

TAXREP 31/06

TAX LAW REWRITE: BILL 5: CORPORATION TAX

ITTOIA-RELATED PROVISIONS: TRADING AND PROPERTY INCOME AND PARTNERSHIPS

Memorandum submitted in October 2006 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(06)07 issued in June 2006 by HMRC Tax Law Rewrite Team

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC/SC(06)07 (Bill 5: Trading and Property Income and Partnerships) published in June 2006 by HMRC's Tax Law Rewrite team at <http://www.hmrc.gov.uk/rewrite/exposure/menu.htm>.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

GENERAL COMMENTS

3. Apart from minor comments, we are content with the drafting of these further ITTOIA-related provisions (we commented on the first batch in TAXREP 21/06 dated 9.8.06). They appropriately adopt for corporation tax rewrite purposes the style and approach used in earlier rewriting the same source legislation for income tax purposes in ITTOIA 2005.
4. Although repetitive in appearance, we have formally replied to each Question separately.
5. As indicated in paragraph 4.8 of Tax Law Rewrite Report and Plans 2006/07 (May 2006), it is clearly a sound approach to keep the Bill 5 clauses as close as possible to the wording and structure of the ITTOIA equivalent sections: to preferably draft the corporation tax clauses in full rather than rely on cross-referencing to the ITTOIA sections, and to incorporate in the rewrite for corporation tax purposes all relevant ITTOIA Changes to the law in order to bring the income tax and corporation tax codes back into line.

ANSWERS TO QUESTIONS

6. **Q1** We support the proposal not to rewrite references to a company carrying on a profession or vocation where these appear in the source legislation.
7. **Q2** We agree the proposal to carry Change 2 in ITTOIA across to corporation tax, in clause 8.
8. **Q3** We agree the proposal to carry Change 3 in ITTOIA across to corporation tax, in clause 13.
9. **Q4** We agree the proposal to carry Change 4 in ITTOIA across to corporation tax, in clause 14.

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10. **Q5** We agree the proposal to carry Change 5 in ITTOIA across to corporation tax, in clause 15.
11. **Q6** We agree the proposal to carry Change 6 in ITTOIA across to corporation tax, in clause 21.
12. **Q7** We agree the proposal to carry Change 158 in ITTOIA as it applies to s 74(1) (g) ICTA across to corporation tax, concerning clause 23.
13. **Q8** We agree the proposal to carry Change 158 in ITTOIA as it applies to s 74(1) (c) ICTA across to corporation tax, concerning clause 23.
14. **Q9** We agree the proposal to carry Change 7 in ITTOIA across to corporation tax, in clause 24.
15. **Q10** We agree the proposal to carry Change 8 in ITTOIA across to corporation tax, in clause 26.
16. **Q11** We agree the proposal to carry Change 9 in ITTOIA across to corporation tax, in clause 36(3).
17. **Q12** We agree the proposal to carry Change 10 in ITTOIA across to corporation tax, in clause 37(4).
18. **Q13** We agree the proposal to carry Change 11 in ITTOIA across to corporation tax, in clause 38(2)(a).
19. **Q14** We agree the proposal to carry Change 13 in ITTOIA across to corporation tax, in clause 45(1).
20. **Q15** We agree the proposal to carry Change 14 in ITTOIA across to corporation tax, in clause 46(5).
21. **Q16** We agree the proposal to carry Change 15 in ITTOIA across to corporation tax, in clause 49.
22. **Q17** We agree the proposal to carry Change 158 in ITTOIA, as it applies to s 74(1) (d) ICTA, across to corporation tax, in clause 51.
23. **Q18** We agree the proposal to carry Change 16 in ITTOIA across to corporation tax, in clause 53.
24. **Q19** We support the proposal to provide for Scottish Ministers to approve educational establishments in Scotland for the purposes of relief under clause 53 (Educational establishments); and we also support the proposal to accordingly amend s 71 of ITTOIA, to bring the income and corporation tax codes into line.

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25. **Q20** We agree the proposal to carry Change 17 in ITTOIA across to corporation tax, in clause 57 (retraining courses).
26. **Q21** We agree the proposal to carry Change 14 in ITTOIA across to corporation tax, in clause 61(2).
27. **Q22** We agree the proposal to carry Change 18 in ITTOIA across to corporation tax, in clause 62.
28. **Q23** We agree the proposal to carry Change 19 in ITTOIA across to corporation tax, in clause 63.
29. **Q24** We agree the proposal to carry Change 20 in ITTOIA across to corporation tax, in clause 64(3).
30. **Q25** We agree the proposal to carry Change 22 in ITTOIA across to corporation tax, in clause 64(6)(b).
31. **Q26** We agree the proposal to carry Part B of Change 149 in ITTOIA across to corporation tax, in clause 70(6).
32. **Q27** We agree the proposal to carry Change 23 in ITTOIA across to corporation tax, in clause 71.
33. **Q28** We agree the proposal to carry Change 24 in ITTOIA across to corporation tax, in clause 73.
34. **Q29** It is clearly correct to rewrite, in clause 78(2) (Excluded cases), the rule in paragraph 6 of Schedule 6 to FA 1999 as it was before it was repealed in error by ITTOIA. This is a situation where s 882 ITTOIA (consequential amendments) would normally be applied to effect the correction. If the change is not made by means of the s 882 ITTOIA procedure, the taxpayer will rely on HMRC practice to apply the exemption if (although unlikely) a relevant case does arise before Bill 5 is enacted. The Explanatory Notes might be used to notify such practice, although, in principle, it would be preferable to amend s 100 ITTOIA (Excluded cases). However, as the legislation to be corrected is itself now being rewritten, we appreciate that it is appropriate to effect the correction in the rewrite as proposed. Provided the above practice is publicised, we would not object; but this unusual situation ought to be drawn to the attention of the Joint Committee when Bill 5 goes before it.
35. **Q30** We agree the proposal to carry Change 27 in ITTOIA across to corporation tax, in clause 82(1)(d).
36. **Q31** We agree the proposal to carry Change 22 in ITTOIA across to corporation tax, in clause 82(3).
37. **Q32** We agree the omission in rewritten clause 82 of the references to mutual insurance and registered industrial and provident societies in s 491(9) and (11) of ICTA.

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38. **Q33** We agree the proposal to carry Change 28 in ITTOIA across to corporation tax, in clause 84.
39. **Q34** We agree the proposal to carry Change 29 in ITTOIA across to corporation tax, in clause 85.
40. **Q35** We agree the proposal to carry Change 30 in ITTOIA across to corporation tax, in clause 85(1).
41. **Q36** We agree the proposal to carry Change 31 in ITTOIA across to corporation tax, in clause 85.
42. **Q37** We agree the proposal to carry Part 13 of Change 149 in ITTOIA across to corporation tax, in clause 86(3).
43. **Q38** We agree the proposal to carry Change 19 in ITTOIA across to corporation tax, in clause 86.
44. **Q39** Having regard to the explanation in Change 30 in Annex 1, it appears to be appropriate that clause 87 (Gifts of medical supplies and equipment) relief should apply for corporation tax purposes only.
45. **Q40** We agree the proposal to carry Change 22 in ITTOIA across to corporation tax, in clause 88(3)(b).
46. **Q41** We agree the proposal to carry Change 32 in ITTOIA across to corporation tax, in clause 91(6).
47. **Q42** We agree the proposal to carry Change 33 in ITTOIA across to corporation tax, in clause 97.
48. **Q43** We agree the proposal to carry Change 36 in ITTOIA across to corporation tax, in clause 103.
49. **Q44** We agree the proposal to carry Change 42 in ITTOIA across to corporation tax, in clause 109.
50. **Q45** We agree the proposal to carry Change 79 in ITTOIA across to corporation tax, in clause 110.
51. **Q46** We agree the proposal to carry Change 46 in ITTOIA across to corporation tax, in clause 116.
52. **Q47** We agree the proposal to carry Change 47 in ITTOIA across to corporation tax, in clause 116.

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53. **Q48** We agree that it is sensible to apply clause 118 (Special rules for partnerships), restricting the deduction for a deemed employment payment, and the cap on connected expenses, by reference to a firm's period of account.
54. **Q49** We agree the proposal to carry Change 48 in ITTOIA across to corporation tax, in clause 119.
55. **Q50** We agree the proposal to carry Change 19 in ITTOIA across to corporation tax, in clause 121.
56. **Q51** Having regard to the explanation in Change 40 in Annex 1, we support the proposal to remove the distinction between trades, professions and vocations. It is clearly sensible in clauses 129-132 to apply the "actual price" basis of valuation where trading stock is transferred by a company to a person carrying on (or intending to carry on) a profession or vocation (rather than only to a person carrying on a trade, as in the source legislation) and to similarly amend s 175(2) ITTOIA to extend it for income tax purposes to transferees who carry on a profession or vocation. It follows that we also support the proposed amendments in Schedule 1 paragraphs 111-114. We also agree the proposed amendment to s 184(1) ITTOIA (Basis of valuation of work in progress), to include transfers of work in progress to an individual or company carrying on a trade (s 184(1) ITTOIA being currently restricted to transfers to a person carrying on, or intending to carry on, a profession or vocation) within the "actual price" basis of valuation.
57. **Q52** We agree the proposal to carry Change 50 in ITTOIA across to corporation tax, in Chapter 11 (Deductions from profits: unremittable amounts).
58. **Q53** We agree the proposal to carry Change 51 in ITTOIA across to corporation tax, in clause 141(2).
59. **Q54** We agree the proposal not to rewrite in clause 162 (Further rules about allowable deductions) the references to capital allowances in s 105(1)(b) and (3) of ICTA, being unnecessary because any capital allowance is allowed as a trading expense.
60. **Q55** We agree the proposal to carry Change 66 in ITTOIA across to corporation tax, in clause 164.
61. **Q56** We agree the proposal to carry Change 6 in ITTOIA across to corporation tax, in clause 176.
62. **Q57** We agree the proposal to carry Change 68 in ITTOIA across to corporation tax, in clause 276.
63. **Q58** We agree the proposal to carry Change 69 in ITTOIA across to corporation tax, in clause 178(3).
64. **Q59** We agree the proposal to carry Change 70 in ITTOIA across to corporation tax, in clause 182(1)(b).

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65. **Q60** We agree the proposal to carry Change 71 in ITTOIA across to corporation tax, in clause 182(5).
66. **Q61** We agree the proposal to carry Change 72 in ITTOIA across to corporation tax, in clause 185(1)(b).
67. **Q62** Having regard to the explanation in Change 49 in Annex 1, we agree that it is necessary to amend s 37(1)(c) ICTA (inserted by paragraph 20(2)(b) of Schedule 1 to ITTOIA) to remove the restrictive reference to a “UK property business” which was inserted in error by ITTOIA. The procedure in s 882 ITTOIA would normally apply to effect this amendment; but we have no objection to the proposed correction instead now being effected by the rewrite in clauses 188(4)(c) and (d). The attention of the Joint Committee should be clearly drawn to this treatment, however.
68. **Q63** We agree the proposal to carry Change 73 in ITTOIA across to corporation tax, in clause 188(5).
69. **Q64** We agree the proposal to carry Change 14 in ITTOIA across to corporation tax, in clause 190(3).
70. **Q65** We agree the proposal to carry Change 15 in ITTOIA across to corporation tax, in clause 194(6).
71. **Q66** We agree the proposal to carry Part B of Change 149 in ITTOIA across to corporation tax, in clause 197(2).
72. **Q67** We agree the proposal to clarify the application of s 38(1)(a) ICTA, in Rule 1 of clause 201(1), and the proposal to correspondingly amend Rule 1 in s 303(1) ITTOIA to bring the income and corporation tax codes into line.
73. **Q68** We agree the proposal to clarify the application of s 38(1)(b) ICTA, in Rule 2 of clause 201(1), and the proposal to correspondingly amend Rule 2 in s 303(1) ITTOIA to bring the income and corporation tax codes into line.
74. **Q69** We agree the proposal to treat all s 34 amounts as premiums for the purposes of the duration rules, and the proposal to correspondingly amend s 303 ITTOIA to bring the income and corporation tax codes into line.
75. **Q70** We agree the proposal to carry Change 14 in ITTOIA across to corporation tax, in clause 210(2)(b).
76. **Q71** We agree the proposal to repeal s 24(6)(a) ICTA as redundant.
77. **Q72** We agree, as explained in Explanatory Notes paragraphs 939-947, the proposal not to rewrite most of s 40 ICTA.
78. **Q73** We agree the proposal to carry Change 77 in ITTOIA across to corporation tax, in clause 221(6).

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79. **Q74** We agree the proposal to carry Change 77 in ITTOIA across to corporation tax, in clause 222(4).
80. **Q75** We agree the proposal not to rewrite s 119(2) ICTA.
81. **Q76** We agree the proposal to carry Change 78 in ITTOIA across to corporation tax, in clause 227(1)(b).
82. **Q77** Having regard to the explanation in Change 56 in Annex 1, we have no objection to the proposal to re-instate the effect of s 111(10) ICTA for corporation tax, ensuring that the rule in clause 247 (that a firm is not a separate entity for tax purposes) applies to a firm carrying on any business, whether or not that business is a trade. As the procedure in s882 ITTOIA would normally apply to effect this amendment the alteration of the Joint Committee should, however, be clearly down to this treatment.
83. **Q78** We agree the proposal to drop the rule in paragraph 13(2) of Schedule 22 to FA 2002, as being unnecessary for corporation tax purposes, on the basis that a positive adjustment on a change of basis is treated as a trade receipt and, once included in the calculation of the firm's trading income, is allocated to the partners of a partnership in accordance with the general rule in clause 250.
84. **Q79** We agree the proposal to carry Change 143 in ITTOIA across to corporation tax, in clause 251.
85. **Q80** We agree the proposal to carry Change 143 in ITTOIA across to corporation tax, in clause 252.
86. **Q81** We agree the proposal to carry Change 145 in ITTOIA across to corporation tax, in clause 254(2).
87. **Q82** We welcome the proposal to clarify the effect of s 558 CAA 2001.
88. **Q83** We agree that the part of s 74(1)(f) ICTA, which dealt with the deduction of interest, has been made redundant by the loan relationships legislation in Chapter 2 of Part 4 of FA 1996 and we accordingly agree the proposal not to rewrite it.
89. **Q84** We agree the proposal to repeal s 74(1)(h) ICTA, which is considered to be redundant.
90. **Q85** We agree the proposal to repeal s 74(1)(k) ICTA.
91. **Q86** We agree the proposal to repeal s 74(1)(m) ICTA.
92. **Q87** We agree the proposal to repeal s 85(5)(d) ICTA.
93. **Q88** We agree the proposal to repeal s 92 ICTA.

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94. **Q89** We agree the proposal to repeal ss 586 and 587 ICTA.
95. **Q90** We agree the proposal to repeal s 817 ICTA.
96. **Q91** We agree the proposal to repeal paragraph 5 of Schedule 30 to ICTA.
97. **Q92** We agree the proposal not to rewrite s 63 FA 1999.
98. **Q93** We do not object to the proposal to amend the definition of “qualifying hire car” in s 49(2)(b) ITTOIA to include a motor cycle, and as a practical expedient to this amendment being made as part of the rewrite.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 27 Restriction of deductions

99. **(4)(a)** Is the reference to ‘or profession’ appropriate?

cl 38 Car or motor cycle hire: supplementary

100. **(2)(c)** In the context of clause 38(2), should it be provided that ‘car’ in s 82 CAA 2001 is to be read as including ‘motor cycle’?

cl 70 Payments to research associations, universities etc

101. **(1)(a)** How is ‘research and development’ defined for the purposes of clause 70?

cl 158 Debts released after cessation

102. We note that in the income tax counterpart clause 249(3) ITTOIA reference is made to a deemed discontinuance of a company’s trade under s 337(1) ICTA. We assume that, in the corporation tax context, it is considered unnecessary to incorporate this into clause 158.

cl 182 Sums payable for variation or waiver of terms of lease

103. In Change 46 of Annex 1, in the final paragraph, the words ‘in respect of a sum payable by a tenant to the landlord or a company connected with the landlord’ are confusing where the issue concerns a sum payable by a tenant, which is not due to the landlord or to a company connected with the landlord. It would be clearer if these words were omitted,
104. In this context, in Explanatory Notes paragraph 796, the second sentence is also confusing. The strict effect of s 34(5) ICTA is to treat a sum payable to a person unconnected with the landlord for the variation or waiver of the terms of a lease as the payment of a premium to the landlord. This is now prevented by clause 182(1)(b). Can this be explained more clearly in Explanatory Notes paragraph 796 – perhaps by omitting the second sentence, and amending the beginning of the third sentence to state ‘Subsection (1) prevents any charge on the landlord by providing’.

Schedule 1

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para 62

105. Section 578 ICTA (Housing grants) appears not to have been rewritten. Is there a reason for this?

para 108

106. We have no objection in practice to the Bill 5 rewrite being used to correct the omission of 'to' in s 88(6)(b) ITTOIA.

para 118

107. We have no objection in practice to the Bill 5 rewrite being used to correct the minor s 279(3) ITTOIA typing error.
108. We similarly have no objection to the rewrite substituting 'terms' for 'term' in various ITTOIA sections (Schedule 1 paragraphs 109, 117, 119, 120(2), 128, 130(2) and 135(2),(3).)

DETAILED COMMENTS ON DRAFTING

cl 49 Restrictions on section 46 expense: lease premium receipts

109. In Explanatory Notes paragraph 185, in the second line, the closing bracket after 'section 87(5)' needs to be moved to the right of 'ICTA'.

cl 87 Gifts of medical supplies and equipment

110. In Change 30, in the third paragraph, in the fourth line. 'united Kingdome' should be 'United Kingdom'.

cl 178 Lease premiums

110. In Change 45 in Annex 1, in the last line on page 206, should 'be' be inserted after the first 'to'?

cl 251 Profit-making period in which some partners have losses

112. In Explanatory Notes paragraph 1081, in the second line, a space is needed between '250' and 'is'.

cl 252 Loss-making period in which some partners have profits

113. In Explanatory Notes paragraph 1090, in the second line, a space is needed between '250' and 'is'.

cl 254 Resident partners and double taxation agreements

114. In Explanatory Notes, paragraph 1104, in the penultimate line, 'make' should be 'makes'.

cl 257 Sale of patent rights: effect of partnership changes

115. In Explanatory Notes paragraph 1123, in the first line, the words 'the what' require attention. In Change 60 in Annex 1, in the first line of the third paragraph, the reference should be to 'section 558 of CAA' and not to 'section 588 of CAA'.

Sch 1 Minor and consequential amendments

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116. In Explanatory Notes paragraph 1157, in the last line, should 'hire' be inserted before 'car'?

Sch 3 Repeals

117. Under ITTOIA 2005, include omission of word 'profession' in s 863(6) (limited liability partnerships).

TJH/PCB
26.10.06

Tax Representation

ANNEX A

WHO WE ARE

The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.

The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at tdtf@icaew.co.uk or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

THE 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 <http://www.icaew.co.uk/index.cfm?route=128518>.