

## **TAXREP 31/05**

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

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

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

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# Tax Representation

## DEDUCTION OF TAX AT SOURCE

### TAX LAW REWRITE: BILL 4

#### INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)09 published on 4 May 2005 by HMRC Tax Law Rewrite Team at <http://www.hmrc.gov.uk/rewrite/exposure/menu.htm>. Our response takes account of our understanding from subsequent discussion that it is now intended not to introduce a 'charge to tax' upon the payer in relation to those payments collected under Schedule 16 ICTA 1988 which were not already the subject of such a charge. We are content with this changed approach in principle.
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 appropriate to bring together in the Chapter 2 draft clauses the provisions about the collection of income tax deducted at source by deposit-takers, building societies and UK-resident companies. The provision of an explicit list of the types of payments to which Chapter 2 applies, to be further extended in the future, is also likely to assist users.
4. Setting out in some detail the way in which set-off claims work and making it explicit, in line with current practice, that returns are only required if a relevant payment is made or a set-off claim is to be made is also helpful.
5. The inclusion of the rewritten s 87 TMA, as relating specifically to tax due under Schedule 16, in draft clauses 18 and 19 improves users' accessibility to these interest on overdue income tax provisions.

#### ANSWERS TO QUESTIONS

6. **Q1** Now otiose, in view of our understanding that Change {jc 484} will be dropped.
7. **Q2** In drafting clause 4 (Return periods) we agree the proposal to align the rules about building society returns where no quarter date falls within the accounting period with the corresponding rules for deposit-takers.
8. **Q3** It is clearly sensible to make it clear, in clause 5(2)(b) (Payments in an accounting period), in line with practice, that returns need only be delivered when a relevant payment has been made in a return period. We also agree the related consequential changes to clauses 8(2), 9(4), 13 and 14.

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9. **Q4** We agree the proposal, in drafting clause 6(3) (Payments otherwise than in an accounting period), to specify the information required to be included in a return made otherwise than in an accounting period, aligning with the position in clause 5(4) for returns where a relevant payment is made in an accounting period.
10. **Q5** We welcome the proposal to set out in more detail in clause 8 (preparatory conditions for a set-off claim), than in the source legislation, when a claim for set-off can be made.
11. **Q6** We similarly welcome the proposal to set out in more detail in clause 9 (How a set-off claim works) the effects of a claim for set-off, as helpful to the reader's understanding.
12. **Q7** Clause 15(1) relates to the same circumstances as clause 14(1)(b), the inclusion of a relevant payment in a return which should not have been included. Despite the original intention referred to in Explanatory Notes paragraphs 56 and 57, this type of error remains possible. Clause 14(3) already provides that resulting liabilities to income tax, on the basis of excluding the relevant payment item, are to be recalculated. It could be argued from this that clause 15, rewriting paragraph 8 of Schedule 16 ICTA, is unnecessary. However clause 14 is predicated on the relevant payer having to deliver an amended return. If the relevant payer failed to do so clause 15 will enable an officer of Revenue and Customs, who becomes aware otherwise of the error, to effect the necessary income tax adjustment. As an added safeguard against the relevant payer's incompetence, clause 15 therefore has intrinsic value.
13. As drafted, clause 15 will not apply to clause 6 (Payments otherwise than in an accounting period) and this appears anomalous (please also see our comments below on clause 14 (Relevant payer's duty to deliver amended return)).
14. Paragraph 8 of Schedule 16 ICTA also refers to the effect of the error on paragraph 5 Schedule 16 ICTA claims to set off income tax borne on income received against the income tax liability on payments made. As drafted clause 15 does not overtly take account of this, unless it is to be read into the clause 15(2) and (3) procedure for identifying the correct resulting liabilities to income tax. Further, is an incorrect claim for set-off also within 'any other error' in clause 14(1)(c)?
15. **Q8** As the only primary legislation to which s 87 TMA applies is Schedule 16 ICTA there is clearly a good case for integrating it within this Chapter and repealing it in Bill 4. We have no objection to this.
16. We note the consequential cross-referencing concern regarding those regulations concerned, as set out in Explanatory Notes paragraphs 68 and 69, but any such temporary inconvenience is not insuperable.
17. **Q9** We agree the proposal to confirm the application of s 350(4) ICTA to deposit-takers and building societies, as drafted in clause 21 (Power to make regulations modifying this Chapter) and explained in Change {jc 488}.

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## SPECIFIC COMMENTS ON DRAFT LEGISLATION

### **cl 2 Introduction**

18. In the context of provisions applying to returns is it appropriate to draw particular attention to Schedule 1A TMA which deals with claims etc not included in returns?

### **cl 3 Meaning of “relevant payer” and “relevant payment”**

19. (2)(b)(ii) The bracketed description of section [15(6) of CC(04)11] as patent royalties is not apt. Section 15 deals rather with the proceeds of a sale of patent rights.

### **cl 9 How a set-off claim works**

20. (3)(b) Rather than refer to ‘any of that income tax’ would it be clearer to specify that this refers to the income tax in sub-clause (3)(a). Perhaps (b) might state instead that “if any of the income tax in (a) has been paid, it is to be repaid to the relevant payer”.

### **cl 14 Relevant payer’s duty to deliver amended return**

21. With reference to Explanatory Notes paragraph 51, it appears anomalous that there is no duty on the relevant payer to correct returns made under clause 6 (Payments made otherwise than in an accounting period).

### **cl 18 Interest on overdue income tax**

22. Clause 18(1) and (3) refer to the date when the income tax ‘should have been paid’. Similarly in clause 19(1)(b) and 19(2) (Interest in set-off cases). If these clauses are finally retained in this Chapter, should the reference more exactly be to ‘due’ as employed in clause 7 which deals with the time when income tax must be paid?

## DETAILED COMMENTS ON DRAFTING

### **cl 10 Proceedings begun after a set-off claim is made**

23. In Explanatory Notes paragraph 38, in the second line at its beginning, ‘proceeding’ should be ‘proceedings’.

### **cl 11 Proceedings begun before a set-off claim is made**

24. In Explanatory Notes paragraph 41, in the second line ‘proceeding’ should be ‘proceedings’.

### **cl 20 Application of Income Tax Acts to this Chapter**

25. In Explanatory Notes paragraph 73, insert ‘of’ immediately after ‘recovery’.

TJH/PCB  
26.7.05

### 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.