

## **TAXREP 56/05**

### **DEDUCTION OF INCOME TAX AT SOURCE**

#### **TAX LAW REWRITE: BILL 4**

*Memorandum submitted in November 2005 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in September 2005 by HMRC Tax Law Rewrite Team*

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## DEDUCTION OF INCOME TAX AT SOURCE

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#### INTRODUCTION

1. We welcome the opportunity to comment on Paper CC/SC(05)28 published on 13 September 2005 by HMRC 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 the Annex.

#### GENERAL COMMENTS

3. It is helpful to now view all the Deduction of Income Tax at Source clauses together. We responded earlier to Paper CC(04)11 in TAXREP 39/04 (18.8.04), and to Paper CC/SC(05)09 in TAXREP 31/05 (26.7.05), in which Papers certain of the clauses (now revised) were originally exposed for consultation.
4. Having regard to the Response Document Paper CC(05)01 and the further Commentary now, and subject to a minor query regarding clause 59(5), we are content with the amendments to the draft clauses first exposed in Paper CC(04)11, to which we responded in TAXREP 39/04 (18.8.04), and which are now included in Part 1 Chapter 1 and in Part 2 Chapters 6, 7 and 12-14.
5. With reference to Explanatory Notes paragraph 141, we note that ESC A16 will be amended to reflect the new legislative structure relating to annual payments.
6. We are also content with the drafting of Part 2 Chapter 1 (Introduction), comprising clauses 7-9.
7. We note that the draft clauses in Part 2 Chapter 2 (Deduction by deposit-takers and building societies) are included for information, to show the revisions made to them and to provide context. We responded in TAXREP 18/05 (20.4.05) to the original version of these clauses, contained in Paper CC(05)02, and we note the revisions now made to them, having regard to the relevant comments in the 29.6.05 Response Document (Paper CC/SC(05)22). No further comments arise at this stage, and we appreciate that further revisions may be made to draft clauses 10-33 and that they will be subject to further consultation in due course as part of draft Bill 4.
8. We are content with the drafting of Part 2 Chapters 3, 4 and 5, comprising new clauses, subject to minor points on various draft clauses below..
9. In Part 2 Chapter 7 (Deduction from other payments) we suggest that clause 66 should be located after clause 67, with appropriate re-numberings and amendments to references to those sections elsewhere in Chapter 7, as clause 66 is interpretative only

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of clause 67. We are otherwise content with the drafting of Part 2 Chapter 7. We are also content with the drafting of Part 2 Chapter 8 (Chapters 6 and 7: Special provision in relation to royalties), apart from our comments on clause 77(1) below; with Part 2 Chapter 9 (Payments between companies etc: exemption from duties to deduct), apart from our comments on clauses 81 and 86 below; and with the proposed approach to the rewrite of the relevant material in s 469 ICTA in Part 2 Chapter 10 (Unauthorised Unit Trusts), subject to our comments on clause 91 (Useable excess of income from earlier tax years).

10. We note that clauses 92-109 in Chapter 11 (Collection: Deposit-takers, building societies and UK resident companies) are included for information to show the revisions made to the Paper CC/SC(05)09 draft clauses and to provide context. We have nevertheless compared the revised clauses with those in Paper CC/SC(05)09, in the context of the 13.9.05 Response Document Responses to Paper CC/SC(05)09. We note the revisions to take account of the decisions to remove “charges to tax” in the context of deduction at source provisions, to leave s 87 TMA as consequentially amended in TMA and not to rewrite paragraph 8 Schedule 16 ICTA. We are content with the resulting revisions reflected in Chapter 11 subject to a minor comment concerning clause 109 (Power to make regulations modifying this Chapter).

## ANSWERS TO QUESTIONS

11. **Q1** We agree the inclusion of sub-section 3(1)(d) as simplifying the legislation by aligning the approach to patent royalties with that for annual payments.
12. **Q2** We support the retention throughout Part 2 of the distinction between the deduction of “sums representing income tax” and the collection of “income tax which those sums represent”. We agree that this makes clearer the conceptual distinction between income tax charged on a person’s income and income tax deducted at source, which will not be subject to a “charge to tax”. In this context, should the title of Part 2 also be “Deduction of sums representing income tax at source” rather than “Deduction of income tax at source”?
13. **Q3** We have no objection to the proposal to enact the principle that statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998 is not yearly interest.
14. **Q4** Whilst we have sympathy with the argument in Explanatory Notes paragraph 82, all doubt would be avoided if clause 48(3)(b) were to be retained. This will ensure that clause 48 (Payments in respect of building society securities) cannot apply to require deduction of a sum representing income tax when interest is paid on a qualifying deposit right.
15. **Q5** Having regard to our response to Question 4, it follows that we consider that the references to “qualifying deposit rights” in clauses 26, 48(3)(b) and 119 should preferably be retained. Clause 26 is helpful in also making clear that a qualifying deposit right is not a relevant investment for the purpose of clause 11 (Duty to deduct sums representing income tax).

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16. **Q6** We have no objection to the inclusion in clause 49 (Interpretation) of a specific reference to “permanent interest bearing share” in the definition of “security”.
17. **Q7** The term “gross-paying government securities” is suitably descriptive of the securities within clause 53(2) (Payments of UK public revenue dividends which are payable gross).
18. **Q8** We agree that it is appropriate to drop the s 50(A1) ICTA words “wherever issued and whatever the terms on which they were issued” in rewritten clause 53(2) and (3).
19. **Q9** We agree the proposal that all tax on qualifying annual payments and patent royalty etc payments by individuals should be collected through Self-Assessment.
20. **Q10** We agree the proposal to refer directly to officers of Revenue and Customs rather than to the Board in clauses 73, 76 and 82.
21. **Q11** We are content with the proposed approach to the rewrite of the material in s 469 ICTA relating to unauthorised unit trusts.
22. **Q12** We have no objection to the collection of income tax as such through the trustees’ self-assessment return, in accordance with practice and in keeping with the approach already consulted on in relation to “charges on income” generally. As clause 90 (Income tax to be collected from trustees) deals with the collection of actual income tax, is it appropriate in clause 89(3) to replace the words ‘a sum representing income tax’ by ‘income tax’?
23. **Q13** We agree the proposal to remove “this charge to tax”, in order to bring the rewritten version of s 350(1) ICTA into line with parallel collection mechanisms.
24. **Q14** We have no objection to the extension of the s 481(3) ICTA definition of “deposit” to apply to deposits with building societies, in order to ensure that the clauses 115, 118 and 119 definitions are the same for both deposit-takers and building societies.
25. **Q15** We agree that s 552(2)(b) ITTOIA (definition of “certificate of deposit”) as now rewritten in clause 115 does require the certificate of deposit to recognise an obligation to pay a stated principal amount in one tranche. We accordingly agree the proposal to align the clause 118 definition of “qualifying certificate of deposit” to the wording of the definition of “qualifying time deposit” in clause 25(2), in order to clarify that a “qualifying certificate of deposit” can only be paid in one tranche “at a specified time”.
26. **Q16** We agree the proposal to clarify in clause 119(2)(b) (Meaning of “qualifying deposit right”) that a “qualifying deposit right” can only be repaid in one tranche.
27. **Q17** We are not responding to the technical point raised, but if such units can be issued then the words “or such units” should be retained in clause 119’.

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28. **Q18** We agree that it is helpful to spell out in clause 120 (Meaning of “quoted Eurobond”) that “security” includes any permanent interest bearing share as defined in s 117 TCGA 1992. We do not see any need to incorporate different versions of the definition within clause 37 (as applying to relevant payments of yearly interest) and within clause 48 (as applying to payments in respect of building society securities).

## SPECIFIC COMMENTS ON DRAFT LEGISLATION

### **cl 38 Payments of yearly interest which are dealt with under other regimes**

29. (5) What is the origin of clause 38(5)?

Is the signpost to clause 45 correct?

### **cl 57 Power to make regulations**

30. (1)(a) The reference to accounting for and paying “income tax” should presumably be to “sums representing income tax under section 52”. The existing words “sums representing income tax under section 52” might then be replaced by “such sums”.

(2)(b), (3) With reference to Explanatory Notes paragraph 117, we note that further consideration is being given to whether it is now necessary to rewrite s 350A(2) ICTA.

### **cl 59 Meaning of “qualifying annual payment”**

31. (5) Why are payments to which s 125(1) ICTA (annual payments made for non-taxable consideration) applies not included in the list of excluded types of payment? They were included in Paper CC(04)11 draft clause 8(5) (Meaning of “qualifying annual payment”).

### **cl 77 Duty of payee to notify, where payment not exempt**

32. (1) The words “to be” should be included before “made” in the second line, in accordance with the source legislation in s 101(5) ICTA. By way of analogy, clause 73(1) is drafted on the basis of the payment still having to be made.

### **cl 81 Exception from duties to deduct sums representing income tax**

33. (5) Having regard to the explanation in Explanatory Notes paragraph 226, the purpose of clause 81(5) might perhaps be more clearly put by omitting that sub-clause and replacing clause 81(1)(a) with “it is made by a company acting otherwise than as trustee or agent for another person or is made by a local authority, and”

### **cl 86 Recipients who are to be paid gross**

34. (2) Is it intended that Act-wide definitions will apply to define “a local authority”, “a charity” and “a registered pension scheme” for the purposes of clause 86?

### **cl 91 Useable excess of income from earlier tax years**

35. (2) The calculation of the useable excess of income from earlier tax years in clause 91(2) will always start from “Year 1” regardless of whether the cumulative excess may have been wholly extinguished to the end of a past tax year by the application of clause 90(5)(a) in that earlier year. Is it possible to draft clause 91 to provide that the

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clock starts only from the earliest year still having a useable excess of income at the start of the tax year at issue for the purposes of clause 90? This would be administratively more convenient for the trustees, and should lead to no abuse as the trustees will clearly not wish to understate an available prior years' excess.

## **cl 105 Relevant payer's duty to deliver amended**

36. Despite the response in paragraph 41 of the 13.9.05 Response Document Responses to Paper CC/SC(05)09 (Collection of Tax: Deposit-takers, building societies and UK resident companies (Schedule 16 ICTA etc)) we remain unclear why clause 14 in that Paper, now clause 105 (Relevant payer's duty to deliver amended return), should not include a duty on the relevant payer to correct returns made under (now) clause 97 (Payments otherwise than in an accounting period), as a PRC matter.

## **cl 109 Power to make regulations modifying this Chapter**

37. Although comments are not called for at this stage, may we suggest that draft clause 20(7) in Paper CC/SC(05)09 needs to be retained in clause 109 in view of the references to 'modify' and 'modifications' in clause 109(2) which also include replacing and supplementing in the source legislation.

## **DETAILED COMMENTS ON DRAFTING**

### **cl 44 Interest paid by recognised clearing houses, etc**

38. (6) The origin is ICTA s 349(4) rather than ICTA s 349(6). Similarly, the reference in Explanatory Notes paragraph 68 should be to section 349(3) and (4) of ICTA rather than to section 349(3) and (6).

### **cl 50 Introduction**

39. (4) Having regard to clause 50(5), is it preferable to refer to sections "53 and 54" rather than "53 to 54"?

### **cl 55 Deduction at source application**

40. In Explanatory Notes paragraph 111, should the reference be to "clause 54(4)" rather than to "clause 54(3)"?

### **cl 57 Power to make regulations**

41. In Explanatory Notes paragraph 116, in the first line, insert "be" after "may"..

### **cl 113 Payments to companies**

42. In Explanatory Notes paragraph 277, the three references to subsection "(2)" should be to subsection "(3)".

TJH/PCB  
11.11.05

### 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.