Tax Representation

Tax Faculty

TAXREP 35/05

LIMITS ON LIABILITY TO INCOME TAX OF NON-UK RESIDENTS

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

CONTENTS

LIMITS ON LIABILITY TO INCOME TAX OF NON-UK RESIDENTS

TAX LAW REWRITE: BILL 4

INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)14 published on 4 May 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. The structure of Chapter 1 (Limits on liability to income tax of non-UK residents), incorporating the rewritten provisions relating to non-UK residents other than companies (in clauses 2-5) together with those relating to non-UK resident companies (in clauses 6 and 7) makes this legislation more accessible to the user who will no longer need to refer respectively to ss 127 and 128 FA 1995 or to s 151 of and Schedule 26 to FA 2003. The combining of the similar FA 1995 and FA 2003 Schedule 26 provisions relating to transactions carried out through brokers and investment managers, in clauses 8-14, is also a useful clarification for the user.

4. As clauses 2-5 can apply to a non-UK resident company liable as a trustee it is arguably misleading to describe these clauses, in the italicised heading, as referring to a limit for non-UK residents other than companies and to describe clauses 6 and 7 as referring to a limit for non-UK resident companies. The headings for clauses 2-5 and for clauses 6 and 7 might each perhaps be extended by the addition of the words 'not liable as a trustee' to more accurately reflect their coverage.

ANSWERS TO QUESTIONS

5. **Q1** We agree the rewriting in the draft clauses of s 127 FA 1995 and Schedule 26 to FA 2003 to the extent that they respectively supplement s 128 FA 1995 and s 151 FA 2003.

6. **Q2** The use of the new term "disregarded income", in place of "excluded income", in calculating the limit in clause 2 (Limit on liability to income tax of non-UK residents) might still convey an impression that it is entirely excluded from the non-UK resident's liability to income tax. We nevertheless support this change, as aligning with the use of 'disregarded' (relief) in s 128(1)(a) FA 1995 in the source legislation, as the use of the term 'disregarded income' in the clause 2(4) definition of Amount A makes it quite clear that tax deducted from such income is to be taken into account in calculating the income tax liability of the non-UK resident.

7. **Q3** We have no objection to the proposed omission, in clause 4(3), of the reference in s 128(3)(cd) FA 1995 to the income being specified as arising from a source in the United Kingdom. With reference to Explanatory Notes paragraph 25, it is clear that as regards non-UK residents ss 609, 610 and 611 ITEPA 2003 apply only to an employment-related annuity which arises from a source in the UK.

8. **Q4** In the context of clause 6 (Limit for non-UK resident companies) we agree the introduction of the defined term 'disregarded company income'. With reference to our response to Q2, we also agree the inclusion in the term of the word 'disregarded' rather than 'excluded'.

9. **Q5** In view of the explanation in Change {jc 472} in Annex 1, we agree the proposed omission of the disregard in s 151(1)(a)(ii) FA 2003 of any relief to which a company is entitled by virtue of double taxation arrangements.

10. **Q6** We agree that draft rewritten clause 8(5)(a) (The independent broker conditions) does effectively rewrite s 127(2)(d) FA 1995, whilst avoiding the need for the reader to refer again to ss 126 and 127 FA 1995 in order to determine whether the broker may be a UK representative in relation to any income or other amounts chargeable to tax for the same tax year whether part of the taxable sums or not.

11. Assuming that this is the effect of s 127(2)(d) FA 1995 (and similarly s 127(3)(f) FA 1995) the penultimate sentence in Explanatory Notes paragraph 43 (and similarly in paragraph 52 as concerns an investment manager) is a little confusing. It appears to say that the broker (or investment manager) will be the non-UK resident's UK representative in respect only of the income or other amounts chargeable for the tax year apart from the taxable sums. However, is not the effect of not meeting the condition in s 127(2)(d) (and similarly s 127(3)(f)) that the broker (or investment manager) is not independent in respect of all income or other amounts chargeable for the tax year in respect of transactions carried out by that broker (or investment manager) whether included in the taxable sums or not?

12. **Q7** Having regard to Change {jc 481} in Annex 1, we agree the rewrite of paragraph 2(2)(d) of Schedule 26 to FA 2003 in the manner proposed in clause 8(5)(b), in accordance with current practice.

13. **Q8** We agree the rewriting of s 127(3)(f) FA 1995 in the manner proposed in clause 9(7)(a), as regards an independent investment manager, but also please see our comments in response to Q6 in relation to the similar clause 8 concerning an independent broker.

14. **Q9** Having regard to Change {jc 481} in Annex 1, we agree the rewrite of paragraph 3(2)(f) of Schedule 26 to FA 2003 in the manner proposed in clause 9(7)(b), in accordance with practice.

15. **Q10** We have no objection to the use in clause 11(3) (mean8ing of 'relevant disregarded income') of the words 'in relation to which the independent investment manager conditions, ignoring the requirements of the 20% rule, are met'.

16. **Q11** In principle, the legislation would be more intelligible to the user if the designated currency swaps were included as a specific category of investment transaction in clause 18, with a signpost to the SIs concerned containing the relevant detail, particularly if this is the only type of investment transaction designated by SI to date. The user might otherwise have difficulty in finding relevant statutory instruments. In practice, however, the user might expect to readily trace these by reference to standard annotated publications of the tax legislation and we accept that an approach of cross-referring to relevant SIs could not be adopted as widespread TLR practice in view of the multiplicity of these. We accordingly agree to the proposal not to include currency swaps as a specific category of investment transaction in clause 18.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 2 Limit on liability to income tax of non-UK residents

17. (6) It is helpful to the user to set out details of the reliefs referred to in clause 2(5)(b).

cl 4 Meaning of 'disregarded income'

18. (1) As sub-clauses 4(1)(e) and (f) are disproportionately long within sub-clause 4(1), and have a common preamble as far as the words 'carried out', might they be substantially amalgamated with appropriate distinction in a single sub-clause between 'broker' and 'investment manager'?

19. As a comment in passing, although originating from ITEPA 2003 the drafting of sub-clause 4(3) is now perhaps a little intimidating to the user; but with the assistance of the bracketed descriptions it is sufficiently intelligible initially and, of course, fully intelligible by reference to the signposts included. The legislation signposted is too extensive to be referred to in any other way.

cl 7Meaning of 'disregarded company income'

20. (1)(c), (1)(d), (2), (3) Sub-clauses 1(c) with (2), and 1(d) with (3), appear cumbersome by reference to sub-clauses 4(e) and (f). The latter refer more directly to the necessary meeting of the key independent broker and independent investment manager conditions (respectively in clauses 8 and 9-13). Is the clause 7 inclusion of 'acting as an agent of independent status' in sub-clauses 7(1)(c) and 7(1)(d), as then respectively elaborated upon in sub-clause 7(2) and 7(3), in fact necessary in the rewrite?

21. (1)(c), (1)(d) Should an exclusion be made for any income within clause 7(1)(a) and (b), analagous to the approach in clause 4(1)(e) and (f)?

22. (1)(e), (1)(f) Is there any significance in the reference to 'income arising from' as compared with 'income deriving from' in clause 4(1)(e) and (f)? If not, should the same wording be used in both clauses 4 and 7?

cl 16 Meaning of 'disregarded savings and investment income' and
cl 17 Meaning of 'disregarded annual payments'

23. Where is 'relevant foreign income' defined?

DETAILED COMMENTS ON DRAFTING

cl 10 Investment managers: the 20% rule

24. In Explanatory Notes paragraph 57 Insert ‘of Schedule 26’ after ‘and (4)’.

TJH/PCB
26.7.05

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.