THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND & WALES

Tax Faculty

Tax Representation

TAXREP 33/05

JOINTLY HELD PROPERTY

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

JOINTLY HELD PROPERTY

TAX LAW REWRITE: BILL 4

INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)11 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 Jointly Held Property Chapter is a short one and apart from our replies to the four Questions nothing else arises.

4. Subject to our comments in response to Questions 2 and 4 we agree the drafting of the clauses and Schedule. We note in particular that it has been found unnecessary to retain the concept of earned income, which has led to some welcome simplification of the legislation.

5. We also note that clause 3 (References to married persons living together) may be relocated in an Interpretation Part of Bill 4.

ANSWERS TO QUESTIONS

6. **Q1** As it is now possible to dispense with the concept of 'earned income' in rewriting the s 282A ICTA joint property rule, being the only place in the Income Tax Acts where it is used, it is appropriate to in fact rewrite s 282A ICTA without reference to this term. This avoids the need to define it and also enables specific provisions treating income as earned to be repealed, in pursuit of simplification of the tax legislation. We note that s 180(1)(b) FA 1993 will be specifically amended to disapply clause 1, so that the 50:50 rule will not apply (as draft Consequential Amendments Schedule paragraph 7). Please also see our response to Q2.

7. **Q2** In the interest of simplifying the legislation it is attractive that all joint income arising from patents and know-how (unless it is partnership income) should be treated in the rewrite as falling within the 50:50 split rule in clause 1. However, such income previously treated as earned will then fall within this 50:50 rule, which is not currently the case under the source legislation, and although couples will have the option of electing for allocation to follow actual beneficial entitlement they will only be able to make this election under clause 2(1) if their shares in the property match their shares in its income. This restriction does not apply in the source legislation. Simplification might be reconciled to the source legislation in this respect if clause 2(1) were to specifically exclude jointly held interests in patents and know-how from

the requirement that the beneficial interest in income should correspond to the beneficial interest in the property from which it arises.

8. **Q3** We agree that, as there is no longer any form of joint assessment of income belonging to more than one person, s 277 ICTA is otiose and need not be rewritten.

9. **Q4** If the exclusion in s 282A(4A) ICTA referred only to distributions from close company shares, as Explanatory Notes paragraph 15 recognises, income from shares held under a joint tenancy (as then included within exception D in clause 1(6) (Jointly held property)) would in consequence fall outside the 50:50 allocation rule under clause 1(2). Reliance would then instead need to be placed on equal allocation according to practice. HMRC confirmation that this practice of allocating half rather than the whole income to each individual would continue to be followed would be helpful in this context and on this basis, and in the interest of simplification, there should be no practical effect if the exclusion in s 282A(4A) ICTA referred only to distributions from close company shares.

TJH/PCB
26.7.2005

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.