TAXREP 05/14

(ICAEW REP 16/14)

ICAEW TAX REPRESENTATION

DRAFT FINANCE BILL 2014 PARTNERSHIPS PARTS 1-4

Comments submitted on 3 February 2014 by ICAEW Tax Faculty in response to Draft Finance Bill 2014 clauses and related HM Revenue & Customs Guidance on partnership tax, published by HM Treasury and HM Revenue & Customs on 10 December 2013

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The Institute of Chartered Accountants in England and Wales
Chartered Accountants' Hall, Moorgate Place
London EC2R 6EA UK
icaew.com/taxfac

T +44 (0)20 7920 8646
F +44 (0)20 7920 0547
E taxfac@icaew.com

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the draft Finance Bill 2014 clauses on partnership tax and related HMRC Technical Note and Guidance published by HM Treasury and HM Revenue & Customs (HMRC) respectively on 10 December 2013.

2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

4. ICAEW is a world leading professional membership organisation that promotes, develops and supports over 142,000 chartered accountants worldwide. We provide qualifications and professional development, share our knowledge, insight and technical expertise, and protect the quality and integrity of the accountancy and finance profession.

5. As leaders in accountancy, finance and business our members have the knowledge, skills and commitment to maintain the highest professional standards and integrity. Together we contribute to the success of individuals, organisations, communities and economies around the world.

6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

KEY POINT SUMMARY

7. Some of these proposals were the subject of earlier consultation and the initial proposals were published in May 2013, to which we responded in TAXREP 35/13 where we raised a number of concerns.

8. While some of these have been addressed, the fundamental challenges we made then are still present in the revised proposals.

9. The Office of Tax Simplification has been conducting a review of partnership tax, the results of which were published on 22 January 2014. Introducing complex legislation which will affect many businesses, potentially leading to structural change while the results of the OTS review are still being considered, seems an unnecessary complication and does little to provide much needed stability and certainty to the UK tax system.

10. Most importantly, we do not think these proposals should be rushed through for implementation from 6 April 2014. These proposals mean radical restructuring for many businesses which needs more time and further consultation about the revised detail and practical implementation.

11. The proposed new rules for salaried members in LLPs and to the non-corporate member rules for all partnerships, will involve a significant additional compliance cost for LLPs.

12. The increasing divide between employment law and tax law leads to more uncertainty, complexity and unfairness as individuals are taxed as employees, but without equivalent employment rights. The proposals to tax LLP salaried partners as employees will create a further group of individuals who will be in this position.

13. It is apparent that many of the problems being addressed in these proposals stem once again from the different tax cost of employment and self employment, together with the different rates of tax paid by small companies and unincorporated businesses. These are structural problems in our tax system and until they are resolved, we will continue to see further legislation being brought forward which merely makes a complex situation even worse.

THE CONSULTATION PROCESS IN RELATION TO THE PARTNERSHIP PROPOSALS

14. After a period of consultation, the Government adopted the new Tax Consultation Framework in March 2011. The Framework sets out five stages of consultation:

1. Setting out objectives and identifying options
2. Determining the best option and developing a framework for implementation including detailed policy design
3. Drafting legislation to effect the proposed change
4. Implementing and monitoring the change
5. Reviewing and evaluating the change

15. We welcome the improved consultation process, however, we are not convinced that the Government is always listening to the responses and ensuring that the proposals are amended to take account of legitimate concerns. There is a danger that the process is still seen more as an end in itself rather than a means to an end, namely improved legislation that meets the Government's policy objectives while being easy and practical to implement and administer. In our view this is evident in the current proposals.

16. At Budget 2013, the Chancellor announced that the government would consult on changes to two aspects of the tax rules on partnerships in order to prevent tax loss arising from:

- disguising employment relationships through limited liability partnerships; and
- certain arrangements involving allocation of profits and losses among partnership members.

17. It was proposed that those changes would take effect from 6 April 2014.

18. The initial proposals were published in May 2013 and we responded to those in TAXREP 35/13 where we raised a number of concerns about the proposals.

19. While some of our concerns have been addressed, the fundamental challenges we made then are still present in the revised proposals.

20. Most importantly, we do not think these proposals should be rushed through for implementation from 6 April 2014. These proposals mean radical restructuring for many businesses and this needs more time and further consultation about the revised detail and practical implementation.

GENERAL POINTS

Key observations regarding partnership tax structure

21. The Draft Finance Bill 2014 clauses, published on 10 December 2013, propose legislation affecting four aspects of partnership tax:

1. Limited Liability Partnerships (LLPs): salaried members
2. Partnership with mixed membership
3. Alternative Investment Fund Managers: Deferred remuneration etc
4. Disposals of assets through partnerships

22. The law on partnerships dates from the Partnership Act 1890. A partnership is transparent for tax purposes. Consequently, although a partnership must submit a tax return each year showing the partnership profits, any profits are allocated to the partners and taxed on them, with individual partners paying income tax in respect of any allocated share of partnership profits through their own personal tax returns.

23. Limited liability partnerships (LLPs) were introduced in 2000 to provide an alternative business structure. However, the tax rules for LLPs follow those for ordinary partnerships.

24. All partnerships are treated in the same way no matter how many partners are in the partnership. Historically there were some limits on the number of partners that could form a partnership although many types of professional partnerships were exempted from this requirement and in 2002 the upper limit was abolished entirely. The vast majority of partnerships in the UK have only two or three partners, but some (usually professional) partnerships are very large, with 500 partners or more.

25. The tax rules for partnerships are not always easy to understand. Most of the guidance on practical application and practices for taxing partnerships is set down by HMRC in guidance.

Employment law vs tax law

26. The increasing divide between employment law and tax law leads to more uncertainty, complexity and unfairness as individuals are taxed as employees, but without equivalent employment rights. The proposals to tax LLP salaried partners as employees will create a further group of individuals who will be in this position.

Complexity and the effect of the rules on partnerships and LLPs

27. The papers and supporting documents, published on 10 December 2013 run to a total of 117 pages. The draft legislation is highly complicated and should contain a commercial purpose exclusion. The attraction of a partnership structure is its flexibility. They allow individual memberships to accommodate different profit sharing arrangements to suit the business model and consequently there are many variations. Without a clearance mechanism, there is a risk the rules could be applied in a mechanistic way without regard to the needs of the business.

28. We are concerned that the proposals are too complex for practical implementation and are disproportionate to the problems they are attempting to resolve. The stated objectives of the proposals are to level the playing field and to tackle tax avoidance, but we are not convinced these proposals support those objectives.

29. LLPs are a flexible and competitive commercial structure and, since they were introduced, the number of them has grown considerably. However, the inherent complexity and uncertainty of these new rules will significantly undermine the commercial case for using an LLP. There are serious commercial implications to this new legislation and we consider it likely that businesses will now favour using a company structure, even if an LLP might have been a better structure.

30. The anti avoidance legislation in new s 863C, ITTOIA 2005 is particularly difficult to understand and appears to rely on deciding whether arrangements have been put in place with a main purpose of ensuring that someone is not a salaried member. On our reading of this legislation, potentially all salaried members would be within the legislation.

31. Example 17 of the Technical guidance provides a simple illustration of the problem:

> *P has been an employee of the DEF LLP. She has reached that point in her career where she is offered membership.*
>
> *In order to become a member, P needs to invest in the LLP. She has some capital of her own, and the LLP arranges with the Bank for her to have a normal commercial loan to cover the balance. An undertaking is given that on P's retirement from DEF LLP, the firm will pay back the loan directly out of P's capital account and, if necessary, any undrawn remuneration, with full recourse against P if these amounts prove insufficient.*
>
> *These arrangements have been put in place to enable P to become a full member of the DEF LLP. They have not been put in place to enable P to evade* (sic) *being a Salaried Member. P faces genuine risk, she has invested in the DEF LLP and does owe the Bank money, which she will need to repay and, in the interim, she will have to pay interest.*

32. In our view, becoming a full member, on terms akin to those of a partner in a traditional partnership, is not avoiding being a Salaried Member and should clearly not be within the ambit of the legislation. While we are pleased with this conclusion, and with the other examples designed to show the working of the Salaried Members test as a whole, we do not consider this compensates for the overly complex legislation itself. This appears to be another example of 'taxed according to the law but untaxed by concession'.

33. Furthermore, part of the rationale behind the new rules is to stop profits being held in corporate form; but this will still happen using simpler corporate structures instead.

34. The Office of Tax Simplification has been conducting a review of partnership tax, the results of which were published on 22 January 2014. Introducing complex legislation which will affect many businesses, potentially leading to structural change while the results of the review are still being considered, seems an unnecessary complication and does little to provide much needed stability and certainty to the UK tax system.

Compliance costs

35. These proposed new rules introduce a significant additional compliance cost for LLPs. These are complex rules that will impact on setting up new business structures and then again to any changes in business structures. Seeking advice on such rules will always tend to be more expensive due to its highly specialist nature.

36. The guidance runs to 56 pages and includes numerous examples to assist users. While this is most welcome and helps users to understand the intended application, it is no substitute for simple and clear legislation. The rules appear to be quite widely drafted and potentially catch a number of situations which we do not think should be caught.

Commercial considerations

37. The rules may lead some businesses to relinquishing structures they previously preferred for a range of commercial reasons, because of uncertainty about whether they will be caught. Some may be forced to implement changes which have adverse commercial repercussions in terms of working capital or undertakings related to third parties.

Transitional rules (paragraph 10-13, Schedule 1)

38. The rules will not be finalised until Finance Act 2014 is enacted. By this time, in summer 2014, some businesses will have already been affected for 15 months or more. The changes will affect partnership periods started after 6 April 2013. Although a split year option could be taken, partnerships tend to operate profit sharing arrangements for entire periods. Other issues they will need to consider in the meantime, include:

- Other tax matters such as entrepreneurs' relief, SDLT etc.

- Personnel matters on admitting new partners, or changing terms for “equity partners”. New employment rights or perhaps the cash flow requirements of the business.
- Regulatory matters. For example Financial Conduct Authority regulation is by reference to an entity and it can take some time to achieve a move from an LLP to a company.
- The operation of Real Time Investment (RTI) for partners who are now employees.

39. The new rules will affect individuals who move from self-employed to employed status as at 5 April 2014. The 2013/2014 taxable profits of these individuals will be different to those originally estimated. For example, with a 30 April year end, their profit share for the year ended 30 April 2013 would have been taxed in 2013/14. Now, using cessation rules, they will instead be taxed on their profit share to 30 April 2013, plus their profit share to 5 April 2014, less their overlap relief. This may mean that their payments on account for 2013/2014 will also need to change. The first payment on account for 2013/14 was on 31 January 2014, which has already passed. Without certainty of the partnership’s profit figures, and with only draft legislation to go on, it is impossible for such individuals to have made the correct payment on account.

40. LLPs choosing to make changes to their profit sharing arrangements to meet one of the three conditions, have very little time to implement the changes needed. The nature of a partnership is such that one partner’s gain is another’s loss. When an employee becomes a salaried partner, there will be negotiations which take into account the changed NIC liabilities and payment of tax dates of the new partner and the consequent saving to those who were formerly the individual’s employer. These arrangements will need to be renegotiated which takes time.

41. Where new capital is to be introduced, there will be consequences for that partnership’s capital funding requirements more generally. For example, the partnership may have restrictions on what such funds can be used for. Others may require money paid in to reduce other loans.

Limited liability partnerships: salaried members

Employment status

42. We agree that there should not be a presumption of self-employment for a member of an LLP, but conversely nor should there be a presumption of employment.

43. HMRC’s guidance (Page 4) states that ‘The salaried member legislation is being introduced so that those members who are effectively in the position of employees will be taxed as employees whilst those members who are in a position equivalent to partners will continue to have the same tax treatment as partners.’ The proposals do not achieve this. To do so, any tests should be by reference to the existing status test rules for income tax. Instead, we have an entirely new set of tests proposed as new s 863B, ITTOIA 2005.

44. While many of those involved in egregious schemes will now be taxed correctly, we do not think these proposals are sufficiently well targeted to meet this objective. Many individuals who are clearly partners will now be taxed as employees, which is bad for business.

45. We are concerned that partners whose profit share is determined by reference to a department or the results of a particular office, will be considered as employees for tax purposes. It is perfectly normal practice for an individual partner in a national partnership with five or six offices, to be a partner of the firm as a whole, while his profit share is restricted to being a share of the profits made by his local office. If HMRC needs particular examples to illustrate this further, we would be very happy to provide them.

46. The existing rules for determining an individual’s employment status could be used for an LLP. Since a large number of LLPs are likely to be professional partnerships, these are most likely to have the expertise necessary to interpret the existing status test rules correctly. Thus, further law should not be necessary.

47. These proposals suggest that the existing law for identifying whether a person is employed or self employed is inadequate. If so, then we would have thought that those rules need to be reviewed and a comprehensive rule introduced that works for all business forms.

48. The key issue here remains the disparity between the tax cost of employment as opposed to self employment. This is a structural problem within the tax system caused by employers' NIC. This difference creates tension for many more taxpayers than just those in partnerships and is particularly problematic for freelancers.

Practical problems

49. There are numerous practical problems with the detail of the legislation. Four examples given to us by our members so far include:

1. The new subjective tests: "reasonable to expect" in new s 863B(1)(b), and "reasonable to suppose" in new s 850C. Reasonable for whom? This introduces considerable uncertainty.
2. The definition of disguised salary in new s 863B(2) will catch profit pools comprising bonuses that are to be allocated on different bases.
3. The application of conditions B and C in new s 863B could cause problems in normal circumstances for larger professional firms. For example, a partner may not be on the management committee so may not have significant influence. Further many professional practices either do not need significant capital, relative to profits, or may be largely financed by outside, third party, finance.
4. Consider partnerships where profit shares are partly based on non-profit factors. For example the profit share might be based to a significant degree on growth or departmental targets, and to some extent on peer review or technical issues. Larger accountancy firms do not always base all profit shares simply on profit. At a simpler level, some firms rely on insolvency profits keeping the firm going in bad times and therefore profit share may not reflect profits in good times or in bad times when the insolvency side is supported by general practice business streams.

Implementation timetable

50. Those LLP members subject to the new legislation will be taxed as employees from 6 April 2014. This is too short a period to make any necessary changes given that at that date many LLPs will be part way through an accounting period. For example, ABC LLP has a year end of 30 April. Under the new rules, C will be treated as an employee from 6 April 2014. If the partnership decides to actually make C an employee from 2014/15, rather than just deeming him to be so for tax purposes, there is in our view insufficient time to rearrange his employment status.

51. We believe any change should apply from the start of the first accounting period on or after 6 April 2014.

52. We are also concerned that the Real Time Information requirements have not been considered. The new RTI penalty rules are also effective from 6 April 2014 and we believe that the combination of the two could give rise to considerable administrative burdens and practical implementation problems.

Partnerships with mixed membership

General

53. While we agree that the use of mixed membership partnerships for the sole purpose of avoiding tax on the profits drawn out of a business should be addressed to ensure that a fair amount of tax is paid, we do not agree with all the changes proposed.

54. The proposals fail to accommodate the commercial and historic reasons why some businesses have a mixed partnership structure. For example, many businesses hold land within a corporate partner or use such a member to build up working capital requirements. The fundamental rule of partnership tax is that all the profits are allocated each year to the partners and then each must pay their share of the tax. Of course the business could then choose to physically retain the cash representing some of the partners' profit shares, but this results in a relatively high charge on reinvestment as compared to retaining profits in a company. The use of a company within an LLP structure therefore helps to narrow the tax disincentive to retain and reinvest earnings which comes with just using an LLP.

55. Other mixed partnerships include a corporate partner as a member in order to access reliefs or tax credits only available to companies such as research and development tax credits or for employee share schemes.

56. As far as mixed partnerships are concerned, we would like to see a de minimis in order to exclude many of the smallest businesses from these proposals; we would prefer to see them excluded by legislation rather than by guidance.

57. The mixed partnership rules come at a time when policy decisions have again lead to a marked, apparently long- term, disparity between income tax and corporate tax rates.

Deferred profit

58. Condition X in s 850 C (2)/ (8) deals with deferred profit, with an equivalent within s.850D. This could result in an individual paying tax on an amount they are only remotely likely to receive. The rules do not provide relief (other than in the event a company makes a voluntary payment within s 850 E), were that amount never to be paid.

59. We suggest it is not appropriate to tax genuinely uncertain sums where the individual does not have the power to enforce payment. Relief should be available (without a four year time bar) in such cases. We appreciate s 850 C (4) has a just and reasonable requirement, but do not consider this goes far enough

Appropriate notional profit (see s850 C (10) et seq)

General points

60. The definition is confined to just two ways in which value may be provided by a non-individual making a capital contribution or providing services.

61. We consider this should also include any type of real value not properly compensated by the business. Examples include:

- providing the business with goods
- letting property other than on a commercial basis
- use of intellectual property.

Capital contribution s 850 C (11)-(14)

62. The definition is quite restrictive. For example, short term "distress" funding may be vitally needed, but usually would be excluded.

63. The guidance cites an example of a 2% interest rate - we would suggest long-term lock up funding in a relatively risky venture will usually require a much higher rate. Interest on late paid tax is currently 3%, so is also higher than this. By imposing this income tax charge, it will be harder to build up retained capital in the business. To suggest that partnerships do not need to accumulate working capital, illustrates a fundamental failure to understand how business operates. This will have an adverse effect on credit ratings and consequent loan terms.

64. Finance Act 2013 extended s 455 CTA 2010 to loans or advances made by close companies to partnerships where these are in effect commonly owned. Can HMRC confirm that capital contributions made within the terms of s 108 ITA 2007 will be excluded for s 455 purposes?

Without this reassurance, the capital contribution carve out from the mixed partnership rules will be of little real use.

Services s 850C (15)-(17)

65. The legislation refers to arm's length but the guidance at para 3.3.5(b) suggests this will usually be cost plus with a modest mark up. In our view, arm's length should mean essentially the same as with transfer pricing - essentially what a third party would charge in the circumstances.

66. We appreciate that guidance is simply that, and not law, but it is unhelpful to give just one particular interpretation as being the norm, since 'arm's length' is already well established as a principle in other areas of tax.

67. Should not any exclusion from the carve out for services which "involve" individual members operate only in so far as the amount reasonably relates specifically to that individual?

Allocation between individuals s 850C (3) and s 850D

68. The definition of power to enjoy (ss 850C (18) and (19)) is extremely wide and may potentially involve several individuals in the same calculation. Section 850C (3) suggests that there is a need to see whether it is reasonable to suppose that the profit is attributable to the power to enjoy by a particular individual. The guidance suggests a general approach would follow the profit allocation for the period.

69. While this may produce a relatively fair result in some cases, it is not always so straightforward. Among factors to consider are:

- Profit allocations may be complex, multi-tiered, or relate to specific elements of the business
- Profit allocations are often made some time after the period ends, often remaining provisional for some time, or being partially deferred.
- Decisions may be made by designated partners with a vested interest. While some of this may be viewed as being to manipulate tax, it is possible it will result in attempts to impose inequitable burdens on certain partners (eg, 'bad leavers') in the light of tax considerations and remembering that restitution by the non-individual is voluntary.

70. We are aware that s 850C (4) requires the individual's share to be increased in a just and reasonable basis, but that is not just in relation to the original allocation to a non-individual but, on reallocation, in comparison with other potentially affected individuals.

71. Clearly, a process is needed for resolving disputes between the individual partners themselves and also between the partners and the partnership as a whole. We note recent tax cases where the (adjusted) allocation of profits was the subject of a dispute and the appeals process enquiry as to amendments - see Graham Morgan and Heather Self v HMRC (TC 00046) and Raymond John Philips v HMRC (TC 00276). We would like more clarity as to how disputes would be handled under this proposed new legislation. This will be even more important for individual partners who have already left the business and are seeking redress.

72. We assume that any amendment to a partner's share of profit under this legislation will in effect amend that partner's share for all income tax purposes (which a reading of the s.850 C (4) and s.850 D (4) appears to suggest). For the avoidance of doubt, this should be made clear.

Payment from the non-individual to the individual s 850E

73. This relief applies where profits, having once been reallocated for tax purposes, eventually pass to the individual. To avoid taxing the same income twice, it ensures that the payment is not taken into account for calculating the income of either party.

74. The relief depends on:

- an agreement between A and B
- a payment being made
- that payment not being part of tax avoidance arrangements.

75. What form is it expected that 'the agreement' should take. For example, can it be a free standing oral agreement, or is it necessary that it is in writing? If in writing, should this be done in any particular way?

76. There may be (albeit perhaps relatively rare) cases where the non-individual partner really cannot make the payment for some time. For example, cash may be locked up, or implicated in a commercial claim. Are there time limits for making this payment so as to obtain relief? Or could the individual's payment of tax be deferrable?

77. Anyone agreeing to a settlement involving s 850C or s 850D, may well want confirmation that s 850E relief will not later be denied. We suggest that as part of agreeing the profit reallocation, this should be part of the process. Further, the s 1264A CTA 2009 adjustment should also be part of the settlement process.

Alternative Investment Fund Managers

78. We are pleased to note that feedback from the consultation on the taxation of partnerships prompted changes to recognise the enforced, by directive (AIFMD) (2011/61/EU), deferred earnings for Alternative Investment Fund Managers (AIFM). Currently, such partnerships often use a corporate partner to shelter the deferred earnings at a lower tax rate, but the new mixed partnership rules will prevent this strategy.

79. The intention is, for those partnerships that elect, to levy a tax charge on the partnership at the higher rate on the deferred income with full tax credit being given to the partner who was originally entitled to the deferred income when it is released to him. However, where the income does not vest in the original partner, it will be treated as a distribution with no further tax to pay, but with no tax repayable.

80. The draft legislation would appear to achieve its aim.

81. The draft legislation introduces a tax charge on a partnership which is contrary to the fact that partnerships are transparent for tax purposes. In the event of non-payment of the tax the liability would seem to become a joint and several liability of the partnership which does not sit well with self-assessment.

82. We are concerned that tax is payable in full at the additional rate on the total remuneration without repayment if the deferred income is ultimately paid to a different partner, for example because the original partner has left the partnership and the recipient partner may have a tax rate below the additional rate.

83. We understand the proposal to charge tax at the additional rate at the time the remuneration is earned rather than when it can be paid to the partner, but would prefer a system similar to the s 458 CTA 2010, relief in cases where a loan to a participator is released. If a similar approach was adopted the tax paid by the partnership could be repaid to the partnership when the remuneration vests in any individual partner who would then pay tax at their appropriate rate.

84. We are surprised at the additional revenue this measure is expected to raise, in 2015/16 in particular.

85. The effective start date of this legislation will be 6 April 2014, yet it will not be enacted until summer 2014. This does not allow sufficient time for partnerships to amend their partnership agreements to recognise the changes. Commencement from the start of the first accounting period beginning on or after 6 April 2014 would be more appropriate.

Disposals of assets through partnerships

86. There is already an existing general principle in legislation, which applies in certain circumstances, that consideration received for the sale or transfer of an income stream is taxed in the recipient's hands in the same way as the income itself would have been (s809AZA – 809AZG ITA 2007 and s752-757 CTA 2010).

87. The draft legislation is a targeted anti avoidance provision aimed at partnerships. As drafted the aim of the legislation seems to have been achieved.

88. We welcome the exception where the transferee and transferor are related by marriage, civil partnership, as siblings and linear ancestors and descendants.

E anita.monteith@icaew.com

APPENDIX

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.

4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/~/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)