THE ADVANCED DIPLOMA IN INTERNATIONAL TAXATION

June 2022

MODULE 3.05 – BANKING OPTION

ADVANCED INTERNATIONAL TAXATION (THEMATIC)

TIME ALLOWED – 3¼ HOURS

This exam paper has **three** parts: **Part A**, **Part B** and **Part C**.

You need to answer **five** questions in total. You will **not** receive marks for any additional answers.

You must answer:

- **Both** questions in **Part A** (25 marks each)
- **One** question from **Part B** (20 marks)
- **Two** questions from **Part C** (15 marks each)

Further instructions

- All workings should be made to the nearest month and in appropriate monetary currency, unless otherwise stated.
- As you are using the online method to complete your exam, you must provide appropriate line breaks between each question, and clearly indicate the start of each new question using the formatting tools available.
- Marks are specifically allocated for clarity of presentation of your answers.
- The time you spend answering questions should correspond broadly to the number of marks available for that question. You should therefore aim to spend approximately half of your time answering Part A, and the other half answering questions in Parts B and C.
- There is no separate reading time, so you can start typing your answers as soon as the exam begins. However, we recommend that you set aside some time to thoroughly read each question and plan each of your answers.

For your information this paper includes:

AMAFI 19-03EN, 10 January 2019, Annex 1: Article 235 Ter ZD of the General Tax Code as amended by Article 39 of Act 2017-1837 of 30 December 2017 (2018 Finance Act)

US IRS Qualified Intermediary Agreement Notice 2016-42 (selected extracts)

User's Guide to the ISDA 2002 Master Agreement, 2003 edition (selected extracts)

UK Corporate Criminal Offence (CCO)

UK Bank Levy

Council Directive (EU) 2018/822 (DAC6)

PART A

You are required to answer BOTH questions from this Part.

1. You are required to answer the following questions:

1) Describe and highlight the advantages and disadvantages of each of the methods for establishing the free capital attributable to the permanent establishment (PE) of a bank, under the Authorised OECD Approach (AOA) as per the *OECD Report on Attribution of Profit to Permanent Establishments 2010*. (17)

2) How does the capital attribution impact the interest expense of the branch? (3)

3) How would the AOA consider the attribution of profit, for back and middle office functions performed within an international bank? (5)

Total (25)

2. The French Financial Transaction Tax (FFT) was implemented in 2012 and is an established obligation. The tax applies to the transfer of specified securities issued by entities that have their registered seat in France and meet certain conditions. It applies to acquisitions made by residents and non-residents of these countries, irrespective of the transaction, including a domestic counterparty.

You are required to:

1) Explain the 'Market Maker Exemptions' within the French FFT, providing examples of its application. (12)

2) Outline the obligations of the 'Statutory Taxpayer' and the 'Economic Taxpayer'. (13)

Total (25)

PART B

You are required to answer ONE questions from this Part.

3. The United Kingdom's new corporate criminal offence (CCO) of the failure to prevent the facilitation of tax evasion entered into force on 30 September 2017.

You are required to:

1) Discuss the reasonable key principles (the 'principles') that should be considered by organisations seeking to avert the criminal facilitation of tax evasion by associated persons. (12)

2) Outline how an organisation which identifies one or more acts of criminal facilitation should report this information. (8)

Total (20)

4. The United States IRS has issued a revised Qualified Intermediary Agreement, with effect from 2017.

You are required to consider the 'Compliance Obligations' arising from the Agreement, and the role of the 'Qualified Intermediary Responsible Officer'. (20)

PART C

You are required to answer TWO questions from this Part.

5. On 25 May 2018 the Economic and Financial Affairs Council (ECOFIN) formally adopted Council Directive (EU) 2018/822, amending Directive 2011/16/EU regarding mandatory automatic exchange of information in the field of taxation, in relation to reportable cross-border arrangements (commonly referred to as 'DAC6').

You are required to discuss what is covered by mandatory disclosure under DAC6, including the timelines for the new rules on mandatory disclosure which apply to EU member states, and the timelines regarding the reporting obligations. (15)

6. The United Kingdom introduced a Bank Levy in 2011, in an attempt to encourage the banking sector to move away from high-risk funding models and to raise a set amount of revenue.

You are required to answer the following questions:

1) How have the rates of the UK Bank Levy changed since 2016? (2)

2) How has the territorial scope of the UK Bank Levy changed from January 2021, and what measures are contained within the Bank Levy's anti-avoidance legislation? (10)

3) Would a foreign bank levy be considered as an equivalent foreign levy, in order to obtain double taxation relief (DTR) in the UK? (3)

Total (15)

7. Bank Beta has issued a total return swap (TRS) on United States equities to a client resident in the United Kingdom, transferring the underlying risk to an affiliate entity, Bank Delta, which in turn hedges the risk with equivalent US equities.

You are required to explain the US IRS withholding and reporting obligations for Bank Beta and Bank Delta, in each of the following scenarios:

1) Both Bank Beta and Bank Delta are Qualified Derivative Dealers.

2) Only Bank Beta is a Qualified Derivative Dealer.

You should explain any assumptions which you make in your answer. (15)

8. An International Swaps and Derivatives Association (ISDA) negotiation has recently stalled, as the other party will not accept the requirement to make a representation confirming that they are a foreign person that cannot act through a United States branch. The 2002 ISDA Agreement is the basis of negotiation.

You are required to explain this representation to your negotiating team, together with the implications that will arise should it not be included in the Schedule to the final ISDA agreement. (15)

ANNEX 1

ARTICLE 235 TER ZD OF THE GENERAL TAX CODE AS AMENDED BY ARTICLE 39 OF ACT 2017-1837 OF 30 DECEMBER 2017 (2018 FINANCE ACT)

(UNOFFICIAL TRANSLATION FOR INFORMATION ONLY)

Current version

1. - A tax is applied to any acquisition for consideration of an equity security as defined by Article L. 212-1 A of the Monetary and Financial Code, or of an assimilated security, as defined by Article L. 211-41 of the same code, once said security is listed for trading on a French, European or foreign regulated market, as defined by Articles L. 421-4, L. 422-1 and L. 423-1 of said code, when acquisition results in a transfer of ownership as defined by Article L. 211-17 of the same code, and when said security is issued by a company with registered offices in France and with a market capitalization that exceeds one billion euros as of 1 December of the year prior to the tax year.

"Acquisition, as used in the first paragraph, means the purchase, including purchase by exercising an option or a forward purchase which has previously been defined in a contract, the exchange or the allotment, in consideration for contributions of equity securities as defined in said first paragraph.

"The securities representing those referred to in the first paragraph, issued by a company, regardless of its place of establishment, shall be subject to the tax.

"II – The tax shall not apply to:

"1. Purchase transactions executed in the context of an issue of equity securities, including when said issue gives rise to the investment service of underwriting or placing of financial instruments on a firm commitment basis as defined by Article L. 321-1 of the Monetary and Financial Code;

"2. Transactions performed by a clearing house, as defined by Article L. 440-1 of the same code, within the framework of the activities defined in said Article L. 440-1, or by a central depositary as defined by point 3 of II of Article L. 621-9 of said code in the context of the activities defined in the same Article L. 621-9;

"3. Acquisitions made in the context of market making activities. These activities are defined as the activities of an investment firm or a credit institution or an entity in a foreign country, or a local company that is a member of a trading platform, or a market in a foreign country when the firm, institution or entity in question acts as intermediary and participate in transactions on financial instruments as defined by Article L. 211-1 of the same code:

"a) either in the simultaneous communication of firm, competitive buy and sell prices, of comparable size, with the result of providing liquidity to the market on a regular and continuous basis;

"b) or, in the context of its normal activity, when executing the orders given by clients or in response to client buy and sell requests;

"c) or to hedge the positions related to the execution of the transactions cited in points a and b;

"4. Transactions executed on behalf of issuers in order to promote the liquidity of their shares within the framework of authorized market practices accepted by the French Autorité des Marchés Financiers pursuant to Regulation (UE) 596/2014 of the European Parliament and Council of 16 April 2014, concerning market abuse (regulation on market abuse) and repealing Directive 2003/6 / EC of the European Parliament and of the Council and Directives 2003/124 / EC, 2003/125 / EC and 2004/72 / EC of the EC and of the Commission.

"5. Acquisitions of securities between companies members of the same group, as defined by Article L. 233-3 of the Commercial Code, at the time of the relevant acquisition of securities, acquisitions of securities between companies members of the same tax group, as defined by Article 223 A of this code, and acquisitions made under the conditions stipulated in Articles 210 A, 210 B, 220 quater, 220 quater A and 220 quater B;

"6. Temporary assignments of securities cited in point 10 of Article 2 of (EC) Regulation 1287/2006 of the European Commission dated 10 August 2006, defining the measures to enforce Directive 2004/39/CE of the European Parliament and the Council governing the filing obligations of investment firms, transaction records, market transparency, the listing of financial instruments for trading and the definition of terms under said directive;

"7. Acquisitions, governed by Book III of the third section of the Labour Code, of equity securities by company mutual investment undertakings governed by Articles L. 214-164 and L. 214-165 of the Monetary and Financial Code and by employee shareholder mutual funds governed by Article L. 214-166 of the same code and acquisitions of equity securities of the company or of a company belonging to the same group as defined by Articles L. 3344-1 and L. 3344-2 of the Labour Code, made directly by the employees pursuant to the seventh paragraph of Article L. 3332-15 of the same code;

"8. Purchases of their own equity securities by companies when these securities are intended to be sold to the participants in a company savings plan pursuant to Title III of Book III of the third part of the Labour Code;

"9. Acquisitions of bonds redeemable for or convertible into shares.

"III. - The tax is based on the acquisition value of the security. In the case of an exchange, if no acquisition value is expressed in a contract, the acquisition value corresponds to the listing price of the securities on the most relevant market in terms of liquidity, as defined by Article 9 of (EC) Regulation 1287/2006 of the Commission of 10 August 2006 cited above, at the closing of the trading day preceding the day of the exchange. In the case of an exchange between securities of unequal value, each party to the exchange shall be taxed on the value of the securities it acquires.

"IV. - The tax is payable the first day of the month following the month in which the security is acquired.

"V. – The rate of the tax is set at 0.3%.

"VI. – The tax shall be assessed and paid by the firm providing investment services, as defined in Article L. 321-1 of the Monetary and Financial Code, having executed the order to buy the securities or having traded in the securities for its own account, regardless of its location.

If several firms mentioned in the first paragraph of this VI are involved in executing a security purchase order, the tax shall be assessed and paid by the firm that received the purchase order directly from the end buyer.

If the acquisition is made without the involvement of a firm providing investment services, the tax shall be assessed and paid by the institution acting as the custody-account-keeper, as defined in 1 of Article L. 321-2 of the same code, regardless of its location. The buyer must provide the institution with the information cited in VIII of this article.

"VII. - If the central depositary-issue account holder of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code and delivers the security, the taxpayer cited in VI of this article shall provide to the central depositary the information stipulated in point VIII before the 5th of the month following the acquisitions cited in point I and shall designate the person on behalf of which the tax may be withheld.

"If the central depositary-issue account custodian is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code and does not make delivery of the security, which is performed in the books of one of its members, said member shall provide the central depositary with the information stipulated in point VIII of this article before the 5th of the month following the acquisition cited in point I.

"If the central depositary-issue account custodian of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, and neither this depositary nor any of its members make delivery of the security, which is performed in the books of the client of a member of the central depositary, this client shall provide the information stipulated in point VIII of this article to the member, which shall transmit it to the central depositary before the 5th of the month following the acquisitions cited in point I.

"If the central depositary-issue account custodian of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code and the delivery is made under conditions different from those described in the first three paragraphs of this point VII, the taxpayer cited in point VI shall declare the tax to the tax administration, based on the model it has established, and pay the tax to the Treasury before the 25th of the month following the acquisitions described in point I. The taxpayer may also pay the tax through a member of the central depositary, to which it shall directly or indirectly transmit the information stipulated in point VIII. The member shall transmit this information to the central depositary before the 5th of the month following the acquisitions described in point I. If the taxpayer opts to pay the tax through a member of the central depositary, he shall so inform the Treasury by declaration before November 1. This declaration is valid for one year and is renewed by tacit renewal.

"If the central depositary-issue account custodian of the equity security is not subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, the taxpayer described in point VI of this article shall declare the tax to the tax administration, using the model it has established, and shall pay the tax to the Treasury before the 25th of the month following the acquisitions described in point I. The taxpayer shall make available to the administration the information stipulated in point VIII.

"VIII. - If the central depositary-issue account custodian of the equity security is subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code, it shall collect from its members or taxpayers, under the conditions stipulated in point VII of this article, information concerning the transactions falling within the scope of application of the tax. A decree shall specify the nature of this information, which includes the amount of the tax due for the tax period, the order numbers of the transactions concerned, the date of execution, the description, number and value of the securities for which the acquisition is taxable, and the exempt transactions, distributed in accordance with the exemption categories cited in point II.

"IX. - The issue central depositary-account custodian of the security subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code shall declare the tax to the tax administration, using the model it has established, clear and pay the tax to the Treasury before the 25th of the month following the acquisitions cited in point I of this article. In particular, the declaration shall specify the amount of the tax due and paid by each taxpayer.

"In the cases described in the first three paragraphs of VII, or in the case of the taxpayer's option cited in the next to last paragraph of point VII, the member who has transmitted the information stipulated in point VIII or who has been designated by the taxpayer pursuant to the first paragraph of VII shall authorize it to withhold the amount of the tax from his account before the 5th of the month following the acquisitions cited in point I.

"X. – The central depositary subject to point 3 of II of Article L. 621-9 of the Monetary and Financial Code shall keep a separate accounting to record the transactions associated with collecting the tax. It shall oversee the consistency between the declarations it receives and the information in its possession as central depositary. The information collected by the central depositary pursuant to point VII of this article shall be provided to the tax administration on request. An annual report shall be transmitted to the administration on the type and magnitude of the audit performed. A decree shall define the conditions for the application of this point X.

"XI. - In the event the central depositary fails, through its action, to meet the payment obligations stipulated in point IX, it shall pay the late penalty stipulated by Article 1727.

"If the taxpayer fails to meet the payment obligations stipulated in point VII of this article, the taxpayer shall pay the late penalty stipulated in said Article 1727.

"If the taxpayer or member fails to perform the declaration obligations stipulated in point VII of this article, the member shall pay the fine stipulated in Article 1788 C.

"XII. - The tax shall be collected and audited in accordance with the procedures and subject to the same sanctions, guarantees and liens as tax on revenues. Claims shall be submitted, investigated and judged under the rules applicable to these same taxes."

"XIII. - The tax is allocated to the French Development Agency within the limit of the ceiling provided for in I of Article 46 of 2012 Finance Act No. 2011-1977 of December 28, 2011.

Proposed Qualified Intermediary Agreement
Notice 2016-42

SECTION 3. WITHHOLDING RESPONSIBILITY AND QDD TAX LIABILITY

Sec. 3.01. Chapters 3 and 4 Withholding Responsibilities.

(A) Chapter 4 Withholding. QI is a withholding agent for purposes of chapter 4 and subject to the withholding and reporting provisions applicable to withholding agents under sections 1471 and 1472 with respect to its accounts. QI is required to withhold 30 percent of any withholdable payment made after June 30, 2014, to an account holder that is an FFI unless either QI can reliably associate the payment (or portion of the payment) with documentation upon which it is permitted to rely to treat the payment as exempt from withholding under §1.1471-2(a)(4) or the payment is made under a grandfathered obligation described in §1.1471-2(b). See §1.1471-2(b)(2)(i)(A)(2) for the definition of grandfathered obligation with respect to an obligation giving rise to a dividend equivalent. QI is also required to withhold 30 percent of any withholdable payment made after June 30, 2014, to an account holder that is an NFFE unless either QI can reliably associate the payment (or portion of the payment) with a certification described in §1.1472-1(b)(1)(ii) or an exception to withholding under §1.1472-1 otherwise applies.

If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI), QI will satisfy its requirement to withhold under sections 1471(a) and 1472(a) with respect to direct account holders that are entities by withholding on withholdable payments made to nonparticipating FFIs and recalcitrant account holders to the extent required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI. See the FFI Agreement, §1.1471-5(f)(1), or the applicable Model 2 IGA for the withholding requirements that apply to withholdable payments made to account holders of the FFI that are individuals treated as recalcitrant account holders or non-consenting accounts. If QI is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI, QI will satisfy its requirement to withhold under section 1471(a) with respect to direct account holders by withholding on withholdable payments made to nonparticipating FFIs to the extent required under its FATCA requirements as a registered deemed-compliant FFI or registered deemed-compliant Model 1 IGA FFI. QI must, however, withhold in the manner described in sections 3.02 and 3.03 of this Agreement for when QI assumes or does not assume primary withholding responsibility for purposes of chapters 3 and 4 regardless of its chapter 4 status.

(B) Chapter 3 Withholding. To the extent that QI makes a payment of an amount subject to chapter 3 withholding, QI is required to withhold 30 percent of the gross amount of any such payment made to an account holder that is (or is presumed) a foreign person unless QI can reliably associate the payment with documentation upon which it can rely to treat the payment as made to a payee that is a U.S. person or as made to a beneficial owner that is a foreign person entitled to a reduced rate of withholding. See section 5 of this Agreement regarding documentation requirements. With respect an amount subject to chapter 4 withholding that is also an amount subject to chapter 3 withholding, QI may credit any tax withheld under chapter 4 against its liability for any tax due under chapter 3 with respect to the payment so that no additional withholding is required on the payment for purposes of chapter 3. Nothing in chapter 4 or the regulations thereunder (including the FFI Agreement) or any applicable IGA relieves QI of its requirements to withhold under chapter 3 to the extent required in this Agreement.

Sec. 3.02. Primary Chapters 3 and 4 Withholding Responsibility Not Assumed. Notwithstanding sections 1.01 and 3.01 of this Agreement, QI is not be required to withhold with respect to a payment of U.S. source FDAP income if it (a) does not assume primary withholding responsibility under section 3.03 of this Agreement by electing to be withheld upon under §1.1471-2(a)(2)(iii) for purposes of chapter 4, (b) provides the withholding agent from which QI receives the payment with a valid withholding certificate that indicates that QI does not assume primary withholding responsibility for chapters 3 and 4 purposes, and (c) provides correct withholding statements (including information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI, other than a qualified intermediary that assumes primary withholding responsibility, withholding foreign partnership, or withholding foreign trust) as described in section 6.02 of this Agreement. However, QI that is acting as a QDD must assume primary withholding responsibility to the extent required under section 3.03(B) of this Agreement. Notwithstanding its election not to assume primary withholding responsibility under chapters 3 and 4, QI shall, however, withhold the difference between the amount of withholding required under chapter 3 or 4 and the amount actually withheld by another withholding agent if QI—

(A) Actually knows that the appropriate amount has not been withheld by another withholding agent; or

(B) Made an error which results in the withholding agent's failure to withhold the correct amount due (e.g., QI fails to provide an accurate withholding statement with respect to the payment, including a failure to provide information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI to the extent required in section 6 of this Agreement) and QI has not corrected the underwithholding under section 9.05 of this Agreement. QI is not required to withhold on an amount that it pays to another qualified intermediary that has assumed primary withholding responsibility with respect to the payment or to a withholding foreign partnership or withholding foreign trust. See section 8 of this Agreement regarding QI's responsibility to report amounts subject to withholding under chapter 3 or 4 on Form 1042-S.

Sec. 3.03. Assumption of Primary Chapters 3 and 4 Withholding Responsibility.

(A) In General. QI, upon notification to a withholding agent, may assume primary withholding responsibility for purposes of chapters 3 and 4 by providing a valid withholding certificate described in section 6 of this Agreement to a withholding agent that makes a payment of U.S. source FDAP income to QI and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary withholding responsibility. QI may assume primary withholding responsibility without informing the IRS. QI is not required to assume primary withholding responsibility for all accounts it holds with the withholding agent. If QI assumes primary withholding responsibility for any account, it must assume that responsibility under chapters 3 and 4 for all withholdable payments and amounts subject to chapter 3 withholding made by the withholding agent to that account. QI may assume primary withholding responsibility for U.S. source FDAP payments of substitute interest as described in §1.861-2(a)(7). If QI assumes primary withholding responsibility for payments of substitute interest (as described in this paragraph), it must assume primary withholding responsibility with respect to all such payments. QI assumes primary withholding responsibility for payments of substitute interest for purposes of this Agreement when it assumes such responsibility for payments of interest and substitute interest it receives in connection with a sale-repurchase or similar agreement, a securities lending transaction, or collateral that it holds in connection with its activities as a dealer in securities. As a result, QI may represent its status as a qualified intermediary on the withholding certificate described in section 6.01 of this Agreement with respect to

payments it receives of interest and substitute interest described in the preceding sentence regardless of whether it acts as an intermediary or as a principal with respect to these payments.

To the extent that QI assumes primary withholding responsibility, QI shall withhold as described in section 3.01 of this Agreement. QI is not required to withhold on amounts it pays to another qualified intermediary that has assumed primary withholding responsibility with respect to the payment (including a qualified intermediary acting as a QDD) or to a withholding foreign partnership or a withholding foreign trust. See section 8 of this Agreement regarding QI's responsibility to report amounts subject to withholding on Form 1042-S.

(B) Assumption of Withholding Responsibility by a QDD. If QI is acting as a QDD, it must assume primary chapters 3 and 4 withholding responsibility for any dividend equivalent payment that it makes and must withhold with respect to a dividend equivalent payment on the dividend payment date for the applicable dividend (as determined in §1.1441-2(e)(4)). A QDD must also assume primary chapter 3 and chapter 4 withholding responsibility for payments made with respect to a potential section 871(m) transaction even if the payment is not a dividend equivalent if the amount paid is an amount subject to chapter 3 or 4 withholding. A QDD is not required to withhold under chapter 3 or 4 on amounts it pays to another qualified intermediary that has assumed primary withholding responsibility with respect to the payment, or to a withholding foreign partnership or a withholding foreign trust. See section 8 of this Agreement regarding QDD's responsibility to report dividend equivalent payments and other amounts subject to withholding on Form 1042-S.

Sec. 3.04. Backup Withholding Under Section 3406 and Form 1099 Reporting Responsibility.

(A) Backup Withholding. QI is a payor under section 3406 with respect to reportable payments. Under section 3406, unless an exception to backup withholding applies, a payor is required to deduct and withhold 28 percent from a reportable payment to an account holder that is a U.S. non-exempt recipient if the U.S. non-exempt recipient has not provided its U.S. TIN in the manner required under that section; the IRS notifies the payor that the U.S. TIN furnished by the payee is incorrect; there has been a notified payee under-reporting described in section 3406(c); or there has been a payee certification failure described in section 3406(d).

(B) Coordination of Chapter 4 Withholding and Backup Withholding. With respect to a withholdable payment that is also a reportable payment subject to backup withholding under section 3406, QI is not required to withhold under section 3406 if QI withheld on such payment under chapter 4. See §31.3406(g)-1(e). Alternatively, if QI is a participating FFI or a registered deemed-compliant FFI (other than a reporting Model 1 FFI), it may elect to satisfy its obligation to withhold under chapter 4 (or the FFI Agreement) on a withholdable payment made to a recalcitrant account holder that is a U.S. non-exempt recipient by satisfying its backup withholding obligation under section 3406 provided that the payment is also a reportable payment. See section 4 of the FFI Agreement. Nothing in chapter 4 (including the FFI Agreement) or any applicable IGA relieves QI of its requirements to backup withhold under section 3406 to the extent required by this Agreement.

(C) Form 1099 Reporting. If QI applies backup withholding (as described in section 3.04(B) of this Agreement), it must report the amount subject to backup withholding on Form 1099 and not on Form 1042-S.

Sec. 3.05. Primary Form 1099 Reporting and Backup Withholding Responsibility for Reportable Payments Other Than Reportable Amounts. QI is responsible for reporting on Form 1099 and backup withholding on reportable payments other than reportable amounts to the extent required under this section 3.05 and section 8.06 of this Agreement, whether or not QI assumes primary Form 1099 reporting and backup withholding responsibility with respect to reportable amounts under section 3.07 of this Agreement. Further, no provision of this Agreement which requires QI to provide another withholding agent with information regarding reportable amounts shall be construed as relieving QI of its Form 1099 reporting and backup withholding obligations with respect to reportable payments that are not reportable amounts.

See, however, §31.3406(g)-1(e) providing that a payor (irrespective of whether the payor is a U.S. or non-U.S. payor) is not required to backup withhold under section 3406 on a reportable payment that is paid and received outside the United States with respect to an offshore obligation or on gross proceeds from a sale effected outside the United States, unless the payor has actual knowledge that the payee is a U.S. person.

(A) U.S. Payor. Except as provided in section 3.05(C) of this Agreement, if QI is a U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for reportable payments other than reportable amounts. For example, if QI is a U.S. payor, it has primary Form 1099 reporting and backup withholding responsibility for payments of foreign source income as well as all broker proceeds paid to account holders that are, or are presumed to be, U.S. non-exempt recipients.

(B) Non-U.S. Payor. If QI is a non-U.S. payor, QI has primary Form 1099 reporting and backup withholding responsibility for broker proceeds described in section 2.75(B)(2) of this Agreement and foreign source fixed and determinable income other than income paid and received outside United States as described in section 2.75(B)(3) of this Agreement, if such payments are made (or presumed made) to U.S. non-exempt recipients.

(C) Special Procedure for Broker Proceeds. If QI is a U.S. payor, QI may request another payor that is either a U.S. financial institution or another qualified intermediary to report on Form 1099 and, if required, backup withhold with respect to broker proceeds from a sale that is effected at an office outside the United States (as defined in §1.6045-1(g)(3)(iii)) that QI is otherwise required to report under section 3.05(A) and section 8.05 of this Agreement, provided the other payor actually receives the broker proceeds. In such a case, QI will not be responsible for primary Form 1099 reporting and backup withholding with respect to broker proceeds, provided that the other payor agrees to do the reporting and backup withholding and QI provides all of the information necessary for the other payor to properly report and backup withhold. QI, however, remains responsible for primary Form 1099 reporting and backup withholding if the other payor does not agree to report and backup withhold, or if QI knows that the other payor failed to do so. If, however, QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI) that reports an account on Form 1099 in order to satisfy its U.S. account reporting requirement under chapter 4, as described in section 8.04 of this Agreement, QI is responsible for reporting on Form 1099 with respect to reportable payments made to such U.S. account and must report in the manner described in the FFI Agreement.

(D) Special Procedure for QDDs. QI acting as a QDD must assume primary Form 1099 reporting and backup withholding responsibility for any payments made with respect to a potential section 871(m) transaction that are reportable payments. Thus, for example, if QI acts as a QDD with respect to an NPC that is a potential section 871(m) transaction and makes a payment pursuant to the NPC to a U.S. person that is a U.S. non-exempt recipient, QI must backup withhold and report any amount paid to the U.S. person to the extent required under section 3406 and §1.6041-1(d)(5). See also section 8.03(C) of this Agreement for

a QDD's Form 1042-S reporting requirements for a qualifying dividend equivalent offsetting payment (notwithstanding the limitation in section 2.70(B) of this Agreement).

Sec. 3.06. Primary Form 1099 Reporting and Backup Withholding Responsibility For Reportable Amounts Not Assumed. Notwithstanding sections 1.01 and 3.04 of this Agreement, QI shall not be required to report on Form 1099 and, if required, backup withhold with respect to a reportable amount if QI does not assume primary Form 1099 reporting and backup withholding responsibility and it provides a payor from which it receives a reportable amount the Forms W-9 of its U.S. non-exempt recipient account holders (or, if a U.S. non-exempt recipient fails to provide a Form W-9, information regarding the account holder's name, address, and U.S. TIN, if a U.S. TIN is available) together with the withholding rate pools (as defined in section 6.03(D) of this Agreement) attributable to U.S. non-exempt recipient account holders so that such payor may report on Form 1099 and, if required, backup withhold. If QI elects to backup withhold on withholdable payments that are also reportable amounts made to recalcitrant account holders that are also U.S. non-exempt recipients, QI shall not be required to report on Form 1099 and backup withhold with respect to a reportable amount if it provides a payor from which it receives a reportable amount information regarding such recalcitrant account holders. See section 6.03 of this Agreement and section 4 of the FFI Agreement. If QI reports its U.S. accounts on Forms 1099 under its FATCA requirements as a participating FFI or registered deemed-compliant FFI, see section 8.04(A) of this Agreement providing that QI cannot delegate to a withholding agent its requirement to report its U.S. accounts. See sections 3.04 and 8.06 of this Agreement for QI's obligations regarding Form 1099 reporting and backup withholding with respect to reportable amounts and see also section 6.03 of this Agreement for when QI may provide a chapter 4 withholding rate pool of U.S. payees. If QI elects not to assume primary Form 1099 reporting and backup withholding responsibility, QI must provide the withholding agent with such information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI. See also sections 3.05(D) and 3.07 of this Agreement requiring a QI acting as a QDD for payments with respect to potential section 871(m) transactions to assume primary Form 1099 and backup withholding responsibility for such amounts. Notwithstanding its election not to assume primary Form 1099 reporting and backup withholding responsibility, QI shall backup withhold and report a reportable amount to the extent required under sections 3.04 and 8.06 of this Agreement if—

(A) QI actually knows that a reportable amount is subject to backup withholding and that another payor failed to apply backup withholding, or

(B) Another payor has not applied backup withholding to a reportable amount because of an error made by QI (e.g., QI failed to provide the other payor with information regarding the name, address, U.S. TIN (if available), and withholding rate pool for a U.S. non-exempt recipient account holder subject to backup withholding, including a failure to provide information regarding any account holders or interest holders of an intermediary or flow-through entity that holds an account with QI to the extent required in section 6 of this Agreement).

QI is not required to backup withhold, however, on a reportable amount that QI makes to a withholding foreign partnership, withholding foreign trust, or another qualified intermediary that has assumed primary Form 1099 reporting and backup withholding responsibility with respect to the payment. QI is also not required to backup withhold on a reportable amount that QI makes to an intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or another qualified intermediary that does not assume primary Form 1099 reporting and backup withholding responsibility with respect to the payment provided that such intermediary or flow-through entity allocates the payment on its withholding statement to a chapter 4 withholding rate pool of U.S. payees and the withholding statement is associated with a valid Form W-8IMY that provides the applicable certification(s) for allocating the payment to this pool or allocates the payment on its withholding statement to a chapter 4 withholding rate pool of recalcitrant account holders. See section 3.05 of this Agreement for backup withholding responsibility for reportable payments other than reportable amounts. See section 8.06 of this Agreement regarding QI's responsibility to report reportable payments on Form 1099.

Sec. 3.07. Assumption of Primary Form 1099 Reporting and Backup Withholding Responsibility. QI may assume primary Form 1099 reporting responsibility and primary backup withholding responsibility with respect to reportable amounts without approval from the IRS. See sections 3.04 and 8.06 of this Agreement for QI's obligations regarding Form 1099 reporting and backup withholding with respect to reportable amounts. QI that assumes such responsibility is subject to all of the obligations imposed by chapter 61 and section 3406, as modified by this Agreement, and QI shall be subject to any applicable penalties for failure to meet those obligations. QI shall inform a payor from which it receives a reportable amount that it has assumed primary Form 1099 reporting and backup withholding responsibility by providing the payor with a valid withholding certificate described in section 6 of this Agreement and by designating on the withholding statement associated with such certificate the account(s) for which QI assumes primary Form 1099 reporting and backup withholding responsibility. QI may assume primary Form 1099 reporting and backup withholding responsibility without informing the IRS.

QI is not required to assume primary Form 1099 reporting and backup withholding responsibility for all accounts it holds with a payor. However, if QI assumes primary Form 1099 reporting and backup withholding responsibility for any account, it must assume that responsibility for all reportable amounts made by a payor to that account.

If QI is acting as a QDD, it must assume primary Form 1099 reporting and backup withholding responsibility with respect to any payment made with respect to a potential section 871(m) transaction, provided that the amount is a reportable payment. In addition, if QI is assuming primary withholding responsibility for payments of substitute interest (as described in section 3.03(A) of this Agreement), it must assume primary Form 1099 reporting and backup withholding responsibility with respect to all such payments.

QI shall not be required to backup withhold on a reportable amount it makes to a withholding foreign partnership, withholding foreign trust, or another qualified intermediary that has assumed primary Form 1099 reporting and backup withholding responsibility with respect to the reportable amount. QI is also not required to backup withhold on a reportable amount that QI makes to an intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or another qualified intermediary that does not assume primary Form 1099 reporting and backup withholding responsibility with respect to the payment provided that such intermediary or flow-through entity allocates the payment on its withholding statement to a chapter 4 withholding rate pool of U.S. payees and the withholding statement is associated with a valid Form W-8IMY that provides the applicable certification(s) for allocating the payment to this pool or allocates the payment on its withholding statement to a chapter 4 withholding rate pool of recalcitrant account holders. See section 8 of this Agreement regarding QI's responsibility to report reportable payments on Form 1099.

Sec. 3.08. Deposit Requirements. If QI assumes primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and backup withholding responsibility, it must deposit amounts withheld under chapter 3 or 4 or section 3406 at the time and in the manner provided under section 6302 (see §1.6302-2) by electronic funds transfer as provided under §31.6302-1(h). If QI is a non-U.S. payor that does not assume primary withholding responsibility under chapters 3 and 4 or primary Form 1099 reporting and section 3406 backup withholding responsibility, QI must deposit amounts withheld by the 15th day following the month in which the withholding occurred.

If QI is acting as a QDD, it must also make deposits with respect to its QDD tax liability. At the time the QDD determines that it has a QDD tax liability (as described in section 3.09(D) of this Agreement), it must deposit any tax for which it is liable at the time and in the manner provided under section 6302 (see §1.6302-2) (substituting the term "QDD" for "withholding agent" and "sections 871(a) and 881" for "chapter 3" and "due under sections 871 and 881" for "withheld pursuant to chapter 3") by electronic funds transfer as provided in §31.6302-1(h). See section 3.09(D) of this Agreement for the timing for determining the QDD tax liability. The deposit requirements under section 6302 and §1.6302-2 apply separately to amounts due for a QDD's QDD tax liability and any amounts withheld under chapters 3 and 4.

Sec. 3.09. QDD Tax Liability. In addition to satisfying its withholding tax liability as described in this Agreement, a QDD must satisfy its QDD tax liability. The QDD's QDD tax liability is the sum of its tax liability under sections 871(a) and 881, if any, for:

(A) its section 871(m) amount (as defined in section 2.79 of this Agreement) for amounts received and made as a QDD in its dealer capacity;

(B) its dividends that are not on underlying securities associated with potential section 871(m) transactions and its dividend equivalent payments received as a QDD in its non-dealer capacity; and

(C) any payments, such as interest, received as a QDD with respect to potential section 871(m) transactions or underlying securities that are not dividend or dividend equivalent payments.

A QDD that is a foreign branch of a U.S. financial institution does not have a QDD tax liability and is not required to report such liability on Form 1042. Instead, such a QDD must determine and report its tax liability in accordance with chapter 1 and the appropriate income tax return filing obligations for the U.S. corporation.

(D) Timing for Determining QDD Tax Liability. A QDD must determine its QDD tax liability due under sections 3.09(A) and (B) for each underlying security and section 871(m) transaction on the date that a dividend is paid on the underlying security, as provided in §1.1441-2(e)(4). A QDD must determine its QDD tax liability due under section 3.09(C) at the time such payments are made, as provided in §1.1441-2(e).

See section 7.01(C) of this Agreement regarding QI that is acting as a QDD's responsibility to report on Form 1042 its QDD tax liability and to maintain a reconciliation schedule for its section 871(m) amount and other amounts related to its QDD tax liability.

SECTION 7. TAX RETURN OBLIGATIONS

Sec. 7.01. Form 1042 Filing Requirement.

(A) In general. QI shall file a return on Form 1042, whether or not QI withheld any amounts under chapter 3 or 4, on or before March 15 of the year following any calendar year in which QI acts as a qualified intermediary and makes a payment of an amount subject to chapter 3 or 4 withholding when acting as a qualified intermediary under this Agreement. A separate Form 1042 must be filed by each legal entity that is a qualified intermediary covered by this Agreement. Form 1042 shall be filed at the address indicated on the form, at the address at which the IRS notifies QI to file the return under the provisions of section 12.06 of this Agreement, or in accordance with the instructions to file Form 1042 electronically. In addition to the information specifically requested on Form 1042 and the accompanying instructions, if QI made any overwithholding or underwithholding adjustments under §§1.1461-2 and 1.1474-2 and sections 9.02 and 9.05 of this Agreement, QI must attach a statement setting forth the amounts of any overwithholding or underwithholding adjustments and an explanation of the circumstances that resulted in the over- or underwithholding.

(B) Extensions for Filing Returns. QI may request an extension of the time for filing Form 1042, or any of the information required to be attached to the form, by submitting Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, on or before the due date of the return.

(C) QDD Tax Liability Requirements for QDDs. In addition to its requirements under section 7.01(A) of this Agreement, a QI that is acting as a QDD (other than a foreign branch of a U.S. financial institution) also must report on Form 1042 its QDD tax liability, including separately identifying each part of the QDD tax liability described in section 3.09(A) through (C) of this Agreement. For its section 871(m) amount, a QDD is also required to separately report the amount of dividends on underlying securities associated with potential section 871(m) amounts and dividend equivalent payments it received in its dealer capacity and the amount of dividend equivalent payments and qualifying dividend equivalent offsetting payments that it makes or is contractually obligated to make in its dealer capacity. A QDD must also report any other information required by Form 1042 with respect to its QDD tax liability (including any part thereof).

A QDD must also maintain, and make available to the IRS upon request, a reconciliation schedule that tracks across calendar years the section 871(m) amount for each dividend with respect to each underlying security associated with potential section 871(m) transactions or underlying security referenced by a potential section 871(m) transaction. The reconciliation schedule must separately state total amounts received as a QDD, as well as the dividends, dividend equivalents, and qualifying dividend equivalent offsetting payments for each dividend with respect to each underlying security associated with potential section 871(m) transactions, each dividend that is not with respect to an underlying security associated with potential section 871(m) transactions, or each dividend with respect to each underlying security referenced by a potential section 871(m) transaction received as a QDD or payments that the QDD makes or is contractually obligated to make, and any adjustments thereto, separated by payments made as a dealer and as a non-dealer. The reconciliation schedule may be maintained in any manner or format that permits the IRS to reconcile the amount reported by the QDD for the calendar year.

Sec. 7.02. Form 945 Filing Requirement. QI shall file a return on Form 945 on or before January 31 following the calendar year in which QI backup withheld an amount under section 3406. Separate Forms 945 must be filed by each legal entity that is a qualified intermediary covered by this Agreement. The form must be filed at the address specified in the instructions for Form 945, at the address at which the IRS notifies QI to file the return under the provisions of section 12.06 of this Agreement, or in accordance with the instructions to file Form 945 electronically.

Sec. 7.03. Retention of Returns. QI shall retain Forms 945 and 1042 (including, with respect to QI acting as a QDD, its reconciliation schedule) for the applicable statute of limitations on assessment under section 6501.

SECTION 8. INFORMATION REPORTING OBLIGATIONS

Sec. 8.01. Form 1042-S Reporting. Except as otherwise provided in section 8.02 of this Agreement, QI is not required to file Forms 1042-S for amounts paid to each separate account holder for whom such reporting would otherwise be required. Instead, QI shall file a Form 1042-S reporting the pools of income (reporting pools) as determined in section 8.03 of this Agreement. QI must file its Forms 1042-S in the manner required by the regulations under chapters 3 and 4 (or in the case of a participating FFI, in the manner required under the FFI Agreement) and the instructions to the form, including any requirement to file the forms magnetically or electronically. Separate Forms 1042-S must be filed by each legal entity that is a qualified intermediary covered by this Agreement. Each QI covered by this Agreement may, however, allow its individual branches to file Forms 1042-S provided that all Forms 1042-S contain the QI-EIN of the legal entity of which the branch forms a part and (to the extent required for chapter 4 purposes) the GIIN of the branch. Any Form 1042-S required by this section 8 shall be filed on or before March 15 following the calendar year in which the payment reported on the form was made. QI may request an extension of time to file Forms 1042-S by submitting Form 8809, Application for Extension of Time to File Information Returns, by the due date of Forms 1042-S in the manner required by (and extent permitted on) Form 8809.

Sec. 8.02. Recipient Specific Reporting. QI (whether or not it assumes primary chapters 3 and 4 withholding responsibility) is required to file separate Forms 1042-S for amounts paid to each separate account holder as described in this section 8.02. QI must file separate Forms 1042-S by income code, exemption code, recipient code, chapter 3 or 4 withholding rate pool, and withholding rate.

(A) QI must file a separate Form 1042-S for each account holder that is a qualified intermediary, to the extent such payment is required to be reported under §1.1461-1, withholding foreign partnership, or withholding foreign trust that receives from QI an amount subject to withholding under chapter 3 or 4, regardless of whether such account holder is a direct or indirect account holder of QI.

(B) QI must file a separate Form 1042-S for each account holder that is a nonqualified intermediary or flow-through entity that is a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and that receives an amount subject to chapter 4 withholding from QI that is allocable to each of such FFI's chapter 4 withholding rate pools of recalcitrant account holders, nonparticipating FFIs, and pool of U.S. payees, if applicable, regardless of whether such FFI is a direct or indirect account holder of QI.

(C) QI must file a separate Form 1042-S for each account holder that is a nonqualified intermediary or flow-through entity that is not described in section 8.02(B) of this Agreement (other than a nonparticipating FFI) that receives from QI an amount subject to chapter 4 withholding allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs, regardless of whether such intermediary or flow-through entity is a direct or indirect account holder of QI.

(D) QI must file a separate Form 1042-S for each account holder of QI that is a PAI or a partnership or trust to which QI applies the agency option that receives from QI an amount subject to chapter 4 withholding allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs or an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required and that is allocable to such entity's chapter 3 withholding rate pools.

(E) QI must file a separate Form 1042-S for each account holder of QI that is a partnership or trust to which QI applies the joint account option that receives from QI an amount subject to chapter 3 withholding and is allocable to such entity's chapter 3 withholding rate pools.

(F) QI must file a separate Form 1042-S for each unknown recipient with respect to an account holder that is a nonqualified intermediary, flow-through entity, or qualified intermediary that does not assume primary chapters 3 and 4 withholding responsibility and that receives an amount subject to chapter 4 withholding from QI that QI must presume is allocable to such entity's chapter 4 withholding rate pool of payees that are nonparticipating FFIs under the presumption rule of §1.1471-3(f)(5).

(G) QI must file a separate Form 1042-S for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is a nonparticipating FFI that is receiving a payment on behalf of an exempt beneficial owner (regardless of whether the nonqualified intermediary or flow-through entity is a direct or indirect account holder of QI) to the extent QI can reliably associate such amounts with valid documentation from such nonqualified intermediary or flow-through entity as to the payment allocable to one or more exempt beneficial owners. In addition, QI must file separate Forms 1042-S in the same manner for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is described in the preceding sentence and that is a direct or indirect account holder (or interest holder) of a PAI of QI or a partnership or trust to which QI applies the agency option.

(H) QI must file separate Forms 1042-S for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is receiving an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required to the extent QI can reliably associate such amounts with valid documentation from an account holder that is not itself a nonqualified intermediary or flow-through entity. In addition, QI must file separate Forms 1042-S in the same manner for each foreign account holder (or interest holder) of a nonqualified intermediary or flow-through entity that is described in the preceding sentence and that is a direct or indirect account holder (or interest holder) of a PAI of QI or a partnership or trust to which QI applies the agency option.

(I) QI must file a separate Form 1042-S for each direct account holder that establishes its status as a passive NFFE but fails to provide the information regarding its owners as required under §1.1471-3(d)(12)(iii) unless such information was reported by the withholding agent.

(J) If QI is acting as a QDD, QI must file a separate Form 1042-S for any amount subject to chapter 3 withholding with respect to a potential section 871(m) transaction made to another QDD.

Sec. 8.03. Reporting Pools for Form 1042-S Reporting.

(A) Chapter 4 Reporting Pools. Except for amounts required to be reported under section 8.02 of this Agreement, if QI is an FFI, QI shall report all amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders of QI. A separate Form 1042-S shall be filed for each type of reporting pool. A chapter 4 reporting pool is

a payment of a single type of income (e.g., interest, dividends), determined in accordance with the categories of income reported on Form 1042-S, that is allocable to a chapter 4 withholding rate pool consisting of either recalcitrant account holders or payees that are nonparticipating FFIs. QI must report recalcitrant account holders in pools based upon a recalcitrant account holder's particular status described in §1.1471-4(d)(6), with a separate Form 1042-S issued for each such pool.

If QI is an FFI, it may report in a chapter 4 withholding rate pool of U.S. payees an account holder that is (or is presumed) a U.S. person and that QI reports as a U.S. account under its applicable FATCA requirements as a participating FFI or registered deemed-compliant FFI provided that QI is excepted from Form 1099 reporting with respect to the payment under section 8.06(A)(1) of this Agreement or section 8.06(A)(2) and (A)(3) of this Agreement if the payment is both excepted from Form 1099 reporting and not subject to withholding under chapter 4.

If QI is an NFFE, QI shall report all amounts subject to chapter 4 withholding by reporting pools on a Form 1042-S if those amounts are paid to direct account holders that are nonparticipating FFIs in a chapter 4 reporting pool of nonparticipating FFIs.

(B) Chapter 3 Reporting Pools. Except for amounts required to be reported under section 8.02 of this Agreement, QI shall report an amount subject to chapter 3 withholding that is either not a withholdable payment or a withholdable payment for which no chapter 4 withholding is required and that is paid to a foreign account holder by reporting pools on a Form 1042-S if those amounts are paid to direct account holders of QI or to direct account holders of a PAI of QI or a partnership or trust described in section 4 of this Agreement. A separate Form 1042-S shall be filed for each type of reporting pool. A chapter 3 reporting pool is a payment of a single type of income that falls within a particular withholding rate, chapter 3 exemption code, and, if the payment is a withholdable payment, chapter 4 exemption code as determined on Form 1042-S. QI may use a single chapter 3 pool reporting code (e.g., QI- withholding rate pool- general) for all reporting pools except for amounts paid to foreign tax-exempt recipients, for which a separate chapter 3 pool reporting code (e.g., QI- withholding rate pool- exempt organization) must be used. For this purpose, a foreign tax-exempt recipient includes any organization that is not subject to chapter 3 withholding and is not liable to tax in its jurisdiction of residence because it is a charitable organization, a pension fund, or a foreign government.

(C) Qualifying Dividend Equivalent Offsetting Payment Reporting Pools. In addition to the reporting required under sections 8.02 and 8.03 of this Agreement for dividend equivalents that are amounts subject to chapter 3 or 4 withholding, a QI acting as a QDD shall report on separate Forms 1042-S (as required by the form and its accompanying instructions) the amount of the qualifying dividend equivalent offsetting payments that represent (a) payments made to U.S. persons that would be dividend equivalent payments if made to foreign persons and (b) the effectively connected income (described in section 2.70(A)(2) of this Agreement). For purposes of determining when a qualifying dividend equivalent offsetting payment is made, apply the timing rule in §1.1441-2(e)(4) (substituting "qualifying dividend equivalent offsetting payment" for "dividends" and "dividend payment date" for "payment date" in the first sentence).

A QI acting as a QDD must also provide, upon request by the IRS, the name, address, and TIN of any U.S. non-exempt recipient to whom the QI acting as a QDD makes a qualifying dividend equivalent offsetting payment described in section 2.70(A)(1) and shall require such person to waive any prohibition on disclosure of such information to the IRS. If a QI acting as a QDD does not obtain a waiver or collect and maintain such information for any U.S. non-exempt recipient described in the preceding sentence, any payment made to such person is not a qualifying dividend equivalent offsetting payment. A QI acting as a QDD shall report those payments made to U.S. non-exempt recipients that are not qualifying dividend equivalent offsetting payments in a pool on a separate Form 1042-S (as required by the form and its accompanying instructions).

Sec. 8.04. FATCA U.S. Account Reporting.

(A) QI that is an FFI. If QI is an FFI, QI is required to report each U.S. account (or, in the case of an FFI that is a reporting Model 1 FFI or a registered deemed-compliant Model 1 IGA FFI, each U.S. reportable account) that it maintains and for whom QI is acting consistent with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. See QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI to report each account that is a U.S. account (or U.S. reportable account) that it maintains. If QI is a participating FFI or registered deemed-compliant FFI (other than a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI), QI must report its U.S. accounts on Form 8966, FATCA Report, in the time and manner required under its FATCA requirements as a participating FFI or registered deemed-compliant FFI except to the extent QI is reporting under §1.1471-4(d)(5) on Form 1099 with respect to its U.S. accounts. If QI is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI, QI must report each U.S. reportable account on Form 8966 as required under the applicable Model 1 IGA. QI cannot delegate to its withholding agent its requirements to report U.S. accounts (or U.S. reportable accounts) under its applicable FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI (regardless of whether QI does or does not assume primary Form 1099 reporting and backup withholding responsibility under section 3 of this Agreement). See section 8.06 of this Agreement for when the reporting described in this section 8.04 satisfies QI's Form 1099 reporting responsibilities with respect to reportable payments under chapter 61.

(B) QI that is an NFFE. If QI is an NFFE acting as a qualified intermediary on behalf of its shareholders, QI shall file Forms 8966 to report information about any substantial U.S. owners of QI. QI must report on Form 8966 to the extent required of a direct reporting NFFE in the time and manner provided in the instructions to the form. Such report must include the name, address, and U.S. TIN of each substantial U.S. owner of QI; the total of all payments made to each substantial U.S. owner (including gross amounts paid or credited to the substantial U.S. owner with respect to such owner's equity interest in the QI during the calendar year, which includes payments in redemption or liquidation (in whole or in part) of the substantial U.S. owner's equity interest in QI); and any other information as required by the form and its accompanying instructions.

If QI is an NFFE acting as a qualified intermediary on behalf of persons other than its shareholders, QI shall file Form 8966 to report withholdable payments made to an account holder that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners if the NFFE is the beneficial owner of the withholdable payment received by QI. See §1.1471-1(b)(8) for the definition of beneficial owner. QI must report on Form 8966 in accordance with the form and its accompanying instructions. Such report must include the name of the NFFE that is owned by a substantial U.S. owner; the name, address, and U.S. TIN of each substantial U.S. owner; the total of all withholdable payments made to the NFFE during the calendar year; and any other information as required by the form and its accompanying instructions. If QI is acting as a sponsoring entity on behalf of an NFFE for chapter 4 purposes, QI is not required to report as described in this paragraph if QI reports the NFFE as part of QI's requirements as a sponsoring entity. See section 1.1472-1(c)(5)(ii) for the reporting requirements of a sponsoring entity.

Sec. 8.05. Form 8966 Reporting for Payees that are NFFEs. QI shall file Form 8966 to report withholdable payments made to an intermediary or flow-through entity that provides information regarding an account holder (or interest holder) that is an NFFE other than an excepted NFFE with one or more substantial U.S. owners (or one or more controlling persons that is a specified U.S. person under an applicable IGA). QI must report on Form 8966 in the time and manner provided in §1.1474-1(i)(2). Such report must include the name of the NFFE that is owned by a substantial U.S. owner (or controlling person); the name, address, and U.S. TIN of each substantial U.S. owner; the total of all withholdable payments made to the NFFE during the calendar year (or reportable period under the applicable IGA); and any other information as required by the form and its accompanying instructions. QI is not required to report, however, if such information is reported pursuant to section 8.04 of this Agreement or if the intermediary or flow-through entity certifies on its withholding statement that it is reporting the account holder (or interest holder) as a U.S. account pursuant to its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI.

Sec. 8.06. Form 1099 Reporting Responsibility. QI shall file Forms 1099 and, unless filing magnetically, Form 1096, Annual Summary and Transmittal of U.S. Information Returns, for reportable payments made to persons described in this section 8.06. Forms 1099 shall be filed on or before the date prescribed for the particular Form 1099 under chapter 61 and in the manner required by regulations under chapter 61 and the instructions to the forms (including the requirements for filing the forms magnetically or electronically). Extensions of the time to file Forms 1099 may be requested by submitting Form 8809 in the manner required by the form. If QI is required to file Forms 1099, it must file the appropriate form for the type of income paid (e.g., Form 1099-DIV for dividends, Form 1099-INT for interest, Form 1099-B for broker proceeds). QI must file Forms 1099 to report a reportable payment other than in the situations listed in sections 8.06(A) and (B) of this Agreement.

(A) Reportable Amount. QI must file a Form 1099 in accordance with the instructions to the form for the aggregate amount of a particular type of reportable amount paid to an account holder that is (or is presumed) a U.S. non-exempt recipient (whether a direct or indirect account holder). However, QI is not required to file a Form 1099 on a reportable amount if--

(1) QI is a non-U.S. payor reporting the account holder of a U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI) and the other conditions of §1.6049-4(c)(4)(i) are satisfied;

(2) QI reports the account holder's account as held by a recalcitrant account holder or, in the case of a QI that is a reporting Model 2 FFI or nonreporting Model 2 FFI treated as registered deemed-compliant, as a non-consenting account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI and the other conditions of §1.6049-4(c)(4)(ii) are satisfied;

(3) QI is a non-U.S. payor that is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI and determines that the account has U.S. indicia for which appropriate documentation sufficient to treat the account as held by a specified U.S. person has not been provided and reports the account as a U.S. reportable account and the other conditions of §1.6049-4(c)(4)(ii) are satisfied;

(4) QI has not assumed primary Form 1099 reporting and backup withholding responsibility with respect to the account holder's account and has provided a Form W-9 to a withholding agent or has provided withholding rate pool information with respect to such account holder to a withholding agent to apply backup withholding and QI does not know that the withholding agent has failed to report or backup withhold as required;

(5) With respect to an account holder of an intermediary or flow-through entity (other than a qualified intermediary) that is a direct or indirect account holder of QI, the intermediary or flow-through entity allocates the payment to a chapter 4 withholding rate pool of U.S. payees and provides a Form W-8IMY containing a certification that the entity meets the requirements of §1.6049-4(c)(4)(iii); or

(6) With respect to an account holder of another qualified intermediary that is a direct or indirect account holder of QI, the qualified intermediary allocates the payment to a chapter 4 withholding rate pool of U.S. payees and provides the applicable certification on a valid Form W-8IMY for allocating the payment to this pool.

(B) Reportable Payments other than Reportable Amounts. QI must file a Form 1099 for a reportable payment (other than a reportable amount) paid to each U.S. non-exempt recipient (whether a direct or indirect account holder), or to any account holder that is presumed to be a U.S. non-exempt recipient under section 5.13(C) of this Agreement. Notwithstanding the previous sentence, QI is not required to file a Form 1099 for a reportable payment (other than a reportable amount) paid to a direct account holder that is (or is presumed) a U.S. non-exempt recipient if—

(1) QI is a non-U.S. payor reporting the account holder of a U.S. account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI (including a reporting Model 1 FFI) and the other conditions of §1.6049-4(c)(4)(i) are satisfied;

(2) QI reports the account holder's account as held by a recalcitrant account holder or, in the case of a QI that is a reporting Model 2 FFI or nonreporting Model 2 FFI treated as registered deemed-compliant, as a non-consenting account under its FATCA requirements as a participating FFI or registered deemed-compliant FFI and the other conditions of §1.6049-4(c)(4)(ii) are satisfied;

(3) QI is a non-U.S. payor that is a reporting Model 1 FFI or registered deemed-compliant Model 1 IGA FFI and determines that the account has U.S. indicia for which appropriate documentation sufficient to treat the account as held by a specified U.S. person has not been provided and reports the account as a U.S. reportable account and the other conditions of §1.6049-4(c)(4)(ii) are satisfied; or

(4) With respect to a reportable payment that is broker proceeds paid to a U.S. non-exempt recipient, QI has applied the procedures of section 3.05(C) of this Agreement and QI does not know that the other payor has failed to report or backup withhold on the payment as required.

SECTION 10. COMPLIANCE PROCEDURES

Sec. 10.01.

(A) In General. QI is required to adopt a compliance program under the authority of a responsible officer or, if QI adopts a consolidated compliance program, under the authority of a responsible officer of a Compliance QI (as described in section 10.02(B) of this Agreement). QI's compliance program must include policies, procedures, and processes sufficient for QI to satisfy the documentation, reporting, and withholding requirements of this Agreement and sufficient for a responsible officer of QI (or

Compliance QI) to make the certifications required under section 10.03 of this Agreement. If QI is acting as a QDD, QI's compliance program must also include policies, procedures, and processes sufficient for it to satisfy and report its QDD tax liability and other reporting required as a condition of its status as a QDD. QI must also perform or arrange for the performance of a periodic review described in section 10.04 of this Agreement to the extent required by that section. As part of the responsible officer's certification, QI must provide to the IRS the factual information referenced in sections 10.04 and 10.05 of this Agreement and in Appendix I to this Agreement. QI must also satisfy the requirements of section 10.06 of this Agreement with respect to the report covering the periodic review, and must comply with the IRS review described in section 10.08 of this Agreement. With respect to QI that, prior to January 1, 2017, was a limited FFI (as defined in §1.1471-1(b)(77) (or a limited branch, as defined in §1.1471-1(b)(76)), references in this section 10 (and in Appendix I to this Agreement) to QI's FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI include its requirements under §1.1471-4(e)(4) for purposes of its initial certification period.

(B) Coordination with FATCA Requirements as a Participating FFI, Registered Deemed-Compliant FFI, or Registered Deemed-Compliant Model 1 IGA FFI and, for a Direct Reporting NFFE, the Requirements of §1.1472-1(c)(3). As a condition for maintaining QI status, QI must comply with its FATCA requirements as applicable to its chapter 4 status (including any applicable compliance procedure) with respect to each branch of QI operating under this Agreement. Therefore, QI must, as part of the compliance procedures described in this section 10 (including in conducting the periodic review described in section 10.04 of this Agreement and in making the periodic certification described in section 10.03 of this Agreement) determine whether it is compliant with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3), with respect to accounts for which it acts as a qualified intermediary. See the compliance procedures, if any, applicable to QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE with respect to all accounts that it maintains or all of its shareholders. If QI is a participating FFI or direct reporting NFFE, QI will be able to make the certification described in section 10.03 of this Agreement, and the certification described in the FFI Agreement, to the extent provided in future published guidance or other instructions.

10.02. Responsible Officer. QI must appoint an individual as a responsible officer as defined in section 2.78 of this Agreement. The responsible officer must be identified on the FATCA registration website as QI's responsible party, and such person may, but is not required to, be the same responsible officer for purposes of compliance with QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3). The responsible officer (or the responsible officer's designee) must establish a compliance program that meets the requirements of this section 10.02 and must make the periodic certifications to the IRS described in section 10.03 of this Agreement. The responsible officer of QI must be an officer of QI with sufficient authority to fulfill the duties of a responsible officer described in this section 10. The responsible officer (or a delegate appointed by the responsible officer) must also serve as the point of contact for the IRS for all issues related to this Agreement and for complying with IRS requests for information or additional review procedures under section 10.07 of this Agreement.

(A) Compliance Program. The responsible officer (or the responsible officer's designee) must establish a program for QI to comply with the requirements of this Agreement that includes the following--

(1) Written Policies and Procedures. The responsible officer (or designee) must ensure the drafting and updating, as necessary, of written policies and procedures sufficient for QI to satisfy the documentation, withholding, reporting, and other obligations of this Agreement, including, with respect to QI that is acting as a QDD, its QDD tax liability. Such written policies and procedures must include a process for employees of QI to raise issues to the responsible officer (or the responsible officer's designee) that concern QI's compliance with this Agreement.

(2) Training. The responsible officer (or designee) must communicate such policies and procedures to any line of business of QI that is responsible for obtaining, reviewing, and retaining a record of documentation under the requirements of section 5 of this Agreement; making payments subject to withholding under section 3 of this Agreement; reporting payments and accounts as required under sections 7 and 8 of this Agreement; or entering into potential section 871(m) transactions in the case of QI that is acting as a QDD.

(3) Systems. The responsible officer (or designee) must ensure that systems and processes are in place that will allow QI to fulfill its obligations under this Agreement. For example, in order to fulfill QI's obligations to report on Forms 1042-S, 1099, and 8966 under section 8 of this Agreement, QI must establish systems for documenting account holders and for recording the information with respect to each such account that QI is required to report under that section.

(4) Monitoring of Business Changes. The responsible officer (or designee) must monitor business practices and arrangements that affect QI's compliance with this Agreement, including, for example, QI's acquisition of lines of businesses or accounts that give rise to documentation, withholding, or reporting obligations under this Agreement.

(5) QDD Tax Liability Determinations. If QI is acting as a QDD, the responsible officer must ensure that the QDD has appropriate systems in place to make the necessary determinations and calculations to identify section 871(m) transactions, potential section 871(m) transactions, underlying securities associated with potential section 871(m) transactions, the amount of dividend or dividend equivalent payments received, and the amount of dividend equivalent or qualifying dividend equivalent offsetting payments made and contractually obligated to be made by the QDD, as well as whether a transaction is as a principal or non-principal and in a dealer or non-dealer capacity. This includes appropriate systems to, where required, calculate the delta for a potential section 871(m) transaction, perform the substantial equivalence test described in §1.871-15(h), calculate the amount of a dividend equivalent or qualifying dividend equivalent offsetting payment, determine any QDD tax liability amount (or part thereof) and its timing, and determine what payments are received, made, or contractually obligated to be made with respect to potential section 871(m) transactions, underlying securities associated with potential section 871(m) transactions, and other underlying securities as a principal and whether in its dealer capacity or non-dealer capacity. The systems must also take into account information received pursuant to §1.871-15(p).

(6) Periodic Review. Unless QI receives a waiver (the requirements of which are described in section 10.07(B) of this Agreement), the responsible officer (or designee) must designate a reviewer that meets the qualifications described in section 10.04(A) of this Agreement to perform the periodic review as described in section 10.05 of this Agreement, to the extent required by that section.

(7) Certification of Internal Controls. The responsible officer (or designee) must make the periodic certification as described in section 10.03 of this Agreement, including ensuring that corrective actions are taken in response to any material failures (as

defined in section 10.03(D) of this Agreement) of QI's compliance with this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3). The responsible officer may rely on any reasonable procedure, process, or review that enables the responsible officer to make the certification described in this section 10.03.

(B) Consolidated Compliance Program. The IRS, in its discretion, may permit a consolidated compliance program that includes two or more QIs that are members of a group of entities under common ownership when the QIs: (i) operate under a uniform compliance program for purposes of this Agreement; (ii) share practices, procedures, and systems subject to uniform monitoring and control; and (iii) are subject to a consolidated periodic review that includes a review of internal controls and testing of transactions relevant to this Agreement with respect to each QI in the consolidated compliance program. Each QI that is a member of a consolidated compliance program must designate a Compliance QI to act on its behalf, and the responsible officer of the Compliance QI must identify itself as such when making its periodic certification and must comply with the identification, certification of internal controls, and periodic review requirements for the QI consolidated compliance program as the IRS may prescribe. The Compliance QI must also agree to be jointly and severally liable for the obligations and liabilities of any QI in its consolidated compliance program relating to the QI's obligations under this Agreement.

10.03. Certification of Internal Controls by Responsible Officer. On or before July 1 of the calendar year following the certification period, QI must make the certification described in either section 10.03(A) or (B) of this Agreement. The initial certification period is the period ending on the third full calendar year that this Agreement is in effect (including renewals of this Agreement). Subsequent certification periods will be every three calendar years following the initial certification period (including renewals of this Agreement). The certification of internal controls required by this section 10.03 applies only to the internal controls related to QI's compliance with this Agreement and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3), with respect to accounts for which it acts as a qualified intermediary, and does not relate to any other obligations or requirements. The responsible officer may rely on any reasonable procedure, process, or review that enables the responsible officer to make the certification described in this section 10.03. If the responsible officer relies on an internal or external review for this purpose, the internal or external reviewer must be independent, as described in section 10.04 of this Agreement. The responsible officer must document the procedure, process, or review relied upon in making the certification. QI (or its Compliance QI) must make the certifications of compliance in such manner as the IRS may prescribe.

(A) Certification of Effective Internal Controls. The responsible officer must certify to the following and disclose any material failures that occurred during the certification period or during any prior period if the material failure was not disclosed as part of a prior certification or written disclosure made by QI to the IRS—

(1) QI has established a compliance program that meets the requirements described in section 10.02(A) or (B) (if applicable) of the QI Agreement that is in effect as of the date of the certification and during the certification period;

(2) Based on the information known (or information that reasonably should have been known) to the responsible officer, including the findings of any procedure, process, or review undertaken in preparation for the responsible officer's certification of internal controls, QI maintains effective internal controls over its documentation, withholding, and reporting obligations under the QI Agreement and according to its applicable FATCA requirements, with respect to accounts for which it acts as a qualified intermediary, and, if QI is acting as a QDD, it maintains effective internal controls over its computation and tax obligations under the QI Agreement and the regulations under section 871(m);

(3) Based on the information known (or information that reasonably should have been known) to the responsible officer, including the findings of any procedure, process, or review undertaken in preparation for the responsible officer's certification of internal controls, there are no material failures, as defined in section 10.03(D) of the QI Agreement, or, if there are any material failures, they have been corrected as of the date of this certification, and such failures are identified as part of this certification as well as the actions taken to remediate such failures and to prevent their reoccurrence by the date of this certification;

(4) With respect to any failure to withhold, deposit, or report to the extent required under the QI Agreement, or, with respect to QI that is acting as a QDD, any failure to pay its QDD tax liability, QI has corrected such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return);

(5) All PAIs of QI and partnerships and trusts to which QI applies the agency option have either (a) provided (or will provide, to the extent QI does not obtain a waiver under section 10.07 of the QI Agreement) documentation and other necessary information for inclusion in QI's periodic review or (b) provided the responsible officer of QI with a certification of effective internal controls meeting the requirements of this section 10.03(A) of the QI Agreement and have represented to QI that there are no material failures, as defined in section 10.03(D) of the QI Agreement, or, if there are such failures, they have been corrected as of the time of this certification, and the PAIs, partnerships, or trusts have disclosed any such failures to QI together with the actions taken by the PAI, partnership, or trust to remediate such failures;

(6) QI's policies, procedures, and processes are applied consistently to all branches covered by the QI Agreement (except as otherwise required by a jurisdiction's AML/KYC procedures, as applicable);

(7) If QI is acting as a QDD, it has acted as a QDD for all payments with respect to potential section 871(m) transactions and underlying securities for which it is required to act as a QDD and no other transactions or underlying securities;

(8) If QI is acting as a QI and has assumed primary withholding responsibility with respect to payments of substitute interest (as described in section 3.03(A) of the QI Agreement), QI has assumed primary withholding responsibility for all such payments covered by the QI Agreement;

(9) A periodic review was conducted for the certification period in accordance with section 10.04 of the QI Agreement, and the results of such review are reported to the extent required in sections 10.05 and 10.06 of the QI Agreement.

(B) Qualified Certification. If the responsible officer has identified an event of default or a material failure that QI has not corrected as of the date of the certification, the responsible officer must certify to the following statements—

(1) The responsible officer (or designee) has identified an event of default as defined in section 11.06 of the QI Agreement, or has determined that, as of the date of the certification, there are one or more material failures as defined in section 10.03(D) of the QI Agreement with respect to QI's compliance, its PAI's compliance, or the compliance of a partnership or trust to which QI applies the agency option and that appropriate actions will be taken to prevent such failures from reoccurring;

(2) With respect to any failure to withhold, deposit, or report to the extent required under the QI Agreement, or with respect to QI that is acting as a QDD, a failure to pay its QDD tax liability, QI will correct such failure by paying any taxes due (including interest and penalties) and filing the appropriate return (or amended return); and

(3) The responsible officer (or an officer of the PAI or partnership or trust to which QI applies the agency option if the PAI or partnership or trust performs its own periodic review) will respond to any notice of default (if applicable) or will provide (either directly or through QI) to the IRS, to the extent requested, a description of each material failure and a written plan to correct each such failure.

(C) PAIs and Partnership or Trust to which QI applies the Agency Option. Unless QI has received a waiver of the periodic review requirement, any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option must provide its documentation and other information to QI for inclusion in QI's periodic review or conduct an independent periodic review and provide a written certification to QI as described in section 10.03 of this Agreement regarding its compliance with the requirements of the PAI or agency agreement. Such certification must be available to the IRS upon a request made as part of the review described in section 10.07 of this Agreement (with a certified translation into English if the certification is not in English).

(D) Material Failures.

(1) Material Failures Defined. A material failure is generally a failure of QI to fulfill the requirements of this Agreement or its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3). For purposes of the certifications described in section 10.03(A) and (B) of this Agreement, a material failure is limited to the following:

(i) QI's establishing of, for financial statement purposes, a tax reserve or provision for a potential future tax liability related to QI's failure to comply with this Agreement, including its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI, or, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3), and with respect to QI that is acting as a QDD, failure to satisfy its QDD tax liability and its obligations pursuant to section 871(m) and the regulations under that section.

(ii) QI's failure to establish written policies, procedures, or systems sufficient for the relevant personnel of QI to take actions consistent with QI's obligations under this Agreement, including, its FATCA requirements as a participating FFI, registered deemed-compliant FFI, registered deemed-compliant Model 1 IGA FFI, or, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3), or if QI is acting as a QDD, its obligations as a QDD under this Agreement or pursuant to section 871(m) and the regulations under that section.

(iii) A criminal or civil penalty or sanction imposed on QI (or any branch or office thereof) by a regulator or other governmental authority or agency with oversight over QI's compliance with AML/KYC procedures to which QI (or any branch or office thereof) is subject and that is imposed due to QI's failure to properly identify account holders under the requirements of those procedures.

(iv) A finding (including a finding noted in the periodic review report described in section 10.06 of this Agreement) for one or more years covered by this Agreement that QI failed to—

(a) Withhold an amount that QI was required to withhold under chapter 3 or 4 or under section 3406 as required under section 3 of this Agreement or, if QI is acting as a QDD, failing to timely pay its QDD tax liability;

(b) Provide information sufficient for another withholding agent to perform withholding and reporting to the extent required when QI does not assume primary chapters 3 and 4 withholding responsibility or primary Form 1099 reporting and backup withholding responsibility;

(c) Provide allocation information as described in section 6.03(D) of this Agreement (regarding U.S. non-exempt recipient account holders) by January 15 as required by that section when QI applies the alternative withholding rate pool procedures;

(d) Make deposits in the time and manner required by section 3.08 of this Agreement or make adequate deposits to satisfy its withholding obligations, or, if QI is acting as a QDD, satisfy its QDD tax liability, taking into account the procedures under section 9 of this Agreement;

(e) Report or report accurately on Forms 1099 as required under section 8.06 of this Agreement or provide information to the extent QI does not assume primary Form 1099 reporting and backup withholding responsibilities;

(f) Report or report accurately on Forms 1042 and 1042-S under sections 7 and 8 of this Agreement, or, if QI is acting as a QDD, obtain any necessary waiver from reporting or maintain the name, address, and TIN of a significant number of U.S. non-exempt recipients to whom the QDD makes a payment that otherwise would be a qualifying dividend equivalent offsetting payment but for the limitation in section 2.70(B) of this Agreement; or

(g) Report or report accurately on Form 8966 under sections 8.04 and 8.05 of this Agreement.

(2) Limitations on Material Failures. A failure described in section 10.03(D)(1)(iv) of this Agreement is a material failure only if the failure was the result of a deliberate action on the part of one or more employees of QI to avoid the requirements of this Agreement with respect to one or more account holders of QI, or was an error attributable to a failure of QI to establish or implement internal controls sufficient for QI to meet the requirements of this Agreement. Regardless of these limitations for certification purposes, QI is required to correct a failure to withhold or deposit tax under section 3 of this Agreement, or to report under section 7 or 8 of this Agreement, or, for a QI that is acting as a QDD, to pay its QDD tax liability, by depositing the amount of tax required to have been withheld and by filing the appropriate return (or amended return).

Sec. 10.04. Periodic Review Absent Waiver. Unless the QI receives a waiver (the requirements of which are described in section 10.07(B) of this Agreement), at the time QI provides the certification of internal controls, provided in section 10.03 of this Agreement, QI must also provide certain factual information regarding its accounts, withholdable payments, amounts subject to chapter 3 withholding, and, if QI is acting as a QDD, section 871(m) transactions, potential section 871(m) transactions, and its QDD tax liability based on the results of a periodic review. The factual information requested is included in Appendix I to this Agreement. The IRS will prescribe the manner in which the information must be reported in additional published guidance or other instructions.

(A) Independent Reviewer. The periodic review may be performed by an internal reviewer (such as an internal auditor) that is an employee of QI ("internal reviewer"), an internal reviewer that is an employee of a Compliance QI in the case of a consolidated

compliance program, or a certified public accountant, attorney, or third-party consultant ("external reviewer"), or any combination thereof.

(1) Internal Reviewer. QI may designate an internal reviewer to perform the periodic review (or a portion of the periodic review) only when the internal reviewer is competent with respect to the requirements of this Agreement. The internal reviewer must also be able to report findings that reflect the independent judgment of the reviewer. The internal reviewer must not be reviewing its own work, procedures, or results (e.g., the internal reviewer, in reviewing QI's documentation cannot be part of the team primarily responsible for collecting and validating documentation). The results of the periodic review and the internal reviewer's reporting of such results to the responsible officer cannot influence or affect the compensation, bonus, employment status, or employee review of the internal reviewer. The IRS has the right to request the performance of the periodic review by an alternative reviewer if the IRS, in its sole discretion, reasonably believes that the reviewer selected by QI was not independent, as described in this Agreement, or did not perform an effective periodic review under this Agreement.

(2) Internal Reviewer of the Compliance QI. The Compliance QI may designate an internal reviewer to perform the consolidated periodic review (or a portion of the consolidated periodic review). See section 10.02(B) of this Agreement. The internal reviewer of the Compliance QI must meet the requirements of section 10.04(A)(1) of this Agreement with respect to both the Compliance QI and each QI that is a member of the consolidated compliance program.

(3) External Reviewer. QI may engage an external reviewer that is a certified public accountant, attorney, or third-party consultant that is regularly engaged in the practice of performing reviews of clients' policies, procedures, and processes for complying with accounting, tax, or regulatory requirements (including assisting clients in determining such compliance). The external reviewer cannot be reviewing systems, policies, or procedures or the results thereof that it was involved in designing, implementing, or maintaining. The external reviewer must be in good standing with and comply with any applicable professional standards for maintaining its license as an accountant or attorney (or other third-party consultant). The external reviewer is not required to make an attestation or render an opinion regarding QI's compliance with this Agreement or QI's compliance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3), but the reviewer must be able to perform the periodic review as specified in section 10.05 of this Agreement. QI must permit the external reviewer to have access to all relevant records of QI for purposes of performing the review, including information regarding specific account holders. Additionally, the engagement between the external reviewer and QI must impose no restrictions on QI's ability to provide the results of the review to the IRS. However, the external reviewer is not required to divulge the identity of QI's account holders to the IRS, except as otherwise provided under QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI. QI must permit the IRS to communicate directly with the external reviewer, and any legal prohibitions that prevent the IRS from communicating directly with the reviewer must be waived.

Sec. 10.05. Scope and Timing of Review. The responsible officer of QI (or of the Compliance QI) must require the reviewer to test accounts related to QI's documentation, withholding, reporting, and other obligations under this Agreement, including its QDD tax liability with respect to QI that is acting as a QDD, and its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3) for accounts for which it is acting as a qualified intermediary, and to identify deficiencies in meeting these obligations. Any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option must provide the information necessary for QI to test accounts and transactions of such entity as part of QI's periodic review unless such entity conducts an its own periodic review and provides QI with the report documenting the results of such review as described in section 10.06 of this Agreement. Unless otherwise approved by the IRS, the review must include the steps described in section 10.05(A) of this Agreement.

QI is required to arrange for the performance of one review for the certification period to evaluate QI's documentation, withholding, and reporting practices. If QI is acting as a QDD, this should also include a review of its determination as to whether transactions are section 871(m) transactions, its computations and determinations of dividend equivalent amounts and qualifying dividend equivalent offsetting payments, and its calculation of its QDD tax liability. The review may be conducted for any calendar year covered by the certification period. However, all results of the review must relate to one calendar year. If QI is acting as a QDD and has an initial certification period ending December 31, 2017, it must use calendar year 2017 for its review of its QDD accounts and activities for the initial certification period. QI may conduct a review for a particular calendar year if, on the due date for reporting the factual information relating to the periodic review (provided in section 10.04 of this Agreement), there are 15 or more months available on the period for assessment under section 6501(a) of the calendar year for which the review is to be conducted or the QI's submits, upon request, a Form 872, Consent to Extend the Time to Assess Tax, that will satisfy the 15-month requirement. The Form 872 must be submitted to the IRS at the address provided in section 12.06 of this Agreement.

QI may use a sample to test accounts if there are more than 50 accounts to review. If QI has fewer than 50 accounts, it must review all accounts and cannot use a sample to test accounts. To the extent applicable, the reviewer must separately review its QI activities (when not acting in its QDD capacity), QI acting as a QDD activities, and substitute interest payments for which QI assumed primary withholding responsibility (as described in section 3.03(A) of this Agreement). The reviewer is required to record its sampling procedures and to maintain the ability to reconstruct the sample. Further, the review is not required to include statistical sampling procedures for testing transactions, but the reviewer must document its methodology for sampling determinations. A safe harbor methodology and additional information on the use of statistical sampling is provided in Appendix II to this Agreement.

If the reviewer determines that underwithholding has occurred, QI shall report and pay any amount due. QI must also notify the IRS Foreign Intermediaries Team at the address provided in section 12.06 of this Agreement of the underwithholding discovered as a result of the review. If the reviewer used a sampling method for its review, see Appendix II to this Agreement for an allowance in certain cases to use a projection method to determine the amount of underwithholding.

(A) Documentation. The reviewer must--

(1) Review QI's accounts, to ensure that QI obtained documentation that meets the requirements described in sections 5.01 through 5.09 of this Agreement;

(2) Review QI's accounts for which treaty benefits are claimed, to ensure that QI obtained the treaty statements and limitation on benefits information required by section 5.03(B) of this Agreement;

(3) Review information contained in account holder files to determine if the documentation validity standards of section 5.10 of this Agreement have been met. For example, the reviewer must verify that changes in account holder information (e.g., a change of address to a U.S. address or change of account holder status from foreign to U.S. or a change in chapter 4 status from participating FFI to non-participating FFI) are being conveyed to QI's withholding agents;

(4) Review the accounts for which QI is acting as a QI to ensure that QI is obtaining, reviewing, and maintaining documentation in accordance with its FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI and, in the case of a direct reporting NFFE, its requirements under §1.1472-1(c)(3);

(5) Review accounts held by U.S. non-exempt recipient account holders, to determine if QI obtained Forms W-9, and, if QI does not assume primary Form 1099 reporting and backup withholding responsibility, that QI transmitted those forms to a withholding agent consistent with this Agreement;

(6) For a QI that is a QDD, review accounts for which QI is acting as a QDD and that received a reportable payment or a qualified dividend equivalent offsetting payment (notwithstanding the limitation in section 2.70(B) of this Agreement) to determine whether QI has documented the status of account holders under the requirements described in sections 5.01 through 5.09 of this Agreement; and

(7) For a QI that makes payments of U.S. source substitute interest and assumes primary chapters 3 and 4 withholding responsibility for such amounts, review accounts of persons to which QI pays U.S. source substitute interest to determine whether QI has documented the status of such persons under the requirements described in sections 5.01 through 5.09 of this Agreement.

(B) Withholding Rate Pools. The reviewer must--

(1) Perform checks using account holders assigned to each withholding rate pool, and cross check that assignment against the documentation provided by, or the presumption rules applied to, the account holder, the type of income earned, and the withholding rate applied;

(2) Verify, if QI is using the procedure for U.S. non-exempt recipients described in section 6.03(D) of this Agreement, that QI is providing sufficient and timely information to withholding agents that allocates reportable payments to U.S. non-exempt recipients; and

(3) With respect to a partnership or trust described in section 4.05 of this Agreement, if applicable, perform test checks, using account holder documentation for the selected partners, beneficiaries, or owners and records of each type of reportable amount paid by QI to the entity, to determine whether the highest rate of withholding applicable to each type of reportable amount was applied.

(C) Withholding Responsibilities. The reviewer must--

(1) To the extent QI has assumed primary chapters 3 and 4 withholding responsibilities, perform test checks, using recalcitrant account holders and nonparticipating FFIs, to verify that QI withheld the proper amounts under chapter 4;

(2) To the extent QI has assumed primary chapters 3 and 4 withholding responsibility, perform test checks, using foreign account holders for which no withholding is required under chapter 4 based on the payees chapter 4 status, to verify that QI withheld the proper amounts under chapter 3 and properly applied the exemptions from chapter 4 withholding;

(3) To the extent QI has not assumed primary chapters 3 and 4 withholding responsibility, verify that QI has fulfilled its responsibilities under section 3.02 of this Agreement (including withholding if QI failed to provide the required information to a withholding agent to withhold on payments);

(4) To the extent QI has assumed primary Form 1099 reporting and backup withholding responsibility, perform checks using U.S. non-exempt recipient account holders to verify that QI backup withheld when required;

(5) To the extent QI has not assumed primary Form 1099 reporting and backup withholding responsibility, perform test checks using U.S. non-exempt account holders to verify that QI fulfilled its backup withholding responsibilities under sections 3.04 through 3.06 of this Agreement;

(6) Verify that amounts withheld by QI were timely deposited in accordance with section 3.08 of this Agreement;

(7) To the extent that QI is acting as a QDD, determine that QI withheld when required on payments that it made with respect to potential section 871(m) transactions; and

(8) To the extent that QI makes payments of U.S. source substitute interest and assumes chapter 3 and 4 withholding responsibility for such amounts, determine that QI withheld when required on such payments.

(D) Return Filing and Information Reporting. The reviewer must—

(1) Obtain copies of original and amended Forms 1042 and 945, and any schedules, statements, or attachments required to be filed with those forms, verify that the forms have been filed, and determine whether the amounts of income, taxes, and other information reported on those forms are accurate by--

(i) Reviewing copies of Forms 1042-S that withholding agents have provided QI to determine whether QI properly reported the amount of taxes withheld by other withholding agents on Form 1042;

(ii) Reviewing account statements and correspondence from withholding agents;

(iii) Determining that adjustments to the amount of tax shown on Form 1042 (and any claim by QI for refund or credit) properly reflect the adjustments to withholding made by QI using the reimbursement or set off procedures under section 9.02 of this Agreement and are supported by sufficient documentation;

(iv) Reconciling amounts shown on Forms 1042 with amounts shown on Form 1042-S (including the amount of taxes reported as withheld);

(v) If QI is acting as a QDD, reviewing the reconciliation schedule described in section 7.01(c) of this Agreement and any information used to prepare such schedule or compute its QDD tax liability, including information received pursuant to §1.871-15(p), reviewing the amounts required to determine its section 871(m) amounts and its QDD tax liability over the applicable period, and reviewing such information to determine whether the section 871(m) amounts and QDD tax liability have been properly calculated;

(vi) If QI is acting as a QDD, reviewing amounts shown on Forms 1042 (including the reconciliation schedule) and Forms 1042-S, as well as any information received pursuant to §1.871-15(p), to determine whether the QDD properly took the information into account (e.g., to calculate its QDD tax liability);

(vii) In the case of collective credits or refunds, reviewing the statements attached to amended Forms 1042 filed to claim a collective refund, determine whether those forms are accurate, and—

(a) Determine the causes of any overwithholding reported and ensure QI did not issue Forms 1042-S to persons whom it included as part of its collective credit or refund;

(b) Determine that QI repaid the appropriate account holders and that the amount of the claim is accurate and supported by adequate documentation; and

(c) Determine that QI did not include payments made to a partnership or trust described in section 4.05 of this Agreement.

(2) Obtain copies of original and corrected Forms 1042-S and Forms 1099 filed by QI together with the work papers used to prepare those forms, and determine whether the amounts reported on those forms are accurate by--

(i) Reconciling payments and tax reported on Forms 1042-S received from withholding agents with amounts (including characterization of income) and taxes reported by QI as withheld on Forms 1042-S and determining the reason(s) for any variance;

(ii) Reviewing the Forms W-8IMY, and the associated withholding statements, that QI has provided withholding agents;

(iii) Reviewing account statements issued by QI to account holders;

(iv) Determining, in the case in which QI utilized the reimbursement or set-off procedure, that QI satisfied the requirements of section 9.02 of this Agreement and that the adjusted amounts of tax withheld are properly reflected on Forms 1042-S.

(3) Obtain copies of original and amended Forms 8966 of accounts for which QI is acting as a qualified intermediary, and determine whether the amounts of income and other information reported on Forms 8966 are accurate by—

(i) Reviewing U.S. accounts (or U.S. reportable accounts for which QI acts as a qualified intermediary) to determine that such accounts were reported in accordance with QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI;

(ii) If QI is an NFFE acting as a qualified intermediary on behalf of its shareholders, confirming that any direct or indirect shareholders that are substantial U.S. owners were reported in accordance with §1.1472-1(c)(3);

(iii) If QI is an NFFE acting as a qualified intermediary on behalf of persons other than its shareholders, confirming that if QI is acting on behalf of a passive NFFE with substantial U.S. owners, withholdable payments made to the passive NFFE and the information regarding its substantial U.S. owners were reported;

(iv) Confirming with respect to any nonqualified intermediary or flow-through entity that provides information regarding an account holder (or interest holder) that is an NFFE (other than an excepted NFFE) with one or more substantial U.S. owners that such substantial U.S. owners were reported to the extent required under section 8.04(B) of this Agreement;

(v) Reviewing the documentation provided by a PAI or a partnership or trust to which QI applied the agency option to determine that QI reported on Form 8966 to the extent required under section 4 of this Agreement; and

(vi) Reviewing work papers used to prepare these forms.

(4) If QI is acting as a QDD, the reviewer must also review accounts designated as accounts for which QI acted as a QDD to determine whether QI is acting as a QDD with respect to all potential section 871(m) transactions and underlying securities for which it is required to act as a QDD and not any other transactions or underlying securities and whether the section 871(m) amount includes the amounts in its dealer capacity and not amounts in its non-dealer capacity.

(E) Significant Change in Circumstances. The reviewer must verify that in the course of the review it has not discovered any significant change in circumstances, as described in section 11.04(A), (D), (E), or (J) of this Agreement.

Sec. 10.06 Periodic Review Report.

(A) In General. The results of the periodic review must be documented in a written report addressed to the responsible officer of QI and must be available to the IRS upon request (with a certified translation into English if the report is not in English). The report must describe the scope of the review and the actions performed to satisfy each requirement of section 10.05(A) through (E), including the methodology for sampling determinations. The report may include explanatory footnotes to clarify the results of the report. Recommendations may be included but are not required to be provided in the report. The periodic review report should form the basis for the factual information provided by QI that is set forth in Appendix I.

In addition to the findings of section 10.05 of this Agreement, the periodic review report should also include details regarding the documentation and tax deposit and payment failures identified by the reviewer but then cured before the periodic review report is finalized. While the curing of inadequate documentation is permissible, the factual information reported (as set forth in Appendix I) should report the results upon initial review (i.e., not reflecting the results after curing) and the curing process should not delay certification of internal controls or factual information required in Appendix I to this Agreement. To the extent necessary, the periodic review report should include the dates on (or time period during) which curative documentation was received for accounts with respect to which the reviewer determined that underwithholding had occurred, the number of accounts for which curative documentation was obtained and a revised calculation of the underwithholding or additional backup withholding.

(B) Periodic Review Report for QDDs. If QI is acting as a QDD, the periodic review report should also include the number of accounts that were not correctly treated as (i) principal accounts (except accounts that are effectively connected with the conduct or a trade or business within the United States within the meaning of section 864), (ii) non-principal accounts, (iii) principal accounts that are effectively connected with the conduct or a trade or business within the United States within the meaning of section 864, (iv) dealer accounts, and (v) non-dealer accounts. The report should also include any other issues related to the QDD tax liability (e.g., incorrect determination of whether an account is a potential section 871(m) transaction or a section 871(m) transaction, the dividend equivalent payment amount, the qualifying dividend equivalent offsetting payment amount, the amount of such payments made or contractually obligated to be made, or any other amounts subject to tax (or required to compute the tax liability) under section 871(a) and 881 (including the QDD tax liability)).

(C) PAI Certification and Partnership or Trust to which QI Applies the Agency Option. Any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option that does not provide its documentation and other

information to QI for inclusion in QI's periodic review described in section 10.04 of this Agreement, must conduct an independent periodic review in accordance with the compliance procedures described in section 10.05 of this Agreement. The performance results of the periodic review must be documented in a written report addressed to the responsible officer of QI and must be available to the IRS upon request (with a certified translation into English if the report is not in English).

(D) Retention of Report and Certifications. The report and certifications described in this section 10.06 must be retained by QI (or the Compliance QI) for as long as this Agreement is in effect.

Sec. 10.07. Waiver of Periodic Review Requirement.

(A) In General. A QI that is not acting as a QDD and that is an FFI that meets the requirements of section 10.07(B) may apply for a waiver of the periodic review requirement. QI must request a waiver of the periodic review requirement under this section 10.07 at the time the responsible officer makes the periodic certification of internal controls described in section 10.03 of this Agreement. QI's application for such a waiver must be approved by the IRS, and the waiver does not apply automatically. QI must apply for a waiver for each certification period for which a waiver is requested. If QI's request for a waiver of the periodic review requirement is granted, such approval is only to waive QI's obligations under sections 10.04 and 10.05 of this Agreement. The approval does not relieve QI of making the certification of internal controls described in section 10.03 of this Agreement. The approval also does not preclude the IRS from requesting information or conducting a correspondence review as described in section 10.07 of this Agreement. QI must include the information of any PAI with which QI has an agreement and any partnership or trust to which QI applies the agency option in its waiver application which is set forth in Part III of Appendix I to this Agreement.

(B) Eligibility. QI is eligible to apply for a waiver of the periodic review requirement if it meets the following requirements—

(1) QI must be an FFI that is not also acting as a QDD;

(2) QI cannot be part of a consolidated compliance program;

(3) For each calendar year covered by the certification period, the reportable amounts received by QI do not exceed $5 million;

(4) QI must have timely filed its Forms 1042, 1042-S, 945, 1099, and 8966, as applicable, for all calendar years covered by the certification period, including for the year to which the periodic review would be applied;

(5) QI must have made all periodic certifications and reviews required by sections 10.02 and 10.03 of this Agreement as well as all certifications required pursuant to QI's FATCA requirements as a participating FFI, registered deemed-compliant FFI, or registered deemed-compliant Model 1 IGA FFI; and

(6) QI must have made the certification of effective internal controls in section 10.02(A).

(C) Documentation Required with Waiver Application. When applying for a waiver under this section 10.07, QI must include the information described in Appendix I to this Agreement using the most recent calendar year covered by the certification period and reporting such results as of QI's initial review (not following any subsequent remediation).

(D) Approval. If QI's request for a waiver of the periodic review requirement is approved, the IRS will notify QI. If QI requests a waiver but such request is not approved, QI will be granted a six month extension from the date of denial of the waiver to complete the periodic review. Such extension will not be granted if QI has made the request for waiver in bad faith.

Sec. 10.08. Periodic Review.

(A) In General. Based upon the certifications made by the responsible officer and the disclosure of material failures, the information reported on Forms 945, 1042, 1042-S, 1099, and 8966 filed with the IRS during the certification period, or otherwise at the IRS's discretion for compliance purposes, the IRS may initiate requests of QI under this section 10.08. The IRS may preemptively request remediation or the conduct of a limited periodic review earlier than the time period provided in section 10.03 of this Agreement if, based upon the information described above, the IRS identifies, in its discretion, a presence of factors indicating systemic or significant compliance failures by QI. The IRS may also request that QI designate a replacement responsible officer if QI's responsible officer has not complied with its responsibilities (including responding to requests by the IRS for additional information) or the IRS has information that indicates the responsible officer may not be relied upon to comply with its responsibilities.

(B) Periodic Review Report. The IRS may request, through written correspondence to the responsible officer of QI (or the Compliance QI), a copy of the results of QI's periodic review for any prior certification period or the periodic review report of any PAI or partnership or trust to which QI applied the agency option that QI has an agreement during the current certification period (with a certified translation into English if the report is not in English). QI is required to provide the results within 30 calendar days of such request.

(C) Correspondence Review. The IRS may, in its discretion, conduct additional fact finding through a correspondence review. In such a review, the IRS will contact the responsible officer of QI (or the Compliance QI) in writing and request information about QI's compliance with this Agreement or the compliance of a PAI or a partnership or trust to which QI applied the agency option, including, for example, information about documentation, withholding, or reporting processes, its periodic review, and information about any material failures that were disclosed to the IRS (including remediation plans). The IRS may request phone or video interviews with employees of QI (and the Compliance QI), PAI, or a partnership or trust to which QI applied the agency option as part of the IRS's correspondence review. QI is required to respond in a reasonable time to any such requests.

(D) Additional Review Procedures. In limited circumstances, the IRS may direct QI (or the Compliance FFI) or any PAI, partnership, or trust described in section 4 of this Agreement with which QI has an agreement to perform additional, specified review procedures. The IRS reserves the right to require QI (or the Compliance QI) or a PAI, or a partnership or trust to which QI applied the agency option to engage an external reviewer to perform the additional review procedures regardless of whether such reviewer performed the periodic review. The IRS will provide the responsible officer of the QI with a written plan describing the additional review procedures and will provide a due date of not more than 120 days for the QI to provide to the IRS a report covering the reviewer's findings.

User's Guide to the ISDA 2002 Master Agreement
2003 Edition

H. U.S. Tax Representations

1. General.

Section IV.B.3. above provides an in-depth description of the general theory behind the utilisation of Payer and Payee Tax Representations, as well as a detailed description of the mechanics of the gross-up provisions. Because a significant number of ISDA Master Agreements are entered into between parties at least one of which is a U.S. person or otherwise subject to U.S. information or backup withholding rules, this Section focuses exclusively on the Payee Tax Representations that should be used when a payer is a U.S. person or otherwise subject to U.S. information or backup withholding rules.

The Payee Tax Representations provided in Part 2(b)(i) and (ii) of the Schedule are generic representations that are not specific for any country. In October 2001, ISDA published on its website new Payee Tax Representations in sample form, for inclusion in the Schedule for contracts where the payer is a U.S. person (or otherwise is subject to U.S. information reporting and backup withholding rules). These new representations were added to help parties comply with new complex U.S. withholding and reporting rules (which generally became effective as of 1 January 2001). The new representations are set out in Part 2(b)(iii) through (vi) of the Schedule and are repeated for your convenience in paragraphs (A) through (D) of Section IV.H.4. below. In general, the Payee Tax Representations outlined below are utilised to reduce or eliminate any reporting or withholding obligations. Payers that are U.S. persons should consider obtaining one of the new representations. Which one of these representations should be provided depends on the payee's U.S. tax status, as explained below. Tax laws change periodically and caution should be used to determine whether any representation requested remains appropriate under the tax laws in effect at the time of each Transaction. Further, special rules may apply to Transactions that are characterised, for U.S. federal income tax purposes, as other than notional principal contracts. Although ISDA is providing these sample representations, each party to a Transaction should consult with U.S. tax counsel to determine what, if any, representation is appropriate in its case.

For a more detailed explanation of these representations, including citations to the relevant U.S. federal income tax regulations, readers are referred to "New U.S. Tax Representations for Schedule to ISDA Master Agreement" available at www.isda.org under the Tax Committee page.

In general, payments attributable to notional principal contracts are not subject to U.S. withholding tax, but may be subject to U.S. information reporting and backup withholding. The general "no withholding" rule does not, however, apply to payments treated as interest for U.S. tax purposes, even though paid in a Transaction documented as a swap.

2. Information Reporting.

a. IRS Form 1042-S Reporting. Notional principal contract payments generally must be reported on IRS Form 1042-S if treated under U.S. Internal Revenue Service regulations as effectively connected with the conduct of a trade or business in the United States. A safe harbor provides, however, that payments need not be reported if the payee represents in the Schedule that it is a U.S. person or a non-U.S. branch of a foreign person.

ISDA has provided sample alternative Payee Tax Representations for this purpose that may be added in Part 2(b)(iv) of the Schedule: paragraph (A) (for U.S. persons); paragraph (B) (for foreign persons that cannot act through a U.S.

branch); and paragraph (C) (for foreign persons that are multibranch parties able to act through a U.S. branch). Before making the representation in paragraph (C), payees should carefully consider whether they will in fact be acting through a non-U.S. branch in all Transactions in which payments are to be made to an address or an account outside the U.S. For example, a payee that directs payments to an account or address outside the U.S. with respect to all its Transactions, including those in which it is acting through its U.S. branch, could not make this representation. Further, a payer cannot rely on either paragraph (B) or paragraph (C) to avoid IRS Form 1042-S reporting if it knows, or has reason to know, that the payment is in fact effectively connected with the conduct of a trade or business within the United States.

b. IRS Form 1099 Reporting and Backup Withholding. Notional principal contract payments must be reported on IRS Form 1099 unless the payee is a corporation or otherwise eligible for an exemption. U.S. Internal Revenue Service rules set forth indicia of corporate status on which a payer generally may rely to avoid reporting, including an IRS Form W-9 with an employer identification number and a statement that the payee is a domestic corporation. Payments also need not be reported if the payee represents that it is a foreign person in the Schedule. Thus, foreign payees providing the new representations in paragraphs (B) and (C) of Section IV.H.4. below to avoid IRS Form 1042-S reporting also will be exempt from IRS Form 1099 reporting. Other foreign payees may make the sample representation in paragraph (D) to avoid IRS Form 1099 reporting.

A swap payment that is not exempt from IRS Form 1099 reporting is subject to a backup withholding tax unless the payee provides a valid U.S. Internal Revenue Service taxpayer identification number. (See also Section IV.H.2.c. below for a brief discussion of backup withholding).

c. Payments to Foreign Partnerships and Trusts. The sample representations in the Schedule may be used by a foreign partnership or trust that qualifies as a "withholding foreign partnership" or "withholding foreign trust" (as evidenced by an IRS Form W-8IMY certifying its status). Persons making payments to non-withholding foreign partnerships and trusts should consult tax counsel as to the representations and forms needed to avoid information reporting and backup withholding.

3. Treatment of Payments as Interest.

Swap agreements providing for up-front yield adjustment or other non-periodic payments from a non-U.S. party to a U.S. party may be treated by the U.S. Internal Revenue Service as loans to the U.S. person if those payments are "significant". If so, a portion of the payments from the U.S. to the non-U.S. party will be U.S.-source interest potentially subject to a 30-percent withholding tax.

Because there is no bright-line test whether a payment is "significant", Transactions with up-front (or other non-periodic) payments to a U.S. party from a non-U.S. party should be reviewed by tax counsel to determine whether they could be loans for U.S. tax purposes. If the only up-front payment is by a U.S. party, however, no review is necessary because interest paid to a U.S. person is not subject to withholding. U.S. Internal Revenue Service regulations permit reliance on a representation on IRS Form W-9 that a party is a U.S. person.

Even if swap payments to a non-U.S. party are treated as interest, no withholding is required if: (i) the interest is effectively connected with the conduct of a trade or business in the U.S.; (ii) the interest qualifies as "portfolio interest"; or (iii) the payee qualifies for the benefits of a treaty providing a full exemption.

a. Effectively Connected Income. U.S.-source interest is effectively connected income exempt from withholding if, prior to payment, the foreign beneficial owner of the payment provides a valid IRS Form W-8ECI with which the payment reliably can be associated that includes both: (i) the owner's taxpayer identifying number and (ii) a representation, under penalties of perjury, that the amounts for which the certificate is furnished are effectively connected with the conduct of a trade or business in the U.S. and are includable in the owner's gross income for the taxable year.

Even if a U.S. payer relies on the effectively connected exemption in not withholding on payments that are treated as interest, the payer may be required to report payments under the agreement on IRS Form 1042-S.

b. Portfolio Interest. To qualify for the portfolio interest exemption, the payee must certify on IRS Form W-8BEN that it is a foreign person and is the beneficial owner of the payment. The exemption is not available, however, unless the obligation on which the interest is paid is in registered form. (See Section IV.G. above).

The portfolio interest exemption is denied to: (i) a bank receiving interest on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business and (ii) a payee related to the payer in specified ways. Thus, U.S. persons making swap payments potentially treated as interest may consider requesting a representation in the Schedule that the payee is neither a bank nor related to the payer. U.S. Internal Revenue Service rules do not expressly authorise reliance on such representations and ISDA has not provided sample language.

Alternatively, U.S. persons entering into a 2002 Agreement with a non-U.S. bank should consider an income tax treaty as a fallback position in the event that the portfolio interest exemption turns out to be unavailable. (See Section IV.H.3.c. below).

Further, special rules not discussed here may limit availability of the portfolio interest exemption for payments to foreign entities treated for U.S. tax purposes as conduits for extensions of credit by non-U.S. persons.

c. Treaty Exemption. A payer may treat a payment of U.S.-source interest as qualifying for relief from withholding if, prior to payment, the payment can be reliably associated with a withholding certificate on IRS Form W-8BEN with all the representations and other information necessary to support the payee's claim of treaty benefits (including the completion of Part II thereof and the provision of a U.S. tax identification number).

Not all tax treaties provide complete exemption from tax for U.S.-source interest payments; some provide only a reduced rate. A payer must examine the provisions of the applicable treaty before determining that payments treated as interest for U.S. tax purposes will be exempt from withholding.

Special rules not discussed here apply in determining the availability of treaty benefits in the case of payments of U.S.-source interest to foreign partnerships and other fiscally transparent entities.

4. Sample Representations for Inclusion in Part 2(b) of the Schedule to the 2002 Agreement.

If payee is	then request representation in . . .
a U.S. person	paragraph (A)
a non-U.S. person with no U.S. office	paragraph (B)
a multibranch non-U.S. person with both a foreign office and a U.S. office	paragraph (C)
a non-U.S. person acting only through a U.S. office	paragraph (D)

Insert in Part 2(b)(iii):

(A) The following representation [will] [will not] apply to Party A and [will] [will not] apply to Party B:

It is a "U.S. person" (as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) for U.S. federal income tax purposes.

OR

(B) The following representation [will] [will not] apply to Party A and [will] [will not] apply to Party B:

It is a "non-U.S. branch of a foreign person" (as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) for U.S. federal income tax purposes.

OR

(C) The following representation [will] [will not] apply to Party A and [will] [will not] apply to Party B:

With respect to payments made to an address outside the U.S. or made by a transfer of funds to an account outside the U.S., it is a "non-U.S. branch of a foreign person" (as that term is used in Section 1.1441-4(a)(3)(ii) of the United States Treasury Regulations) for U.S. federal income tax purposes.

OR

(D) The following representation [will] [will not] apply to Party A and [will] [will not] apply to Party B:

It is a "foreign person" (as that term is used in Section 1.6041-4(a)(4) of the United States Treasury Regulations) for U.S. federal income tax purposes.

5. Explanation of U.S. Payee Tax Representations.

The following provides a brief explanation of the four representations outlined in (A) through (D) in Section IV.H.4. above.

a. Representation A (Payee is a U.S. Person). If the payee is a U.S. person, it should provide the representation in paragraph (A). If the payee provides the representation in paragraph (A), the payer will not be required to report payments on IRS Form 1042-S. The payer, nevertheless, may be required to report on IRS Form 1099 unless the payee is a corporation (or other "exempt recipient"). If reporting is required, backup withholding also will be required if the payee fails to provide a valid U.S. Internal Revenue Service taxpayer identification number to the payer.

b. Representation B (Payee May Not Act Through a U.S. Office). If the payee provides this representation, the payer generally will not be required to report payments on either IRS Form 1042-S or IRS Form 1099.

c. Representation C (Payee is a Multi-Branch Party That May Act Through a U.S. Office). This representation differs from the second representation in that it applies to a non-U.S. person with multiple branches, at least one of which is in the U.S. (while the second representation applies to a non-U.S. person that does not have U.S. branches). If the payee provides this representation, the payer will not be required to report payments on IRS Form 1099. In addition, the payer will not be required to report on IRS Form 1042-S payments to an address outside the U.S. or to a bank account outside the U.S., because the payee will have represented that it is a non-U.S. branch of a foreign person with respect to such payments. A non-U.S. party that enters into swaps through both U.S. and non-U.S. branches under a single Schedule, but directs that payments under all swaps be made to an address outside the United States, could not give this representation. The rules for determining whether income of a foreign person is effectively connected are complicated and parties entering into Transactions with a foreign person that operates through U.S. and non-U.S. branches should consult their tax advisors regarding the appropriate representations to be made.

d. Representation D (Payee is a Non-U.S. Person Acting Only Through a U.S. Office). If the payee provides this representation, the payer will not be required to report any payments on IRS Form 1099. Reporting on IRS Form 1042-S may be required.

l. U.S. Confidential Tax Shelter Legislation

In February 2003 the U.S. Internal Revenue Service finalised U.S. Treasury regulations regarding the disclosure, registration and list-keeping requirements related to abusive tax shelters. U.S. Internal Revenue Service regulations may treat a transaction (not otherwise thought of as a tax shelter) as an abusive tax shelter if certain information regarding the tax treatment and tax structure of the transaction is required to be kept confidential. Such treatment would require a participant otherwise required to file a U.S. tax return to disclose the transaction to the U.S. Internal Revenue Service on its tax return and, in certain circumstances, subject that person or other persons connected with the transaction (whether or not required to file a tax return) to certain other requirements, such as registering the transaction with, or maintaining a list of participants for, the U.S. Internal Revenue Service. Participants in Transactions should consider whether, in light of those regulations, a provision should be added to the Schedule that provides that the tax treatment and tax structure of the transaction need not be kept confidential. The final regulations provide a safe-harbor, in which a transaction will be presumed not to be confidential under these regulations if every person making or providing statements about the potential tax consequences that may result from the transaction provides express written authorisation to the taxpayer in substantially the following form: "the taxpayer (and each employee, representative, or other agent of the taxpayer) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the transaction and all materials of any kind (including opinions or other tax analyses) that are provided to the taxpayer relating to such tax treatment and tax structure." Such written authorisations generally must be effective from the commencement of discussions related to such transaction. Although standardised industry-wide language to preclude confidentiality has not yet been developed, ISDA may consider publishing such language in the future. In the interim, participants in Transactions that have a U.S. nexus may wish to incorporate in the Schedule the language from the final regulations (or other appropriate language).

Part 3: Corporate Offences of Failure to Prevent Facilitation of Tax Evasion

PRELIMINARY

44 Meaning of relevant body and acting in the capacity of an associated person

(1) This section defines expressions used in this Part.

(2) "Relevant body" means a body corporate or partnership (wherever incorporated or formed).

(3) "Partnership" means—

(a) a partnership within the meaning of the Partnership Act 1890, or

(b) a limited partnership registered under the Limited Partnerships Act 1907,

or a firm or entity of a similar character formed under the law of a foreign country.

(4) A person (P) acts in the capacity of a person associated with a relevant body (B) if P is—

(a) an employee of B who is acting in the capacity of an employee,

(b) an agent of B (other than an employee) who is acting in the capacity of an agent, or

(c) any other person who performs services for or on behalf of B who is acting in the capacity of a person performing such services.

(5) For the purposes of subsection (4)(c) the question whether or not P is a person who provides services for or on behalf of B is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between P and B.

FAILURE OF RELEVANT BODIES TO PREVENT TAX EVASION FACILITATION OFFENCES BY ASSOCIATED PERSONS

45 Failure to prevent facilitation of UK tax evasion offences

(1) A relevant body (B) is guilty of an offence if a person commits a UK tax evasion facilitation offence when acting in the capacity of a person associated with B.

(2) It is a defence for B to prove that, when the UK tax evasion facilitation offence was committed—

(a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or

(b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.

(3) In subsection (2) "prevention procedures" means procedures designed to prevent persons acting in the capacity of a person associated with B from committing UK tax evasion facilitation offences.

(4) In this Part "UK tax evasion offence" means—

(a) an offence of cheating the public revenue, or

(b) an offence under the law of any part of the United Kingdom consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.

(5) In this Part "UK tax evasion facilitation offence" means an offence under the law of any part of the United Kingdom consisting of—

(a) being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax by another person,

(b) aiding, abetting, counselling or procuring the commission of a UK tax evasion offence, or

(c) being involved art and part in the commission of an offence consisting of being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of a tax.

(6) Conduct carried out with a view to the fraudulent evasion of tax by another person is not to be regarded as a UK tax evasion facilitation offence by virtue of subsection (5)(a) unless the other person has committed a UK tax evasion offence facilitated by that conduct.

(7) For the purposes of this section "tax" means a tax imposed under the law of any part of the United Kingdom, including national insurance contributions under—

(a) Part 1 of the Social Security Contributions and Benefits Act 1992, or

(b) Part 1 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

(8) A relevant body guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction in England and Wales, to a fine;

(c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

46 Failure to prevent facilitation of foreign tax evasion offences

(1) A relevant body (B) is guilty of an offence if at any time—

(a) a person commits a foreign tax evasion facilitation offence when acting in the capacity of a person associated with B, and

(b) any of the conditions in subsection (2) is satisfied.

(2) The conditions are—

(a) that B is a body incorporated, or a partnership formed, under the law of any part of the United Kingdom;

(b) that B carries on business or part of a business in the United Kingdom;

(c) that any conduct constituting part of the foreign tax evasion facilitation offence takes place in the United Kingdom;

and in paragraph (b) "business" includes an undertaking.

(3) It is a defence for B to prove that, when the foreign tax evasion facilitation offence was committed—

(a) B had in place such prevention procedures as it was reasonable in all the circumstances to expect B to have in place, or

(b) it was not reasonable in all the circumstances to expect B to have any prevention procedures in place.

(4) In subsection (3) "prevention procedures" means procedures designed to prevent persons acting in the capacity of a person associated with B from committing foreign tax evasion facilitation offences under the law of the foreign country concerned.

(5) In this Part "foreign tax evasion offence" means conduct which—

(a) amounts to an offence under the law of a foreign country,

(b) relates to a breach of a duty relating to a tax imposed under the law of that country, and

(c) would be regarded by the courts of any part of the United Kingdom as amounting to being knowingly concerned in, or in taking steps with a view to, the fraudulent evasion of that tax.

(6) In this Part "foreign tax evasion facilitation offence" means conduct which—

(a) amounts to an offence under the law of a foreign country,

(b) relates to the commission by another person of a foreign tax evasion offence under that law, and

(c) would, if the foreign tax evasion offence were a UK tax evasion offence, amount to a UK tax evasion facilitation offence (see section 45(5) and (6)).

(7) A relevant body guilty of an offence under this section is liable—

(a) on conviction on indictment, to a fine;

(b) on summary conviction in England and Wales, to a fine;

(c) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum.

GUIDANCE ABOUT PREVENTION PROCEDURES

47 Guidance about preventing facilitation of tax evasion offences

(1) The Chancellor of the Exchequer ("the Chancellor") must prepare and publish guidance about procedures that relevant bodies can put in place to prevent persons acting in the capacity of an associated person from committing UK tax evasion facilitation offences or foreign tax evasion facilitation offences.

(2) The Chancellor may from time to time prepare and publish new or revised guidance to add to or replace existing guidance published by the Chancellor under this section.

(3) The Chancellor must consult the Scottish Ministers, the Welsh Ministers and the Department of Justice in Northern Ireland when preparing any guidance to be published under this section.

(4) Guidance prepared and published under this section does not come into operation except in accordance with regulations made by the Chancellor by statutory instrument.

(5) A statutory instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Where for the purposes of subsection (5) a copy of a statutory instrument containing such regulations is laid before Parliament the Chancellor must also lay a copy of the guidance to which the regulations relate.

(7) The Chancellor may approve guidance prepared by any other person if it relates to any matters within the scope of subsection (1).

(8) Approval under subsection (7)—

(a) must be given in writing, and

(b) may only be given on the condition that the person who prepared it publishes the approved guidance while it remains in operation as approved guidance.

(9) The Chancellor may withdraw approval under subsection (7) by a notice given to the person who prepared the guidance.

OFFENCES: GENERAL AND SUPPLEMENTARY PROVISION

48 Offences: extra-territorial application and jurisdiction

(1) It is immaterial for the purposes of section 45 or 46 (except to the extent provided by section 46(2)) whether—

(a) any relevant conduct of a relevant body, or

(b) any conduct which constitutes part of a relevant UK tax evasion facilitation offence or foreign tax evasion facilitation offence, or

(c) any conduct which constitutes part of a relevant UK tax evasion offence or foreign tax evasion offence,

takes place in the United Kingdom or elsewhere.

(2) Proceedings for an offence under section 45 or 46 may be taken in any place in the United Kingdom.

(3) If by virtue of subsection (2) proceedings for an offence are to be taken in Scotland, they may be taken in such sheriff court district as the Lord Advocate may determine.

(4) In subsection (3) "sheriff court district" is to be read in accordance with section 307(1) of the Criminal Procedure (Scotland) Act 1995.

49 Consent to prosecution under section 46

(1) In this section "proceedings" means proceedings for an offence under section 46.

(2) No proceedings may be instituted in England and Wales except by or with the consent of the Director of Public Prosecutions or the Director of the Serious Fraud Office.

(3) No proceedings may be instituted in Northern Ireland except by or with the consent of the Director of Public Prosecutions for Northern Ireland or the Director of the Serious Fraud Office.

(4) The Director of Public Prosecutions and the Director of the Serious Fraud Office must each exercise any function of giving consent under subsection (2) or (3) personally unless—

(a) the Director concerned is unavailable, and

(b) there is another person designated in writing by the Director concerned acting personally as the person who is authorised to exercise the function when the Director is unavailable.

(5) In that case the other person may exercise the function but must do so personally.

(6) No proceedings may be instituted in Northern Ireland by virtue of section 36 of the Justice (Northern Ireland) Act 2002 (delegation of functions of the DPP for Northern Ireland to persons other than the Deputy Director) except with the consent of the Director of Public Prosecutions for Northern Ireland to the institution of the proceedings.

(7) The Director of Public Prosecutions for Northern Ireland must exercise personally any function of giving consent under subsection (3) or (6) unless the function is exercised personally by the Deputy Director of Public Prosecutions for Northern Ireland by virtue of section 30(4) or (7) of that Act.

50 Offences by partnerships: supplementary

(1) Proceedings for an offence under section 45 or 46 alleged to have been committed by a partnership must be brought in the name of the partnership (and not in the name of any of the partners).

(2) For the purposes of such proceedings—

(a) rules of court relating to the service of documents have effect as if the partnership were a body corporate, and

(b) the following provisions (which concern procedure in relation to offences by bodies corporate) apply as they apply to a body corporate—

(i) section 33 of the Criminal Justice Act 1925 and Schedule 3 to the Magistrates' Courts Act 1980, and

(ii) section 18 of the Criminal Justice Act (Northern Ireland) 1945 (c. 15 (N.I.)) and Schedule 4 to the Magistrates' Courts (Northern Ireland) Order 1981 (S.I. 1981/1675 (N.I. 26)).

(3) A fine imposed on a partnership on its conviction for an offence under section 45 or 46 is to be paid out of the partnership assets.

CONSEQUENTIAL AMENDMENTS AND INTERPRETATION

51 Consequential amendments

(1) In section 61(1) of the Serious Organised Crime and Police Act 2005 (offences to which investigatory powers etc apply) after paragraph (h) insert—

"(i) any offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent the facilitation of UK tax evasion offences or foreign tax evasion offences)."

(2) In Schedule 1 to the Serious Crime Act 2007 (serious offences)—

(a) in Part 1 (serious offences in England and Wales), in the heading before paragraph 8 insert "etc" at the end and in paragraph 8 at the end insert—

"(6) An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent the facilitation of UK tax evasion offences or foreign tax evasion offences).";

(b) in Part 1A (serious offences in Scotland) in the heading before paragraph 16G insert "etc" at the end and in paragraph 16G at the end insert—

"(5) An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent the facilitation of UK tax evasion offences or foreign tax evasion offences).";

(c) in Part 2 (serious offences in Northern Ireland) in the heading before paragraph 24 insert "etc" at the end and in paragraph 24 at the end insert—

"(6) An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent the facilitation of UK tax evasion offences or foreign tax evasion offences)."

(3) In Part 2 of Schedule 17 to the Crime and Courts Act 2013 (offences in relation to which a deferred prosecution agreement may be entered into) after paragraph 26A insert—

"26B An offence under section 45 or 46 of the Criminal Finances Act 2017 (failure to prevent the facilitation of UK tax evasion offences or foreign tax evasion offences)."

52 Interpretation of Part 3

(1) In this Part—

- "conduct" includes acts and omissions;
- "foreign country" means a country or territory outside the United Kingdom;
- "foreign tax evasion facilitation offence" has the meaning given by section 46(6);
- "foreign tax evasion offence" has the meaning given by section 46(5);
- "partnership" has the meaning given by section 44(3);
- "relevant body" has the meaning given by section 44(2);
- "tax" includes duty and any other form of taxation (however described);
- "UK tax evasion facilitation offence" has the meaning given by section 45(5) and (6);
- "UK tax evasion offence" has the meaning given by section 45(4).

(2) References in this Part to a person acting in the capacity of a person associated with a relevant body are to be construed in accordance with section 44(4).

SCHEDULE 19: THE BANK LEVY

Part 1: Introduction

1 There is to be a tax called “the bank levy”.

2 The bank levy is charged on certain types of equity and liabilities of certain groups of entities and individual entities as set out in Part 2 of this Schedule.

3 In this Schedule—

Part 3 contains provision defining the different types of groups of entities in relation to which the bank levy is charged;

Part 4 contains provision defining the equity and liabilities on which the bank levy is charged;

Part 5 contains supplementary provision;

Part 6 deals with the collection and management of the bank levy;

Part 7 deals with double taxation relief;

Part 8 contains definitions;

Part 9 confers a power to make changes to this Schedule in specified circumstances.

Part 2: Charging of bank levy

Bank levy to be charged in relation to certain groups of entities

4 (1) The bank levy is charged if, as at the end of a period of account (“the chargeable period”) of an entity (“the parent entity”)—

(a) the parent entity is a parent and is not a subsidiary of any other entity, and

(b) the group (“the relevant group”) for which the parent entity is the parent is a group within sub-paragraph (2).

(2) The groups within this sub-paragraph are—

(a) a UK banking group,

(b) a building society group,

(c) a foreign banking group, or

(d) a relevant non-banking group. See Part 3 of this Schedule for the definitions of these groups.

(3) “Group”, “parent” and “subsidiary” have the meaning given by those provisions of international accounting standards relating to the preparation of consolidated financial statements (whether or not the parent entity prepares financial statements under those standards).

(4) Accordingly, for the purposes of this Schedule the members of the relevant group are—

(a) the parent entity, and

(b) any other entity which, as at the end of the chargeable period, is a member of the group for the purposes of the provisions mentioned in sub-paragraph (3).

(5) Sub-paragraphs (3) and (4) are subject to what follows.

(6) Sub-paragraph (7) applies if—

(a) as at the end of the chargeable period—

(i) the parent entity is resident in a territory outside the United Kingdom,

(ii) generally accepted accounting practice for entities resident in that territory is or includes US GAAP, and

(iii) the parent entity is a parent for the purposes of those provisions of US GAAP which relate to the preparation of consolidated financial statements (as well as being a parent for the purposes of the provisions mentioned in sub-paragraph (3)), and

(b) the parent entity prepares consolidated financial statements for the chargeable period under US GAAP.

(7) The relevant group is the group for which the parent entity is the parent for the purposes of the provisions of US GAAP mentioned in sub-paragraph (6)(a)(iii) (instead of the provisions mentioned in sub-paragraph (3)) and, accordingly, for the purposes of this Schedule the members of the relevant group are—

(a) the parent entity, and

(b) any other entity which, as at the end of the chargeable period, is a member of the group for the purposes of the provisions of US GAAP mentioned in sub-paragraph (6)(a)(iii).

(8) This paragraph applies in relation to periods of account ending on or after 1 January 2011.

Bank levy to be charged in relation to certain entities which are not members of groups

5 (1) The bank levy is charged if, as at the end of a period of account (“the chargeable period”) of an entity (“the relevant entity”), the relevant entity—

(a) is a UK resident bank, a building society or a relevant foreign bank, and

(b) does not fall within sub-paragraph (2) or (3).

(2) An entity falls within this sub-paragraph if it is an entity in relation to which paragraph 4(1) applies as at the end of the chargeable period.

(3) An entity (“A”) falls within this sub-paragraph if—

(a) there is another entity (“B”) in relation to which paragraph 4(1) applies as at the end of the chargeable period (or in relation to which paragraph 4(1) would apply if B had a period of account ending at the same time as the chargeable period), and

(b) A is (or would be) a member of the relevant group.

(4) This paragraph applies in relation to periods of account ending on or after 1 January 2011.

Steps for determining the amount of the bank levy

6 (1) This paragraph applies where the bank levy is charged as provided for by paragraph 4 or 5.

(2) Here are the steps to be taken to determine the amount of the bank levy.

Step 1: In accordance with Part 4 of this Schedule, determine the amount of the chargeable equity and liabilities of the relevant group or the relevant entity (as the case may be).

Step 2: If the amount of the chargeable equity and liabilities is not more than £20,000,000,000, the amount of the bank levy is nil and no further steps are taken. If the amount of the chargeable equity and liabilities is more than £20,000,000,000, go to Step 3.

Step 3: Determine how much of the chargeable equity and liabilities are long term equity and liabilities and how much are short term liabilities.

Step 4: Determine the proportion ("A%") of the chargeable equity and liabilities which is long term equity and liabilities and the proportion ("B%") of the chargeable equity and liabilities which is short term liabilities.

Step 5: Reduce the amount of the long term chargeable equity and liabilities by an amount equal to A% of £20,000,000,000 and the amount of the short term chargeable liabilities by an amount equal to B% of £20,000,000,000.

Step 6: If the chargeable period is 12 months, go straight to Step 7. If not, adjust the amount of the long term chargeable equity and liabilities and the amount of the short term chargeable liabilities as follows. Divide the amount by 365 and then multiply the result by the number of days in the chargeable period.

Step 7: Charge the amount of the long term chargeable equity and liabilities at the rate of 0.039%. Charge the amount of the short term chargeable liabilities at the rate of 0.078%.

(3) The bank levy is to be paid as provided for by Part 6 of this Schedule.

Special provision for chargeable periods falling wholly or partly before 1 January 2012

7 (1) Paragraph 6(2) applies subject to this paragraph if some or all of the chargeable period falls before 1 January 2012.

(2) For Step 7 there is substituted—

"Step 7: Determine the proportion ("X%") of the chargeable period (if any) falling in the period from 1 January 2011 to 28 February 2011. Determine the proportion ("Y%") of the chargeable period (if any) falling in the period from 1 March 2011 to 30 April 2011. Determine the proportion ("Z%") of the chargeable period (if any) falling in the period from 1 May 2011 to 31 December 2011. Charge X% of the amount of the long term chargeable equity and liabilities at the rate of 0.025%, Y% of that amount at the rate of 0.05%, Z% of that amount at the rate of 0.0375% and the balance (if any) at the rate of 0.039%. Charge X% of the amount of the short term chargeable liabilities at the rate of 0.05%, Y% of that amount at the rate of 0.1%, Z% of that amount at the rate of 0.075% and the balance (if any) at the rate of 0.078%. Add these results together to give the amount of the bank levy. "

(3) If the chargeable period starts before 1 January 2011, for the purposes of Step 6 and Step 7 (as substituted by sub-paragraph (2)) the part of the period falling before 1 January 2011 is ignored and, accordingly, the period is treated as having started on 1 January 2011.

Part 3: Groups covered by the bank levy

Definitions of "UK banking group", "building society group", "foreign banking group" and "relevant non-banking group"

8 The relevant group is a "UK banking group" if—

(a) the group is a banking group (see paragraph 12), and

(b) the parent entity is a UK resident entity.

9 The relevant group is a "building society group" if the parent entity is a building society.

10 The relevant group is a "foreign banking group" if—

(a) the group is a banking group (see paragraph 12), and

(b) the parent entity is a non-UK resident entity.

11 The relevant group is a "relevant non-banking group" if—

(a) the members of the group include at least one UK resident bank or relevant foreign bank, and

(b) the group is neither a banking group nor a building society group.

Definition of "banking group"

12 (1) The relevant group is a "banking group" if—

(a) condition A, B, C or D is met, and

(b) the exempt activities condition is not met (see paragraph 13).

(2) Condition A is that the parent entity is a UK resident bank (see paragraph 80) or a relevant foreign bank (see paragraph 78).

(3) Condition B is that—

(a) the parent entity is an investment entity, and

(b) the members of the relevant group include at least one UK resident bank to which sub-paragraph (6) applies or relevant foreign bank to which that sub-paragraph applies.

(4) Condition C is that—

(a) the parent entity is a non-UK resident entity to which sub-paragraph (8) applies, and

(b) the members of the relevant group include at least one UK resident bank or relevant foreign bank.

(5) Condition D is that—

(a) the parent entity is an investment entity,

(b) the members of the relevant group include at least one non-UK resident entity to which both sub-paragraphs (6) and (8) apply, and

(c) those members also include at least one UK resident bank or relevant foreign bank.

(6) This sub-paragraph applies to an entity ("E") if, for the purposes of the applicable accounting provisions, E is not a subsidiary of any other entity apart from investment entities.

(7) "The applicable accounting provisions" means—

(a) the provisions mentioned in paragraph 4(3), or

(b) if the members of the relevant group are determined under paragraph 4(7), the provisions of US GAAP mentioned in paragraph 4(6)(a)(iii).

(8) This sub-paragraph applies to an entity ("F") if—

(a) F would be a UK resident bank if—

(i) F were a UK resident entity,

(ii) it carried on its activities in the United Kingdom,

(iii) where it would be required to be an authorised person for the purposes of FISMA 2000 in order to carry on those activities in the United Kingdom, it were an authorised person with permission to carry on those activities, and

(iv) where those activities consist wholly or mainly of any of the relevant activities described in the provisions mentioned in paragraph 79(b) to (f), as a result of carrying on those activities and having such permission it would be a BIPRU 730k firm and a full scope BIPRU investment firm, or

(b) F is a member of a partnership which is a non-UK resident entity and F would be a UK resident bank if—

(i) both F and the partnership were UK resident entities,

(ii) the partnership carried on its activities in the United Kingdom,

(iii) where the partnership would be required to be an authorised person for the purposes of FISMA 2000 in order to carry on those activities in the United Kingdom, the partnership were an authorised person with permission to carry on those activities, and

(iv) where those activities consist wholly or mainly of any of the relevant activities described in the provisions mentioned in paragraph 79(b) to (f), as a result of carrying on those activities and having such permission the partnership would be a BIPRU 730k firm and a full scope BIPRU investment firm.

(9) "Investment entity"—

(a) means an entity the business of which consists wholly or mainly of, and the principal part of the income of which is derived from, the making of investments, and

(b) also includes any savings bank or other bank for savings.

13 (1) The exempt activities condition is met for the purposes of paragraph 12(1)(b) if—

(a) at least 90% of the trading income of the relevant group for the chargeable period derives from exempt activities, or

(b) at least 50% of the trading income of the relevant group for the chargeable period derives from non-financial trading activities.

(2) For this purpose, the trading income of the relevant group for the chargeable period—

(a) consists of the items mentioned in sub-paragraph (3), and

(b) is to be determined by reference to—

(i) the amounts recognised in the group's consolidated financial statements for the chargeable period as prepared under the applicable accounting standards, or

(ii) if no such financial statements are prepared, the amounts which would have been so recognised had consolidated financial statements for the group been prepared for the chargeable period under international accounting standards.

(3) The items referred to in sub-paragraph (2)(a) are—

(a) the group's gross income for the chargeable period arising from its activities (other than net-basis activities) without taking account of any deductions (whether for expenses or otherwise), and

(b) the group's net income for the chargeable period arising from its net-basis activities.

(4) In this paragraph—

"activities" includes buying, holding, managing and selling assets;

"the applicable accounting standards" means—

(a) international accounting standards, or

(b) US GAAP if the members of the relevant group are determined under paragraph 4(7);

"dealing on own account" has the same meaning as in Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (see Article 4(1)(6));

"deposit" has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S. I.2001/544) but ignoring the exclusions in articles 6 to 9AB;

"exempt activities" means—

(a) insurance activities, asset management activities and related activities, and

(b) non-financial trading activities;

"financial trading entity" means an entity which—

(a) is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act),

(b) is not UK resident, but if it were and it carried on its activities in the United Kingdom, would be required to be an authorised person, or

(c) is not within paragraph (a) or (b) but carries on a trade consisting wholly or partly in dealing in securities;

"insurance activities" means—

(a) the effecting or carrying out of contracts of insurance by a regulated insurer, and

(b) investment business that arises directly from activities falling within paragraph (a);

"lending activities" means—

(a) acceptance of deposits or other repayable funds,

(b) lending of money, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions (including forfeiting),

(c) finance leasing (as lessor),

(d) issuing and administering means of payment,

(e) provision of guarantees or commitments to provide money,

(f) money transmission services,

(g) provision of alternative finance arrangements, and

(h) other activities carried on in connection with activities falling within any of paragraphs (a) to (g);

"net-basis activities" means activities normally reported on a net basis in consolidated financial statements prepared under the applicable accounting standards;

"non-financial trading activities" means activities carried on by an entity which is not a financial trading entity, other than—

(a) lending activities, and

(b) dealing on own account, with the exception of any hedging transactions in relation to activities which (disregarding this exception) are non-financial trading activities;

"regulated insurer", in relation to the relevant group, means a member of the group which—

(a) is authorised under the law of any territory to carry on insurance business, or

(b) is a member of a body or organisation which is so authorised;

"related activities" means—

(a) activities which are ancillary to insurance activities or asset management activities of any entity which is a member of the relevant group (whether or not the entity carrying on the insurance activities or asset management activities), and

(b) activities which would not be carried on but for such insurance activities or asset management activities being carried on,

but does not include dealing on own account;

"securities" includes—

(a) shares,

(b) rights of unit holders in unit trust schemes to which TCGA 1992 applies as a result of section 99 of that Act, and

(c) in the case of a company with no share capital, interests in the company possessed by members of the company.

Part 4: Chargeable equity and liabilities

Definition of "assets", "equity" and "liabilities"

14 (1) For the purposes of this Schedule, "assets", "equity" and "liabilities" have the same meaning as they have for the purposes of international accounting standards.

(2) Sub-paragraph (1) is without prejudice to any provision of this Schedule which requires anything to be determined by reference to amounts which are recognised, or amounts which would have been recognised, in consolidated financial statements or financial statements prepared under UK GAAP.

Chargeable equity and liabilities of a UK banking group or a building society group

15 (1) This paragraph applies if the relevant group is a UK banking group or a building society group.

(2) To determine the amount of the relevant group's chargeable equity and liabilities—

(a) determine the amount of the group's equity and liabilities (other than excluded equity and liabilities) as at the end of the chargeable period,

(b) adjust that amount in accordance with paragraphs 16 and 44 (so far as applicable), and

(c) finally, reduce that amount (but not below nil) by—

(i) the amount of the group's high quality liquid assets as at the end of that period, other than any asset which for the purposes of an adjustment under paragraph (b) is an asset to which paragraph 16(4) applies, and

(ii) where sub-paragraph (4) applies, the amount determined under that sub-paragraph.

(3) Sub-paragraph (4) applies where—

(a) as at the end of the chargeable period, the assets of the group include a financial asset in respect of an advance of cash made by a member of the group,

(b) that financial asset is not an asset which, for the purposes of an adjustment under sub-paragraph (2)(b), is an asset to which paragraph 16(4) applies, and

(c) underlying that asset, as collateral, is an item ("the collateral") owned by that member which would form part of the group's high quality liquid assets as at the end of that period were the collateral, rather than the financial asset, an asset of the group.

(4) The amount within sub-paragraph (2)(c)(ii) is—

(a) the amount of the financial asset as at the end of that period or, if lower, an amount equal to the fair value of the collateral as at that time, or

(b) if this sub-paragraph applies in relation to more than one financial asset, the total of the amounts determined under paragraph (a) in respect of each of those assets.

(5) For the purposes of this paragraph and paragraph 16 the relevant group's assets, equity and liabilities are to be determined by reference to—

(a) the amounts recognised in the group's consolidated financial statements for the chargeable period as prepared under international accounting standards or UK GAAP, or

(b) if no such financial statements are prepared, the amounts which would have been so recognised had consolidated financial statements for the group been prepared for the chargeable period under international accounting standards.

(6) In reducing the amount of any equity or liabilities under sub-paragraph (2)(c), long term equity and liabilities are to be reduced before short term liabilities.

16 (1) This paragraph applies for the purposes of paragraph 15(2) if—

(a) a member ("M") of the relevant group has liabilities to an entity ("N") which is not a member of the group and N has assets which correspond to those liabilities ("M's liabilities"),

(b) M, or another member of the relevant group, has assets which correspond to liabilities which N, or another entity which is not a member of the group, has to M or (as the case may be) that other member ("N's liabilities"),

(c) there is in place an agreement which makes provision for there to be a single net settlement of all M's liabilities, and liabilities of other members of the group to N or another entity which is not a member of the group, (so far as covered by the provision) and all N's liabilities (so far as covered by the provision) if the netting event occurs, and

(d) the provision mentioned in paragraph (c) is legally effective and enforceable.

(2) For the purposes of sub-paragraph (1)—

(a) "agreement" includes an agreement which forms part of a multi-lateral agreement, arrangement or trading facility,

(b) references to assets of one party which correspond to liabilities of another party are to amounts receivable by that first party which correspond to amounts due from that other party,

(c) a liability which M has to N to which sub-paragraph (3) applies is to be treated as a liability to which an asset of N corresponds, and

(d) "the netting event occurs" if the insolvency or bankruptcy of—

(i) M, or another member of the relevant group which has assets which correspond to a liability covered by the provision mentioned in sub-paragraph (1)(c), or

(ii) N, or another entity which is not a member of the group and which has such a liability,gives rise to the termination of any arrangements under which such a liability arises.

(3) This sub-paragraph applies to a liability which M has to N if—

(a) as at the end of the chargeable period, the assets of the relevant group include a financial asset in respect of an advance of cash made by M to N,

(b) underlying that asset, as collateral, are securities which have been transferred by M to another person,

(c) the liability is a financial liability in respect of M's obligation to return the securities or similar securities to N, and

(d) the provision mentioned in sub-paragraph (1)(c) covers both the financial asset mentioned in paragraph (a) and that financial liability. Section 556 of CTA 2009 (meaning of securities and similar securities) applies for the purposes of this sub-paragraph as it applies for the purposes of Chapter 10 of Part 6 of that Act.

(4) The amount of M's net settlement liabilities is to be reduced (but not below nil) by the amount of M's net settlement assets.

(5) "M's net settlement liabilities" means M's liabilities so far as they—

(a) are covered by the provision mentioned in sub-paragraph (1)(c), and

(b) are not excluded liabilities.

(6) "M's net settlement assets" means the assets of M, or of another member of the relevant group, so far as corresponding to N's net settlement liabilities.

(7) But if this paragraph applies in relation to more than one member of the relevant group, no part of an asset may be included in the net settlement assets of more than one such member.

(8) "N's net settlement liabilities" means N's liabilities so far as they are covered by the provision mentioned in sub-paragraph (1)(c).

(9) If M's net settlement liabilities exceed M's net settlement assets, and a proportion (A%) of those liabilities is long term liabilities and a proportion (B%) of those liabilities is short term liabilities, under sub-paragraph (4)—

(a) the long term liabilities are reduced by A% of M's net settlement assets, and

(b) the short term liabilities are reduced by B% of those assets.

Chargeable equity and liabilities of a foreign banking group

17 (1) This paragraph applies if the relevant group is a foreign banking group.

(2) The amount of the chargeable equity and liabilities of the relevant group is the sum of all type A, type B, type C and type D equity and liabilities.

(3) Type A equity and liabilities are the chargeable equity and liabilities of any relevant UK sub-group.

(4) "UK sub-group" means a group of entities—

(a) which is a group for the purposes of those provisions of international accounting standards or UK GAAP which relate to the preparation of consolidated financial statements,

(b) which has as its parent or parent undertaking for the purposes of those provisions an entity which is a UK resident entity, and

(c) the members of which for the purposes of those provisions are all members of the relevant group.

(5) A UK sub-group is "relevant" if—

(a) consolidated financial statements for the chargeable period are prepared for it under international accounting standards or UK GAAP, and

(b) its members are not members of any larger UK sub-group for which such financial statements are prepared.

(6) To determine the amount of the chargeable equity and liabilities of a relevant UK sub-group—

(a) determine the amount of the sub-group's equity and liabilities (other than excluded equity and liabilities) as at the end of the chargeable period,

(b) adjust that amount in accordance with paragraphs 18 and 44 (so far as applicable), and

(c) finally, reduce that amount (but not below nil) by—

(i) the amount of the sub-group's high quality liquid assets as at the end of that period, other than any asset which for the purposes of an adjustment under paragraph (b) is an asset to which paragraph 18(12) applies, and

(ii) where sub-paragraph (8) applies, the amount determined under that sub-paragraph.

(7) Sub-paragraph (8) applies where—

(a) as at the end of the chargeable period, the assets of the relevant UK sub-group include a financial asset in respect of an advance of cash made by a member of that sub-group,

(b) that financial asset is not an asset which, for the purposes of an adjustment under sub-paragraph (6)(b), is an asset to which paragraph 18(12) applies, and

(c) underlying that asset, as collateral, is an item ("the collateral") owned by that member which would form part of the sub-group's high quality liquid assets as at the end of that period were the collateral, rather than the financial asset, an asset of the sub-group.

(8) The amount within sub-paragraph (6)(c)(ii) is—

(a) the amount of the financial asset as at the end of that period or, if lower, an amount equal to the fair value of the collateral as at that time, or

(b) if this sub-paragraph applies in relation to more than one financial asset, the total of the amounts determined under paragraph (a) in respect of each of those assets.

(9) For the purposes of this paragraph and paragraph 18, the assets, equity and liabilities of a relevant UK sub-group are to be determined by reference to the amounts recognised in its consolidated financial statements for the chargeable period.

(10) Type B equity and liabilities are the chargeable equity and liabilities of any UK resident entity which—

(a) is a member of the relevant group, but

(b) is not a member of a relevant UK sub-group.

(11) Type C equity and liabilities are the chargeable equity and liabilities of any non-UK resident entity which—

(a) is a member of the relevant group, and

(b) is a member of a UK sub-group but is not a member of a relevant UK sub-group.

(12) To determine the amount of the chargeable equity and liabilities of an entity covered by sub-paragraph (10) or (11)—

(a) determine the amount of the entity's equity and liabilities (other than excluded equity and liabilities) as at the end of the chargeable period,

(b) adjust that amount in accordance with paragraphs 18 and 44 (so far as applicable), and

(c) finally, reduce that amount (but not below nil) by—

(i) the amount of the entity's high quality liquid assets as at the end of that period, other than any asset which for the purposes of an adjustment under paragraph (b) is an asset to which paragraph 18(12) applies, and

(ii) where sub-paragraph (14) applies, the amount determined under that sub-paragraph.

(13) Sub-paragraph (14) applies where—

(a) as at the end of the chargeable period, the assets of the entity include a financial asset in respect of an advance of cash made by the entity,

(b) that financial asset is not an asset which, for the purposes of an adjustment under sub-paragraph (12)(b), is an asset to which paragraph 18(12) applies, and

(c) underlying that asset, as collateral, is an item ("the collateral") owned by that entity which would form part of the entity's high quality liquid assets as at the end of that period were the collateral, rather than the financial asset, an asset of the entity.

(14) The amount within sub-paragraph (12)(c)(ii) is—

(a) the amount of the financial asset as at the end of the chargeable period or, if lower, an amount equal to the fair value of the collateral as at that time, or

(b) if this sub-paragraph applies in relation to more than one financial asset, the total of the amounts determined under paragraph (a) in respect of each of those assets.

(15) For the purposes of this paragraph and paragraph 18 the assets, equity and liabilities of an entity covered by sub-paragraph (10) or (11) are to be determined by reference to—

(a) the amounts recognised in the entity's financial statements for the chargeable period as prepared under international accounting standards or UK GAAP, or

(b) if no such financial statements are prepared, the amounts which would have been so recognised had such financial statements been prepared—

(i) under international accounting standards, or

(ii) under UK GAAP if that is what the entity prepares its financial statements under.

(16) In reducing the amount of any equity or liabilities under sub-paragraph (6)(c) or (12)(c), long term equity and liabilities are to be reduced before short term liabilities.

(17) Type D equity and liabilities are the UK allocated equity and liabilities (see paragraph 24) as at the end of the chargeable period of any relevant foreign bank which—

(a) is a member of the relevant group, but

(b) is not a member of a UK sub-group.

(18) If—

(a) the amount of the equity and liabilities, as at the end of the chargeable period, of a relevant UK sub-group or an entity covered by sub-paragraph (10) or (11), or

(b) the amount of the UK allocated equity and liabilities, as at the end of that period, of a relevant foreign bank covered by sub-paragraph (17),is less than £50,000,000, the equity and liabilities, or UK allocated equity and liabilities, may be ignored for the purposes of this paragraph and paragraph 18.

(19) But the total amount of equity and liabilities which may be ignored under sub-paragraph (18) may not exceed £200,000,000.

18 (1) This paragraph applies for the purposes of paragraph 17(6) and (12).

(2) In this paragraph "relevant member" means—

(a) a relevant UK sub-group,

(b) a UK resident entity covered by paragraph 17(10), or

(c) a non-UK resident entity covered by paragraph 17(11).

(3) Sub-paragraph (4) applies if the members of a relevant UK sub-group are also members of one or more larger UK sub-groups.

(4) Any equity of the relevant UK sub-group is to be left out so far as it would have been eliminated under normal consolidation procedures had consolidated financial statements for the chargeable period been prepared for the larger or largest UK sub-group—

(a) under international accounting standards, or

(b) under UK GAAP if the entity which is the parent or parent undertaking for the larger or largest UK sub-group prepares its financial statements under UK GAAP.

(5) Sub-paragraph (6) applies if a relevant member within sub-paragraph (2)(b) or (c) is a member of one or more UK sub-groups.

(6) Any equity of the relevant member is to be left out so far as it would have been eliminated under normal consolidation procedures had consolidated financial statements for the chargeable period been prepared for the UK sub-group or the largest UK sub-group—

(a) under international accounting standards, or

(b) under UK GAAP if the entity which is the parent or parent undertaking for the UK sub-group or the largest UK sub-group prepares its financial statements under UK GAAP.

(7) The following liabilities of a relevant member are to be left out—

(a) liabilities to other relevant members, and

(b) liabilities to a relevant foreign bank covered by paragraph 17(17) so far as the bank's assets corresponding to the liabilities are assets of the permanent establishment through which the bank carries on a trade in the United Kingdom as determined at Step 2 in paragraph 24(1).

(8) Sub-paragraph (12) applies if—

(a) an entity ("M") within sub-paragraph (9) has liabilities to another entity ("N") not within that sub-paragraph, and N has assets which correspond to those liabilities ("M's liabilities"),

(b) M, or another entity within sub-paragraph (9), has assets which correspond to liabilities which N, or another entity not within that sub-paragraph, has to M or (as the case may be) to that other entity within that sub-paragraph ("N's liabilities"),

(c) there is in place an agreement which makes provision for there to be a single net settlement of all M's liabilities, and liabilities of other entities within sub-paragraph (9) to N or another entity which is not within that sub-paragraph, (so far as covered by the provision) and all N's liabilities (so far as covered by the provision) if the netting event occurs, and

(d) the provision mentioned in paragraph (c) is legally effective and enforceable.

(9) An entity is within this sub-paragraph if it is—

(a) a member of a relevant UK sub-group, or

(b) a relevant member within sub-paragraph (2)(b) or (c).

(10) For the purposes of sub-paragraph (8)—

(a) "agreement" includes an agreement which forms part of a multi-lateral agreement, arrangement or trading facility,

(b) if N is a relevant foreign bank covered by paragraph 17(17), liabilities of M to N are to be ignored so far as N's assets corresponding to those liabilities are assets of the permanent establishment through which N carries on a trade in the United Kingdom as determined at Step 2 in paragraph 24(1),

(c) references to assets of one party which correspond to liabilities of another party are to amounts receivable by that first party which correspond to amounts due from that other party,

(d) a liability which M has to N to which sub-paragraph (11) applies is to be treated as a liability to which an asset of N corresponds, and

(e) "the netting event occurs" if the insolvency or bankruptcy of—

(i) M, or another entity within sub-paragraph (9) which has assets which correspond to a liability covered by the provision mentioned in sub-paragraph (8)(c), or

(ii) N, or another entity not within sub-paragraph (9) which has such a liability,gives rise to the termination of any arrangements under which such a liability arises.

(11) This sub-paragraph applies to a liability which M has to N if—

(a) as at the end of the chargeable period, the assets of M include a financial asset in respect of an advance of cash made by M to N,

(b) underlying that asset, as collateral, are securities which have been transferred by M to another person,

(c) the liability is a financial liability in respect of M's obligation to return the securities or similar securities to N, and

(d) the provision mentioned in sub-paragraph (8)(c) covers both the financial asset mentioned in paragraph (a) and that financial liability. Section 556 of CTA 2009 (meaning of securities and similar securities) applies for the purposes of this sub-paragraph as it applies for the purposes of Chapter 10 of Part 6 of that Act.

(12) The amount of M's net settlement liabilities is to be reduced (but not below nil) by the amount of M's net settlement assets.

(13) "M's net settlement liabilities" means M's liabilities so far as they—

(a) are covered by the provision mentioned in sub-paragraph (8)(c), and

(b) are not excluded liabilities.

(14) "M's net settlement assets" means the assets of M, or of another entity within sub-paragraph (9), so far as corresponding to N's net settlement liabilities.

(15) But—

(a) if N's net settlement liabilities include liabilities of a relevant foreign bank covered by paragraph 17(17), X% (as determined at Step 2 in paragraph 24(1)) of the assets corresponding to the liabilities of the relevant foreign bank are to be disregarded for the purposes of sub-paragraph (14), and

(b) if sub-paragraph (12) applies in relation to more than one entity within sub-paragraph (9), no part of an asset may be included in the net settlement assets of more than one such entity.

(16) "N's net settlement liabilities" means N's liabilities so far as they are covered by the provision mentioned in sub-paragraph (8)(c).

(17) If M's net settlement liabilities exceed M's net settlement assets, and a proportion (A%) of those liabilities is long term liabilities and a proportion (B%) of those liabilities is short term liabilities, under sub-paragraph (12)—

(a) the long term liabilities are reduced by A% of M's net settlement assets, and

(b) the short term liabilities are reduced by B% of those assets.

Chargeable equity and liabilities of a relevant non-banking group

19 (1) This paragraph applies if the relevant group is a relevant non-banking group.

(2) The amount of the chargeable equity and liabilities of the relevant group is the sum of all type A, type B, type C and type D equity and liabilities.

(3) Type A equity and liabilities are the chargeable equity and liabilities of any relevant UK banking sub-group.

(4) "UK banking sub-group" means a group of entities—

(a) which is a group for the purposes of those provisions of international accounting standards or UK GAAP which relate to the preparation of consolidated financial statements,

(b) which has as its parent or parent undertaking for the purposes of those provisions an entity which is a UK resident bank, and

(c) the members of which are all members of the relevant group.

(5) A UK banking sub-group is "relevant" if—

(a) consolidated financial statements for the chargeable period are prepared for it under international accounting standards or UK GAAP, and

(b) its members are not members of any larger UK banking sub-group for which such financial statements are prepared.

(6) To determine the amount of the chargeable equity and liabilities of a relevant UK banking sub-group—

(a) determine the amount of the sub-group's equity and liabilities (other than excluded equity and liabilities) as at the end of the chargeable period,

(b) adjust the amount in accordance with paragraphs 20 and 44 (so far as applicable), and

(c) finally, reduce the amount (but not below nil) by—

(i) the amount of the sub-group's high quality liquid assets as at the end of that period, other than any asset which for the purposes of an adjustment under paragraph (b) is an asset to which paragraph 20(12) applies, and

(ii) where sub-paragraph (8) applies, the amount determined under that sub-paragraph.

(7) Sub-paragraph (8) applies where—

(a) as at the end of the chargeable period, the assets of the relevant UK banking sub-group include a financial asset in respect of an advance of cash made by a member of the sub-group,

(b) that financial asset is not an asset which, for the purposes of an adjustment under sub-paragraph (6)(b), is an asset to which paragraph 20(12) applies, and

(c) underlying that asset, as collateral, is an item ("the collateral") owned by that member which would form part of the sub-group's high quality liquid assets as at the end of that period were the collateral, rather than the financial asset, an asset of the sub-group.

(8) The amount within sub-paragraph (6)(c)(ii) is—

(a) the amount of the financial asset as at the end of that period or, if lower, an amount equal to the fair value of the collateral as at that time, or

(b) if this sub-paragraph applies in relation to more than one financial asset, the total of the amounts determined under paragraph (a) in respect of each of those assets.

(9) For the purposes of this paragraph and paragraph 20 the assets, equity and liabilities of a relevant UK banking sub-group are to be determined by reference to the amounts recognised in its consolidated financial statements for the chargeable period.

(10) Type B equity and liabilities are the chargeable equity and liabilities of any UK resident bank which—

(a) is a member of the relevant group, but

(b) is not a member of a relevant UK banking sub-group.

(11) Type C equity and liabilities are the chargeable equity and liabilities of any entity (apart from a UK resident bank) which—

(a) is a member of the relevant group, and

(b) is a member of a UK banking sub-group but is not a member of a relevant UK banking sub-group.

(12) To determine the amount of the chargeable equity and liabilities of an entity covered by sub-paragraph (10) or (11)—

(a) determine the amount of the entity's equity and liabilities (other than excluded equity and liabilities) as at the end of the chargeable period,

(b) adjust the amount in accordance with paragraphs 20 and 44 (so far as applicable), and

(c) finally, reduce the amount (but not below nil) by—

(i) the amount of the entity's high quality liquid assets as at the end of that period, other than any asset which for the purposes of an adjustment under paragraph (b) is an asset to which paragraph 20(12) applies, and

(ii) where sub-paragraph (14) applies, the amount determined under that sub-paragraph.

(13) Sub-paragraph (14) applies where—

(a) as at the end of the chargeable period, the assets of the entity include a financial asset in respect of an advance of cash made by the entity,

(b) that financial asset is not an asset which, for the purposes of an adjustment under sub-paragraph (12)(b), is an asset to which paragraph 20(12) applies, and

(c) underlying that asset, as collateral, is an item ("the collateral") owned by that entity which would form part of the entity's high quality liquid assets as at the end of that period were the collateral, rather than the financial asset, an asset of the entity.

(14) The amount within sub-paragraph (12)(c)(ii) is—

(a) the amount of the financial asset as at the end of that period or, if lower, an amount equal to the fair value of the collateral as at that time, or

(b) if this sub-paragraph applies in relation to more than one financial asset, the total of the amounts determined under paragraph (a) in respect of each of those assets.

(15) For the purposes of this paragraph and paragraph 20 the assets, equity and liabilities of an entity covered by sub-paragraph (10) or (11) are to be determined by reference to—

(a) the amounts recognised in the entity's financial statements for the chargeable period as prepared under international accounting standards or UK GAAP, or

(b) if no such financial statements are prepared, the amounts which would have been so recognised had such financial statements been prepared—

(i) under international accounting standards, or

(ii) under UK GAAP if that is what the entity prepares its financial statements under.

(16) In reducing the amount of any equity or liabilities under sub-paragraph (6)(c) or (12)(c), long term equity and liabilities are to be reduced before short term liabilities.

(17) Type D equity and liabilities are the UK allocated equity and liabilities (see paragraph 24) as at the end of the chargeable period of any relevant foreign bank which—

(a) is a member of the relevant group, but

(b) is not a member of a UK banking sub-group.

(18) If—

(a) the amount of the equity and liabilities, as at the end of the chargeable period, of a relevant UK banking sub-group or an entity covered by sub-paragraph (10) or (11), or

(b) the amount of the UK allocated equity and liabilities, as at the end of that period, of a relevant foreign bank covered by sub-paragraph (17),is less than £50,000,000, the equity and liabilities, or UK allocated equity and liabilities, may be ignored for the purposes of this paragraph and paragraph 20.

(19) But the total amount of equity and liabilities which may be ignored under sub-paragraph (18) may not exceed £200,000,000.

20 (1) This paragraph applies for the purposes of paragraph 19(6) and (12).

(2) In this paragraph "relevant member" means—

(a) a relevant UK banking sub-group,

(b) a UK resident bank covered by paragraph 19(10), or

(c) an entity covered by paragraph 19(11).

(3) Sub-paragraph (4) applies if the members of a relevant UK banking sub-group are also members of one or more larger UK banking sub-groups.

(4) Any equity of the relevant UK banking sub-group is to be left out so far as it would have been eliminated under normal consolidation procedures had consolidated financial statements for the chargeable period been prepared for the larger or largest UK banking sub-group—

(a) under international accounting standards, or

(b) under UK GAAP if the entity which is the parent or parent undertaking for the larger or largest UK banking sub-group prepares its financial statements under UK GAAP.

(5) Sub-paragraph (6) applies if a relevant member within sub-paragraph (2)(b) or (c) is a member of one or more UK banking sub-groups.

(6) Any equity of the relevant member is to be left out so far as it would have been eliminated under normal consolidation procedures had consolidated financial statements for the chargeable period been prepared for the UK banking sub-group or the largest UK banking sub-group—

(a) under international accounting standards, or

(b) under UK GAAP if the entity which is the parent or parent undertaking for the UK banking sub-group or the largest UK banking sub-group prepares its financial statements under UK GAAP.

(7) The following liabilities of a relevant member are to be left out—

(a) liabilities to other relevant members, and

(b) liabilities to a relevant foreign bank covered by paragraph 19(17) so far as the bank's assets corresponding to the liabilities are assets of the permanent establishment through which the bank carries on a trade in the United Kingdom as determined at Step 2 in paragraph 24(1).

(8) Sub-paragraph (12) applies if—

(a) an entity ("M") within sub-paragraph (9) has liabilities to another entity ("N") not within that sub-paragraph, and N has assets which correspond to those liabilities ("M's liabilities"),

(b) M, or another entity within sub-paragraph (9), has assets which correspond to liabilities which N, or another entity not within that sub-paragraph, has to M or, as the case may be, to that other entity within that sub-paragraph ("N's liabilities"),

(c) there is in place an agreement which makes provision for there to be a single net settlement of all M's liabilities, and liabilities of other entities within sub-paragraph (9) to N or another entity which is not within that sub-paragraph, (so far as covered by the provision) and all N's liabilities (so far as covered by the provision) if the netting event occurs, and

(d) the provision mentioned in paragraph (c) is legally effective and enforceable.

(9) An entity is within this sub-paragraph if it is—

(a) a member of a relevant UK banking sub-group, or

(b) a relevant member within sub-paragraph (2)(b) or (c).

(10) For the purposes of sub-paragraph (8)—

(a) "agreement" includes an agreement which forms part of a multi-lateral agreement, arrangement or trading facility,

(b) if N is a relevant foreign bank covered by paragraph 19(17), liabilities of M to N are to be ignored so far as N's assets corresponding to those liabilities are assets of the permanent establishment through which N carries on a trade in the United Kingdom as determined at Step 2 in paragraph 24(1),

(c) references to assets of one party which correspond to liabilities of another party are to amounts receivable by that first party which correspond to amounts due from that other party,

(d) a liability which M has to N to which sub-paragraph (11) applies is to be treated as a liability to which an asset of N corresponds, and

(e) "the netting event occurs" if the insolvency or bankruptcy of—

(i) M, or another entity within sub-paragraph (9) which has assets which correspond to a liability covered by the provision mentioned in sub-paragraph (8)(c), or

(ii) N, or another entity not within sub-paragraph (9) which has such a liability,gives rise to the termination of any arrangements under which such a liability arises.

(11) This sub-paragraph applies to a liability which M has to N if—

(a) as at the end of the chargeable period, the assets of M include a financial asset in respect of an advance of cash made by M to N,

(b) underlying that asset, as collateral, are securities which have been transferred by M to another person,

(c) the liability is a financial liability in respect of M's obligation to return the securities or similar securities to N, and

(d) the provision mentioned in sub-paragraph (8)(c) covers both the financial asset mentioned in paragraph (a) and that financial liability. Section 556 of CTA 2009 (meaning of securities and similar securities) applies for the purposes of this sub-paragraph as it applies for the purposes of Chapter 10 of Part 6 of that Act.

(12) The amount of M's net settlement liabilities is to be reduced (but not below nil) by the amount of M's net settlement assets.

(13) "M's net settlement liabilities" means M's liabilities so far as they—

(a) are covered by the provision mentioned in sub-paragraph (8)(c), and

(b) are not excluded liabilities.

(14) "M's net settlement assets" means the assets of M, or of another entity within sub-paragraph (9), so far as corresponding to N's net settlement liabilities.

(15) But—

(a) if N's net settlement liabilities include liabilities of a relevant foreign bank covered by paragraph 19(17), X% (as determined at Step 2 in paragraph 24(1)) of the assets corresponding to the liabilities of the relevant foreign bank are to be disregarded for the purposes of sub-paragraph (14), and

(b) if sub-paragraph (12) applies in relation to more than one entity within sub-paragraph (9), no part of an asset may be included in the net settlement assets of more than one such entity.

(16) "N's net settlement liabilities" means N's liabilities so far as they are covered by the provision mentioned in sub-paragraph (8)(c).

(17) If M's net settlement liabilities exceed M's net settlement assets, and a proportion (A%) of those liabilities is long term liabilities and a proportion (B%) of those liabilities is short term liabilities, under sub-paragraph (12)—

(a) the long term liabilities are reduced by A% of M's net settlement assets, and

(b) the short term liabilities are reduced by B% of those assets.

Chargeable equity and liabilities of UK resident banks and building societies which are not members of groups

21 (1) This paragraph applies where the bank levy is charged as provided for by paragraph 5 and the relevant entity is a UK resident bank or a building society.

(2) To determine the amount of the relevant entity's chargeable equity and liabilities—

(a) determine the amount of the entity's equity and liabilities (other than excluded equity and liabilities) as at the end of the chargeable period,

(b) adjust that amount in accordance with paragraphs 22 and 44 (so far as applicable), and

(c) finally, reduce that amount (but not below nil) by—

(i) the amount of the entity's high quality liquid assets as at the end of that period, other than any asset which for the purposes of an adjustment under paragraph (b) is an asset to which paragraph 22(4) applies, and

(ii) where sub-paragraph (4) applies, the amount determined under that sub-paragraph.

(3) Sub-paragraph (4) applies where—

(a) as at the end of the chargeable period, the assets of the relevant entity include a financial asset in respect of an advance of cash made by the entity,

(b) that financial asset is not an asset which, for the purposes of an adjustment under sub-paragraph (2)(b), is an asset to which paragraph 22(4) applies, and

(c) underlying that asset, as collateral, is an item ("the collateral") owned by the entity which would form part of the entity's high quality liquid assets as at the end of that period were the collateral, rather than the financial asset, an asset of the entity.

(4) The amount within sub-paragraph (2)(c)(ii) is—

(a) the amount of the financial asset as at the end of that period or, if lower, an amount equal to the fair value of the collateral as at that time, or

(b) if this sub-paragraph applies in relation to more than one financial asset, the total of the amounts determined under paragraph (a) in respect of each of those assets.

(5) For the purposes of this paragraph and paragraph 22 the relevant entity's assets, equity and liabilities are to be determined by reference to the amounts recognised in the entity's financial statements for the chargeable period as prepared under international accounting standards or UK GAAP.

(6) In reducing the amount of any equity or liabilities under sub-paragraph (2)(c), long term equity and liabilities are to be reduced before short term liabilities.

22 (1) This paragraph applies for the purposes of paragraph 21(2) if—

(a)the relevant entity has liabilities to another entity ("N") and N has assets which correspond to those liabilities ("the relevant entity's liabilities"),

(b) the relevant entity also has assets which correspond to liabilities which N has to the relevant entity ("N's liabilities"),

(c) there is in place an agreement between the relevant entity and N which makes provision for there to be a single net settlement of all the relevant entity's liabilities (so far as covered by the provision) and all N's liabilities (so far as covered by the provision) if the netting event occurs, and

(d) the provision mentioned in paragraph (c) is legally effective and enforceable.

(2) For the purposes of sub-paragraph (1)—

(a) "agreement" includes an agreement which forms part of a multi-lateral agreement, arrangement or trading facility,

(b) references to assets of one party which correspond to liabilities of another party are to amounts receivable by that first party which correspond to amounts due from that other party,

(c) a liability which the relevant entity has to N to which sub-paragraph (3) applies is to be treated as a liability to which an asset of N corresponds, and

(d) "the netting event occurs" if the insolvency or bankruptcy of the relevant entity or N gives rise to the termination of any arrangements under which any liability covered by the provisions mentioned in sub-paragraph (1)(c) arises.

(3) This sub-paragraph applies to a liability which the relevant entity has to N if—

(a) as at the end of the chargeable period, the assets of the relevant entity include a financial asset in respect of an advance of cash made by the relevant entity to N,

(b) underlying that asset, as collateral, are securities which have been transferred by the relevant entity to another person,

(c) the liability is a financial liability in respect of the relevant entity's obligation to return the securities or similar securities to N, and

(d) the provision mentioned in sub-paragraph (1)(c) covers both the financial asset mentioned in paragraph (a) and that financial liability. Section 556 of CTA 2009 (meaning of securities and similar securities) applies for the purposes of this sub-paragraph as it applies for the purposes of Chapter 10 of Part 6 of that Act.

(4) The amount of the relevant entity's net settlement liabilities is to be reduced (but not below nil) by the amount of the relevant entity's net settlement assets.

(5) The relevant entity's "net settlement liabilities" are the relevant entity's liabilities so far as they—

(a) are covered by the provision mentioned in sub-paragraph (1)(c), and

(b) are not excluded liabilities.

(6) The relevant entity's "net settlement assets" are its assets so far as corresponding to N's net settlement liabilities.

(7) "N's net settlement liabilities" means N's liabilities so far as they are covered by the provision mentioned in sub-paragraph (1)(c).

(8) If the relevant entity's net settlement liabilities exceed the entity's net settlement assets, and a proportion (A%) of those liabilities is long term liabilities and a proportion (B%) of those liabilities is short term liabilities, under sub-paragraph (4)—

(a) the long term liabilities are reduced by A% of the entity's net settlement assets, and

(b) the short term liabilities are reduced by B% of those assets.

Chargeable equity and liabilities of relevant foreign banks which are not members of groups

23 (1) This paragraph applies where the bank levy is charged as provided for by paragraph 5 and the relevant entity is a relevant foreign bank.

(2) The chargeable equity and liabilities of the relevant entity is the amount of its UK allocated equity and liabilities (see paragraph 24) as at the end of the chargeable period.

Definition of "UK allocated equity and liabilities"

24 (1) Take Steps 1 to 4 to determine the amount of the UK allocated equity and liabilities of a relevant foreign bank as at the end of the chargeable period. Take Steps 5 and 6 to determine how much of that amount is to be treated as long term equity and liabilities and how much as short term liabilities for the purposes of Step 3 in paragraph 6(2).

Step 1: Determine the amount ("A") of the bank's assets as at the end of the chargeable period (subject to any adjustment under paragraph 25(5)).

Step 2: In accordance with paragraph 26, determine the amount ("B") of the assets, as at the end of the chargeable period, of the permanent establishment through which the bank carries on a trade in the United Kingdom (subject to any adjustment under paragraph 25(6)). The proportion which B is of A is "X%".

Step 3: In accordance with paragraph 27, determine the amount ("C") of the bank's chargeable equity and liabilities.

Step 4: The amount of the UK allocated equity and liabilities is X% of C.

Step 5: Determine the proportion ("Y%") of C which is long term equity and liabilities.

Step 6: For the purposes of Step 3 in paragraph 6(2), treat Y% of the amount of the UK allocated equity and liabilities as long term equity and liabilities and the rest as short term liabilities.

(2) For the purposes of this paragraph and paragraphs 25 to 27, assets, equity and liabilities of a relevant foreign bank or the permanent establishment through which it carries on a trade in the United Kingdom are to be determined by reference to—

(a) the amounts recognised in the bank's financial statements for the chargeable period as prepared under international accounting standards or UK GAAP, or

(b) if no such financial statements are prepared, the amounts which would have been so recognised had such financial statements been prepared—

(i) under international accounting standards, or

(ii) under UK GAAP if that is what the bank prepares its financial statements under.

25 (1) This paragraph applies if—

(a) the relevant foreign bank has liabilities to another entity ("N") (subject to sub-paragraph (2)), and N has assets which correspond to those liabilities ("the bank's liabilities"),

(b) the bank also has assets which correspond to liabilities which N has to the bank ("N's liabilities"),

(c) there is in place an agreement between the bank and N which makes provision for there to be a single net settlement of all the bank's liabilities (so far as covered by the provision) and all N's liabilities (so far as covered by the provision) if the netting event occurs, and

(d) the provision mentioned in paragraph (c) is legally effective and enforceable.

(2) If the UK allocated equity and liabilities of the bank are being determined for the purposes of paragraph 17(17) or 19(17), this paragraph does not apply if N is—

(a) an entity within paragraph 18(9) or 20(9) (as the case may be), or

(b) another relevant foreign bank covered by paragraph 17(17) or 19(17) (as the case may be).

(3) For the purposes of sub-paragraph (1)—

(a) "agreement" includes an agreement which forms part of a multi-lateral agreement, arrangement or trading facility,

(b) references to assets of one party which correspond to liabilities of another party are to amounts receivable by that first party which correspond to amounts due from that other party,

(c) a liability which the relevant foreign bank has to N to which sub-paragraph (4) applies is to be treated as a liability to which an asset of N corresponds, and

(d) "the netting event occurs" if the insolvency or bankruptcy of the relevant foreign bank or N gives rise to the termination of any arrangements under which any liability covered by the provision mentioned in sub-paragraph (1)(c) arises.

(4) This sub-paragraph applies to a liability which the relevant foreign bank has to N if—

(a) as at the end of the chargeable period, the assets of the relevant foreign bank include a financial asset in respect of an advance of cash made by the relevant foreign bank to N,

(b) underlying that asset, as collateral, are securities which have been transferred by the bank to another person,

(c) the liability is a financial liability in respect of the bank's obligation to return the securities or similar securities to N, and

(d) the provision mentioned in sub-paragraph (1)(c) covers both the financial asset mentioned in paragraph (a) and that financial liability. Section 556 of CTA 2009 (meaning of securities and similar securities) applies for the purposes of this sub-paragraph as it applies for the purposes of Chapter 10 of Part 6 of that Act.

(5) In determining the amount of the bank's assets at Step 1 in paragraph 24(1), the amount of the bank's net settlement assets is to be reduced (but not below nil) by the amount of the bank's net settlement liabilities.

(6) In determining the amount of the permanent establishment's assets at Step 2 in paragraph 24(1)—

(a) the reduction in the bank's assets under sub-paragraph (5) is to be ignored, but

(b) the amount of the permanent establishment's net settlement assets is to be reduced by Z%.

(7) For this purpose, "Z%" is the proportion by which the bank's net settlement assets are reduced under sub-paragraph (5).

(8) In determining the amount of the bank's chargeable equity and liabilities at Step 3 in paragraph 24(1), the amount of the bank's net settlement liabilities is to be reduced (but not below nil) by the amount of the bank's net settlement assets (ignoring the reduction under sub-paragraph (5)).

(9) The bank's "net settlement liabilities" are the bank's liabilities so far as they—

(a) are covered by the provision mentioned in sub-paragraph (1)(c), and

(b) are not excluded liabilities.

(10) The bank's "net settlement assets" are its assets so far as corresponding to N's net settlement liabilities.

(11) "N's net settlement liabilities" means N's liabilities so far as they are covered by the provision mentioned in sub-paragraph (1)(c).

(12) The permanent establishment's "net settlement assets" are its assets so far as they are part of the bank's net settlement assets.

(13) If the bank's net settlement liabilities exceed the bank's net settlement assets (ignoring the reduction under sub-paragraph (5)), and a proportion (A%) of those liabilities is long term liabilities and a proportion (B%) of those liabilities is short term liabilities, under sub-paragraph (8)—

(a) the long term liabilities are reduced by A% of the bank's net settlement assets, and

(b) the short term liabilities are reduced by B% of those assets.

26 (1) This paragraph applies for the purposes of Step 2 in paragraph 24(1).

(2) The assets of the permanent establishment are those which it would have were it a distinct and separate enterprise which—

(a) engaged in the same or similar activities under the same or similar conditions, and

(b) dealt wholly independently with the relevant foreign bank.

(3) For this purpose, any relevant provisions of sections 21 to 28 of CTA 2009 are to be applied as they would be applied in determining profits attributable to the permanent establishment for corporation tax purposes.

(4) But where paragraph 24(1) is being applied in determining the UK allocated equity and liabilities of a relevant foreign bank for the purposes of paragraph 17(17) or 19(17), any assets within sub-paragraph (5) are to be left out.

(5) The assets within this sub-paragraph are any assets of the permanent establishment (as otherwise determined under this paragraph) representing an excluded loan relationship.

(6) A loan relationship is "excluded" if—

(a) the relevant foreign bank is the creditor,

(b) the debtor ("D") is a UK resident bank or another relevant foreign bank—

(i) which is a member of the relevant group, and

(ii) whose activities include the relevant regulated activity described in the provision mentioned in paragraph 79(a),

(c) the money which is the subject of the transaction giving rise to D's debt is money borrowed by the relevant foreign bank from another entity, and

(d) in borrowing that money the relevant foreign bank was acting as the agent or intermediary of D.

(7) Section 302(1) of CTA 2009 (definition of "loan relationship") applies for the purposes of sub-paragraphs (5) and (6) as it applies for corporation tax purposes.

27 (1) This paragraph applies for the purposes of Step 3 in paragraph 24(1).

(2) To determine the amount of the relevant foreign bank's chargeable equity and liabilities—

(a) determine the amount of the bank's equity and liabilities (other than excluded equity and liabilities) as at the end of the chargeable period,

(b) adjust that amount in accordance with sub-paragraph (5) and paragraphs 25(8) and 44 (so far as applicable), and

(c) finally, reduce that amount (but not below nil) by—

(i) the amount of the entity's high quality liquid assets as the end of that period, other than any asset which for the purposes of an adjustment under paragraph (b) is an asset to which paragraph 25(8) applies, and

(ii) where sub-paragraph (4) applies, the amount determined under that sub-paragraph.

(3) Sub-paragraph (4) applies where—

(a) as at the end of the chargeable period, the assets of the relevant foreign bank include a financial asset in respect of an advance of cash made by the bank,

(b) that financial asset is not an asset which, for the purposes of an adjustment under sub-paragraph (2)(b), is an asset to which paragraph 25(8) applies, and

(c) underlying that asset, as collateral, is an item ("the collateral") owned by the bank which would form part of the bank's high quality liquid assets as at the end of that period were the collateral, rather than the financial asset, an asset of the bank.

(4) The amount within sub-paragraph (2)(c)(ii) is—

(a) the amount of the financial asset as at the end of that period or, if lower, an amount equal to the fair value of the collateral as at that time, or

(b) if this sub-paragraph applies in relation to more than one financial asset, the total of the amounts determined under paragraph (a) in respect of each of those assets.

(5) Where paragraph 24(1) is being applied in determining the UK allocated equity and liabilities of a relevant foreign bank for the purposes of paragraph 17(17) or 19(17), the following liabilities are to be left out—

(a) any liabilities to a relevant member as defined in paragraph 18(2) or 20(2) (as the case may be), or

(b) any liabilities to another relevant foreign bank covered by paragraph 17(17) or 19(17) (as the case may be) so far as the other bank's assets corresponding to the liabilities are assets of the permanent establishment through which the other bank carries on a trade in the United Kingdom as determined at Step 2 in paragraph 24(1).

(6) In reducing any amount of equity or liabilities under sub-paragraph (2)(c), long term equity and liabilities are to be reduced before short term liabilities.

"Excluded" equity and liabilities

28 (1) Equity or liabilities are "excluded" so far as they consist of equity or liabilities which are specified to be excluded—

(a) by any of paragraphs 29 to 39, or

(b) by an order made by the Treasury.

(2) The Treasury may also by order add to, repeal or otherwise amend any of paragraphs 29 to 39.

(3) An order under this paragraph may make consequential amendments of paragraph 76 ("long term" liabilities: non-protected deposits).

(4) An order under this paragraph may have retrospective effect in relation to—

(a) any chargeable period in which the order is made, or

(b) in the case of an order made on or before 31 December 2011, any chargeable period ending on or after 1 January 2011.

(5) Orders under this paragraph are to be made by statutory instrument.

(6) A statutory instrument containing an order under this paragraph may not be made unless a draft has been laid before, and approved by a resolution of, the House of Commons.

29 (1) Liabilities representing protected deposits are excluded.

(2) A deposit is "protected" so far as it is covered by the Financial Services Compensation Scheme under section 213 of FISMA 2000 ("the FSCS").

(3) A deposit is "protected" so far as it is covered by a scheme which—

(a) operates outside the United Kingdom, and

(b) is comparable to the FSCS.

(4) Sub-paragraph (5) applies for the purposes of sub-paragraphs (2) and (3) if—

(a) the entity holding the deposit ("the relevant deposit") is required to pay, in relation to the scheme, levies for purposes mentioned in section 213(3)(b) of FISMA 2000 or purposes comparable to those purposes,

(b) those levies are calculated—

(i) by reference to a proportion ("X%") of the total amount of all deposits held by the entity or all deposits held by the entity within a specified class within which the relevant deposit falls, or

(ii) by reference to another amount which is a proportion ("Y%") of the total amount of all the scheme deposits held by the entity, and

(c) X% or (as the case may be) Y% exceeds the proportion ("Z%") of the relevant deposit covered by the scheme.

(5) The scheme is treated—

(a) in a case within sub-paragraph (4)(b)(i), as covering X% of the relevant deposit (instead of Z%), and

(b) in a case within (4)(b)(ii), as covering Y% or, if smaller, 100% of the relevant deposit (instead of Z%).

(6) In sub-paragraph (4) "scheme deposit" means a deposit the whole or part of which is covered by the scheme (disregarding sub-paragraph (5)).

(7) A deposit is "protected" so far as it is covered by a guarantee—

(a) which is given explicitly by a national government (other than the government of the United Kingdom), and

(b) under which the government guarantees to compensate depositors for losses on their deposits.

(8) In sub-paragraph (2), and sub-paragraphs (4), (5) and (6) so far as relating to a scheme within sub-paragraph (2), "deposit" has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S. I.2001/544).

(9) In sub-paragraphs (3) and (7), and sub-paragraphs (4), (5) and (6) so far as relating to a scheme within sub-paragraph (3), "deposit" has the meaning given by article 5(2) of that Order but ignoring the exclusions in articles 6 to 9AB.

(10) If two or all of sub-paragraphs (2), (3) and (7) apply to a deposit, the amount of the deposit "protected" is the highest amount which results from any one of those sub-paragraphs.

30 (1) Equity and liabilities which are "tier one capital equity and liabilities" are excluded.

(2) "Tier one capital equity and liabilities" means, in relation to an entity or a group of entities, so much of the entity or group's equity and liabilities as—

(a) is tier one capital before deductions for the purposes of the FSA Handbook, or

(b) would be treated as tier one capital before deductions for those purposes were the tier one capital before deductions of the entity or group as at the end of the chargeable period to be determined under that Handbook.

31 (1) Sovereign repo liabilities are excluded.

(2) "Sovereign repo liability" means a liability of a person ("A") which represents a sum of money or other asset received by A from another person ("B") under an arrangement where—

(a) under the arrangement A sells high quality securities at any time to B,

(b) the arrangement makes provision conferring a right or imposing an obligation on A to buy those or similar securities at any subsequent time, and

(c) the subsequent buying of those or similar securities would extinguish the liability.

(3) Section 556 of CTA 2009 (meaning of securities and similar securities) applies for the purposes of sub-paragraph (2) as it applies for the purposes of Chapter 10 of Part 6 of that Act.

(4) Securities are "high quality" if—

(a) they are debt securities issued by entities within section BIPRU 12.7.3(1) or (2) of the FSA Handbook which meet the requirements of section BIPRU 12.7.4(1) and (2), or

(b) they are issued by a designated multilateral development bank. "Debt securities" has the same meaning as that term has in section BIPRU 12.7.3 of the FSA Handbook.

32 (1) Sovereign stock-lending liabilities are excluded.

(2) "Sovereign stock-lending liabilities" means liabilities of the lender to redeliver equivalent cash collateral under a stock lending arrangement in respect of high quality securities.

(3) Section 805 of CTA 2010 ("stock lending arrangement") applies for the purposes of sub-paragraph (2) as it applies for the purposes of Chapter 5 of Part 17 of that Act, and the reference in sub-paragraph (2) to "the lender" is to be construed accordingly.

(4) Paragraph 31(3) and (4) apply for the purposes of this paragraph.

33 (1) Relevant insurance liabilities are excluded.

(2) "Relevant insurance liabilities" means liabilities of a regulated insurer carrying on an insurance business which are—

(a) liabilities to policyholders under contracts of general insurance or contracts of long-term insurance, including such contracts effected or carried out outside the United Kingdom,

(b) liabilities representing unallocated surpluses, or

(c) liabilities representing participants' interests in collective investment schemes.

(3) The liabilities of a regulated insurer within sub-paragraph (2)(c) include a liability which would be a liability of the insurer within that provision if the insurer prepared consolidated financial statements.

(4) In this paragraph—

"collective investment scheme" has the same meaning as in Part 17 of FISMA 2000 (see sections 235 and 237 of that Act);

"contract of general insurance" means a contract of a type described in Part 1 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S. I.2001/544);

"contract of long-term insurance" means a contract of a type described in Part 2 of that Schedule;

"regulated insurer" means an entity which—

(a) is authorised under the law of any territory to carry on insurance business, or

(b) is a member of a body or organisation which is so authorised;

"unallocated surplus" means the fund for future appropriations shown in line 15 of Form 3 of a return deposited with the Financial Services Authority under section 9.6 of the Interim Prudential Sourcebook for Insurers made by that Authority under FISMA 2000.

34 (1) Relevant property, plant and equipment reserves are excluded.

(2) "Relevant property, plant and equipment reserves" means equity amounts representing revaluation reserves relating to the revaluation of property, plant and equipment under International Accounting Standard 16 or Financial Reporting Standard 15.

(3) "Property, plant and equipment" has the meaning given, for the time being, by International Accounting Standard 16.

35 (1) Relevant tax liabilities are excluded.

(2) In relation to liabilities to be determined by reference to amounts recognised, or which would have been recognised, in consolidated financial statements or financial statements prepared under international accounting standards, "relevant tax liabilities" means liabilities representing—

(a) current tax or deferred tax liabilities within the meaning, for the time being, of International Accounting Standard 12, or

(b) an amount of the bank levy.

(3) In relation to liabilities to be determined by reference to amounts recognised, or which would have been recognised, in consolidated financial statements or financial statements prepared under UK GAAP, "relevant tax liabilities" means liabilities representing—

(a) current tax or deferred tax within the meaning, for the time being, of Financial Reporting Standard 16 or 19, or

(b) an amount of the bank levy.

36 (1) Relevant retirement benefit liabilities are excluded.

(2) In relation to liabilities to be determined by reference to amounts recognised, or which would have been recognised, in consolidated financial statements or financial statements prepared under international accounting standards, "relevant retirement benefit liabilities" means liabilities under defined benefit plans within the meaning, for the time being, of International Accounting Standard 19.

(3) In relation to liabilities to be determined by reference to amounts recognised, or which would have been recognised, in consolidated financial statements or financial statements prepared under UK GAAP, "relevant retirement benefit liabilities" means liabilities under defined benefit schemes within the meaning, for the time being, of Financial Reporting Standard 17.

37 (1) Financial services compensation scheme liabilities are excluded.

(2) "Financial services compensation scheme liabilities" means liabilities representing—

(a) levies payable by virtue of section 213(2)(b) of FISMA 2000, or

(b) levies payable for purposes comparable with those mentioned in section 213(2)(b) of that Act in relation to a scheme which—

(i) operates outside the United Kingdom, and

(ii) is comparable to the Financial Services Compensation Scheme under section 213 of that Act.

38 (1) Liabilities representing clients' money held by an authorised person are excluded.

(2) "Authorised person" means an entity which—

(a) is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act), or

(b) would be required to be such an authorised person if it were a UK resident entity which carried on its activities in the United Kingdom.

(3) "Clients' money"—

(a) in relation to an authorised person within sub-paragraph (2)(a), has the meaning given by section 139(1) of FISMA 2000 (rules relating to handling of money), and

(b) in relation to an authorised person within sub-paragraph (2)(b), means any money held by the person outside the United Kingdom where the holding of that money is subject to rules comparable with rules made under section 139 of that Act,but does not include a deposit within the meaning of article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S. I.2001/544) ignoring the exclusions in articles 6 to 9AB.

39 (1) Currency liabilities are excluded.

(2) "Currency liabilities" means liabilities of an entity or a group of entities representing notes issued by the entity or a member of the group as currency.

Part 5: Supplementary provision

Netting agreements

40 (1) The Treasury may by order add to, repeal or otherwise amend any of paragraphs 16, 18(8) to (17), 20(8) to (17), 22 and 25.

(2) An order under this paragraph may make consequential amendments of this Schedule.

(3) An order under this paragraph may have retrospective effect in relation to—

(a) any chargeable period in which the order is made, or

(b) in the case of an order made on or before 31 December 2011, any chargeable period ending on or after 1 January 2011.

(4) Orders under this paragraph are to be made by statutory instrument.

(5) A statutory instrument containing an order under this paragraph may not be made unless a draft has been laid before, and approved by a resolution of, the House of Commons.

Chargeable periods: entities which do not prepare financial statements

41 (1) This paragraph applies where an entity does not prepare financial statements (consolidated or otherwise) for a period ("the relevant period").

(2) If the relevant period is 12 months or less, this Schedule (apart from this paragraph) applies as if that period were a period of account of the entity.

(3) If the relevant period is more than 12 months, this Schedule (apart from this paragraph) applies as if each period to which sub-paragraph (4) applies were a period of account of the entity.

(4) This sub-paragraph applies to a period if—

(a) it is the first period of 12 months falling within the relevant period, or

(b) it begins immediately after the end of the period mentioned in paragraph (a) and ends at the end of the relevant period.

(5) Sub-paragraph (6) applies if, at the end of a period of 36 months beginning with a relevant date, an entity has not prepared financial statements for a period which begins with that date.

(6) The entity is to be treated for the purposes of this paragraph as not having prepared financial statements for that period or, if that period exceeds 24 months, for the first 24 months of that period.

(7) "Relevant date" means—

(a) 1 January 2011,

(b) the first day after a period, ending on or after that date, for which the entity has prepared financial statements, or

(c) the first day after a period for which the company is treated under sub-paragraph (6) as not having prepared financial statements.

Financial statements etc

42 (1) This paragraph applies for the purposes of this Schedule.

(2) References to consolidated financial statements for a period include references to a consolidated balance sheet (or consolidated statement of financial position) as at the last day of the period.

(3) References to financial statements for a period include references to a balance sheet (or statement of financial position) as at the last day of the period.

(4) References to amounts recognised in consolidated financial statements or financial statements include references to an amount comprised in an amount so recognised.

(5) Sub-paragraph (6) applies if an amount for the chargeable period, or as at the last day of the chargeable period, is so recognised in a currency other than sterling.

(6) The amount is to be translated into its sterling equivalent by reference to the spot rate of exchange for the last day of the chargeable period.

(7) If consolidated financial statements or financial statements for the chargeable period are not prepared in a way which complies with the relevant accounting framework under which the statements are prepared, the statements are to be adjusted as necessary to ensure that they comply.

(8) In sub-paragraph (7) "relevant accounting framework" means—

(a) international accounting standards,

(b) US GAAP, or

(c) UK GAAP.

(9) In relation to the preparation of consolidated financial statements or financial statements under UK GAAP, Financial Reporting Standard 23 and Financial Reporting Standard 26 are to be treated as if they were mandatory for all entities.

(10) Accordingly, if any statements are prepared under UK GAAP without one or both of those Standards being applied, the statements are to be treated as not complying with UK GAAP and adjusted under sub-paragraph (7) accordingly.

Joint ventures

43 (1) This paragraph applies if—

(a) the relevant group is a foreign banking group or a relevant non-banking group,

(b) a member of the relevant group has an interest ("the relevant interest") in a joint venture for the purposes of those provisions of the applicable accounting standards which relate to joint ventures,

(c) the amounts recognised in the relevant consolidated financial statements include amounts representing the liabilities ("the JV liabilities") of the joint venture so far as determined by the relevant interest,

(d) the joint venture is a UK resident entity or, if the relevant group is a relevant non-banking group, a UK resident bank, and

(e) none of the liabilities of a relevant UK sub-group, a relevant UK banking sub-group or any entity for the purposes of (as the case may be) paragraph 17(6)(a) or (12)(a), 19(6)(a) or (12)(a) or 27(2)(a) include the JV liabilities.

(2) For the purpose of determining the chargeable equity and liabilities of the relevant group the joint venture is to be treated as if it were (as the case may be) a UK resident entity covered by paragraph 17(10) or a UK resident bank covered by paragraph 19(10)—

(a) the liabilities of which consist of the JV liabilities, and

(b) the assets of which consist of the assets of the joint venture so far as determined by the relevant interest.

(3) In this paragraph references to the amounts recognised in the relevant consolidated financial statements are to—

(a) the amounts recognised in the relevant group's consolidated financial statements for the chargeable period as prepared under the applicable accounting standards, or

(b) if no such financial statements are prepared, the amounts which would have been so recognised had consolidated financial statements for the relevant group been prepared for the chargeable period under international accounting standards.

(4) "The applicable accounting standards" means—

(a) international accounting standards, or

(b) US GAAP if the members of the relevant group are determined under paragraph 4(7).

44 (1) This paragraph applies for the purpose of determining the chargeable equity and liabilities of the relevant group or the relevant entity if, as at the end of the chargeable period—

(a) the parent entity or the relevant entity is a joint venture for the purposes of a JV standard, and

(b) the liabilities of the parent entity or the relevant entity include liabilities ("the JV liabilities") which are subject to a double charge.

(2) The JV liabilities are to be left out for the purpose of determining the chargeable equity and liabilities.

(3) In sub-paragraph (1)(b) the reference to the liabilities of the parent entity includes any liabilities which, in the absence of this paragraph, would form part of the chargeable equity and liabilities of the relevant group.

(4) The JV liabilities are subject to a double charge if conditions A and B are met.

(5) Condition A is that an entity ("V") which has an interest in the joint venture for the purposes of the JV standard—

(a) is an entity in relation to which paragraph 4(1) or 5(1) applies as at the end of the chargeable period (or in relation to which paragraph 4(1) or 5(1) would apply if V had a period of account ending at the same time as the chargeable period), or

(b) falls within sub-paragraph (6).

(6) V falls within this sub-paragraph if—

(a) there is another entity ("A") in relation to which paragraph 4(1) applies as at the end of the chargeable period (or in relation to which paragraph 4(1) would apply if A had a period of account ending at the same time as the chargeable period), and

(b) V is (or would be) a member of the relevant group of which A is (or would be) the parent entity.

(7) Condition B is that—

(a) in the circumstances mentioned in sub-paragraph (5)(a) or sub-paragraph (5)(b) (when read with sub-paragraph (6)), the bank levy is charged (or would be charged), and

(b) in determining the amount of the bank levy, the JV liabilities are (or would be) liabilities for the purposes of paragraph 15(2)(a), 17(6)(a) or (12)(a), 19(6)(a) or (12)(a), 21(2)(a) or 27(2)(a) by virtue of V having an interest in the joint venture.

(8) "JV standard" means those provisions of international accounting standards or UK GAAP which relate to joint ventures.

Residence

45 For the purposes of this Schedule—

(a) the territory in which a company is resident is to be determined as for corporation tax purposes, and

(b) the territory in which a partnership is resident is the territory in which the control and management of the partnership's trade and investment activities take place.

Bank levy to be ignored for other tax purposes

46 In calculating profits or losses for the purposes of income tax or corporation tax—

(a) no deduction is allowed in respect of the bank levy, and

(b) no account is to be taken of any amount which is paid by a member of the relevant group to another member of the group for the purposes of meeting or reimbursing the cost of the bank levy charged in relation to the group.

Anti-avoidance

47 (1) This paragraph applies if—

(a) arrangements are entered into by one or more entities, and

(b) the main purpose, or one of the main purposes, of the entity, or any of the entities, in entering into the arrangements or any part of them is to avoid or reduce a charge or assessment to the bank levy.

(2) In this paragraph "the relevant arrangements"—

(a) means the arrangements or the part of them referred to in sub-paragraph (1)(b), and

(b) includes any part of those arrangements or of that part.

(3) Sub-paragraph (4) applies if an effect of the relevant arrangements is that the bank levy is not charged or assessed as it would have been in the absence of the relevant arrangements.

(4) The bank levy is charged or assessed as it would have been ignoring that effect.

(5) The cases covered by sub-paragraph (3) include (in particular) cases in which the bank levy is charged or assessed but an effect of the relevant arrangements is that the amount of the bank levy charged or assessed—

(a) is nil, or

(b) is otherwise less than it would have been in the absence of the relevant arrangements.

(6) In sub-paragraphs (3) and (5) references to the relevant arrangements do not include those arrangements to the extent to which any of the following sub-paragraphs applies to them.

(7) This sub-paragraph applies to the relevant arrangements so far as their effect is to increase, on an ongoing basis, the excluded equity and liabilities of the relevant group or the relevant entity.

(8) This sub-paragraph applies to the relevant arrangements so far as their effect is to increase, on an ongoing basis, the long term equity and liabilities of the relevant group or the relevant entity.

(9) This sub-paragraph applies to the relevant arrangements so far as—

(a) their effect is to reduce, on an ongoing basis, the short term liabilities of the relevant group or the relevant entity, and

(b) there is no corresponding increase, on an ongoing basis or otherwise, in the amount of the funding, or the size of the financial obligations, of the relevant group or the relevant entity which is not, or are not, excluded equity and liabilities or long term equity and liabilities (it being immaterial for this purpose whether or not any such funding or obligation is recognised in the financial statements of the group or entity).

(10) This sub-paragraph applies to the relevant arrangements so far as—

(a) their effect is to reduce, on an ongoing basis, the long term equity and liabilities of the relevant group or the relevant entity, and

(b) there is no corresponding increase, on an ongoing basis or otherwise, in the amount of the funding, or the size of the financial obligations, of the relevant group or the relevant entity which is not, or are not, excluded equity and liabilities (it being immaterial for this purpose whether or not any such funding or obligation is recognised in the financial statements of the group or entity).

(11) This sub-paragraph applies to the relevant arrangements so far as they are an agreement within paragraph 16(1)(c) and (d), 18(8)(c) and (d), 20(8)(c) and (d), 22(1)(c) and (d) or 25(1)(c) and (d).

(12) This sub-paragraph applies to the relevant arrangements so far as their effect is to increase, on an ongoing basis, the amount of the high quality liquid assets of the relevant group or the relevant entity.

(13) If the relevant group is a foreign banking group or a relevant non-banking group, in the sub-paragraphs above references to the relevant group are to be read as references to the members of the group, collectively, which are relevant members.

(14) In sub-paragraph (13) "relevant member"—

(a) has the same meaning as in paragraph 18 or 20 (as the case may be), and

(b) includes a relevant foreign bank covered by paragraph 17(17) or 19(17) (as the case may be).

48 (1) Section 1139 of CTA 2010 (definition of "tax advantage") is amended as follows.

(2) In subsection (2)—

(a) omit the "or" after paragraph (c), and

(b) after paragraph (d) insert ", or

(e) the avoidance or reduction of a charge or assessment to the bank levy under Schedule 19 to FA 2011 (the bank levy). "

(3) After subsection (3) insert—

"(3A) The avoidance or reduction of a charge or assessment to the bank levy as a result of arrangements to which paragraph 47 of Schedule 19 to FA 2011 (bank levy: anti-avoidance) applies is to be ignored for the purposes of subsection (2)(e) to the extent that it results from arrangements, or part of arrangements, to which any of paragraph 47(7) to (12) of that Schedule applies. "

Part 6: Collection and management

Responsibility for collection and management

49 (1) The Commissioners for Her Majesty's Revenue and Customs are responsible for the collection and management of the bank levy.

(2) In this Part of this Schedule "HMRC" means Her Majesty's Revenue and Customs.

Payment of the bank levy through the corporation tax system

50 (1) This paragraph applies where the bank levy is charged as provided for by paragraph 4.

(2) The bank levy is to be treated as if it were an amount of corporation tax chargeable on the relevant group's responsible member (see paragraph 54) for the accounting period or periods determined in accordance with the following sub-paragraphs.

(3) Subject to what follows, the accounting period for which the bank levy is to be treated as if it were an amount of corporation tax chargeable is to be—

(a) the responsible member's accounting period which ends at the same time as the chargeable period, or

(b) if it does not have an accounting period which ends at that time, its accounting period during which the chargeable period ends.

(4) If a proportion ("X%") of the chargeable period falls in any other accounting period of the responsible member, X% of the bank levy is to be treated as if it were an amount of corporation tax chargeable for that other accounting period.

51 (1) This paragraph applies where the bank levy is charged as provided for by paragraph 5.

(2) The bank levy is to be treated as if it were an amount of corporation tax chargeable on the relevant entity for the accounting period or periods determined in accordance with the following sub-paragraphs.

(3) Subject to what follows, the accounting period for which the bank levy is to be treated as if it were an amount of corporation tax chargeable is to be—

(a) the relevant entity's accounting period which ends at the same time as the chargeable period, or

(b) if it does not have an accounting period which ends at that time, its accounting period during which the chargeable period ends.

(4) If a proportion ("X%") of the chargeable period falls in any other accounting period of the relevant entity, X% of the bank levy is to be treated as if it were an amount of corporation tax chargeable for that other accounting period.

52 (1) Paragraphs 50(2) and 51(2) are to be taken as applying all enactments applying generally to corporation tax.

(2) This is subject to—

(a) any provisions of the Taxes Acts (within the meaning of TMA 1970),

(b) any necessary modifications, and

(c) sub-paragraph (5).

(3) The enactments mentioned in sub-paragraph (1) include—

(a) those relating to returns of information and the supply of accounts, statements and reports,

(b) those relating to the assessing, collecting and receiving of corporation tax,

(c) those conferring or regulating a right of appeal, and

(d) those concerning administration, penalties, interest on unpaid tax and priority of tax in cases of insolvency under the law in any part of the United Kingdom.

(4) Accordingly—

(a) TMA 1970 is to have effect as if any reference to corporation tax included the bank levy where it is treated by paragraph 50(2) or 51(2) as an amount of corporation tax chargeable on an entity, and

(b) in particular, where the bank levy is so treated, it is due and payable as an amount of corporation tax in accordance with section 59D of TMA 1970, subject to section 59E of that Act.

(5) Nothing in section 53 of this Act (leases and changes to accounting standards) has effect in relation to the bank levy or any provision of this Schedule.

Joint and several liability

53 (1) This paragraph applies where the bank levy is charged as provided for by paragraph 4.

(2) The entities within sub-paragraph (3) are jointly and severally liable for the bank levy liability of the relevant group's responsible member (see paragraph 54) for an accounting period; and HMRC may enforce that liability against any of those entities accordingly.

(3) The entities within this sub-paragraph are—

(a) if the relevant group is a relevant non-banking group, all relevant members of the relevant group within the charge to corporation tax as at the end of the chargeable period, or

(b) otherwise, all members of the relevant group within the charge to corporation tax as at the end of the chargeable period.

(4) In sub-paragraph (3)(a) "relevant member" means a member of the relevant group which—

(a) is a member of a relevant UK banking sub-group,

(b) is a UK resident bank covered by paragraph 19(10),

(c) is an entity covered by paragraph 19(11), or

(d) is a relevant foreign bank covered by paragraph 19(17).

(5) An entity's liability by virtue of sub-paragraph (2) is not affected if, after the end of the chargeable period, it ceases to be within the charge to corporation tax.

(6) An entity is not within sub-paragraph (3) if, as at the end of the chargeable period, it is—

(a) a securitisation company,

(b) a covered bond vehicle, or

(c) an entity of a kind prescribed by an order made by the Treasury.

(7) In sub-paragraph (6)—

"capital market arrangement" has the same meaning as in section 72B(1) of the Insolvency Act 1986 (see paragraph 1 of Schedule 2A to that Act);

"covered bond vehicle" means a limited liability partnership—

(a) which is a party to a capital market arrangement, or a transaction in pursuance of a capital market arrangement,

(b) whose trade or business (ignoring any incidental activities) consists wholly of one or both of the following—

(i) providing guarantees, and

(ii) acquiring, owning and managing assets directly or indirectly forming the whole or part of the security for the capital market arrangement, and

(c) which is within the charge to corporation tax;

"limited liability partnership" includes an entity established under the law of a territory outside the United Kingdom of a similar character to a limited liability partnership;

"securitisation company" means a company of the kind mentioned in paragraphs (a) to (e) of section 83(2) of FA 2005 or paragraphs (a) to (e) of regulation 4(2) of the Taxation of Securitisation Companies Regulations 2006 (S. I.2006/3296).

(8) The responsible member's "bank levy liability" for an accounting period—

(a) is the member's liability for corporation tax for that period as calculated in accordance with paragraph 8 of Schedule 18 to FA 1998 so far as the tax calculated consists of the bank levy by virtue of paragraph 50(2) of this Schedule, and

(b) includes any interest or penalties payable in relation to that tax so far as it consists of the bank levy.

(9) An order under sub-paragraph (6) may have retrospective effect in relation to—

(a) any chargeable period in which the order is made, or

(b) in the case of an order made on or before 31 December 2011, any chargeable period ending on or after 1 January 2011.

(10) Orders under sub-paragraph (6) are to be made by statutory instrument.

(11) A statutory instrument containing an order under sub-paragraph (6) is subject to annulment in pursuance of a resolution of the House of Commons.

Meaning of "the responsible member"

54 (1) This paragraph applies where the bank levy is charged as provided for by paragraph 4.

(2) In this paragraph and paragraph 55 "chargeable member" means a member of the relevant group within paragraph 53(3).

(3) The relevant group's responsible member is the entity ("E") in relation to which the following requirements are met—

(a) E is a chargeable member of the relevant group,

(b) E has an accounting period for corporation tax purposes which is the same as the chargeable period,

(c) during the chargeable period but no later than 45 days after it started, the parent entity, or another entity acting on behalf of the parent entity, nominated E to HMRC to be the responsible member, and

(d) HMRC did not reject E's nomination. See paragraph 55 for further provision about nominations.

(4) If—

(a) no entity meets the requirements in sub-paragraph (3) and the relevant group is a UK banking group or a building society group, and

(b) the parent entity is a chargeable member of the relevant group,the responsible member is the parent entity.

(5) If no entity meets the requirements in sub-paragraph (3) and the relevant group is a foreign banking group or a relevant non-banking group, the responsible member is the entity in relation to which the following requirements are met—

(a) it is a chargeable member of the relevant group,

(b) it has an accounting period for corporation tax purposes which is the same as the chargeable period, and

(c) it is—

(i) the relevant member with the largest amount of chargeable equity and liabilities, or

(ii) if the relevant member with the largest amount of chargeable equity and liabilities is a relevant UK sub-group or a relevant UK banking sub-group (as the case may be), the entity which is the parent or parent undertaking for that sub-group.

(6) In sub-paragraph (5)(c) "relevant member"—

(a) has the same meaning as in paragraph 18 or 20 (as the case may be), and

(b) includes a relevant foreign bank covered by paragraph 17(17) or 19(17) (as the case may be).

(7) If no entity meets the requirements of sub-paragraph (3) or sub-paragraph (4) or (5) (as the case may be), the responsible member is the member of the relevant group determined by HMRC within the period of 30 days after the end of the chargeable period.

(8) HMRC must give written notice of a determination under sub-paragraph (7) to the member concerned within that period.

(9) HMRC cannot determine as the responsible member under sub-paragraph (7)—

(a) an entity within paragraph 53(6)(a) or (b), or

(b) an entity of a kind prescribed by an order under paragraph 53(6)(c).

(10) In relation to chargeable periods arising by virtue of paragraph 41 (chargeable periods: entities which do not prepare financial statements), the Treasury may by order modify the time limit applying to determinations under sub-paragraph (7) (including determinations in cases to which paragraph 65(3) applies).

(11) An order under sub-paragraph (10) may amend paragraphs 41 to 44 of Schedule 18 to FA 1998 (discovery assessments and determinations) in relation to any bank levy charged by virtue of paragraph 41 of this Schedule.

(12) Orders under sub-paragraph (10) are to be made by statutory instrument.

(13) A statutory instrument containing an order under sub-paragraph (10) is subject to annulment in pursuance of a resolution of the House of Commons.

(14) An order under sub-paragraph (10) may have retrospective effect in relation to—

(a) any chargeable period in which the order is made, or

(b) in the case of an order made on or before 31 December 2011, any chargeable period ending on or after 1 January 2011.

55 (1) This paragraph applies for the purposes of paragraph 54(3).

(2) Only one nomination may be made during the chargeable period.

(3) A nominator may nominate itself.

(4) HMRC may from time to time publish requirements as to the information to be included with a nomination.

(5) HMRC may reject a nomination within the period of 30 days starting with the day on which it receives the nomination.

(6) HMRC may reject a nomination only if—

(a) the nomination contravenes sub-paragraph (2),

(b) information required under sub-paragraph (4) is missing from the nomination, or

(c) HMRC has reason to believe that the nominee will turn out—

(i) not to be a chargeable member of the relevant group,

(ii) not to have an accounting period for corporation tax purposes which is the same as the chargeable period, or

(iii) not to have sufficient resources itself to pay the bank levy.

Consequential amendment to section 1 of PCTA 1968

56 In section 1 of the Provisional Collection of Taxes Act 1968 (temporary statutory effect of House of Commons resolutions affecting certain taxes), in subsection (1) after "corporation tax" insert ", the bank levy".

Consequential amendments to TMA 1970

57 TMA 1970 is amended as follows.

58 (1) Section 59E (provision about when corporation tax is due and payable) is amended as follows.

(2) In subsection (11), after paragraph (c) insert—

"(d) to the bank levy where treated as an amount of corporation tax chargeable on a company by paragraph 50 or 51 of Schedule 19 to the Finance Act 2011 (the bank levy). "

(3) After that subsection insert—

"(12) Without prejudice to the generality of any provision above—

(a) in relation to cases where the bank levy is treated as an amount of corporation tax chargeable on a company, regulations under this section may make provision—

(i) for amounts of the bank levy to be treated as becoming due and payable on dates which fall within the chargeable period (within the meaning of Schedule 19 to the Finance Act 2011);

(ii) for payments in respect of any such amounts of the bank levy as are mentioned in sub-paragraph (i) to become due and payable on dates which fall within that period;

(b) in relation to cases where a company on which the bank levy is treated as an amount of corporation tax chargeable for an accounting period has made payments in respect of corporation tax for that period, regulations under this section may make provision for or in connection with determining the extent to which those payments are to be treated as being payments of the bank levy;

(c) in relation to cases where a company ("the relevant company") has made payments in respect of corporation tax for an accounting period wholly or partly on the assumption that the bank levy will be treated as an amount of corporation tax chargeable on the relevant company for that period, regulations under this section may make provision for or in connection with treating those payments (wholly or partly) to have been made by another company if it turns out that the bank levy is not to be treated as an amount of corporation tax chargeable on the relevant company for that period;

(d) where regulations under this section impose a requirement within subsection (2)(j) above to furnish information for purposes related to the bank levy, the regulations may make provision for or in connection with applying Part 7 of Schedule 36 to the Finance Act 2008 in whole or in part (with or without modification) as if the requirement to furnish the information were contained in an information notice within the meaning of that Schedule. "

59 At the end of section 59F(6) (provision for paying corporation tax on behalf of group members) insert ", and (c) the bank levy where treated as an amount of corporation tax chargeable on a company by paragraph 50 or 51 of Schedule 19 to the Finance Act 2011 (the bank levy). "

Consequential amendments to Schedule 18 to FA 1998

60 Schedule 18 to FA 1998 (company tax returns) is amended as follows.

61 At the end of paragraph 1 insert ", and paragraphs 50 and 51 of Schedule 19 to the Finance Act 2011 (the bank levy). "

62 After paragraph 3 insert—

"3A(1) Her Majesty's Revenue and Customs may from time to time publish requirements as to the information, accounts, statements and reports which a company must deliver as part of its company tax return where the company has a tax liability by virtue of paragraph 50 or 51 of Schedule 19 to the Finance Act 2011 (the bank levy); and such information, accounts, statements and reports must be delivered as if the notice to the company under paragraph 3(1) had required them to be delivered (and paragraph 4 is to be read accordingly).

(2) The publication of any requirements under sub-paragraph (1) does not stop a notice under paragraph 3(1) requiring the delivery of any additional information, accounts, statements and reports as part of a company tax return. "

63 (1) Paragraph 8 is amended as follows.

(2) At the end of the "Third step" in sub-paragraph (1) insert—

"3. Any amount of the bank levy chargeable by virtue of paragraph 50 or 51 of Schedule 19 to the Finance Act 2011 (the bank levy). "

(3) After sub-paragraph (1) insert—

"(1A) Sub-paragraph (1B) applies if an amount of the bank levy chargeable by virtue of paragraph 50 or 51 of Schedule 19 to the Finance Act 2011 (the bank levy) is added at the third step.

(1B) Any deductions made at the fourth step are to be treated as made from all other amounts before being made from the amount of the bank levy. "

64 (1) Paragraph 11 is amended as follows.

(2) The existing provision becomes sub-paragraph (1).

(3) After that sub-paragraph insert—

"(2) Sub-paragraph (1) does not affect—

(a) the power to require the delivery of accounts, information or documents in relation to a company's tax liability by virtue of paragraph 50 or 51 of Schedule 19 to the Finance Act 2011 (the bank levy), or

(b) the requirements which may be imposed under paragraph 3A. "

Transitional provision

65 (1) Sub-paragraphs (2) to (6) apply if the chargeable period starts on or before the day on which this Act is passed (whether or not it ends on or before that day).

(2) Paragraph 54(3)(c) has effect as if for the words "during the chargeable period but no later than 45 days after it started" there were substituted "within the period of 7 days starting with the day on which this Act is passed".

(3) Paragraph 54(7) has effect as if for the words "30 days after the end of the chargeable period" there were substituted "15 days starting with the day on which this Act is passed".

(4) Paragraph 55(5) has effect as if for "30" there were substituted "7".

(5) Sub-paragraph (6) applies if, before the passing of this Act—

(a) HMRC published a statement stating that it was ready to receive nominations for responsible members,

(b) an entity made a nomination in accordance with HMRC's statement, and

(c) the nomination included all information required by HMRC's statement.

(6) For the purposes of paragraphs 54(3)(c) and 55(5) (as modified above) the nomination is to be treated as if it were made by the entity and received by HMRC immediately after the passing of this Act.

(7) The requirements covered by paragraph 55(4) include any requirements published by HMRC before the passing of this Act which are stated to apply for the purposes of nominations for responsible members.

(8) But such requirements are to apply only to nominations made during 2011.

(9) Regulations under section 59E of TMA 1970, in relation to amounts within subsection (11)(d) of that section (amounts of bank levy), made on or before 31 December 2011 may have effect in relation to amounts of bank levy which—

(a) are payable in respect of chargeable periods ending on or before that day, or

(b) are treated as amounts of corporation tax for accounting periods ending on or before that day.

Part 7: Double taxation relief

Arrangements affording double taxation relief

66 (1) If the Treasury by order declares—

(a) that arrangements specified in the order have been made in relation to any foreign territory with a view to affording relief from double taxation in relation to the bank levy and any equivalent foreign levy, and

(b) that it is expedient that those arrangements should have effect,those arrangements ("double taxation arrangements") have effect so far as they provide for relief from the bank levy.

(2) In this Part of this Schedule—

"equivalent foreign levy", in relation to a foreign territory, means any tax imposed by the law of that territory which corresponds to the bank levy;

"foreign territory" means a territory outside the United Kingdom.

(3) For the purposes of sub-paragraph (2), tax may correspond to the bank levy even though—

(a) the tax is payable under the law of a province, state or other part of a country,

(b) it is levied by or on behalf of a municipality or other local body, or

(c) its proceeds form a fund used for a particular purpose.

(4) Double taxation arrangements have effect under sub-paragraph (1)—

(a) subject to the following provisions of this paragraph, and

(b) despite anything in any other enactment.

(5) This paragraph gives effect to arrangements even if they provide for relief from the bank levy for periods before the making of the arrangements or before the passing of this Act.

(6) Relief under this paragraph requires a claim.

(7) An order under this paragraph revoking an earlier order may contain transitional provisions that appear to the Treasury to be necessary or expedient.

(8) The Treasury may by regulations make provision—

(a) generally for carrying out the provisions of this paragraph or double taxation arrangements;

(b) for removing, or reducing the amount of, relief obtained by virtue of double taxation arrangements in circumstances where a scheme or arrangement of a specified description has been made or in other specified circumstances;

(c) for restricting the amount of relief allowed against an entity's liability for the bank levy for a chargeable period to an amount calculated in a specified manner.

(9) Regulations under sub-paragraph (8)(a) may, in particular, provide that where, under double taxation arrangements, the Commissioners for Her Majesty's Revenue and Customs arrive at a solution to a case, or make a mutual agreement with an authority in another territory for the resolution of a case—

(a) the Commissioners are to give effect to the solution or mutual agreement despite anything in any enactment, and

(b) any adjustment as is appropriate in consequence may be made.

(10) Regulations under this paragraph may—

(a) amend any provision made by or under an Act whenever passed or made (including this Act), and

(b) contain transitional provisions that appear to the Treasury to be necessary or expedient.

(11) Orders or regulations under this paragraph are to be made by statutory instrument.

(12) A statutory instrument containing an order or regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

Power to provide for double taxation relief

67 (1) The Treasury may by regulations make provision for relief from the bank levy for the purpose of affording relief from double taxation in relation to the bank levy and any equivalent foreign levy imposed by the law of a foreign territory.

(2) Regulations under this paragraph must specify the equivalent foreign levy or levies in respect of which they are made.

(3) Regulations under this paragraph may, in particular—

(a) provide for relief from the bank levy for periods before the making of the regulations or before the passing of this Act;

(b) make provision for removing, or reducing the amount of, relief obtained in circumstances where a scheme or arrangement of a specified description has been made or in other specified circumstances;

(c) make provision for restricting the amount of relief allowed against an entity's liability for the bank levy for a chargeable period to an amount calculated in a specified manner.

(4) Regulations under this paragraph may—

(a) make different provision for different purposes, cases or circumstances,

(b) amend any provision made by or under an Act whenever passed or made (including this Act), and

(c) contain transitional provisions that appear to the Treasury to be necessary or expedient.

(5) Regulations under this paragraph are to be made by statutory instrument.

(6) A statutory instrument containing regulations under this paragraph—

(a) in a case where the reciprocity condition is met, are subject to annulment in pursuance of a resolution of the House of Commons, and

(b) in any other case, may not be made unless a draft has been laid before and approved by a resolution of that House.

(7) The reciprocity condition is met if the Treasury is satisfied that in relation to the foreign territory or each of the foreign territories concerned—

(a) appropriate provision has been made under the law of the territory for relief from double taxation in relation to the bank levy and the equivalent foreign levy under the law of that territory to which the regulations apply, or

(b) such provision will be made as a result of an agreement which has been entered into in relation to the territory.

Disclosure of information to foreign tax authorities

68 (1) Sub-paragraph (2) applies if the law of a foreign territory makes provision allowing, in respect of payments of the bank levy, relief from an equivalent foreign levy payable under that law.

(2) No obligation as to secrecy or other restriction on the disclosure of information prevents the Commissioners for Her Majesty's Revenue and Customs, or an officer of Revenue and Customs, from disclosing to the authorised officer of the authorities of the territory such facts as may be necessary to enable the proper relief to be given under the law of the territory.

Consequential amendment to the Constitutional Reform and Governance Act 2010

69 In section 23 of the Constitutional Reform and Governance Act 2010 (which excepts certain treaties from the requirements imposed by section 20 of that Act as to the laying of treaties before Parliament), after subsection (2) insert—

"(2A) Section 20 does not apply to a treaty in relation to which an order may be made under paragraph 66 of Schedule 19 to the Finance Act 2011 (bank levy: arrangements affording double taxation relief). "

Part 8: Definitions

General

70 (1) In this Schedule—

"arrangements" includes any agreement, understanding, scheme, transaction or series of transactions (whether or not it is legally enforceable);

"asset management activities" is defined in paragraph 71;

"assets" is defined in paragraph 14;

"banking group" is defined in paragraph 12;

"the bank levy" is defined in paragraph 1;

"building society" means a building society within the meaning of the Building Societies Act 1986;

"building society group" is defined in paragraph 9;

"capital resources condition" is defined in paragraph 72;

"the chargeable period" is defined in paragraph 4(1) or 5(1) (as the case may be);

"company" has the meaning given by section 1121(1) of CTA 2010;

"contract of insurance" has the meaning given by article 3(1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S. I.2001/544);

"entity" includes a company, a partnership or a joint venture, but not—

(a) the Crown,

(b) a Minister of the Crown,

(c) a government department,

(d) a Northern Ireland department,

(e) a foreign sovereign power, or

(f) an international organisation;

"equity" is defined in paragraph 14;

"excluded", in relation to equity and liabilities, is defined in paragraph 28;

"excluded entity" is defined in paragraph 73;

"exempt activities condition" is defined in paragraph 13;

"fair value", in relation to an item, means the amount for which the item could be exchanged between knowledgeable, willing parties in an arm's length transaction;

"foreign banking group" is defined in paragraph 10;

"the FSA Handbook" means the Handbook of Rules and Guidance made by the Financial Services Authority (as that Handbook has effect from time to time);

"high quality liquid asset", in relation to an entity or group of entities, means an asset (within the meaning of this Schedule) within section BIPRU 12.7.2(1) to (4) of the FSA Handbook (whether or not it is held by an ILAS BIPRU firm), but see sub-paragraph (4);

"international accounting standards" has the meaning given by section 1127(5) of CTA 2010, including any modifications mentioned in section 1127(6);

"international organisation" means an organisation of which—

(a) two or more sovereign powers are members, or

(b) the governments of two or more sovereign powers are members,

(see also sub-paragraph (5));

"liabilities" is defined in paragraph 14;

"long term", in relation to equity and liabilities, is defined in paragraphs 74 to 77;

"the parent entity" is defined in paragraph 4(1);

"partnership" includes—

(a) a limited liability partnership, and

(b) an entity established under the law of a territory outside the United Kingdom of a similar character to a partnership,

and "member", in relation to a partnership, is to be read accordingly;

"period of account", in relation to an entity, means a period for which the entity prepares financial statements (consolidated or otherwise), (see also paragraph 41);

"permanent establishment" is to be read in accordance with Chapter 2 of Part 24 of CTA 2010;

"the relevant entity" is defined in paragraph 5(1);

"relevant foreign bank" is defined in paragraph 78;

"the relevant group" is defined in paragraph 4(1);

"relevant non-banking group" is defined in paragraph 11;

"relevant regulated activity" is defined in paragraph 79;

"relevant UK banking sub-group" is defined in paragraph 19(5);

"relevant UK sub-group" is defined in paragraph 17(5);

"short term", in relation to liabilities, means any liabilities which are not long term;

"UK allocated equity and liabilities" is defined in paragraph 24;

"UK banking sub-group" is defined in paragraph 19(4);

"UK GAAP" means UK generally accepted accounting practice as defined in section 1127(2) of CTA 2010 (subject to paragraph 42(9));

"UK resident bank" is defined in paragraph 80;

"UK resident entity" means an entity which is resident in the United Kingdom (see paragraph 45) and "non-UK resident entity" is to be read accordingly;

"UK sub-group" is defined in paragraph 17(4);

"US GAAP" means United States Generally Accepted Accounting Principles.

(2) In this Schedule the following terms have the meaning given in the FSA Handbook—

"authorised corporate director";

"BIPRU 730k firm";

"capital resources requirement";

"contracts for differences";

"discretionary investment manager";

"exempt BIPRU commodities firm";

"full scope BIPRU investment firm";

"ILAS BIPRU firm";

"designated multilateral development bank";

"pension scheme";

"principal";

"retail client".

(3) A entity which would be a BIPRU 730k firm and a full scope BIPRU investment firm by virtue of activities carried on in the United Kingdom but for the fact that its registered office (or, if it does not have a registered office, its head office) is not in the United Kingdom is to be treated as being one.

(4) The definition of "high quality liquid assets" has effect, in relation to a particular entity or group of entities, subject to any direction made in relation to that entity or group under section 148 of FISMA 2000 (modification or waiver of rules).

(5) If, in any proceedings, any question arises whether a person is an international organisation for the purposes of the definition of "entity" in sub-paragraph (1), a certificate issued by or under the authority of the Secretary of State stating any fact relevant to that question is conclusive evidence of that fact.

"Asset management activities"

71 (1) "Asset management activities" means activities which consist (or, if they were carried on in the United Kingdom, would consist) of any or all of the following—

(a) acting as the operator of a collective investment scheme (within the meaning of Part 17 of FISMA 2000: see sections 235 and 237 of that Act),

(b) acting as a discretionary investment manager for clients none of which is a linked entity, and

(c) acting as an authorised corporate director.

(2) In sub-paragraph (1), "linked entity", in relation to an entity ("E"), means—

(a) a member of the same group as E,

(b) a company in which a company which is a member of the same group as E has a major interest (within the meaning of Part 5 of CTA 2009: see section 473 of that Act), or

(c) a partnership the members of which include an entity—

(i) which is a member of the same group as E, and

(ii) whose share of the profits or losses of a trade carried on by the partnership for an accounting period of the partnership any part of which falls within the chargeable period is at least a 40% share (see Part 17 of CTA 2009 for provisions about shares of partnership profits and losses).

(3) In sub-paragraph (2) "group" means a group for the purposes of—

(a) the provisions mentioned in paragraph 4(3), or

(b) the provisions of US GAAP mentioned in paragraph 4(6)(a)(iii).

"Capital resources condition"

72 (1) "The capital resources condition" is that the entity has a capital resources requirement of at least £100,000,000.

(2) But if the entity is a member of a group, "the capital resources condition" is that the entity and—

(a) any other entities which—

(i) are members of the group,

(ii) meet either of the conditions in sub-paragraph (3),

(iii) are not excluded entities, and

(iv) are not members of any partnership within paragraph (b), and

(b) any partnership—

(i) the members of which are or include one or more entities which are members of the group and not excluded entities, and

(ii) which meets either of the conditions in sub-paragraph (3),have (in aggregate) capital resources requirements of at least £100,000,000.

(3) The conditions referred to in sub-paragraph (2) are that the entity or partnership—

(a) is both a BIPRU 730k firm and a full scope BIPRU investment firm, or

(b) is an entity or partnership which carries on in the United Kingdom activities including the relevant regulated activity described in the provision mentioned in paragraph 79(a).

(4) In determining whether the entity is a UK resident bank or a relevant foreign bank by virtue of paragraph 78(2) or 80(2), the references in sub-paragraph (1) to the entity are to the partnership.

(5) If any entity whose capital resources may be material for the purposes of sub-paragraph (1) or (2) prepares its accounts in a currency other than sterling, the amount of its capital resources at the end of the chargeable period is to be translated into its sterling equivalent by reference to the spot rate of exchange on the last day of the chargeable period.

(6) If any entity whose capital resources may be material for the purposes of sub-paragraph (1) or (2) carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom, its capital resources are to be determined as they would be for corporation tax purposes (see Chapter 4 of Part 2 of CTA 2009).

(7) In sub-paragraph (2) "group" means a group for the purposes of—

(a) the provisions mentioned in paragraph 4(3), or

(b) the provisions of US GAAP mentioned in paragraph 4(6)(a)(iii).

"Excluded entity"

73 (1) "Excluded entity" means an entity which is—

(a) an insurance company or an insurance special purpose vehicle,

(b) an entity which is a member of a group and does not carry on any relevant regulated activities otherwise than on behalf of an insurance company or insurance special purpose vehicle which is a member of the group,

(c) an entity which does not carry on any relevant regulated activities otherwise than as the manager of a pension scheme,

(d) an investment trust (within the meaning given by section 1158 of CTA 2010),

(e) an entity which does not carry on any relevant regulated activities other than asset management activities,

(f) an exempt BIPRU commodities firm,

(g) an entity which does not carry on any relevant regulated activities otherwise than for the purpose of trading in commodities or commodity derivatives,

(h) an entity which does not carry on any relevant regulated activities otherwise than for the purpose of dealing in contracts for differences—

(i) as principal with persons all or all but an insignificant proportion of whom are retail clients, or

(ii) with another person to enable the entity or other person to deal in contracts for differences as principal with persons all or all but an insignificant proportion of whom are retail clients,

(i) a society incorporated under the Friendly Societies Act 1992,

(j) a society registered as a credit union under the Industrial and Provident Societies Act 1965 or the Credit Unions (Northern Ireland) Order 1985 (S. I.1985/1205 (N. I.12)), or

(k) a building society.

(2) In sub-paragraph (1)(a) and (b) "insurance company" and "insurance special purpose vehicle" have the meaning given by section 431(2) of ICTA.

(3) In sub-paragraph (1)(b) "group" means a group for the purposes of—

(a) the provisions mentioned in paragraph 4(3), or

(b) the provisions of US GAAP mentioned in paragraph 4(6)(a)(iii).

"Long term" equity and liabilities

74 All equity is "long term".

75 (1) Liabilities are "long term" to the extent that—

(a) as at the end of the chargeable period, the liabilities are not required, and cannot be required, to be repaid or otherwise met during the 12 month period starting with the last day of the chargeable period, and

(b) in the case of liabilities of one member of the relevant group to another member of the relevant group, an officer of Revenue and Customs is satisfied that the following condition is also met in relation to the liabilities.

(2) The condition is that, as at the end of the chargeable period, the liabilities are funded by the relevant group through—

(a) equity,

(b) excluded liabilities to persons who are not members of the relevant group, or

(c) liabilities to such persons which are not required, and cannot be required, to be repaid or otherwise met during the 12 month period starting with the last day of the chargeable period.

76 (1) Liabilities are also "long term" so far as they consist of non-protected deposits.

(2) But sub-paragraph (1) does not apply to a deposit if the depositor is—

(a) an authorised person for the purposes of FISMA 2000 (see section 31 of that Act), or

(b) an entity which if it were a UK resident entity which carried on its activities in the United Kingdom would be required to be an authorised person.

(3) A deposit is "non-protected" so far as it is not a protected deposit for the purposes of paragraph 29.

(4) For the purposes of this paragraph—

(a) "deposit" has the meaning given by article 5(2) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S. I.2001/544), and

(b) in relation to a deposit held in a territory outside the United Kingdom, the exclusions in articles 6 to 9AB of that Order apply with whatever modifications are appropriate to achieve the following purpose.

(5) The purpose is that the exclusions are to cover, essentially, the same matters in relation to the territory concerned as they cover in relation to the United Kingdom.

77 Paragraphs 74 to 76 are subject to Step 6 in paragraph 24(1).

"Relevant foreign bank"

78 (1) "Relevant foreign bank" means an entity which—

(a) is a non-UK resident entity,

(b) is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act),

(c) is an entity which carries on a trade in the United Kingdom through a permanent establishment in the United Kingdom and—

(i) whose activities include the relevant regulated activity described in the provision mentioned in paragraph 79(a), or

(ii) which is both a BIPRU 730k firm and a full scope BIPRU investment firm, whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in paragraph 79(b) to (f),

(d) carries on that relevant regulated activity, or those relevant regulated activities, wholly or mainly in the course of that trade,

(e) meets the capital resources condition, and

(f) is not an excluded entity.

(2) "Relevant foreign bank" also includes an entity which—

(a) meets the conditions in sub-paragraph (1)(a) and (f), and

(b) is a member of a partnership which meets the conditions in paragraph 80(1)(b) to (e).

"Relevant regulated activity"

79 "Relevant regulated activity" means an activity which is a regulated activity for the purposes of FISMA 2000 by virtue of any of the following provisions of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S. I.2001/544)—

(a) article 5 (accepting deposits),

(b) article 14 (dealing in investments as principal),

(c) article 21 (dealing in investments as agent),

(d) article 25 (arranging deals in investments),

(e) article 40 (safeguarding and administering investments), and

(f) article 61 (entering into regulated mortgage contracts).

"UK resident bank"

80 (1) "UK resident bank" means an entity which—

(a) is a UK resident entity,

(b) is an authorised person for the purposes of FISMA 2000 (see section 31 of that Act),

(c) is an entity—

(i) whose activities include the relevant regulated activity described in the provision mentioned in paragraph 79(a), or

(ii) which is both a BIPRU 730k firm and a full scope BIPRU investment firm, whose activities consist wholly or mainly of any of the relevant regulated activities described in the provisions mentioned in paragraph 79(b) to (f),

(d) carries on that relevant regulated activity, or those relevant regulated activities, wholly or mainly in the course of trade,

(e) meets the capital resources condition, and

(f) is not an excluded entity.

(2) "UK resident bank" also includes an entity which—

(a) meets the conditions in sub-paragraph (1)(a) and (f), and

(b) is a member of a partnership which meets the conditions in sub-paragraph (1)(b) to (e).

Part 9: Power to make consequential changes

81 (1) The Treasury may, by order made by statutory instrument, make such amendments of this Schedule as they consider appropriate in consequence of—

(a) any change made to or replacement of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (S. I.2001/544) (or any replacement),

(b) any change made to the FSA Handbook, or

(c) any change in international accounting standards, UK GAAP or US GAAP.

(2) An order under this paragraph may have retrospective effect in relation to—

(a) any chargeable period in which the order is made, or

(b) in the case of an order made on or before 31 December 2011, any chargeable period ending on or after 1 January 2011.

(3) A statutory instrument containing an order under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.

COUNCIL DIRECTIVE (EU) 2018/822

of 25 May 2018

amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 and 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

(1) In order to accommodate new initiatives in the field of tax transparency at the level of the Union, Council Directive 2011/16/EU has been the subject of a series of amendments over the last few years. In this context, Council Directive 2014/107/EU introduced the Common Reporting Standard (‘CRS’) developed by the Organisation for Economic Cooperation and Development (OECD) for financial account information within the Union. The CRS provides for the automatic exchange of information on financial accounts held by non-tax residents and establishes a framework for that exchange worldwide. Directive 2011/16/EU was amended by Council Directive (EU) 2015/2376, which provided for the automatic exchange of information on advance cross-border tax rulings, and by Council Directive (EU) 2016/881, which provided for the mandatory automatic exchange of information on country-by-country reporting of multinational enterprises between tax authorities. In light of the use that anti-money-laundering information can have for tax authorities, Council Directive (EU) 2016/2258 placed an obligation on Member States to give tax authorities access to customer due diligence procedures applied by financial institutions under Directive (EU) 2015/849 of the European Parliament and of the Council. Although Directive 2011/16/EU has been amended several times in order to enhance the means tax authorities can use to react to aggressive tax planning, there is still a need to reinforce certain specific transparency aspects of the existing taxation framework.

(2) Member States find it increasingly difficult to protect their national tax bases from erosion as tax-planning structures have evolved to be particularly sophisticated and often take advantage of the increased mobility of both capital and persons within the internal market. Such structures commonly consist of arrangements which are developed across various jurisdictions and move taxable profits towards more beneficial tax regimes or have the effect of reducing the taxpayer's overall tax bill. As a result, Member States often experience considerable reductions in their tax revenues, which hinder them from applying growth-friendly tax policies. It is therefore critical that Member States' tax authorities obtain comprehensive and relevant information about potentially aggressive tax arrangements. Such information would enable those authorities to react promptly against harmful tax practices and to close loopholes by enacting legislation or by undertaking adequate risk assessments and carrying out tax audits. However, the fact that tax authorities do not react to a reported arrangement should not imply acceptance of the validity or tax treatment of that arrangement.

(3) Considering that most of the potentially aggressive tax-planning arrangements span across more than one jurisdiction, the disclosure of information about those arrangements would bring additional positive results where that information was also exchanged amongst Member States. In particular, the automatic exchange of information between tax authorities is crucial in order to provide those authorities with the necessary information to enable them to take action where they observe aggressive tax practices.

(4) Recognising how a transparent framework for developing business activity could contribute to clamping down on tax avoidance and evasion in the internal market, the Commission has been called on to embark on initiatives on the mandatory disclosure of information on potentially aggressive tax-planning arrangements along the lines of Action 12 of the OECD Base Erosion and Profit Shifting (BEPS) Project. In this context, the European Parliament has called for tougher measures against intermediaries who assist in arrangements that may lead to tax avoidance and evasion. It is also important to note that in the G7 Bari Declaration of 13 May 2017 on fighting tax crimes and other illicit financial flows, the OECD was asked to start discussing possible ways to address arrangements designed to circumvent reporting under the CRS or aimed at providing beneficial owners with the shelter of non-transparent structures, considering also model mandatory disclosure rules inspired by the approach taken for avoidance arrangements outlined within the BEPS Action 12 Report.

(5) It is necessary to recall how certain financial intermediaries and other providers of tax advice seem to have actively assisted their clients in concealing money offshore. Furthermore, although the CRS introduced by Directive 2014/107/EU is a significant step forward in establishing a framework of tax transparency within the Union, at least in terms of financial account information, it can still be improved.

(6) The reporting of potentially aggressive cross-border tax-planning arrangements can contribute effectively to the efforts for creating an environment of fair taxation in the internal market. In this light, an obligation for intermediaries to inform tax authorities of certain cross-border arrangements that could potentially be used for aggressive tax planning would constitute a step in the right direction. In order to develop a more comprehensive policy, it would also be necessary that as a second step, following the reporting, the tax authorities share information with their peers in other Member States. Such arrangements should also enhance the effectiveness of the CRS. In addition, it would be crucial to grant the Commission access to a sufficient amount of information so that it can monitor the proper functioning of this Directive. Such access to information by the Commission does not discharge a Member State from its obligations to notify any State aid to the Commission.

(7) It is acknowledged that the reporting of potentially aggressive cross-border tax-planning arrangements would stand a better chance of achieving its envisaged deterrent effect where the relevant information reached the tax authorities at an early stage, in other words before such arrangements are actually implemented. To facilitate the work of Member States' administrations, the subsequent automatic exchange of information on such arrangements could take place every quarter.

(8) To ensure the proper functioning of the internal market and to prevent loopholes in the proposed framework of rules, the reporting obligation should be placed upon all actors that are usually involved in designing, marketing, organising or managing the implementation of a reportable cross-border transaction or a series of such transactions, as well as those who provide assistance or advice. It should not be ignored either that, in certain cases, the reporting obligation would not be enforceable upon an intermediary due to a legal professional privilege or where there is no intermediary because, for instance, the taxpayer designs and implements a scheme in-house. It would thus be crucial that, in such circumstances, tax authorities do not lose the opportunity to receive information about tax-related arrangements that are potentially linked to aggressive tax planning. It would therefore be necessary to shift the reporting obligation to the taxpayer who benefits from the arrangement in such cases.

(9) Aggressive tax-planning arrangements have evolved over the years to become increasingly more complex and are always subject to constant modifications and adjustments as a reaction to defensive countermeasures by the tax authorities. Taking this into consideration, it would be more effective to endeavour to capture potentially aggressive tax-planning arrangements through the compiling of a list of the features and elements of transactions that present a strong indication of tax avoidance or abuse rather than to define the concept of aggressive tax planning. Those indications are referred to as 'hallmarks'.

(10) Given that the primary objective of this Directive concerning the reporting of potentially aggressive cross-border tax-planning arrangements should focus on ensuring the proper functioning of the internal market, it is critical not to regulate at the level of the Union beyond what is necessary to achieve the envisaged aims. This is why it would be necessary to limit any common rules on reporting to cross-border situations, namely those involving either more than one Member State or a Member State and a third country. In such circumstances, due to the potential impact on the functioning of the internal market, one can justify the need for enacting a common set of rules, rather than leaving the matter to be dealt with at the national level. A Member State could take further national reporting measures of a similar nature, but any information collected in addition to what is reportable in accordance with this Directive should not be communicated automatically to the competent authorities of the other Member States. That information could be exchanged on request or spontaneously according to applicable rules.

(11) Considering that the reportable arrangements should have a cross-border dimension, it would be important to share the relevant information with the tax authorities in other Member States in order to ensure the maximum effectiveness of this Directive in deterring aggressive tax-planning practices. The mechanism for the exchange of information in the context of advance cross-border rulings and advance pricing arrangements should also be used to accommodate the mandatory and automatic exchange of reportable information on potentially aggressive cross-border tax-planning arrangements amongst tax authorities in the Union.

(12) In order to facilitate the automatic exchange of information and enhance the efficient use of resources, exchanges should be carried out through the common communication network ('CCN') developed by the Union. In this context, information would be recorded in a secure central directory on administrative cooperation in the field of taxation. Member States should have to implement a series of practical arrangements, including measures to standardise the communication of all requisite information through the creation of a standard form. This should also involve specifying the linguistic requirements for the envisaged exchange of information and upgrading the CCN accordingly.

(13) In order to minimise costs and administrative burdens both for tax administrations and intermediaries and to ensure the effectiveness of this Directive in deterring aggressive tax-planning practices, the scope of automatic exchange of information in relation to reportable cross-border arrangements within the Union should be consistent with international developments. A specific hallmark should be introduced to address arrangements designed to circumvent reporting obligations involving automatic exchanges of information. For the purposes of that hallmark, agreements on the automatic exchange of financial account information under the CRS should be treated as equivalent to the reporting obligations laid down in Article 8(3a) of Directive 2014/107/EU and in Annex I thereto. In implementing the parts of this Directive addressing CRS avoidance arrangements and arrangements involving legal persons or legal arrangements or any other similar structures, Member States could use the work of the OECD, and more specifically its Model Mandatory Disclosure Rules for Addressing CRS Avoidance Arrangements and Opaque Offshore Structures and its Commentary, as a source of illustration or interpretation, in order to ensure consistency of application across Member States, insofar those texts are aligned with the provisions of Union law.

(14) While direct taxation remains within the competence of Member States, it is appropriate to refer to a corporate tax rate of zero or almost zero, solely for the purpose of clearly defining the scope of the hallmark that covers arrangements involving cross-border transactions, which should be reportable under Directive 2011/16/EU by intermediaries or, as appropriate, taxpayers, and about which the competent authorities should exchange information automatically. Moreover, it is appropriate to recall that aggressive cross-border tax-planning arrangements, the main purpose or one of the main purposes of which is to obtain a tax advantage that defeats the object or purpose of the applicable tax law, are subject to the general anti-abuse rule as set out in Article 6 of Council Directive (EU) 2016/1164.

(15) In order to improve the prospects for the effectiveness of this Directive, Member States should lay down penalties against the violation of national rules that implement this Directive. Such penalties should be effective, proportionate and dissuasive.

(16) In order to ensure uniform conditions for the implementation of this Directive and in particular for the automatic exchange of information between tax authorities, implementing powers should be conferred on the Commission to adopt a standard form with a limited number of components, including the linguistic arrangements. For the same reason, implementing powers should also be conferred on the Commission to adopt the necessary practical arrangements for upgrading the central directory on administrative cooperation in the field of taxation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

(17) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council. Any processing of personal data carried out within the framework of this Directive must comply with Directive 95/46/EC of the European Parliament and of the Council and Regulation (EC) No 45/2001.

(18) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(19) Since the objective of this Directive, namely to improve the functioning of the internal market by discouraging the use of aggressive cross-border tax-planning arrangements, cannot sufficiently be achieved by the Member States but can rather, by reason of the fact that it targets schemes which are developed to potentially take advantage of market inefficiencies that originate in the interaction amongst disparate national tax rules, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective, especially considering that it is limited to cross-border arrangements concerning either more than one Member State or a Member State and a third country.

(20) Directive 2011/16/EU should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

ARTICLE 1

Directive 2011/16/EU is amended as follows:

(1) Article 3 is amended as follows:

(a) point 9 is amended as follows:

(i) in the first subparagraph, point (a) is replaced by the following:

‘(a) for the purposes of Article 8(1) and Articles 8a, 8aa and 8ab, the systematic communication of predefined information to another Member State, without prior request, at pre-established regular intervals. For the purposes of Article 8(1), reference to available information relates to information in the tax files of the Member State communicating the information, which is retrievable in accordance with the procedures for gathering and processing information in that Member State;’;

(ii) in the first subparagraph, point (c) is replaced by the following:

‘(c) for the purposes of provisions of this Directive other than Article 8(1) and (3a) and Articles 8a, 8aa and 8ab, the systematic communication of predefined information provided in points (a) and (b) of this point.’;

(iii) in the second subparagraph, the first sentence is replaced by the following:

‘In the context of Articles 8(3a), 8(7a) and 21(2), Article 25(2) and (3) and Annex IV, any capitalised term shall have the meaning that it has under the corresponding definitions set out in Annex I.’;

(b) the following points are added:

‘18. “cross-border arrangement” means an arrangement concerning either more than one Member State or a Member State and a third country where at least one of the following conditions is met:

(a) not all of the participants in the arrangement are resident for tax purposes in the same jurisdiction;

(b) one or more of the participants in the arrangement is simultaneously resident for tax purposes in more than one jurisdiction;

(c) one or more of the participants in the arrangement carries on a business in another jurisdiction through a permanent establishment situated in that jurisdiction and the arrangement forms part or the whole of the business of that permanent establishment;

(d) one or more of the participants in the arrangement carries on an activity in another jurisdiction without being resident for tax purposes or creating a permanent establishment situated in that jurisdiction;

(e) such arrangement has a possible impact on the automatic exchange of information or the identification of beneficial ownership.

For the purposes of points 18 to 25 of this Article, Article 8ab and Annex IV, an arrangement shall also include a series of arrangements. An arrangement may comprise more than one step or part.

19. “reportable cross-border arrangement” means any cross-border arrangement that contains at least one of the hallmarks set out in Annex IV.

20. “hallmark” means a characteristic or feature of a cross-border arrangement that presents an indication of a potential risk of tax avoidance, as listed in Annex IV.

21. “intermediary” means any person that designs, markets, organises or makes available for implementation or manages the implementation of a reportable cross-border arrangement.

It also means any person that, having regard to the relevant facts and circumstances and based on available information and the relevant expertise and understanding required to provide such services, knows or could be reasonably expected to know that they have undertaken to provide, directly or by means of other persons, aid, assistance or advice with respect to designing, marketing, organising, making available for implementation or managing the implementation of a reportable cross-border arrangement. Any person shall have the right to provide evidence that such person did not know and could not reasonably be expected to know that that person was involved in a reportable cross-border arrangement. For this purpose, that person may refer to all relevant facts and circumstances as well as available information and their relevant expertise and understanding.

In order to be an intermediary, a person shall meet at least one of the following additional conditions:

(a) be resident for tax purposes in a Member State;

(b) have a permanent establishment in a Member State through which the services with respect to the arrangement are provided;

(c) be incorporated in, or governed by the laws of, a Member State;

(d) be registered with a professional association related to legal, taxation or consultancy services in a Member State.

22. “relevant taxpayer” means any person to whom a reportable cross-border arrangement is made available for implementation, or who is ready to implement a reportable cross-border arrangement or has implemented the first step of such an arrangement.

23. for the purposes of Article 8ab, “associated enterprise” means a person who is related to another person in at least one of the following ways:

(a) a person participates in the management of another person by being in a position to exercise a significant influence over the other person;

(b) a person participates in the control of another person through a holding that exceeds 25 % of the voting rights;

(c) a person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25 % of the capital;

(d) a person is entitled to 25 % or more of the profits of another person.

If more than one person participates, as referred to in points (a) to (d), in the management, control, capital or profits of the same person, all persons concerned shall be regarded as associated enterprises.

If the same persons participate, as referred to in points (a) to (d), in the management, control, capital or profits of more than one person, all persons concerned shall be regarded as associated enterprises.

For the purposes of this point, a person who acts together with another person in respect of the voting

rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.

In indirect participations, the fulfilment of requirements under point (c) shall be determined by multiplying the rates of holding through the successive tiers. A person holding more than 50 % of the voting rights shall be deemed to hold 100 %.

An individual, his or her spouse and his or her lineal ascendants or descendants shall be treated as a single person.

24. “marketable arrangement” means a cross-border arrangement that is designed, marketed, ready for implementation or made available for implementation without a need to be substantially customised.

25. “bespoke arrangement” means any cross-border arrangement that is not a marketable arrangement.’;

(2) the following Article is inserted:

‘Article 8ab

Scope and conditions of mandatory automatic exchange of information on reportable cross-border arrangements

1. Each Member State shall take the necessary measures to require intermediaries to file information that is within their knowledge, possession or control on reportable cross-border arrangements with the competent authorities within 30 days beginning:

(a) on the day after the reportable cross-border arrangement is made available for implementation; or

(b) on the day after the reportable cross-border arrangement is ready for implementation; or

(c) when the first step in the implementation of the reportable cross-border arrangement has been made,

whichever occurs first.

Notwithstanding the first subparagraph, intermediaries referred to in the second paragraph of point 21 of Article 3 shall also be required to file information within 30 days beginning on the day after they provided, directly or by means of other persons, aid, assistance or advice.

2. In the case of marketable arrangements, Member States shall take the necessary measures to require that a periodic report be made by the intermediary every 3 months providing an update which contains new reportable information as referred to in points (a), (d), (g) and (h) of paragraph 14 that has become available since the last report was filed.

3. Where the intermediary is liable to file information on reportable cross-border arrangements with the competent authorities of more than one Member State, such information shall be filed only in the Member State that features first in the list below:

(a) the Member State where the intermediary is resident for tax purposes;

(b) the Member State where the intermediary has a permanent establishment through which the services with respect to the arrangement are provided;

(c) the Member State which the intermediary is incorporated in or governed by the laws of;

(d) the Member State where the intermediary is registered with a professional association related to legal, taxation or consultancy services.

4. Where, pursuant to paragraph 3, there is a multiple reporting obligation, the intermediary shall be exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another Member State.

5. Each Member State may take the necessary measures to give intermediaries the right to a waiver from filing information on a reportable cross-border arrangement where the reporting obligation would breach the legal professional privilege under the national law of that Member State. In such circumstances, each Member State shall take the necessary measures to require intermediaries to notify, without delay, any other intermediary or, if there is no such intermediary, the relevant taxpayer of their reporting obligations under paragraph 6.

Intermediaries may only be entitled to a waiver under the first subparagraph to the extent that they operate within the limits of the relevant national laws that define their professions.

6. Each Member State shall take the necessary measures to require that, where there is no intermediary or the intermediary notifies the relevant taxpayer or another intermediary of the application of a waiver under paragraph 5, the obligation to file information on a reportable cross-border arrangement lie with the other notified intermediary, or, if there is no such intermediary, with the relevant taxpayer.

7. The relevant taxpayer with whom the reporting obligation lies shall file the information within 30 days, beginning on the day after the reportable cross-border arrangement is made available for implementation to that relevant taxpayer, or is ready for implementation by the relevant taxpayer, or when the first step in its implementation has been made in relation to the relevant taxpayer, whichever occurs first.

   Where the relevant taxpayer has an obligation to file information on the reportable cross-border arrangement with the competent authorities of more than one Member State, such information shall be filed only with the competent authorities of the Member State that features first in the list below:

   (a) the Member State where the relevant taxpayer is resident for tax purposes;

   (b) the Member State where the relevant taxpayer has a permanent establishment benefiting from the arrangement;

   (c) the Member State where the relevant taxpayer receives income or generates profits, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State;

   (d) the Member State where the relevant taxpayer carries on an activity, although the relevant taxpayer is not resident for tax purposes and has no permanent establishment in any Member State.

8. Where, pursuant to paragraph 7, there is a multiple reporting obligation, the relevant taxpayer shall be exempt from filing the information if it has proof, in accordance with national law, that the same information has been filed in another Member State.

9. Each Member State shall take the necessary measures to require that, where there is more than one intermediary, the obligation to file information on the reportable cross-border arrangement lie with all intermediaries involved in the same reportable cross-border arrangement.

   An intermediary shall be exempt from filing the information only to the extent that it has proof, in accordance with national law, that the same information referred to in paragraph 14 has already been filed by another intermediary.

10. Each Member State shall take the necessary measures to require that, where the reporting obligation lies with the relevant taxpayer and where there is more than one relevant taxpayer, the relevant taxpayer that is to file information in accordance with paragraph 6 be the one that features first in the list below:

    (a) the relevant taxpayer that agreed the reportable cross-border arrangement with the intermediary;

    (b) the relevant taxpayer that manages the implementation of the arrangement.

    Any relevant taxpayer shall only be exempt from filing the information to the extent that it has proof, in accordance with national law, that the same information referred to in paragraph 14 has already been filed by another relevant taxpayer.

11. Each Member State may take the necessary measures to require that each relevant taxpayer file information about their use of the arrangement to the tax administration in each of the years for which they use it.

12. Each Member State shall take the necessary measures to require intermediaries and relevant taxpayers to file information on reportable cross-border arrangements the first step of which was implemented between the date of entry into force and the date of application of this Directive. Intermediaries and relevant taxpayers, as appropriate, shall file information on those reportable cross-border arrangements by 31 August 2020.

13. The competent authority of a Member State where the information was filed pursuant to paragraphs 1 to 12 of this Article shall, by means of an automatic exchange, communicate the information specified in paragraph 14 of this Article to the competent authorities of all other Member States, in accordance with the practical arrangements adopted pursuant to Article 21.

14. The information to be communicated by the competent authority of a Member State under paragraph 13 shall contain the following, as applicable:

    (a) the identification of intermediaries and relevant taxpayers, including their name, date and place of birth (in the case of an individual), residence for tax purposes, TIN and, where appropriate, the persons that are associated enterprises to the relevant taxpayer;

    (b) details of the hallmarks set out in Annex IV that make the cross-border arrangement reportable;

    (c) a summary of the content of the reportable cross-border arrangement, including a reference to the name by which it is commonly known, if any, and a description in abstract terms of the relevant business activities or arrangements, without leading to the disclosure of a commercial, industrial or professional secret or of a commercial process, or of information the disclosure of which would be contrary to public policy;

    (d) the date on which the first step in implementing the reportable cross-border arrangement has been made or will be made;

    (e) details of the national provisions that form the basis of the reportable cross-border arrangement;

    (f) the value of the reportable cross-border arrangement;

    (g) the identification of the Member State of the relevant taxpayer(s) and any other Member States which are likely to be concerned by the reportable cross-border arrangement;

    (h) the identification of any other person in a Member State likely to be affected by the reportable cross-border arrangement, indicating to which Member States such person is linked.

15. The fact that a tax administration does not react to a reportable cross-border arrangement shall not imply any acceptance of the validity or tax treatment of that arrangement.

16. To facilitate the exchange of information referred to in paragraph 13 of this Article, the Commission shall adopt the practical arrangements necessary for the implementation of this Article, including measures to standardise the

communication of the information set out in paragraph 14 of this Article, as part of the procedure for establishing the standard form provided for in Article 20(5).

17. The Commission shall not have access to information referred to in points (a), (c) and (h) of paragraph 14.

18. The automatic exchange of information shall take place within one month of the end of the quarter in which the information was filed. The first information shall be communicated by 31 October 2020.';

(3) in Article 20, paragraph 5 is replaced by the following:

'5. The Commission shall adopt standard forms, including the linguistic arrangements, in accordance with the procedure referred to in Article 26(2), in the following cases:

(a) for the automatic exchange of information on advance cross-border rulings and advance pricing arrangements pursuant to Article 8a before 1 January 2017;

(b) for the automatic exchange of information on reportable cross-border arrangements pursuant to Article 8ab before 30 June 2019.

Those standard forms shall not exceed the components for the exchange of information listed in Articles 8a(6) and 8ab(14), and such other related fields which are linked to these components which are necessary to achieve the objectives of Articles 8a and 8ab, respectively.

The linguistic arrangements referred to in the first subparagraph shall not preclude Member States from communicating the information referred to in Articles 8a and 8ab in any of the official languages of the Union. However, those linguistic arrangements may provide that the key elements of such information shall also be sent in another official language of the Union.';

(4) in Article 21, paragraph 5 is replaced by the following:

'5. The Commission shall by 31 December 2017 develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of Article 8a(1) and (2) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The Commission shall by 31 December 2019 develop and provide with technical and logistical support a secure Member State central directory on administrative cooperation in the field of taxation where information to be communicated in the framework of Article 8ab(13), (14) and (16) shall be recorded in order to satisfy the automatic exchange provided for in those paragraphs.

The competent authorities of all Member States shall have access to the information recorded in that directory. The Commission shall also have access to the information recorded in that directory, however within the limitations set out in Articles 8a(8) and 8ab(17). The necessary practical arrangements shall be adopted by the Commission in accordance with the procedure referred to in Article 26(2).

Until that secure central directory is operational, the automatic exchange provided for in Article 8a(1) and (2) and Article 8ab(13), (14) and (16) shall be carried out in accordance with paragraph 1 of this Article and the applicable practical arrangements.';

(5) in Article 23, paragraph 3 is replaced by the following:

'3. Member States shall communicate to the Commission a yearly assessment of the effectiveness of the automatic exchange of information referred to in Articles 8, 8a, 8aa and 8ab as well as the practical results achieved. The Commission shall, by means of implementing acts, adopt the form and the conditions of communication for that yearly assessment. Those implementing acts shall be adopted in accordance with the procedure referred to in Article 26(2).';

(6) Article 25a is replaced by the following:

'Article 25a

Penalties

Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and concerning Articles 8aa and 8ab, and shall take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.';

(7) Article 27 is replaced by the following:

'Article 27

Reporting

1. Every five years after 1 January 2013, the Commission shall submit a report on the application of this Directive to the European Parliament and to the Council.

2. Every two years after 1 July 2020, the Member States and the Commission shall evaluate the relevance of Annex IV and the Commission shall present a report to the Council. That report shall, where appropriate, be accompanied by a legislative proposal.';

(8) Annex IV, the text of which is set out in the Annex to this Directive, is added.

ARTICLE 2

1. Member States shall adopt and publish, by 31 December 2019 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

They shall apply those provisions from 1 July 2020.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

ARTICLE 3

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

ARTICLE 4

This Directive is addressed to the Member States.

Done at Brussels, 25 May 2018.

For the Council

The President

V. GORANOV

ANNEX

ANNEX IV: HALLMARKS

Part I. Main benefit test

Generic hallmarks under category A and specific hallmarks under category B and under points (b)(i), (c) and (d) of paragraph 1 of category C may only be taken into account where they fulfil the "main benefit test".

That test will be satisfied if it can be established that the main benefit or one of the main benefits which, having regard to all relevant facts and circumstances, a person may reasonably expect to derive from an arrangement is the obtaining of a tax advantage.

In the context of hallmark under paragraph 1 of category C, the presence of conditions set out in points (b)(i), (c) or (d) of paragraph 1 of category C can not alone be a reason for concluding that an arrangement satisfies the main benefit test.

Part II. Categories of hallmarks

A. Generic hallmarks linked to the main benefit test

1. An arrangement where the relevant taxpayer or a participant in the arrangement undertakes to comply with a condition of confidentiality which may require them not to disclose how the arrangement could secure a tax advantage vis-à-vis other intermediaries or the tax authorities.
2. An arrangement where the intermediary is entitled to receive a fee (or interest, remuneration for finance costs and other charges) for the arrangement and that fee is fixed by reference to:
   (a) the amount of the tax advantage derived from the arrangement; or
   (b) whether or not a tax advantage is actually derived from the arrangement. This would include an obligation on the intermediary to partially or fully refund the fees where the intended tax advantage derived from the arrangement was not partially or fully achieved.
3. An arrangement that has substantially standardised documentation and/or structure and is available to more than one relevant taxpayer without a need to be substantially customised for implementation.

B. Specific hallmarks linked to the main benefit test

1. An arrangement whereby a participant in the arrangement takes contrived steps which consist in acquiring a lossmaking company, discontinuing the main activity of such company and using its losses in order to reduce its tax liability, including through a transfer of those losses to another jurisdiction or by the acceleration of the use of those losses.
2. An arrangement that has the effect of converting income into capital, gifts or other categories of revenue which are taxed at a lower level or exempt from tax.
3. An arrangement which includes circular transactions resulting in the round-tripping of funds, namely through involving interposed entities without other primary commercial function or transactions that offset or cancel each other or that have other similar features.

C. Specific hallmarks related to cross-border transactions

1. An arrangement that involves deductible cross-border payments made between two or more associated enterprises where at least one of the following conditions occurs:
   (a) the recipient is not resident for tax purposes in any tax jurisdiction;
   (b) although the recipient is resident for tax purposes in a jurisdiction, that jurisdiction either:
      (i) does not impose any corporate tax or imposes corporate tax at the rate of zero or almost zero; or
      (ii) is included in a list of third-country jurisdictions which have been assessed by Member States collectively or within the framework of the OECD as being non-cooperative;
   (c) the payment benefits from a full exemption from tax in the jurisdiction where the recipient is resident for tax purposes;
   (d) the payment benefits from a preferential tax regime in the jurisdiction where the recipient is resident for tax purposes;
2. Deductions for the same depreciation on the asset are claimed in more than one jurisdiction.
3. Relief from double taxation in respect of the same item of income or capital is claimed in more than one jurisdiction.
4. There is an arrangement that includes transfers of assets and where there is a material difference in the amount being treated as payable in consideration for the assets in those jurisdictions involved.

D. Specific hallmarks concerning automatic exchange of information and beneficial ownership

1. An arrangement which may have the effect of undermining the reporting obligation under the laws implementing Union legislation or any equivalent agreements on the automatic exchange of Financial Account information, including agreements with third countries, or which takes advantage of the absence of such legislation or agreements. Such arrangements include at least the following:
   (a) the use of an account, product or investment that is not, or purports not to be, a Financial Account, but has features that are substantially similar to those of a Financial Account;
   (b) the transfer of Financial Accounts or assets to, or the use of jurisdictions that are not bound by the automatic exchange of Financial Account information with the State of residence of the relevant taxpayer;
   (c) the reclassification of income and capital into products or payments that are not subject to the automatic exchange of Financial Account information;
   (d) the transfer or conversion of a Financial Institution or a Financial Account or the assets therein into a Financial Institution or a Financial Account or assets not subject to reporting under the automatic exchange of Financial Account information;
   (e) the use of legal entities, arrangements or structures that eliminate or purport to eliminate reporting of one or more Account Holders or Controlling Persons under the automatic exchange of Financial Account information;
   (f) arrangements that undermine, or exploit weaknesses in, the due diligence procedures used by Financial Institutions to comply with their obligations to report Financial Account information, including the use of jurisdictions with inadequate or weak regimes of enforcement of anti-money-laundering legislation or with weak transparency requirements for legal persons or legal arrangements.
2. An arrangement involving a non-transparent legal or beneficial ownership chain with the use of persons, legal arrangements or structures:
   (a) that do not carry on a substantive economic activity supported by adequate staff, equipment, assets and premises; and
   (b) that are incorporated, managed, resident, controlled or established in any jurisdiction other than the jurisdiction of residence of one or more of the beneficial owners of the assets held by such persons, legal arrangements or structures; and
   (c) where the beneficial owners of such persons, legal arrangements or structures, as defined in Directive (EU) 2015/849, are made unidentifiable.

E. Specific hallmarks concerning transfer pricing
1. An arrangement which involves the use of unilateral safe harbour rules.
2. An arrangement involving the transfer of hard-to-value intangibles. The term “hard-to-value intangibles” covers intangibles or rights in intangibles for which, at the time of their transfer between associated enterprises:
   (a) no reliable comparables exist; and
   (b) at the time the transaction was entered into, the projections of future cash flows or income expected to be derived from the transferred intangible, or the assumptions used in valuing the intangible are highly uncertain, making it difficult to predict the level of ultimate success of the intangible at the time of the transfer.
3. An arrangement involving an intragroup cross-border transfer of functions and/or risks and/or assets, if the projected annual earnings before interest and taxes (EBIT), during the three-year period after the transfer, of the transferor or transferors, are less than 50 % of the projected annual EBIT of such transferor or transferors if the transfer had not been made.’