Tax Faculty

Tax Representation

TAXREP 18/05

DEDUCTION OF TAX BY DEPOSIT-TAKERS AND BUILDING SOCIETIES: TAX LAW REWRITE: BILL 4

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

CONTENTS

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)02 published on 2 February 2005 by HMRC Tax Law Rewrite Team at http://www.hmrc.gov.uk/rewrite/exposure/menu.htm.

WHO WE ARE

2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in the Annex.

GENERAL COMMENTS

3. The fundamental approach of aligning the building society regime with the deposit-takers regime makes the rewritten legislation much more easily accessible, through the adoption of a common basis for the split between primary and secondary legislation and for identifying payments subject to deduction of tax.

4. The definition of 'relevant investment' in clause 7, common to building societies and deposit-takers, and the new logical structure adopted in Part 1 Chapter 1 (Deduction of Tax by Deposit-Takers and Building Societies) are also fundamentally helpful to the reader.

5. There remains extensive duplication of regulations in SI 1990/2231 and SI 1990/2232, and we support the suggestion in paragraph 9 of Paper CC(05)02 Explanatory Notes that the possibility of combining the two sets of regulations should be explored. There does appear to be scope to achieve this, without losing the benefit of the clarity of two completely separate sets. We appreciate, however, the resource implications for the project and agree that the priority should be to ensure that the remaining regulations continue to work properly alongside Bill 4.

ANSWERS TO QUESTIONS

6. **Q1** As achieving the benefits set out in Explanatory Notes paragraph 7, it is clearly sensible to rationalise the building society and deposit-taker regimes, through adopting common bases for the split between primary and secondary legislation and by aligning the gross payment category rules for building societies with those for deposit-takers, for the identification of payments subject to deduction of tax. We agree that the alignment of the main provisions of the two regimes justifies the exceptional rewriting of the secondary legislation involved.

7. **Q2** It follows from our response to Q1 that, in accordance with the approach of aligning the two regimes, we also consider it sensible to explore the possibility of subsuming the remaining provisions of the Building Society regulations (SI 1990/2231) into an amended version of the Income Tax (Deposit-Takers) (Interest

Payments) Regulations 1990 (SI 1990/2232). There is currently extensive duplication in the two sets of regulations.

8. **Q3** There is no evident reason to disagree with the order of the rewritten clauses 9 to 21, having regard to the consideration already given to this as explained in Explanatory Notes paragraph 13. In particular, the basic separation of clauses 9 –14, dealing with non-UK resident beneficiaries, and the other investments which are not relevant investments in clauses 15-21 is appropriate. Its topic is evident from each clause heading and the number of clauses is not sufficiently large as to cause any further concern over their ordering, which appears appropriate.

9. **Q4** We agree the proposal to enact SI 1992/3234 (EEA firms) and SI 2002/1968 (dealers in financial instruments).

10. In this context, we note that consideration is being given to whether SI 1984/1801 (the Income Tax (Prescribed Depositors) (No. 1) Order, relating to the British Railways Board, and SI 1985/1696 (the Income Tax (Composite Rate) Prescribed Deposit-takers) Order, relating to various local authorities, are spent or obsolete.

11. **Q5** We have no objection to the proposal in clauses 7(5)(a) and 7(6)(a) to refer to the receipt of interest respectively as a personal representative or as a trustee, particularly as the qualification 'in that capacity' is retained for the plural cases in clauses 7(5)(b) and 7(6)(b).

12. **Q6** As a relevant investment is now defined in the rewrite by reference to the beneficial owner of the payment, we agree that it is not necessary to rewrite regulation 4(1)(b) of the Income Tax (Building Societies) (Dividend and Interest) Regulations 1990 (SI 1990/2231), where payment is made to the trustees of a trust other than a discretionary or accumulation trust.

13. **Q7** The changes set out in Change {jc 460}, affecting the obligation of building societies to check whether a payment may be made gross, follow logically from the alignment of the building society regime with the deposit-takers regime and are acceptable.

14. **Q8** We agree the alignment, in clause 9(4) and 10(4) respectively, of the information required in declarations made to building societies on behalf of individuals and Scottish partnerships with that required in declarations made to deposit-takers.

15. **Q9** We agree that it is appropriate that clause 10 should be rewritten to the effect, in clause 10(2), that an investment will not be a relevant investment where a declaration has been made by the Scottish partnership that *all the partners* of the Scottish partnership are not ordinarily resident in the United Kingdom. This approach also affects clauses 10(3), 12(2)(b)(iii) and 12(3)(d)-(g).

16. **Q10** We have no objection to clause 13(c) requiring a declaration to contain such *information* as the Board of Inland Revenue may *reasonably require*, in accordance with current practice.

17. **Q11** It is appropriate that the Inland Revenue should be given flexibility in clause 14(1) in the selection of declarations to be inspected, aligning the deposit-taker legislation with the building society regulations. It would, however, be helpful if it was made clearer that the Inland Revenue notice applies only to those declarations which the deposit-taker or building society is still required to retain at the date of the notice.

18. **Q12** Agreed

19. **Q13** It is appropriate to draft clause 19(4), concerning when an investment will be treated as being held at a branch for the purposes of the building society legislation, in accordance with s 482(7) ICTA which makes the same provision in respect of deposit-takers.

20. **Q14** It is appropriate to define "bank" for the purposes of the building society legislation, in clause 21(3), by reference to the meaning given by s 840A ICTA.

21. **Q15** We support the proposal to replace the general building society regulation making power in s 477A(1) ICTA with specific regulation making powers in line with the deposit-taker legislation.

22. **Q16** We similarly support the proposal to replace the general building society regulation making powers in s 477A(1) ICTA with specific order making powers.

23. **Q17** S 481(4A) ICTA, relating to the deposit-taker's regime, does not include the words "applied in defraying expenses of the trustees" in its definition of a discretionary and accumulation trust. In aligning the deposit-takers and building societies regimes, we do not object to these words being excluded from the clause 24 definition of a discretionary or accumulation trust, on the understanding that s 686 ICTA (liability to additional rate tax of certain income of discretionary trusts) does not apply to income applied in defraying the trustees' expenses.

24. **Q18** Agreed.

25. **Q19** SI 1995/1370 relates to pre- 6 April 1995 deposits and permits gross payment of interest by a deposit-taker where it is not reasonably practicable for the deposit-taker to pay the interest net within a period of 30 days of being notified to do so. As a transitional provision, of restricted application, it does not appear appropriate to incorporate it into primary legislation.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

Sch 1 Consequential amendments

Para 2

26. In view of the repeal of s 477A(1) ICTA is any consequential amendment needed to subsection 477A(7), which refers to subsection 477A(1)? Subsections 477A(5) and (6), which contain similar references, will be repealed by ITTOIA.

Para 3

27. If s 480A ICTA is omitted and repealed, is any saving provision necessary in respect of s 480A(2)-(4) pending the rewriting of Schedule 16?

DETAILED COMMENTS ON DRAFTING

Clause 3: Power to make regulations disapplying section 2

28. The repeated use of the word 'provision' at the beginning of clause 3(2)(a), (b), (c) and (d) might be avoided by placing it after the word 'include' in the first line of clause 3(2).

Clause 4: Meaning of "deposit-taker"

29. In clause 4(2)(b)(iii), insert 'a' before 'credit' in the first line.

Annex 1

30. In the second bullet point on page 15 of Paper CC(05)12, at the beginning of the third line, 'interest' should be 'income tax'.

TJH/PCB
20.4.05

ANNEX

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.