

## TAXREP 14/06

### TAX LAW REWRITE: BILL 4

*Memorandum submitted in May 2006 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in February 2006 by HMRC Tax Law Rewrite Team*

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## TAX LAW REWRITE: BILL 4

### FOREWORD

1. We welcome the opportunity to comment on draft Bill 4 published on 27 February 2006 by HMRC Tax Law Rewrite Team at <http://www.hmrc.gov.uk/rewrite/index.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.

### INTRODUCTION

3. We have responded earlier in separate TAXREPs to the 30 consultation Papers published on various Bill 4 topics, which relate to extensive tracts of the draft Bill, and we have also reviewed the various Response Documents issued.
4. We note that work continues on Schedules 1-3; that Part 9 (Special Rules about trusts) will be revised in due course to accommodate the FA 2006 changes arising from the modernisation of the income tax law relating to trusts, and that the drafting of the Bill will take account of any other relevant FA 2006 changes.
5. We note also that the figures used for allowances and income thresholds throughout Part 3 (Personal reliefs) are those for 2005/06 and that they will be updated in due course.

### GENERAL COMMENTS

6. We commend the Tax Law Rewrite team on having produced another excellent rewrite Bill. Bill 4, together with Income Tax (Earnings and Pensions) Act 2003 ('ITEPA 2003') and Income Tax (Trading and Other Income) Act 2005 ('ITEPA 2005'), now complete the rewrite of the income tax legislation, apart from that legislation which it was decided not to rewrite (as set out in Appendix D in the Draft Income Tax Bill Volume 2: Explanatory Notes (Annexes) Appendices). This is a major achievement.
7. The clause 1 Overview, subject to our specific comments, appropriately positions the Income Tax Act 2007 as the main Act about income tax, complemented by ITEPA 2003, ITTOIA 2005 and the income tax provisions located elsewhere as comprising the entire income tax legislation.
8. Having regard to the variety of the topics rewritten in Bill 4, the Parts are well arranged in the sequence of basic provisions, various reliefs, specific rules on certain topics (including tax avoidance legislation), and the general income tax definitions.

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9. We welcome, in particular, the rewrite in clauses 589-593 (Transactions in securities) of Circumstances A-E in that order and using those labels. We also welcome clauses 633-637 (Transfer of assets abroad – charges where benefit received), which considerably simplify the predecessor Paper CC/SC(05)25 draft clauses 18-24. It is also helpful in Part 11 (Manufactured Payments and Repos) to now locate various definitions in Chapter 1 (Introduction).

## ANSWERS TO QUESTIONS

10. **Q1** We welcome the proposal to charge income within s 466 ITTOIA at the savings rate (clause 18(4)) instead of the basic rate.
11. **Q2** We have no objection to clause 66(2) specifying, for the purpose of the restriction on trade loss relief unless a trade is commercial, that the trade must be carried on on a commercial basis throughout the basis period for the tax year rather than throughout the tax year itself.
12. **Q3** We agree the incorporation into the relevant rewritten clauses of express references to the interaction of capital gains tax relief under s 261B of TCGA and sideways relief.
13. **Q4** We agree that the “contribution to the firm” approach is more sensibly drafted than the “contribution to the trade” approach in the source legislation, as the contribution is in fact to the firm.
14. **Q5** We agree that as ss 574(1), 576(2) and 576(3) ICTA have effect only for the purposes of capital gains tax or, as regards the two latter sections, corporation tax on chargeable gains and capital gains tax, that it is appropriate to rewrite all three provisions in s 125A of TCGA (inserted by Bill 4 Schedule 1 paragraph 294).
15. **Q6** We support the inclusion of clauses 137 to 146, defining eligible trading companies without the frequent and user-unfriendly references to the EIS provisions as originally drafted in Paper CC/SC(05)05 clause 5.
16. **Q7** We support the drafting of clause 145(1)(f) (and the new section 576K(1)(f) of ICTA introduced by Schedule 1) which does not require there to be advance clearance to the effect that the exchange of shares is not to be treated as involving a disposal of the old shares or an acquisition of the new shares.
17. **Q8** We support the definition in clause 147(1) of a mixed holding as one which includes qualifying shares and shares which are not qualifying shares as being more appropriate now than the s 576(1) ICTA definition based on whether the person subscribed for shares (‘qualifying shares’) or acquired them otherwise than by subscription, having regard to the comments in the penultimate paragraph of Change 22.
18. **Q9** We support the proposal to apply the identification rules in sections 105-105B and 106A of TCGA so far as those rules are capable of determining the questions in clause 147(2).

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19. **Q10** We agree that it is appropriate to legislate in clause 147(7) where the clause 147 provisions cannot otherwise identify whether shares disposed of out of a mixed holding are qualifying shares, or which of any qualifying shares acquired at different times are being disposed of, that such questions are to be determined on a just and reasonable basis.
20. **Q11** The proposal to limit clause 148(1) and (2) to disposals of qualifying shares forming part of a mixed holding, and to make the other changes set out in Change 25 in Annex 1, will more closely identify the actual loss on the disposal of qualifying shares available for s 131 share loss relief and appears unobjectionable. This change may, however, present taxpayers with practical difficulty if detailed acquisition cost records of long-standing pooled shareholdings have not been retained.
21. **Q12** We agree the necessary inclusion of clause 149(1) (Mixed holdings: supplementary) in order to ensure that the identification rules for the purposes of share loss relief, in the case of a disposal of certain qualifying shares to which s 105A of TCGA applies (where “approved-scheme shares” are involved) are the same as those for the purposes of capital gains tax.
22. Whilst correctly drafted, clause 149(1) is dense and will be unintelligible to the user without careful reference to the various other sections cross-referenced to. This results from the complexity of the legislation itself. Whilst it may not be possible to draft s 149(1) so that it is more readily intelligible it would be helpful if the Explanatory Notes could include sufficient guidance to its function – perhaps a précis derived from the detailed technical explanation in Change 26?
23. **Q13** We agree the addition of clause 149(2).
24. **Q14** We are content with the removal, in drafting clause 168(4)(a)(i) (Directors excluded from connection), of the possible ambiguity in s 291A(2)(i) of ICTA.
25. **Q15** We are content with the proposal that clause 179(7) (Meaning of “qualifying business activity”) provides for a company that is not a qualifying 90% subsidiary at the time when the shares are issued.
26. **Q16** We are content with the proposal that clause 181(3) and (7) (The trading requirement) provide for a company that is not a group company at the time when the shares are issued.
27. **Q17** We welcome the proposal that clause 181(6)(d)(ii) (business of a group – activities to be ignored) should extend to property used for research and development intended to benefit an existing or future qualifying trade of a group company.
28. **Q18** On the basis that the words “exposed for sale” reflect the normal description of a trade of retail distribution in UK statute law, we agree their inclusion in sub-clause 193(4).
29. **Q19** We are content with the drafting of clause 278(4)-(6).

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30. **Q20** We are content with the addition of the words “exposed for sale” in the description of a trade of retail distribution in clause 304(4) (Excluded activities: wholesale and retail distribution), as reflecting the normal description of a trade of retail distribution in UK statute law.
31. **Q21** It does appear preferable to provide an explicit general definition of ‘company’ and ‘shares’, in clause 332, for the purposes of Part 6.
32. **Q22** We agree that it is appropriate to rewrite the provisions referred to in Explanatory Notes paragraph 1164 in new sections 151BA, 151 BB and 151 BC of TCGA (inserted by Bill 4 Schedule 1 paragraphs 298-300).
33. **Q23** An appropriate apportionment of the interest paid when a mixed loan is partly repaid is clearly unobjectionable. We accordingly agree the drafting of clause 386 (Exclusion of double relief etc).
34. **Q24** We are content with the way in which s 368(6) ICTA has been rewritten in clause 387(6).
35. **Q25** In the interests of simplification, we welcome the proposal not to restrict clause 400 relief (loans to invest in a co-operative) to loans made after 10 March 1981.
36. **Q26** We agree the proposal that, to be a qualifying donation for gift aid purposes, a payment must not be deductible in computing income from any source.
37. **Q27** We have no objection to the proposed amendment to the drafting of the priority rule in clause 418(8) (Gifts and benefits linked to periods of less than 12 months), now giving priority to cases where Conditions C or D apply (as well as Conditions A or B) when determining the method of annualisation.
38. **Q28** We agree the proposal to drop references to the British Museum and the Natural History Museum in clause 429(2) (Application of Chapter to exempt bodies).
39. **Q29** Subject to satisfactory resolution of our enquiry against clause 482(2) below, we are content with the revisions made to the provisions about trustees’ expenses in clause 467.
40. **Q30** We support the proposal to legislate HMRC practice on the treatment of excess trustees’ expenses, in clause 468.
41. **Q31** We agree the proposals to provide exemptions for adjustment income and post-cessation receipts in relation to income from trades and from land and property.
42. **Q32** We agree the way that s 505(1)(a) ICTA has been rewritten in clause 510 (Exemption for certain trading income arising from land).
43. **Q33** If the estate interest or right in or over land is required to be vested in a person in trust for the charitable trust, as in clause 513(1)(b), then it does not appear to be necessary to explicitly state that such a person may be a nominee of the trustees.

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44. **Q34** On the basis of the reasoning in Explanatory Notes paragraph 1925 we agree that the words “or for charitable purposes” in clause 513(1)(b) do not appear to be necessary.
45. **Q35** We welcome the proposal to extend the scope of the exemption for certain miscellaneous income to royalties and other income from intellectual property and income from relevant telecommunication rights, where such income is not taxable as profits of a trade and does not come within the definition of annual payments.
46. **Q36** We welcome the proposal to enact in clause 517 the practice of providing an exemption for income received by the trustees of a charitable trust from UK estates and UK source income of foreign estates provided that such income is applied for the purposes of the charitable trust.
47. **Q37** We are satisfied with the way that the clauses about charitable and non-charitable expenditure have been revised.
48. **Q38** We are satisfied with the way that the rules about approved investments have been updated and incorporated into clauses 534-536. It is more logical to now locate these before clauses 538-540 (Excess expenditure treated as non-charitable expenditure).
49. **Q39** We are content with the rewrite of ss 231AA and 231AB of ICTA, splitting the legislation on manufactured payments and repos between the income tax and the corporation tax codes.
50. **Q40** We support the proposal to change the 28-day information gathering time limit in s 708 of ICTA to at least 30 days (in clause 606(6)) for the purposes of income tax.
51. **Q41** We support the proposal in drafting clause 610 (Statement of case by tribunal for opinion of High Court or Court of Session) to remove the s 705A(2) ICTA requirement for the dissatisfied party to declare dissatisfaction.
52. **Q42** We agree the proposal to clarify the definition of “associated operation” in clause 621 (Meaning of “associated operation”).
53. **Q43** We agree the treatment of surplus “relevant income”.
54. We are content with the drafting of clause 635 (Income charged under section 633).
55. **Q44** We support the proposal to set the minimum time which HMRC may allow for particulars to be provided under clause 644 (Power to obtain information) at 30 days rather than 28 days.
56. **Q45** We have no objection to the proposal to give the clearance function under clause 665, in respect of transactions in land, to the Commissioners for Her Majesty’s Revenue and Customs, to be delegated as appropriate.

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57. **Q46** We agree the incorporation into the relevant rewritten clauses of express references to the interaction of capital gains tax relief under s 261B of TCGA and sideways relief.
58. **Q47** We agree the omission of the words “(apart from this paragraph)” from clause 712(5) and from s 127(2)(d) FA 1995 on the basis that they are otiose, as explained in Explanatory Notes paragraph 2661.
59. **Q48** We agree the omission the words “(apart from this paragraph)” from clause 713(7) and from s 127(3)(f) FA 1995 on the basis that they are otiose, as explained in Explanatory Notes paragraph 2673.
60. **Q49** We agree the use of “the total of the non-UK resident company’s income” in clause 716(3).
61. **Q50** We agree the substitution of “income” for “chargeable profits” in clause 718(2)(b).
62. **Q51** We agree the inclusion in clause 720(1)(a) of stock dividends from UK resident companies chargeable under Chapter 5 of Part 4 of ITTOIA.
63. **Q52** We do not object to the extension of the application of clause 724 (Residence of individuals temporarily abroad) to all individuals who are UK resident and ordinarily UK resident.
64. **Q53** Clause 724(2) does correctly rewrite s 334 ICTA.
65. **Q54** We have no objection to the change of the reference to six months in s 336(1)(b) of ICTA to a reference to 183 days in clause 726(1)(b) (Foreign income of non-UK residents who come to the United Kingdom).
66. **Q55** We agree the proposal to repeal and not rewrite s 320(1), (3)(a) and (c) ICTA, having regard to the explanation in Explanatory Notes paragraphs 2822 and 2823.
67. **Q56** As s 587A of ICTA only applies for corporation tax purposes if “new securities” were issued before 1 April 1996, it is reasonable to assume that it is no longer necessary to retain this provision for corporation tax purposes.
68. **Q57** We have no objection to the proposal to provide that all declarations of non-UK residence must be in a prescribed or authorised format, in accordance with current practice and the proposed alignment of the rules concerning deposit-takers and building societies.
69. **Q58** We are content with the introduction in clause 759 of a separate new category of gross payment where there is a “qualifying uncertificated eligible debt security unit”.
70. **Q59** If there are no qualifying certificates of deposit evidenced by a document in existence currently, and all qualifying certificates of deposit are now and henceforth to be issued and traded electronically, then we have no objection to the proposal to

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remove the Bill 4 references to “qualifying certificate of deposit” by omitting clauses 760, 784(3)(a) and 876. We assume that the guidance of industry specialists on these matters will have been taken (reference paragraph 6 Paper CC/SC(05)28).

71. **Q60** As regards the proposal to remove references to “qualifying deposit right” by omitting clauses 761, 784(3)(b) and 877 please refer to our response to Q59 which applies similarly to this question, with references to “qualifying deposit right” for references to “qualifying certificate of deposit”.
72. **Q61** We are content with the approach to defining the nature of the yearly interest to which the clause 770 duty to deduct sums representing income tax applies, as any yearly interest arising in the UK. We also agree the omission in its definition that the yearly interest should not be chargeable under Schedule A.
73. **Q62** We are content with the proposal to enact SI 1996/1179, in clause 774(3), as regards the European Investment Bank, enabling the payment of interest to the EIB in respect of an advance to be made without a duty to deduct a sum representing income tax under clause 770.
74. **Q63** With reference to Explanatory Notes paragraph 3023 we agree, if research reveals that there are now no income producing securities left which were issued under the National Loans Act 1939 and are still in existence and not listed in part 2 of Schedule 9 to TCGA, that the reference to the National Loans Act 1939 in clause 789(2)(a) (Treasury directions) is unnecessary.
75. **Q64** We support the proposed extension of the definition of “registered” in clause 790(6), to provide legislative support for deduction at source applications under clause 790 to be made in respect of gilts held in Crest.
76. **Q65** If the Bank of Ireland no longer manages United Kingdom gilts registers, and there are no reasons still for retaining s 350A(2)(b) ICTA, then it appears unnecessary to rewrite that provision as clause 792(3).
77. **Q66** We are content with the rewrite in Chapter 9 Part 14 (Deduction of income tax at source – Manufactured interest and manufactured overseas dividends) of the provisions of paragraphs 3 to 4 of Schedule 23A to ICTA.
78. **Q67** We support the proposal in drafting clause 819 (Power to provide set-off entitlement) to bring into line with practice the law on the periods by reference to which overseas dividend manufacturers may set amounts of overseas tax against their UK tax liabilities.
79. **Q68** We have no objection to the use of the label “section 840 payments” in Part 14 Chapter 15 (Collection: Deposit-takers, building societies and certain companies). Although lengthier than ‘relevant payment’, its meaning is more readily apparent. We hold no strong view on either label, however.
80. **Q69** We support the proposal to extend the duty on the payer, to deliver an amended return where an error is found (in clause 852), to incorrect returns of payments made otherwise than in an accounting period.

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81. **Q70** It is helpful to make explicit how the time limits for assessments are to operate for the purpose of Part 14 Chapter 15 (Deduction of income tax at source – Collection: deposit-takers, building societies and certain companies), as proposed in clause 853(3)-(5).
82. **Q71** We agree the proposal not to rewrite paragraph 10(2) of Schedule 16 ICTA.
83. **Q72** We agree the proposal not to rewrite references to “the Board” in clause 864 (Supplementary).
84. **Q73** On the basis that it is preferable not to split up the non-resident landlord scheme, we agree the proposal to rewrite the regulation making powers in respect of Schedule A income in clause 865 of Bill 4 and to then necessarily treat all amounts paid as amounts in respect of income tax. We assume that in due course there will be an appropriate signpost to this provision from the corporation tax legislation when rewritten.
85. **Q74** We agree the removal of the s 42A of ICTA reference to “charging” from the rewritten clause 865, bringing the rewritten version of s 42A of ICTA into line with other collection mechanisms, as indicated in Explanatory Notes paragraph 3403.
86. **Q75** The new defined term “non-resident landlord representative” is somewhat lengthy, but it is descriptive of its meaning and does work in the context of clauses 865 and 866 (Non-resident landlords).
87. **Q76** We have no objection to the proposal to bring the rules for statements about manufactured interest on UK securities into line with the rules for statements about actual interest on UK securities.
88. **Q77** We support the proposal to clarify that qualifying certificate of deposits (clause 876) as indicated in our response to Q15 in Paper CC/SC(05)28, qualifying deposit rights (clause 877) and qualifying uncertificated eligible debt security units (clause 879) can only be repaid in one tranche at a specified time.
89. We note from the commentary in Change 132 that in practice such instruments are issued on the basis that the amount is payable in a single tranche and, as indicated in Explanatory Notes paragraph 3461, the first two of the three may now be obsolescent.
90. **Q78** We have no objection to the proposal to omit the s 832 ICTA definition of “interest” from clause 881 (The definitions) on the grounds that it adds nothing to the general meaning of “interest”.
91. **Q79** We are content with the proposal to include in clause 881 a definition of “personal representatives”, by reference to the United Kingdom and to territories outside the United Kingdom, for the purposes of the Income Tax Acts.
92. **Q80** We have no objection to the proposal to streamline the definition of “trade”, as originally proposed in clause 3.1.5 in Exposure Draft No 10 (May 2000).

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93. **Q81** We have no objection to the proposal to repeal s 832(5) ICTA, applicable for both income tax and corporation tax purposes, without rewriting it on the basis that it has been overtaken by the Adoption and Children Act 2002.
94. **Q82** On the understanding that there are no adverse practical consequences from doing so, we have no objection to replacing the current wording in s 832(1) ICTA with a simple reference to “Northern Ireland legislation” in clause 882 (Meaning of “Act”). But please also see our specific comments on clause 882(2).
95. **Q83** We support as helpful the inclusion of Scottish and Northern Ireland legislation within the meaning of “Act” in clause 908 (“Act” to include Scottish and Northern Ireland legislation in some cases).
96. However, if clause 908 is to apply the ITA 2007 provisions to the clause 908(1) sections only, it would appear necessary to extend clause 882(1) to also include Acts of the Scottish Parliament (whether termed ‘Scottish legislation’ or otherwise) and to leave in the references to ‘section 908’ and to ‘section 879’ in clause 882(2)(a) and (b). Please also see our specific comments on clause 882(2) (Meaning of “Act”).
97. **Q84** We understand the reasoning behind introducing the 3-year ‘sunset clause’ in clause 918 (and in clause 919) – that a 3 year period should be long enough to pick up any rewrite errors and that, in the unlikely event that any were picked up after 3 years, they would be better corrected through the Finance Bill process because of developments in legislation in the meantime. This will create a more restrictive situation than under rewrite practice to date, without time limit or the need to take up Finance Bill space to effect corrections. In principle, therefore, we see no advantage in now introducing the time limit; but, in practice, we doubt that it will give rise to any difficulty, and therefore regard its introduction with equanimity.
98. Please also see our specific comments on clause 918.
99. **Q85** Please see our comments in response to Q84, which apply equally to Q85.
100. **Q86** We do not object to the approach taken in clause 920 to Part 5 (Enterprise Investment Scheme) of the draft Bill.
101. **Q87** We support the proposal not to retain s 368 ICTA, having regard to the explanation for this in Change 137. We agree that the possibility of the interest at issue qualifying for relief twice is remote, and the decision not to introduce any special rule to prevent such double relief is a sensible simplification measure.
102. **Q88** We agree the rewriting of part of s 573(4) ICTA in new s 125A(1) TCGA inserted by Schedule 1 paragraph 294.
103. **Q89** We are content with the inclusion of sections 576A to 576M of ICTA.
104. **Q90** We support the proposed amendment to s 789 of ICTA ensuring that, when interpreting provisions for exemption from surtax in old double taxation relief arrangements in relation to dividend income, the dividend ordinary rate is applied to any such income instead of the dividend upper rate.

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105. **Q91** We agree the proposal to extend s 37A of TMA to civil partners..
106. **Q92** We are content with the way that s 539 of ITTOIA has been rewritten, giving relief for a deficiency as a tax reduction. We do not object to the introduction of a formal claim requirement.
107. **Q93** We support the proposal to make it more explicit, in new s 680A of ICTA, that estate income paid to a beneficiary retains its underlying character.

## SPECIFIC COMMENTS ON DRAFT LEGISLATION

### **cl 1 Overview of Income Tax Acts**

108. Sub-clause 1(1) commendably introduces this Act together with ITEPA 2003 and ITTOIA 2005 as the main Acts dealing with income tax. This is a helpful focus for the user, who can readily appreciate that the main income tax legislation is to be found in these three Acts. However, sub-clauses (2) and (3) do not conclusively indicate where the other income tax provisions are. It is helpful to the user to learn from sub-clause 1(2) that there other such provisions and to be directed to certain of them in sub-clause 1(3); but the user is left adrift after that (apart from reference to Appendix D in Volume 2: Explanatory Notes (Annexes) Appendices). We therefore support the good intention of sub-clauses (2) and (3), but query whether they might be expanded into signposts to all the other income tax provisions to be found elsewhere.

### **cl 2 Overview of Act**

109. Whilst duplicating the purpose of the inherently more detailed Contents pages, the much more succinct identification of the Act's contents in clause 2 is nevertheless helpful guidance for the user. It also accords logically with the Tax Law Rewrite standard 'Overview' approach adopted throughout.

### **cl 3 Charges to income tax**

110. With reference to our suggestion in paragraph 14 of TAXREP 58/05, dated 11.11.05, we would prefer that clause 3 should also refer to 'any other amounts which, under the Income Tax Acts, are charged to income tax'. Whilst the user will not be made aware of which other amounts are at issue, the effect on clause 3 will be to set a boundary around the charges to income tax. As presently drafted the scope of clause 3 is left unsatisfactorily open.

### **cl 14 Income charged at the dividend ordinary rate: other persons**

111. (2) We note that trustees' income within s 720(5) ICTA (transfers of securities with or without accrued interest), which was included in Paper CC/SC(05)30 clause 11(2), is now appropriately included in clause 15(1).

### **cl 38 Blind person's allowance**

112. (4)(a) We prefer the description 'in that tax year', as employed in Paper CC/SC(04)06 clause 8(4)(a), to 'in the tax year' as more clearly relating to 'a particular tax year'.

### **cl 77 First-year allowances: partnerships with companies**

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113. (2)(b) We prefer the Paper CC(04)10 clause 17(4) drafting – that it does not matter when the arrangements were made. As drafted, as a purist comment, clause 77(2)(b) does not cover arrangements made when the expenditure was incurred, even though this might be impossible in practice.
114. Similar comments apply to clause 78(5).
- cl 106 Restrictions on reliefs for members of LLPs**
115. (6)(b) Is it intended to omit the words ‘at any time’ before ‘during which’? These words were included in Paper CC/SC(05)29 clause 6(5)(b).
- cl 113 Exclusion of amounts in calculating contributions to the firm or LLP**
116. We note from Explanatory Notes paragraph 474 that consideration is still being given as to how best to handle s 118ZO of ICTA 1988.
- cl 117 Carry forward against subsequent property business profits**
117. Does Explanatory Notes paragraph 486 correctly describe the effect of clause 117(4)? Clause 117(4) provides for a s 117 loss carry forward to be deducted from the profits of a business in a subsequent tax year before any other reliefs are deducted from those profits (as reduced by the loss brought forward), except to the extent that the brought forward loss is first relieved under clause 119 (clause 117(5))
118. The intention is presumably to focus on the property income for a later tax year, which must first be reduced by the brought forward property loss before any other loss relief can be given against it. As drafted it appears to refer to a brought forward loss being available against a later year’s general income *after* having reduced the property income of that later year.
- cl 135 Subscriptions for shares**
119. (4) Should it be made clear that the individual is treated as having subscribed for the bonus shares at the time the original shares to which they relate were issued?
- cl 257 Minor definitions etc**
120. (3) Is the inclusion of a reference to s 243(3), to which the s 416 ICTA definition of ‘control’ is stated to apply, correct?
- cl 263 Form and amount of relief**
121. (2) With reference to Explanatory Notes paragraph 973, regard will now be necessary to the 2006 Finance Bill proposal to extend the tax reduction at a 30% rate post- 5 April 2006. Similarly, regarding clause 266 (Loss of relief of shares disposed of within 3 years).
- cl 315 Power to make provision about distributions by VCT-in-liquidation**
122. (1)(a) The words ‘distribution from’ should be inserted after ‘in relation to’, in accordance with paragraph 4(1)(a) Schedule 33 FA 2002.
- cl 397 Eligibility requirements for interest on loans within section 396**
123. (4)(b) Should clause 397(4)(b) be redrafted to state “if the individual has ceased to be a full-time employee of the company before the payment date, the date on which the individual ceased to be an employee provided that this falls in the 12 months

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before the payment date”? As drafted clause 397(4)(b) does not identify the end date where the employee ceases to work full-time within the period of 12 months before the payment date.

- cl 420 Admission rights: supplementary**
124. (2),(4) Charities may hold evening functions to which admittance is available only on payment of a separate entrance fee. How does clause 420 deal with a donor who pays an annual entrance fee within the gift aid provisions for general access but is not able to attend such a function without payment of the separate entrance fee, although he/she could still access the premises or property concerned earlier on an event day before such access was stopped ahead of the event taking place? This is a common feature nowadays in the case of zoological gardens, for example. When such charities need to maximise their fundraising activities, the 5-days exemption under clause 420(2) may well prove inadequate on an annual basis.
125. This point might be met by replacing the word ‘on’ in the first line in clause 420(2) by ‘throughout’ and similarly replace the first ‘on’ in the clause 420(4) definition of an ‘event day’. This would presumably require a PRC. A less preferable alternative would be to provide for this situation by extra-statutory concession, and draw attention to it in the Explanatory Notes.
- cl 421 Disqualified overseas gifts**
126. (3) Is clause 421(3) correctly drafted? Should an overseas gift be disqualified to the extent that the overseas gifts total exceeds (rather than is less than or equal to) the charged amount?
- cl 433 The relievable amount**
127. (2)(a) The use of ‘...IC (where the IC has the same meaning as in subsection (1))’ is more cumbersome than simply stating (as in clause 4(2)(a) in Paper CC(05)23) ‘the incidental costs of making the disposal to the individual making it’ and less readily intelligible.
- cl 452 Meaning of “qualifying maintenance payment”**
128. (5)(a)(ii) The use of the word ‘subsequently’ gives rise to the question ‘subsequent to what?’ It may be clearer to replace the words ‘subsequently entered into a marriage or civil partnership’ with ‘entered into any new marriage or civil partnership’.
129. (7) The reference is now to ‘a member State’, whereas it was to ‘United Kingdom’ in the s 347B(8) ICTA source legislation. Is this intended, without a PRC? If so, appropriate commentary in the Explanatory Notes would be helpful.
- cl 475 Discretionary payments by trustees**
130. (3) We consider that clause 475(3) should refer to s 624 of ITTOIA 2005 (income where settlor retains an interest), so that clauses 476 and 477 will apply to all discretionary payments treated for income tax purposes as the income of the settlor.
- cl 479 Calculation of trustees’ tax pool**
131. In TAXREP 68/05 paragraph 35 we expressed the view that there could be no justification for not legislating along the lines of ESC A68. We note that clause 479 is drafted without legislating for ESC A68. Why is this? If the objection is that doing

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so would unbalance clause 479, an appropriate separate clause subsidiary to clause 479 might enact the practice set out in ESC A68. The latter is not unduly lengthy, and would be further compressible in clause form. If the final decision is not to enact it, the continuity and relevance of ESC A68 ought to at least be referred to in the Explanatory Notes.

## **cl 482 Restrictions on use of trustees' expenses to reduce the beneficiary's income**

132. (2) In view of the 'subject to' caveat in clause 482(2) is it correct to state in Change 84 that if the trustees' expenses are chargeable to income under a provision of the trust then, irrespective of whether they would be so chargeable in the absence of that provision, the expenses are to be taken into account? Is it also correct to state that this is different from the rule that operates in relation to accumulated or discretionary income 'where the provisions of the trust are to be ignored' when the inclusion now of the words 'apart from the express provisions of the trust' in clause 467(6)(b) appears to restore priority to the trust provisions as regards the clauses 468-470 deductibility of allowable expenses rules for accumulation and discretionary trusts? It appears that essentially the same expenses deduction rules will now apply to accumulated/discretionary trusts and to fixed interest trusts, which meets the concern which we expressed regarding the drafting of Paper CC/SC(05)36 clause 24 in paragraph 39 of TAXREP 68/05 dated 22.12.05. Is this correct?

## **cl 511 Exemption for profits from fund-raising events**

133. (3) Clause 511(3) requires the profits to be applied for the purposes of the charitable trust only. Is this restriction intended? Paper CC/SC(05)04 clause 15(1)(b) was originally drafted by reference to the raising of funds for *charities* and we queried in TAXREP 20/05 whether it should be made clear that this meant for the charitable trust itself and for other charities. Explanatory Notes paragraph 1916 does refer to the raising of money by a charity for itself and other charities.

## **cl 521 Exemption for transactions in deposits**

134. (5) Why has the definition of "certificate of deposit" in Paper CC/SC(05)04 clause 16(5) been omitted?

## **cl 548 Overview of Chapter**

135. It would be helpful to include a definition of "manufactured payments" as set out in Paper CC/SC(05)19 clause 2(5).

## **cl 588 Exception where no tax avoidance object shown**

136. (2)(a) We note that 'bona fide' has now been replaced by '*genuine* commercial reasons'. We are not convinced that 'genuine' is an improvement on 'bona fide'. The latter is also referred to in the existing case law and, in the absence of a better description, we would prefer to retain the words 'bona fide' in this tax avoidance context.

## **cl 609 Rehearing by tribunal of appeal against counteraction notice**

137. (6) Clause 609(6) should be made subject to clause 610 which provides for the tribunal's determination on a point of law to be reconsidered by the High Court or the Court of Session.

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## **cl 612 Effect of appeals against tribunal's determination on rehearing of appeal against counteraction notice.**

138. (3) There should be an obligation placed on Revenue and Customs to make the refund within a set period after the date of the order or judgement of the Court, as a counterpart to the clause 612(5) time limit within which the taxpayer is expected to pay any tax found to be undercharged.

## **cl 635 Income charged under section 633**

139. (1) Can the Explanatory Notes make it clearer that the 'total relevant income' in Step 4 refers to actual income, whereas the s 633(2) chargeable amount of income arising (calculated in s 635) is an amount *treated* as arising and which may be more or less than "the available relevant income" (which is calculated by reference to actual income, through Steps 3-5)?

## **cl 727 Employment income of non-UK residents who come to the United Kingdom**

140. (1)(a) We note the use of the words 'with no intention of' in contrast to 'with no view to' in clause 726(1)(a) as commented on in Explanatory Notes paragraphs 2743-2745. This appears to be inconsistent.

## **cl 798 Deduction from patent royalties**

141. How has Paper CC/SC(05)28 clause 64(1), which deals with a patent royalty payment which is exempt from income tax, been dealt with in Bill 4? Such a payment will not fall within the duty to deduct a sum representing income tax because clause 798(4) requires it to be charged to income tax or corporation tax.

## **cl 801 Certain royalties etc where usual place of abode of owner is abroad**

142. How has Paper CC/SC(05)28 clause 68(1) been dealt with in Bill 4? Is a payment of a royalty which is exempt from income tax still a royalty within the clause 801 duty to deduct a sum representing income tax on it, and hence requires no special reference? Alternatively, is the reasoning for dropping clause 68(1) that, as the royalty is ultimately exempt from income tax, then there is no point in referring to it in the tax deduction provisions? If so, the person making the payment will again remain within the clause 801(5) duty to deduct a sum representing income tax, because clause 801 does not require the payment to be one that is charged to income tax or corporation tax (which is a requirement in clause 798(4)).

## **cl 824 Exception from duties to deduct sums representing income tax**

143. How has Paper CC/SC(05)28 clause 81(4) been dealt with in Bill 4? This provided that the duty to deduct sums representing income tax remained applicable in the cases of the two types of qualifying annual payments referred to in clause 81(4)(a) and (b); but clause 824(2)(c) does not appear to be similarly qualified.

## **cl 833 Duty to retain bonds where issue treated as payment of interest**

144. Should clause 833 reflect the s 582(1)(b) ICTA 1988 provision that the redemption of the bonds shall not be treated as the payment of any amount of the interest in respect of which the funding bonds are issued?

## **cl 838 Directions for payments to be subject to duty to deduct**

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145. (2) As drafted, does clause 838 apply to a single payment of an amount taxable? Sub-clause 838(2) appears to apply only to payment of consideration by instalments (Explanatory Notes paragraph 3270 refers). Should ‘part’ in the first line of clause 838(2) be replaced by ‘the whole or part’? As drafted, of course, clause 838(3) will ensure that the non-resident person liable for the amount is fully finally liable.

## **cl 865 Income tax due in respect of income of non-resident landlords**

146. (5) It might be clearer to replace the first ‘the person’ by ‘non-resident landlord representative’ and to replace the second ‘the person’ by ‘he’, in view of the references to both the non-resident and the representative in clause 865(4)(b).

## **cl 882 Meaning of “Act”**

147. (2) As clause 882(1) deals with the inclusion of *Northern Ireland* legislation, should the clause 882(2)(a) bracketed signpost be to ‘section 908(2)’ only and should the clause 882(2)(b) bracketed reference be to s 880 ITTOIA only? Section 908(1) ITA and s 879 ITTOIA refer to Acts of the Scottish Parliament only.
148. In this context in clause 882(2)(a) should the bracketed words be replaced by ‘(except as provided in section 908(2))’; and in clause 882(2)(b) should the bracketed words be replaced by ‘(except as provided in section 880 of that Act)’?

149. But please also see our response to Q83.

## **cl 884 Meaning of “company”**

150. (3) Why have the bracketed words at the end of s 832(2) ICTA, to the effect that the definition of ‘company’ does not apply where the context otherwise requires because some other definition of ‘company’ applies, not been rewritten in clause 884?

## **cl 890 Meaning of “local authority”**

151. In the source legislation the s 842A(1) ICTA definition of ‘local authority’ is qualified as being applicable ‘except so far as the context otherwise requires’. Why has this qualification not been rewritten into clause 890? It is, however, not readily apparent as to when this qualification might become applicable.

## **cl 892 Meaning of “offshore installation”**

152. In the source legislation the s 837C ICTA definition of ‘offshore installation’ is qualified as being applicable ‘unless the context otherwise requires’. Why has this qualification not been rewritten into clause 892?

## **cl 898 Meaning of “unit trust scheme”**

153. (4) What is the authority for inserting clause 898(4)?

## **cl 903 Relationship between highest part rules**

154. (5) We assume that income within s 777(8) ICTA (income treated as arising by virtue of section 775 or 776 of ICTA to be treated as highest part of income), which was identified separately in Paper CC/SC(05)30 clause 11(7), is now included within ‘any other provisions of the Income Tax Acts’ in clause 903(5); but it is not clear from the Explanatory Notes why the specific reference to it has now been dropped in clause 903(5).

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155. Should the ‘just and reasonable proportion’ approach of treating income as the highest part of an individual’s total income in clause 663(7) (transactions in land) and clause 681(7) (sales of occupation income) be extended to the other provisions listed in clause 903(5)?

**cl 911 Application of definitions of “connected” persons and “control”**

156. With reference to Explanatory Notes paragraph 3548, it is not clear how references to Change 93 and the commentary on clause 536 assist an understanding that the application of the definition of “control” to clause 536(8) is new.

**cl 913 Meaning of “firm”**

157. The use of the phrase “doing something in partnership” is questionable. If it is not desirable to use the s 846 ITTOIA phrase “carrying on a trade in partnership”, then it might be preferable to refer instead to “acting in partnership”.

**cl 918 Power to make consequential provision**

158. Explanatory Notes paragraph 3566 states that the scope of the clause 918 power is in substance the same as that in s 882 ITTOIA. The latter is represented in ITA 2007 by clauses 918 and 919. In subsection 882(4) ITTOIA there is an overriding requirement that the Treasury order must not change the effect of the law as it was immediately before ITTOIA came into force (subject to the effect of the agreed rewrite PRCs). Although clause 919 does empower the Treasury to undo erroneous changes to return the effect of the law to what it was immediately before 6 April 2007, the limitation to this purpose is not built into clause 918. Whilst the latter is presumably directed at correcting any errors found in the ITA’s minor and consequential amendments, transitionals and savings and repeals and revocations, as being ‘in consequence of this Act’ (clause 918(1)), the power conferred by clause 918 (although time-limited) is very wide. The power applies to any Act, and retrospectively, if the Treasury sees fit. Whilst this power is clearly unlikely to be abused, and its exercise is intended to be subject to the agreement of the Consultative and Steering Committees, we consider that clause 918 should nevertheless itself also contain a purpose statement that the object of any order is to ensure that nothing done or omitted by ITA 2007 should change the effect of the law immediately before 6 April 2007 (subject to the effect of the agreed rewrite PRCs).

159. We assume that the power extends to the correction of any omissions through the power to ‘amend’ in the absence of any direct reference to errors of omission.

**cl 919 Power to undo changes**

160. Clauses 918 and 919 evidently appear capable of covering the same ground. For example, where something is amended under clause 918 it may relate to a change requiring undoing under clause 919. We assume that clause 918 targets errors in the ‘consequential’ provisions (which presumably extends to consequential amendments, transitionals and savings and repeals and revocations – although Explanatory Notes paragraph 3565 appears to limit its scope to errors concerning the Schedule 1 consequential amendments) and that clause 919 targets errors changing the effect of the law (which could presumably be errors of both commission and omission) although Explanatory Notes paragraph 3572 refers to its potential use in correcting errors in making consequential amendments. Can it be made any clearer what each clause relates to? If not, and there is no clear benefit in keeping the two clauses

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separate as it is only sub-clauses 918(1) and 919(1) which differ, should they be combined?

## **Part 12 Tax avoidance – Transactions in land**

161. Chapter 3 How has s 777(11) ICTA been dealt with?

### **DETAILED COMMENTS ON DRAFTING**

#### **cl 25 Reliefs and allowances deductible at Steps 2 and 3: supplementary**

162. (2) In the first line, should the words ‘in the way’ be inserted after ‘components’?

#### **cl 47 Election by individual to transfer relief under section 45 or 46**

163. In Explanatory Notes paragraph 211, in the first line, delete the first ‘of’.

#### **cl 58 Meaning of “adjusted unrelieved total income”**

164. In Explanatory Notes paragraph 260, in the fifth line, delete the first ‘that’.

#### **cl 73 How relief works**

165. In Explanatory Notes paragraph 327, in the second line, insert ‘on’ after ‘based’.

#### **cl 75 Trade leasing allowances given to individuals**

166. In Explanatory Notes paragraph 335, in the second line, the phrase ‘for the tax year’ is duplicated.

#### **cl 104 Meaning of “contribution to the firm”**

167. In Explanatory Notes paragraph 422, in the second line, ‘where’ should presumably be ‘whether’.

#### **cl 120 How relief works**

168. In Explanatory Notes paragraph 496, in the first line, insert ‘if’ after ‘rule’.

#### **cl 143 The property managing subsidiaries requirement**

169. (1)(a) The reference to ‘subsection (2) of section 133’ could be contracted to ‘section 133(2)’ as in clause 142(1)(a).

#### **cl 181 The trading requirement**

170. (9) In clause 181(9), a closing bracket is required after “qualifying trade”.

#### **cl 261 Eligibility for relief**

171. (4) Should the signpost be to s 271(4) rather than to s 271(3)? If so, Explanatory Notes paragraph 968 should refer to clause 271(4) rather than to clause 271(3).

#### **cl 271 Provision of information**

172. In Explanatory Notes paragraph 988 should the reference be to subsection (4) rather than to subsection (3)?

#### **cl 295 The unquoted status requirement**

173. (6)(b) In the second line of clause 295(6)(b), ‘a unquoted’ should be ‘an unquoted’.

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174. **cl 475 Discretionary payments by trustees**  
(3) The reference to ‘relevant children’ within the brackets is a distraction. This term is not defined, and the s 629 ITTOIA 2005 heading is ‘Income paid to unmarried minor children of settlor’.
175. **cl 507 Payments from other charities: income tax liability and exemption**  
(3) As a minor point, the order of the wording differs from the similar clauses 505(2) and 506(3).
176. **cl 614 Proceedings in Northern Ireland**  
(2)(a) Should the references to ‘subsections (4) to (6)’ instead be to ‘subsections (5) to (7)’?
177. **cl 622 Charge to tax on income treated as arising under section 623**  
In Explanatory Notes paragraph 2308 the reference to ‘Subsection(4)’ should be to ‘Subsection (5)’.
178. **cl 673 Income arising where capital amount other than derivative property or right obtained for occupation income**  
In Explanatory Notes paragraph 2487, at the end of the sentence, is the word ‘realised’ apt?
179. **cl 715 Meaning of “qualifying period”**  
In Explanatory Notes paragraph 2681, in the fourth line, the reference should be to clause 709(5) rather than to 709(3).
180. **cl 767 Power to make regulations to give effect to Chapter**  
In Explanatory Notes paragraph 2944, in the fourth line, the spacing between the words has gone awry.
181. **cl 817 Foreign payers of manufactured overseas dividends: the reverse charge**  
In Explanatory Notes paragraph 3185 the references to “manufactured interest” should all be to “manufactured overseas dividends”.
182. **cl 835 Deemed payments to unit holders and deemed deductions of tax**  
In Explanatory Notes paragraph 3255, in the first line, the reference to ‘Subsection (5)’ should be to ‘Subsection (6)’.
183. **cl 859 Overview of sections 860 to 864**  
In Explanatory Notes paragraph 3375, in the second bullet point, the reference should be to ‘Chapter 8 of Part 2 of ITEPA’.
184. **cl 862 Treatment of sums representing income tax**  
In Explanatory Notes paragraph 3390, at the end of the only sentence, insert ‘or transfer’ after ‘payment’.
185. **cl 866 Regulations under section 865**  
In Explanatory Notes paragraph 3407, in the first line, ‘cane’ should be ‘can’.

## **cl 881 The definitions**

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186. In the definition of “the year 1988/1989” should the date referred to now perhaps be updated as part of the rewrite?

187. The definition of “woodlands” as with the definition of “forestry”, might rather be stated as “to be read in accordance with section 888”. Section 888 does not give a clear definition to either.

## **cl 884 Meaning of “company”**

188. (3) Having regard to Schedule 4 Part 2 (Index of defined expressions) should an exception also be made for Part 6?

## **Part 14 Deduction from other payments connected with intellectual property**

189. Chpt 7 In Explanatory Notes paragraph 3092, the third bullet point reference to Chapter 7 concerning chargeable payments connected with exempt distributions from companies appears to be in error. Chapter 10 in Part 14 deals with these, as indicated in Explanatory Notes paragraph 3121.

## **Part 14 Deduction from certain payments of yearly interest**

190. Chpt 3 In Explanatory Notes paragraph 2957, in the first bullet point references to clauses ‘34’ and ‘35’ should be to ‘35’ and ‘36’. In the second bullet point, the reference to clause ‘35’ should be to ‘36’.

## **Sch 2 Transactions in securities: appeals to House of Lords**

191. Para 89(a) Paragraph 89(a) should also apply to the reference in s 613(s) to the Supreme Court.

## **Sch 4 Index of defined expressions**

192. Part 2 ‘Act’ is defined in s 882 (which then signposts s 908).

TJH/PCB  
30.5.06

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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](mailto:tdtf@icaew.co.uk) or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

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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/taxfac/index.cfm?AUB=TB2I\\_43160,MNXI\\_43160](http://www.icaew.co.uk/taxfac/index.cfm?AUB=TB2I_43160,MNXI_43160).