

## **TAXREP 58/05**

### **INCOME TAX RATES**

#### **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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# Tax Representation

## INCOME TAX RATES

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#### INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)30 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. We note that the draft clauses in Paper CC/SC(05)30 will be closely associated with material on the tax computation still forthcoming at 13 September 2005.
4. Part I (Basic Provisions) logically structures the source material the change to and rates of income tax, and generally rewrites the source legislation well.
5. However, please see our criticism of clause 1 (Charges to income tax) in Chapter 1 which we regard as less definitive than section 1(1) of ICTA (The charge to income tax). Clause 2 (Income tax an annual tax) is also more elaborate than section 2(2) of ICTA but it still does encompass 'every assessment and charge' with due reference also to sections 1(2) and 832(1) ICTA, and we are content with its drafting.
6. Clause 3 (The starting rate, basic rate and higher rate) is a particularly useful introductory clause in Chapter 2 (Rates at which income tax is charged) and draws the distinction well between the three main rates which may apply to all taxpayers (in clause 3(1)) and the other rates which may apply to a particular taxpayer (signposted in clause 3(3)).
7. As a comment on policy, whilst accurately rewritten, Chapter 2 (Rates at which income tax is charged) reflects how complex it has become for a taxpayer to actually calculate his income tax liability once taxable income has been quantified. It is surely unacceptable under a self-assessment tax regime that the taxpayer must struggle through the present rates maze, and whatever the guidance, we suspect that it proves beyond the ability of many to correctly to calculate or check their income tax liability – let alone the capital gains liability on top.

#### ANSWERS TO QUESTIONS

8. **Q1** We have no objection to the proposal to not rewrite section 2(1) ICTA on the basis that it is otiose as fractional parts of a pound of income are not assessed to income tax (an assessment being in practice made to a whole number of pounds).

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9. **Q2** We have no objection to the proposal to change the name of ‘the lower rate’ to ‘the savings rate’ which is the informal name now in use. We would note in passing however that some individuals might also regard dividend income as being income from savings.
10. **Q3** We approve the proposal to change the name from the cumbersome ‘the rate applicable to trusts’ to ‘the trust rate’
11. **Q4** We agree the proposal to make it explicit that the income of an individual within Chapters 5 and 6 of Part 4 of ITTOIA is charged at the dividend upper rate rather than the higher rate.
12. **Q5** We agree the proposal to provide a priority rule for income within paragraphs (a) and (b) of section 833(3) ICTA.
13. In Schedule 1 paragraph 4 (Consequential amendments – ITTEPA), in inserted section 404A(4) in the first line, would it be clearer to replace the words ‘has effect in spite of’ by ‘has priority over’? Similarly, in paragraph 6 of inserted section 465A(4) in the first line, and in draft clause 12(7) in the first line?

## **SPECIFIC COMMENTS ON DRAFT LEGISLATION**

### **Clause 1: Charges to income tax**

14. Section 1 ICTA (The charge to income tax) is an exhaustive provision, in view of section 1(c) ICTA covering ‘any other amounts’ which are charged to income tax under the Income Tax Acts. The rewrite of this section in draft clause 1 (Charges to income tax) on a non-exhaustive basis is therefore incorrect. It is not helpful simply to list certain main other charges to income tax in clause 1(2). This neither defines the scope of clause 1 nor fully indicates to the user which are the other provisions under which income tax is charged. We would prefer clause 1(2) to incorporate section 1(1)(c) as its main text, and then to state that the clause 1(2) coverage includes [1(a)-(d)] as listed. We appreciate that the intention is helpfully to guide the user to certain other main charges outside the scope of clause 1(1), but the current drafting of clause 1 in consequence loses the all-encompassing scope of section 1(1) ICTA.

### **Clause 7: Income charged at the starting, basic and higher rates: individuals**

15. We assume that the word ‘income’ where used in clause 7 as meaning taxable income for the purposes of charging income tax at particular rates, will, with or without any necessary qualification, be cross-referable to the forthcoming material on the tax computation itself.
16. With reference to sub-clauses 7(1)-(3), we note that Explanatory Notes para 20 refers to the ‘starting rate band’, ‘the basic rate band’ and ‘the higher rate band’. Whilst these are not terms used in the draft clauses themselves, they are of course familiar.

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## **Clause 12: Savings and dividend income to be treated as highest part of income**

17. It might improve the clarity of this clause if the words ‘which take priority over it’ were added at the end of clause 12(6). Please also see our response to Q5 as regards clause 12(7).

## **Clause 14: Meaning of ‘savings income’**

18. Is there any reason why sub-clause 14(4) should not be combined with sub-clause 14(3) as clause 14(3)(d), with sub-clauses 14(3)(a)-(d) having a single common introduction of ‘income chargeable under’ in the first line of clause 14(3)?

## **Clause 17: Indexation of the starting rate limit and the basic rate limit**

19. We note from Explanatory Notes para 44 that it is considered unnecessary to rewrite the words ‘unless Parliament otherwise determines’ as qualifying clause 17.
20. We also note that clause 26 in Paper CC/SC(04)6 (Personal reliefs), concerned with the indexation of allowances and thresholds, is to be revised to mirror this clause.

## **DETAILED COMMENTS ON DRAFTING**

### **Clause 2: Income tax an annual tax, and**

### **Clause 3: The basic rate, starting rate and higher rate**

21. We prefer the use of ‘that year’ rather than ‘the year’ at the end of the sentence in clause 2(1), as indicating more clearly that income tax is charged for the year in respect of which the Act provides for it to be charged. Similarly in clause 3(2).

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.