TAX REP 25/02

TAX LAW REWRITE:
DRAFT INCOME TAX (EARNINGS AND PENSIONS) BILL

Memorandum submitted in September 2002 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in July 2002 by the Inland Revenue

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A GENERAL COMMENTS

Introduction

1. We welcome the opportunity to comment on the Draft Income Tax (Earnings and Pensions) Bill ('the Bill') issued in three volumes in July 2002.

2. We have earlier commented on Exposure Drafts 6, 11 and 12 in TAXREPs 25/99, 7/01 and 13/02, in TAXREP 15/02 on the March 2002 rewritten clauses concerning mileage allowance payments and mileage allowance relief and the extension of the exemption for works bus services to minibuses, and in TAXREP 16/02 in response to paper CC/SC(02)03 (PAYE legislation). We are pleased to note that many of our suggestions in these responses have been taken into account in the drafting of the Bill.

3. We congratulate the Tax Law Rewrite team on having produced an excellent Bill. Following the Capital Allowances Act 2001, it is another major step forward in improving the intelligibility of UK tax legislation in areas of the law which affect the majority of taxpayers, justifies the good sense of embarking upon the tax law rewrite project and demonstrates its practical value. The completion of the project, through the further necessary rewrite Bills, would be accelerated if more drafting resources could be devoted to it and, whilst also congratulating its firmness of purpose in supporting the project, we urge the Government to give consideration to this.

4. Apart from our comments below on the draft clauses and Schedules, we have also drawn attention to any errors in the Commentary, on the understanding that this will substantially become the Explanatory Notes to accompany the Bill.

Structure of the Bill

5. We are content with the overall structure of the Bill, based on its 14 Parts.

6. Part 1 (Overview) is a neat 'introduction' to the entire Bill

7. Part 2 (Employment income: Charge to tax), imposing the charge to tax on employment income and setting out how the amount charged to tax in a tax year is to be calculated, is an equally neat introduction to the employment income Parts. It is well structured and a great improvement upon the original legislation. Part 2 is a key Part to which the following employment income Parts 3 – 8 relate well. We note that Part 2 of ED12 has now been divided into Parts 2 – 6 in the Bill, and we agree that this is appropriate.

8. The non-exhaustive definition of 'employment' in cl 4 (meaning of 'employment') is a realistic approach to the meaning of employment, sensibly permitting individual contracts to continue to be determined as employment or self-

employment on their facts as hitherto in the context of the substantial case law and experience in practice.

9. The Part 2, Chapter 2 distinction between 'general earnings' (comprising earnings and amounts treated as earnings) and 'specific income' (comprising amounts which count as employment income), relating to the two streams to the charge to tax on employment income with issues of residence, ordinary residence and domicile being relevant only to 'general earnings', accurately rewrites the structure of Schedule E and is essentially sound. We are happy with the structure and inter-relationship of cls 6, 7 and 8, although the unavoidable multiplicity of signposts may initially deter the reader; but also feel that the labels 'general earnings' and 'specific income' are not ideal, and note that this terminology is subject to change.

10. As regards its structure Part 2, Chapter 3 might be made clearer through deleting cls 9(3) and 9(5) and relocating cl 10 after cl 12, renumbering the clause sequence accordingly. It is clear to the reader what 'net taxable earnings' and 'net taxable specific income' mean from existing cls 11 and 12, and he then only needs guidance as to the meaning of 'taxable earnings' and 'taxable specific income' (provided in existing cl 10) to enable him to calculate the amount eligible in cl 9.

11. It might also be better to relocate cl 13 before cl 9 in Part 2, Chapter 3. This would give more prominence to the person liable for tax, and the use of the terms 'general earnings' and 'specific income' in existing cl 13 rather than net taxable earnings and net taxable specific income would also then flow more naturally into existing cl 9(1).

12. We are also pleased to note that cl 8 and Schedule 1 (Provision of services through an intermediary) in ED12 are now included in the draft Bill as Part 2 Chapter 7 (Application of provisions to workers under arrangements made by intermediaries).

13. We note that the exemptions clauses in Part 4 now precede the deductions clauses in Part 5. Whilst this reverses the ED11 order, it is equally acceptable. Cls 228 and 229 reflect the differing treatment of the various exemptions in the legislation, and clearly demonstrate the need for simplification. Are there really persuasive policy reasons to maintain these differences? Cl 229 in particular is not easily understandable.

14. We note that cls 287 and 288, relating to special exemption and relief for bridging loans connected with employment moves, are now located in Part 4 Chapter 7 (Exemptions: removal benefits and expenses); and no longer in Part 3 Chapter 7 (taxable benefits: loans). This is acceptable, given the clear signpost from cl 173(3).

15. 4.16.9(Car hire) in ED11, restricting the deduction for expenditure on hiring a car where its retail price when new exceeds £12,000, has not been included in the Bill. Why not?

16. We note that the two register system proposed in ED11 in regard to deductible professional fees and subscriptions dealt with under s 201(2) ICTA and s 201(3) ICTA is not to be pursued.

17. In Part 11, Cls 653 - 657 (Income support) now make the limited chargeability of income support more intelligible, as compared with cls 594 – 596 in ED12. The splitting of ED12 cl 594 between new cls 653 – 655 is particularly helpful. There are still difficulties of comprehension, however. The new heading of cl 653 is confusing. Chapter 3 concerns income support payable to the claimant who is on strike, when the other member of the couple is not; whereas the clause heading can be read as meaning that income support is not payable to the striking member, and this needs attention.

18. As regards Part 12 (Pay as you earn), we responded to the earlier CC/SC(02)03 draft of the clauses in TAXREP 16/02 (May 2002). We make reference to that response, where applicable, in this response.

19. Further changes to the layout of the clauses within Part 12 have been made since paper CC/SC(02)03 was issued, and we are content with these.

20. We will await the issue of revised Schedules 6 and 7 (as indicated in Commentary 3909 and 3929). We have not reviewed these Schedules to the published draft Bill.

21. References in this memorandum to Part, Chapter, cl (clause) and, unless otherwise indicated, to Sch (Schedule) are to those contained in the Bill. References to 'Commentary' are to the Commentary in the Draft Income Tax (Earnings and Pensions) Bill Volume 1: Introduction and Commentary (July 2002), and the numbering refers to the paragraphs in that Commentary.

B QUESTIONS

We agree with the PRCs proposed, except where we comment to the contrary below. In a number of cases, where we do agree, we have additional comments to make as below. We reply by reference to the question numbering in the Draft Income Tax (Earnings and Pensions) Bill Volume 1: Introduction and Commentary (July 2002).

Q11 PRC(78). Please see our comments in Section C on cl 110.

Q12 Agreed (PRC(13)).
The drafting of cl 148(2) (Reduction of cash equivalent where car is shared) is a neat solution to the difficulties referred to in Commentary 573. We also note the effect (favourable to the taxpayer) upon cl 218, as compared with the operation of s 167(2) ICTA and ESC A71, when determining whether an employee is lower-paid.

Q15 Agreed.
This should be listed as a PRC.

Q16 Agreed.
The relevant PRC does not appear to be listed in Volume 1: Introduction and Commentary Part 2.

Q17 Not agreed (PRC(79)).
S 837(2) affects s 837(1) which defines 'the annual value of land'. We are not clear why the reference to s 23 of the General Rate Act 1967 should be considered no longer necessary. It provides a definition of 'the rent which might reasonably be expected to be ascertained within s 837(1)'. It reduces the taxable amount in the circumstances in which it applies. Although the General Rate Act 1967 has been repealed s 23 was a provision defining what was meant by 'rent'. We believe that, although the Act has been repealed, s 837(1) would currently still be interpreted by reference to it. Whilst we agree that it is inappropriate to refer to repealed legislation, we consider that the proper solution is not to change the law by deleting the s 23 provisions through not rewriting s 837(2) but rather to rewrite s 23 and include it as part of cl 207.

Q20 Agreed (PRC(3)).
It is a sensible change to list the deductions which can be made rather than those that may not be made, and this improves the intelligibility of cl 218 (Calculation of earnings rate for a tax year).

Q36 Agreed.
We note that work continues on the list in cl 341(2). In this context, it is a little surprising to note the omission of the Hearing Aid Council, referred to in ED11 Commentary s 180; but we assume that it remains under consideration whether this should be dealt with in cl 341 or in cl 342.

Q44 We are not aware of any provisions which entitle a person to charge income tax against another person, and accordingly cl 411(4)(b) could be deleted.

Q49 Agreed (PRC(17)).
Commentary 1927 states that this PRC is a change to the law but not to policy; whereas it is listed on page 9 of Vol 1 under Changes to the law and policy.

Q51 Agreed (PRC(52)).
In Section D of our response to cl 407(3) in ED12 we considered it sufficient to refer only to ss 272 and 273 TCGA 1992; but hold no strong view, and note that the definition of market value by reference to Part 8 of TCGA 1992 is also adopted in Schedules 2, 3, 4 and 5 to the Bill and is in accordance with existing policy.

Q52 Agreed (PRC (5)).
Commentary 2024 states that this is a change in the law but not to policy; whereas PRC(5) is incorrectly listed under Changes in approach but not in the underlying law on page 7 of the Bill Vol 1: Introduction and Commentary.

Q54 Agreed (PRC(54)).
The award date should be the same as that applying for cl 487 (no charge on acquisition of dividend shares).

Q58 Agreed (PRC(22)).
We welcome the simplification of the working time rule.

Q69 PRC(69). Not agreed.
It is clearly sensible to have a common basis of assessment for UK social security income. Where certain of that income is already assessable on an accruing basis, and in view of the project's limited ability only to change the law, we understand the proposal to adopt this basis throughout Part 11. We are not, however, in favour of it. Although the accruing basis is a longstanding basis, to tax on the basis of receivability before, and even without, receipt is fundamentally unacceptable. It is not a basis which is understood by taxpayers, and we suspect that most complete their Tax Returns on a receipts basis regardless.

It is incorrect to say that moving to an accruals basis will not affect anyone's liability to tax. Liability is affected where there is no receipt or the receipt is in a later tax year when the taxpayer's circumstances and the tax rates and allowances may be different from the previous year.

Further, where social security benefits, in particular pensions, are paid quarterly by bank transfer, it will cause a lot of unnecessary work for taxpayers to have to accrue for the period between 31 March and 5 April – or even for a week's benefit if a Monday falls between 1 and 5 April should the benefit be deemed to accrue by reference to the beginning of the week for which it is payable rather than on a day to day basis. Furthermore, where an initial claim is made for benefit this can often be backdated for a period of months.

As the liability on employment income is determined by reference to a tax year but taxed on a receipts basis, despite any inherent difficulty in defining date of receipt, it appears more consistent to tax benefits on a receipts basis rather than on an accruals basis.

Q73 We cannot support PRC(83).
We responded to this question in TAXREP 16/02 (May 2002). Having regard to Commentary 2905, the omission of s 205 ICTA will remove the taxpayer's right under s 205(4) ICTA to call for a tax return for completion. Whilst Commentary 2904 indicates that a taxpayer who wants to complete a tax return and self-assess will be allowed to do so, it is not acceptable to replace a statutory right with a discretion exercisable only by the Revenue.

Removing the s 205(4) right will leave the taxpayer with no power at all to insist on paying the correct amount of tax imposed on him by Parliament. The removal of such a right cannot possibly be regarded as a minor change, and falls clearly outside the terms of reference of the rewrite project.

Q85 Agreed (PRC(73)).
PRC(73) needs to refer to both Q84 and Q85.

Q95 Agreed.
We are content with the suggested replacement words in para 40(1)(a), as appropriately relating to any employee who may benefit from an award of shares.

Q97 Agreed.
We are content with the suggested replacement words in para 51(4)(b).

C SPECIFIC COMMENTS ON MATTERS OF PRINCIPLE

Part 2 – Employment income: Charge to tax

Chapter 3 – Operation of tax charge

cl 12 Calculation of 'net taxable specific income'

(2) The clause envisages a possible loss situation in the case of specific income. Why is there no provision for loss relief under s 380(1) ICTA? Cl 11(3)(a) does provide for such relief in the case of general earnings.

Part 3 – Employment income: earnings and benefits etc treated as earnings

Chapter 4 – Taxable benefits: vouchers and credit-tokens

cl 75 Sickness benefits-related voucher

(2) Without the Commentary, it would be difficult to understand cl 75 although it is accurately drafted. Might cl 75(2) in particular be easier to understand if the final two lines were abbreviated to 'the provision expense less the sickness benefit costs'?

cl 82 Meaning of "non-cash voucher"

(4) We note that cl 82(4) is now rewritten by reference to the provision to an employee for his/her use only, which accurately rewrites s 141(7) ICTA, rather than the provision to the employee or to a member of the employee's family as in 4.6.5(5) of ED6.

cl 84 Transport vouchers under pre-26th March 1982 arrangements

We note that cl 4.6.9(3) of ED6, whereby a transport voucher excepted from the charge to tax (now under cl 84) could nevertheless be chargeable to tax under the provisions for taxable benefits: residual liability to charge in the case of employees who were not lower paid, has now been dropped and that no such liability to tax arises for any taxpayer. This follows from the treatment of a cl 84 benefit as an 'excluded benefit' for the purposes of cl 202(1) and accordingly as not being an 'employment-related benefit' for the purposes of cl 201 in Part 3 Chapter 10 (Taxable benefits: residual liability to charge). Does this now require a PRC in the case of employees other than those who are lower paid? It would now be helpful to state in the Commentary in cl 84 that no residual liability to tax arises in the case of any taxpayer.

cl 86 Year in which earnings treated as received

(1) In Commentary 323, the third sentence is confusing. The amount is simply treated as earnings in the year of receipt, being a later tax year than that in which the cost of provision is incurred, and this is clear enough from cl 86(1).

The rest of Commentary 323, concerning the ascertaining of the cost of provision only in a tax year after that of receipt, is also confusing. What conclusion is to be drawn from the penultimate sentence? The final sentence is unintelligible.

Chapter 5 – Taxable benefits: living accommodation

cl 103 Cash equivalent: cost of accommodation not over £75,000

(3) Where the cl 103(2) cash equivalent applies, the 'rental value of the accommodation' is defined in cl 103(3) as the rent which would have been payable for the taxable period if the property had been let to the employee at an annual rent equal to the 'annual market value'. 'Annual market value' is defined in cl 110(1), which is substantially based on the s 837(1) ICTA definition of 'annual value' of land. In practice 'annual value' has been taken as gross rateable value. A lengthy commentary on this practice was included on p 160 of ED6, where cl 4.7.15 introduced the concept of 'notional annual value' which was drafted specifically by reference to gross rateable value (appropriately adapted to the entire UK). The use of 'notional annual value' has now been dropped, without comment either in the Inland Revenue's response document to ED6 or in the Commentary on the Bill. As drafted, cl 103(3) perpetuates the confusion that a commercial rent is implied, which was refuted in para 1 of the Commentary on cl 4.7.15 in ED6.

The essential problem here is that the existing legislation is defective. This is because, when what is now s 146 ICTA was enacted in 1983, the Revenue did not in practice apply the charge by reference to the 'annual value' as ascertained under s 837 ICTA; but instead by reference to what would have been the charge under s 837 had it been calculated 10 years previously having regard to the 1 April 1973 rating revaluation. This is an area where the process of rewriting changes the law, and the consequence will be materially disadvantageous to the taxpayer. This is because, prior to the rewrite, the Courts would probably have interpreted s 145 ICTA in the context of its history and the identity of the s 837 wording to that in the rating legislation. However, our understanding is that following the rewrite the Courts would no longer be permitted to look at the history, but will have to interpret the Income Tax (Earnings and Pensions) Act 2003 in accordance with its wording unless there is such ambiguity that recourse to history would aid interpretation. There would be no such ambiguity involved in the case of cl 103 which imposes a tax charge by reference to the current rental value of the property concerned. This is not an acceptable consequence of the rewrite. Whilst the rewrite correctly reflects the wording of the existing legislation, it does not reflect its spirit. We accept that it is probably impossible for the rewrite to reflect the spirit of the legislation within its terms of reference; but, if the Revenue were to adopt a practice of applying cl 103 by reference to 1973 values rather than current values, and expect everyone to rely on them to do so, that would not be a satisfactory situation

for taxpayers. We can see no obvious way to resolve this matter; but we regard it as a major outstanding issue.

cl 104 ***Cash equivalent: cost of accommodation over £75,000***

ED6 cl 4.7.11 sought to enact ESC A 91(b) – that where the charge to tax under s 145 ICTA was calculated broadly by reference to the commercial rent paid by the employer to provide 'over £75,000 accommodation', then no additional charge would arise under s 146 ICTA. Why has this not been followed through into cls 103 and 104? As drafted, the full commercial rent paid by the employer could be charged on the employee under cl 103(4)(a) and, through Step 1, cl 104 charge would include *in addition* the taxable 'additional yearly rent'. Whilst this correctly rewrites the existing legislation, why has the opportunity not been taken to mitigate its unfairness in a cl 104 charge situation (as recognised by ESC A 91(b))? Presumably the decision has been taken to continue to apply ESC A 91(b)? If so, it would be helpful to make this clear in the Commentary.

Chapter 6 – Taxable benefits: cars, vans and related benefits

cl 143 ***Deduction for periods when car unavailable***

(2)(c) It could be made clearer that the 30 day or more period can span two tax years.

cl 155 ***Method of calculating the cash equivalent of the benefit of a van***

(4) We do not understand the third sentence in Commentary 604. The last sentence in cl 155(4) is not the same as that in cl 90(4) of ED12, and it is difficult to understand the reference to the same sentence being retained.

It is debatable whether the final sentence in cl 155(4) and the inclusion of cl 155(5) and (6) clarifies the clause. The intent appears to be to make clear that where more than one van is shared in a tax year, as *all* the shared vans are taken into account in the calculation of the value of *shared* availability under s 160, then when totalling the cash equivalents in respect of those vans under cl 155(7) it is only necessary to include the one s 160 calculated amount plus the value of *exclusive* availability calculated for *each* of the vans.

We would prefer to delete the final sentence in cl 155(4); move cl 155(7) to follow cl 155(4) and reword it to refer to the situation where there is more than one shared van (in contrast to the single van situation in cl 155(4)); and accordingly leave cls 155(5) and (6) as the final sub-clauses explaining what is meant by the value of shared availability for the purpose of both cls 155(4) and (7). It is not clear why the wording of cls 155(5)(b) and (6)(b) should differ and, if this is unnecessary, they might also be combined.

cl 168 ***Pooled vans***

(2)(b) A PRC is presumably needed, to effect the change in approach but not in the underlying law referred to in Commentary 656?

Chapter 7 – Taxable benefits: loans

cl 174 Employment-related loans

With reference to our comments on Q17 in our response to ED12, we note that cl 109(1)(c) and cl 109(3) are now omitted from cl 174. Commentary 674 refers to this; but the Commentary is not easy to follow, and in particular the reference to 'Clause 178' is not understood. The ED12 drafting was directed towards establishing that the employment was or would become chargeable to tax, and Commentary 674 appears to be saying that this aspect is now covered by the definition of what is an employment within the benefits code. Commentary 674 does, however, still state that *at the time* the loan is made there must be an employment, by inference from the use of the word 'employee' in cl 174(1). In the example we gave, in response to Q17 of ED12, the loan is made before the employment commences. Cl 174 as drafted nevertheless would appear to tax the benefit from such a loan, because it is an employment related loan made by a person who becomes an employer to a person who *becomes* his employee. Cl 174 does not overtly state the requirement referred to above in Commentary 674. This is confusing.

cl 191 Claim for relief to take account of event after assessment

(3) Is a reference to cl 188 (Release or writing-off of loan treated as earnings) needed?

(4) Is a reference to cl 175 (Benefit of taxable cheap loan treated as earnings) needed?

Chapter 9 – Taxable benefits: disposals of shares for more than market value

cl 199 Disposal for more than market value: amount treated as earnings

(3) s 162(11) ICTA is not rewritten as affecting cl 199, whereas it was taken into account as cl 133(4)(b) in ED12. The Commentary does not comment on this. The view appears to have been taken that there are no other tax provisions taking priority over cl 199 on such a disposal; but it would be helpful if the Commentary explained this.

Chapter 10 – Taxable benefits: residual liability to charge

cl 202 Excluded benefits

(1) How is s 154(1)(b) rewritten? In cl 4.12.2 of ED6 it was expressly provided that benefits chargeable to tax as the employee's income otherwise than as employment income were outside the residual liability to charge. This is not reflected in cl 202.

cl 206 Cost of the benefit: transfer of used or depreciated asset

General Commentary 833 refers to cl 206 as a relieving provision. This is misleading. Where the market value of the asset at transfer is below its market value when the transferor first applied it in the provision of an employment related benefit, and is also less than the cl 206(5) amount, then the higher cl 206(5) amount becomes the cash equivalent as an anti-avoidance measure. Where the asset has increased in value, despite having been used, the full market value at transfer becomes the cash equivalent regardless of the amount of prior years' employment-related benefits which have arisen.

(5) It might be made clearer that the total of *all* employment-related benefits during the transferor's ownership of the asset, and not simply any attributable to the transferee, are deductible from the market value of the asset at the time it was first applied to provide cl 205 benefits through replacing the words 'those providing the current benefit' in Step 4 with 'transferor' (probably with 'transferor' also being inserted as a cross-reference after the second 'asset' in cl 206(1)(b)).

Chapter 11 – Taxable benefits: exclusion of lower-paid employments from parts of benefits code

General In our TAXREP 25/99 response to cl 4.13 of ED6 we referred to the argument that a director who has no cash emoluments does not have an 'employment' as defined in s 168(2) ICTA and is not therefore within s 167(1) ICTA; whereas the rewritten benefits code appeared unambiguously applicable to directors whether or not they have a contract of employment or receive other emoluments. We noted that the Revenue might resist this argument; but suggested that the rewrite's elimination of any such argument should at least be acknowledged. The Bill Commentary contains no reference to this.

cl 219 Extra amount to be added in connection with a car

(2)-(4) Commentary 883 is misleading. S 167(2B) – (2D) ICTA, and in particular s 167(2C), provided for the higher of two amounts to be included in the '£8,500' calculation; but cls 218 and 219 are drafted differently, by reference to an 'extra amount'. The extra amount to be added is not the higher of the two amounts denoted by the bullet points but, applying cl 219(2) – (4), the difference between them. This is effective for cl 218(1) purposes if the total of the cash equivalent of the car and the fuel benefit is already taken into account in cl 218(1) Step 1(b) as the amount taxable whether or not cl 219 applies, and cl 219 does appear to be drafted on this basis.

cl 220 Related employments

(3)(b)(ii) What is the authority for cl 220(3)(b)(ii)? The Table of Origins attributes cl 220(3) to ICTA s 167(3) (part) and (4); but neither of these appear to

authorise the inclusion of a partnership or body also controlled by B. What is the reference to 'section 167(12)' in Commentary 889?

Part 4 – Employment income: exemptions

Chapter 1 – Exemptions: general

cl 228 Effect of exemptions on liability under provisions outside Part 2

(1) The words 'In general' import a feeling of imprecision, whereas all the Part 4 exemptions affect liability to Income Tax under Part 2 and only those in cl 228(2) attract a wider and complete exemption. It would be preferable to draft cl 228(1) as subject to cl 228(2).

(2) We note that cl 4.43.1 of ED11 has now been dropped. That clause did, however, refer (in items (b), (n), (o) and (p)) to present draft cls 248,320, 322 and 323. Those clauses are not now listed in cl 228(2). Is it now the Inland Revenue view that those particular clauses do not in fact remove any charge to Income Tax on the income in question; or are they omissions which need to be included in cl 228(2)?

Chapter 3 – Exemptions: Transport, Travel and Subsistence

cl 238 Parking provision and expenses

(2) Cl 238(2) provides that no Income Tax liability at all arises in respect of the payment or reimbursement of expenses incurred in connection with the provision of workplace parking. How does this relate to cl 229(2) which provides more narrowly that such expenses are not to be treated as earnings in the employment income Parts? Presumably the purpose is to focus upon the earnings consequence in cl 229(2) before widening out to the overall Income Tax exemption under cl 238(2)?

As a policy matter, the exemption in cl 238(2) (expenses in connection with the provision of workplace parking) is wider than that in cl 238(1) (the provision for/ use of the workplace parking) which seems anomalous.

cl 246 Travelling and subsistence during public transport strikes

In TAXREP 7/01 we raised a number of practical issues on the predecessor clause 4.30.9 in ED11, and it is not evident how these have been addressed.

cl 247 Transport between work and home for disabled employees: general

ESC A59 also refers to travelling to and from a place where training is provided. This does not appear to be reflected in cl 247 (or in cl 248).

Chapter 6 – Exemptions: non-cash vouchers and credit-tokens

cl 266 Exemption of credit-tokens used for exempt benefits

(2) We note that s 314 (subsidised meals) is not listed; but the Table of Origins still includes a reference to ESC A74.

Chapter 7 – Exemptions: removal benefits and expenses

cl 284 Replacement of domestic goods

As explained in Commentary 1199, cl 284 is now drafted on the basis that sale proceeds of replaced domestic goods do not need to be deducted. We regard it as fairer to have regard to the net amount involved, where an overall limit applies in cl 286.

Chapter 11 – Miscellaneous exemptions

cl 314 Subsidised meals

General Under ESC A74 an employer can provide free or subsidised meal vouchers for staff for whom meals are not provided, and Commentary 314 appears to confirm that such meals can be obtained anywhere in exchange for the vouchers or tokens. In this context, cl 314(2)(b)(ii) is confusing because cl 314(2) relates to the provision of free or subsidised meals on the employer's business premises only. The reference to meal vouchers or tokens in cl 314(2) probably needs to be in a context of obtaining a free or subsidised meal with or without the use of a free or subsidised meal voucher or token; and then perhaps deal with the distinct use of meal vouchers or tokens at catering establishments away from the employer's business premises separately in an expanded cl 314(3)?

(1)(b) Should the words 'and the conditions in subsection (2) are met' qualify both cl 314(1)(a) and cl 314(1)(b)?

(2)(c) In order to avoid confusion with the cl 314(1) restrictions on location, it might be clearer to replace cl 314(2)(c) as 'in the case of a hotel or a catering or similar business if the meals are provided in the business restaurant or dining room at a time when …'.

cl 322 Long service awards

(3)(c)(vi) Is it intended that an interest in or rights over shares within cl 322(3)(b) should be excepted from the exemption, when an award of the shares themselves is exempt? If this is not intended, cl 322(3)(c)(vi) might be rephrased as 'an interest in or right over shares (but not those within paragraph (b)) or securities'.

Part 5 – Employment income: deductions allowed from earnings

Chapter 4 – Fixed allowances for employee's expenses

cl 364 Scope of this Chapter: amounts fixed by Treasury

As the introductory clause to Part 5 Chapter 4 (Fixed Allowances for Employee's expenses) it should be made clear that the employee is not obliged to deduct the fixed sum under cl 365 or cl 366; but can instead claim a deduction under the cl 334(1) general rule for his actual expenses wholly, exclusively and necessarily incurred if he chooses. Whilst such a choice may in practice be made only exceptionally, this opportunity is made clear in ESC A1 where it is stated that the existence of a flat rate deduction does not debar an individual employee from instead claiming a deduction for the actual expense he has incurred.

Part 6 – Employment income: income which is not earnings or share-related

Chapter 3 – Payments and benefits on termination of employment etc

cl 399 Meaning of 'benefit'

Are the amounts referred to in 4.43.2 of ED11 to be included within the Part 6 Chapter 3 (Payments and benefits on termination of employment etc) charge or not? Would the items at issue remain specific income even though exempted from a general earnings charge so that, applying cl 399(2), they would then remain benefits within cl 399(1)?

cl 400 Charge on payment or other benefit

We would prefer to have it made clear that the cl 400(1) charge is independent of the residence status rules which apply to earnings.

cl 405 Exception for contributions to tax-exempt pension schemes

Commentary 1818 appears to indicate that cl 405 also excepts the purchase of an annuity for the former employee by the employer (as para 2 of SP 2/1981). It is not obvious that cl 405 encompasses this; but, as SP 2/1981 required the annuity purchase to be an approved transaction, presumably such a purchase will now fall within an 'approved period pension arrangement'? If so, it would be helpful to explain this more clearly in the Commentary for the avoidance of any doubt.

cl 413 Notional interest treated as paid if amount charged for beneficial loan

We commented at length on 4.23.13 of ED11 and, despite the Commentary on cl 413, still remain unclear as to the purpose of this provision. The intention appears to be to exclude loans where, had interest been paid, it would have been tax deductible; but, the bracketed words in cl 413(2) appear instead to be saying that for cl 400 purposes only no interest is treated as having been paid, so cl 413 appears quite ineffective in the cl 400 context.

Part 7 – Employment income: share-related income and exemptions

Chapter 2 – Conditional interests in shares

cl 423 Amount of charge

(3) With reference to the penultimate sentence in Commentary 1903, it is not obvious how it is made clear that a charge taken under the 'FA 1998' provisions is not a deductible amount if it is generated by the same event which gives rise to the Part 7 Chapter 2 charge. If the 'FA 1998' charge is by reference to an event chargeable under Part 7 Chapter 2, the former cannot be later than the latter and accordingly cl 423(3) would then appear to allow a deduction from the 'FA 1998' charges.

cl 427 Duty to provide information: provision of conditional interest in shares

(1) What notification requirements apply where cl 421 does not apply, because the terms on which the employee acquires the employee's interest are such that the interest will cease to be only conditional *later than* 5 years after its acquisition, so that a liability to Income Tax under Part 2 arises on acquisition as well as subsequently under cl 422(1). This seems to follow from the existence of cl 421 itself – otherwise what point is there in having an exemption from an Income Tax liability under Part 2 if there is no such liability on acquisition? This is, of course, contradicted by the second sentence in Commentary 1907. Is it to be understood from Commentary 1907 that in practice the law is interpreted as not giving rise to any charge on acquisition of the employee's interest in such circumstances? The cl 427 certification requirements will of course alert the Inland Revenue to the acquisition of such an interest, but Commentary 1907 is confusing to the taxpayer .

Chapter 3 – Convertible shares

cl 434 Amount of charge

In Commentary 1923 the reference should be to 'clause 423' rather than to 'clause 426'.

Chapter 4 – Post-acquisition benefits from shares

cl 456 Related acquisitions of additional shares

(2)(a) Commentary 1976 states that rewritten cl 456 makes it clear that the timing rule (additional shares deemed as acquired at the time of the original acquisition) does not affect the date on which the cl 452 charge is taken.

We assume that this refers to cl 456(2)(a), which does *not* incorporate the timing rule and can relate to a cl 452 charge, whereas cl 456(2)(b) and cl 456(3) which do incorporate the timing rule deal only with charges on occurrence of a chargeable event or increase in value of shares in dependent subsidiaries. This significance of cl 456(2)(a) may not be readily apparent to the reader.

cl 465 Minor definitions

(1) Commentary 1990 states that, in the definition of an interest in shares, the words 'part of' in the phrase 'proceeds of sale of part of the shares' have been reinstated; but it is not apparent where this has been done in cl 465.

Chapter 5 – Share options

cl 468 Share options to which this Chapter does not apply

General The heading of cl 468 is misleading, as cls 468(2) and (3) deal with share options to which Chapter 5 *does* apply.

(1) Commentary 2006 states that the concern of cl 468(1) is with options granted at a time the employee is resident and ordinarily resident in the UK. Cl 468 does not make clear the consequences if a prospective employee is granted a share option at a time when he is not resident and ordinarily resident in the UK; for example, someone returning to the UK to take up new employment after working abroad for a period of years. In this example, cl 468(3) will evidently apply; but this is at variance with the Commentary 2006 statement above.

cl 469 No charge in respect of receipt of shorter-term option

(1) With reference to Commentary 2009, we would prefer to see the proviso that any gain on exercise of the option would be chargeable as expressly stated in cl 469(1). It is asking a great deal of the reader to deduce this in accordance with the final sentence in Commentary 2009.

The Commentary on cl 469 appears in effect to respond to our comments on cl 406(3) in Section C of our response to ED12. We referred to the example there of an employee being within the existing Schedule E Case 1 at the time of grant of an option capable of exercise within 10 years of grant, but where the employee subsequently moved outside the scope of the existing Case 1 within that 10 year period and before the option is exercised. It now appears that cl 469 would not apply in the case of this example, because of the de facto absence of any charge on exercise, and that a charge would arise on acquisition of the option. How does Chapter 5 cope with this? In this context it might also be helpful to insert 'or ceases to be' after the 'not' in the second line of the second bullet point in Commentary 2010. Further explanation may also become necessary in this respect in Commentary 2010.

Chapter 6 – Approved share incentive plans

cl 482 Approved share incentive plans (SIPs)

(4) It is not clear what point is being made in Commentary 2060 regarding the deduction of 'salary'. The definition is now included in para 43(4) Schedule 2, for the purposes of the SIP code generally. It would be clearer to make this point in Commentary 2060, or signpost Commentary 3377.

cl 499 Charge on free or matching shares ceasing to be subject to plan

(3) Commentary 2115 refers to the inclusion of the second sentence to clarify the relationship of this clause with cl 501. Is this necessary, or even confusing, in view of cl 499(6)(c) which subjects the entire clause to cl 501?

Chapter 8 – Approved CSOP schemes

cl 515 Approved CSOP schemes

(1)(a) It would probably be more reader-friendly to explain the acronym 'CSOP' once at least through still retaining 'company share option plan' before 'CSOP'.

Chapter 11 – Supplementary provisions about employee benefit trusts

cl 547 Meaning of 'appropriate percentage' for purposes of section 546

The contrast in cl 547(3) and (4) between the distributions made to the trustees by the company and the total distributions made by the company is perhaps not sufficiently obvious. The formula in cl 547(1) works where 'X' is less than 'Y'; but what if the trustees own more than one-third of the company's ordinary share capital, and cl 547(3) applies? If distributions were made by the company in each of the 3 years within cl 547(4) and the trustees received more than one-third of those in each of those years (but in aggregate less than the payments total in cl 547(2)), then the percentage will exceed 100%.

In a case where cl 547(5) applies, where the company makes no distributions in the 3 year period should cl 537(3) also be deemed to apply as though 'X' were 0? In the absence of any distributions by the company to the trustees, which presumably follows from the absence of any distributions at all by the company, cl 547(3) would otherwise not operate to exclude cl 547(2) because it assumes that some distribution is made by the company. If 'X' is not deemed to be 0, the cl 547(1) fraction would then appear capable of exceeding 100%. It would then also seem appropriate to designate 'Y' as 0. 'X' could not be I, as this would give rise to a fraction of 100%.

Part 10 – Pension income

Chapter 8 – Other employment-related annuities

cl 600 Annuities under sponsored superannuation schemes

(3) Cl 600(3) should also presumably be extended to Chapter 6 of Part 10? This was the case in cl 540(3) of ED12. Similar comments apply to cl 601(3).

Chapter 12 – Return of surplus employee additional voluntary contributions

cl 615 Return of surplus employee additional voluntary contributions

(4) With reference to Commentary 2586, whilst cl 615 correctly rewrites s 599A(5) and (10) ICTA, would it not be appropriate to bring payments made to the employee's personal representatives within cl 615 by means of an appropriate PRC? Presumably they will remain within Sch D Case VI, if cl 615 is enacted as drafted, and this does not seem consistent with the approach of removing income from Case VI and taxing it according to its substance whenever possible.

cl 619 Meaning of "grossing up"

(3) With regard to Commentary 2598, this post-ED12 addition of the words 'expressed as a percentage' in the definition of 'R' when applied to the formula confuses rather than clarifies. It might be simpler in the definition of 'R' to state that 'R' is the basic rate expressed as an integer. If it is too difficult to explain this, we would drop sub-clause 619(3).

Chapter 13 – Pre-1973 pensions paid under the Overseas Pensions Act 1973

cl 623 Income chargeable

Having regard to Q66 in Commentary 2623, the reference to 'subject to the remittance basis rules' in Commentary 2624 is inappropriate.

Part 11 – Social security income

Chapter 2 – United Kingdom social security income

cl 649 United Kingdom social security income

Why is invalid care allowance no longer listed in Table A, as it was in ED12?

Chapter 3 – United Kingdom social security income: exemptions

cl 653 Income support not payable to member of couple involved in trade dispute

With reference to Commentary 2792, it seems a surprising result that nothing should be taxable if both members of the couple are on strike. Is this correct? Couples with no dependants, who are both involved in a trade dispute, are of course not entitled to income support; but, where they have dependants, may be entitled to some income support. Should this not then be taxable?

Please also see our comments on the cl 653 heading in Section A.

Part 12 – Pay As You Earn

Chapter 2 – PAYE: General

cl 676 Meaning of 'payment'

(1) We note from Commentary 3003 that a revised cl 676 will be made available if the points in Commentary 3002 can be accommodated.

Chapter 4 – PAYE: Special types of income

cl 690 PAYE: Gains from share options

We note from CC/SC(02)13 (August 2002) the two revisions now made to cl 690; the first to correctly exclude the references to section 477 in cl 690(3)(a)(ii) and (4)(b), and the second to expand sub-clause 690(6) into new sub-clauses 690(6) and (7) to more clearly provide the circumstances where PAYE is due if the consideration for the sale or assignment of a share option is in the form of a voucher or credit token.

Part 14 – Supplementary provisions

cl 704 Alteration of amounts by Treasury order

(2)(h) S 577 ICTA (business entertaining expenses) does not include any power for the Treasury to alter by order the monetary limit in s 577(8)(b). We have no objection to the Treasury being given power in cl 704(2)(h) to alter this by order; but strictly this should be dealt with by means of a PRC.

Schedule 2 – Approved share incentive plans

para 10 No preferential treatment for directors and senior employees

We note that the words 'higher levels of remuneration' used in para 10 Sch 8 FA 2000 have been changed without comment to 'the higher or highest levels of remuneration'. Does this add anything to the reader's understanding of para 10 Sch 2, or is alignment with para 8(1)(b) Sch 3 (Commentary 3273) the sole justification?

Schedule 3 – Approved SAYE option schemes

para 39 Requirements about share options granted in exchange

(2)(b) We note that the Inland Revenue share scheme specialists are considering the circumstances where there is a commercial preference for replacement options to be over shares in a a company in a group, other than the acquiring company. Similar comments apply in the case of Sch 4 para 27(2).

Schedule 4 – Approved CSOP schemes

para 6(1) Limit on value of shares subject to options

Should the reference to 'person' be changed to 'individual', as Sch 4 relates to individuals only?

D DETAILED COMMENTS ON DRAFTING

Part 2 – Employment income: charge to tax

Chapter 5 – Taxable earnings: rules applying to person resident, ordinarily resident or domiciled outside UK

cl 20 ***Taxable earnings under this Chapter***
In Commentary 78, in the first line, insert 'with' after 'deals'.

cl 22 ***Chargeable overseas earnings for year when employee resident and ordinarily resident, but not domiciled, in UK***
In Commentary 81, the reference to 'Subsection (4)' should be to 'Subsection (3)'.

In Commentary 84, the reference to 'Subsection (6)' should be to 'Subsection (5)'.

cl 23 ***Meaning of "chargeable overseas earnings"***
In Commentary 86, in the first line, insert 'are' after 'earnings'.

cl 32 ***Receipt of non-money earnings***
(2) In the first line, insert 'tax' before 'year'.

In the description of s 92, a closing bracket is omitted before the comma. Similarly in cl 19(2).

cl 34 ***Earnings remitted to the United Kingdom: further provisions about UK-linked debts***
Commentary 114 should refer to Subsections (1) and (2) as the applicable subsections.

Chapter 6 – Application of provisions to agency workers

cl 42 ***Treatment of workers supplied by agencies***
In Commentary 154, in the third sentence, the references should be to 'clause 42' rather than to 'clause 43'and within the brackets to 'clause 45' rather than to 'clause 46'.

In Commentary 157, we suggest that the reference should be to 'section 42(2)(a)' rather than to 'subsection (2)(a)' in view of the earlier reference to cl 45 as there is also a sub-clause (2)(a) in cl 45.

Chapter 7 – Application of provisions to workers under arrangements made by intermediaries

cl 49 ***Conditions of liability where intermediary is a company***
In Commentary 186 there is an appropriate reference to 'Schedule' in the fourth line.

cl 50 ***Conditions of liability where intermediary is a partnership***
(3) In the third line 'payments' should be 'payment'.

cl 53 ***Application of rules relating to earnings from employment***
In Commentary 207, the quotation from para 10(5) Sch 12 FA 2000 omits '(a)' and, in the first line, 'a' should be 'as'.

cl 55 ***Earlier date of deemed employment payment in certain cases***
(1)(b) The reference to 'section 48(2)' should be to 'section 48(3)'.

Part 3 – Employment income: earnings and benefits etc treated as earnings

Chapter 3 – Taxable benefits: expenses payments

In Commentary 259, insert 'with' after 'deals' in the first sentence.

cl 69 ***Sums in respect of expenses***
In Commentary 261, the reference should be to 'clause 70' and not to 'clause 71'.

In Commentary 264, in the third line, 'sums' should be 'sum'.

Chapter 4 – Taxable benefits: vouchers and credit-tokens

General In the General supplementary provisions it would be helpful to have a signpost to Part 4 Chapter 6 (Exemptions: Non-cash vouchers and credit tokens)

cl 86 ***Year in which earnings treated as received***
In Commentary 323, in the second sentence insert 'the' before 'voucher'. In the fourth sentence, 'provisions' should be 'provision'.

cl 93 ***Disregard for money, goods or services obtained***
In Commentary 351, in the first sentence 'serviced' should be 'services'.

Chapter 5 – Taxable benefits: living accommodation

cl 104 ***Cash equivalent: cost of accommodation over £75,000***

Several mistakes in the Commentary make it more difficult to understand cl 104.

In Commentary 386, a reference to subsection (2)(b) of cl 103 rather than to subsection (5) would be more helpful. A closing bracket is also required after '103' at the end of the second sentence.

In Commentary 388, a reference to 'the additional yearly rent' rather than to 'the notional annual rent' (which appears to be a hangover from ED6) would be more helpful to the reader's understanding. The reference to 'step 1' in the second sentence in Commentary 388 should instead be to 'step 3'.

Chapter 6 – Taxable benefits: cars, vans and related benefits

cl 165 Deduction for payments for private use

(4)(a) With reference to Commentary 644, whilst we hesitate to complicate this already over-lengthy legislation concerning vans, it is preferable that the law should be clear rather than leaving it to be interpreted under the 'care and management' provisions. Perhaps through a PRC 'amount paid' in cl 165(4)(a) should be phrased as 'attributable amount paid' supported by a definition of 'attributable' in a sub-clause as meaning either the amount paid in respect of a particular van or a just and reasonable part of any global sum paid?

Chapter 7 – Taxable benefits: loans

cl 184 Interested treated as paid

In Commentary 723 the reference should be to Subsection (4) and in Commentary 724 the reference should be to Subsection (5).

Chapter 8 – Taxable benefits: notional loans in respect of acquisitions of shares

cl 192 Application of this Chapter

(2) We prefer 'the employing company', as used in ED12, to 'the employer' as the employer could be an individual. Similar comments apply to cl 198(3) in Chapter 9.

Chapter 10 – Taxable benefits: residual liability to charge

In Commentary 815, the second '204' should be '205'.

cl 210 Power to exempt minor benefits

Commentary 841 refers to subsection (3), which no longer appears in the Bill itself.

cl 211 Special rules for scholarships: introduction

In Commentary 842, the two references to Chapter 10 should be to Chapter 4.11 (in ED6).

(3) Cl 211 does not originate entirely from drafting, as stated in the Table of Origins. Cl 211(3) originates from s 165(6)(a) ICTA.

cl 212 Scholarships provided under arrangements entered into by employer or connected person

In Commentary 847, the reference to 'Chapter 10' should be to 'Chapter 4.11' (of ED6). The reference to 'subsection (3)' (of cl 212) should also be to 'subsection (1)'.

(4) Commentary 848 is unintelligible. Can the purpose of cl 212(4) be explained more clearly?

cl 213 Exception for certain scholarships under trusts or schemes

General Cl 213 does not wholly originate from s 165(3) ICTA, as stated in the Table of Origins. Cl 213(6) originates from part of s 165(6)(b) ICTA.

(2) Whilst the meaning of cl 213(1) itself is reasonably clear, that the provision by reason of the employment test should be made disregarding any exclusion under cl 201(3) or cl 212 on account of its provision in the normal course of an individual employee's domestic, family or personal relationships, Commentary 851 confuses the issue. What are the 'clause 201(3) opening words' and is this perhaps an incorrect reference to cl 201(5)?

Chapter 11 – Taxable benefits: exclusion of lower-paid employments from parts of benefits code

cl 216 Provisions not applicable to lower-paid employments

(6) The reference to 'section 188(3)' should be to 'section 188(2)'

cl 218 Calculation of earnings rate for a tax year

In Commentary 874 the reference to 'clause 216(2)' should be to 'clause 216(4)'.

In Commentary 878 the reference to subsection (3) drawing attention to special rules that apply to the provision of a car is incorrect. Attention is drawn to the special rule concerning living accommodation only. Step 2 in cl 218(1) deals with the special rule in respect of the provision of a car.

In the flow diagram on p 117 of the Commentary, 'Note (a)' and 'Note (b)' require alignment.

Part 4 – Employment income: exemptions

Chapter 1 – Exemptions: general

cl 227 Scope of Part 4

(3) The signposts to the various provisions containing exemptions affecting what constitutes general earnings are helpful; but maintaining this type of subsection as complete in the future will need close attention.

Chapter 2 – Exemptions: mileage allowances and passenger payments

cl 237 Interpretation of this Chapter

(2)(c) A signpost to cl 168 (Pooled vans) is also necessary.

Chapter 3 – Exemptions: transport, travel and subsistence

cl 240 Payments and benefits connected with taxable cars and vans and exempt heavy goods vehicles

(5)(a) The signposts to cl 115 might also refer to the definition of 'van'.

cl 241 Incidental overnight expenses and benefits

In Commentary 994 the italicised reference to 'Subsection (5)(a)' should be to 'Subsection (5)'.

Chapter 4 – Exemptions: education and training

cl 255 Exemption for contributions to individual learning account training

(1) In Commentary 1044, in the last line, 'employee' should be 'employer' in both places where it appears.

(1)(a) Commentary 1047 states that the exemption is now expressed to apply whether the training is funded or provided by the employer (or former employer) or a third party. In this context, the words 'other than the employee's employer or former employer' may confuse. The intended meaning is presumably that the employer/former employer cannot give the training; but can fund or provide it. It would be clearer to delete these words from cl 255(1)(a), and state more obviously as a separate closing sentence within cl 255(1)(a) that the training provider must not be the employee's employer or former employer.

Chapter 5 – Exemptions: recreational benefits

cl 260 Exemption of recreational benefits

In Commentary 1078 the reference to 'Subsection (1)(b)'should be to 'Subsection (2)(b)'.

cl 263 Annual parties and functions

In Commentary 1096 the reference to cl 264 should be to cl 265, and the reference to cl 265 at the end of the sentence should be to cl 263.

Chapter 6 – Exemptions: non-cash vouchers and credit-tokens

cl 265 Exemption of non-cash vouchers for exempt benefits

General In Commentary 1109 the reference should be to Subsection (5). There is in fact no commentary on Subsection (4).

(2)(a) Section 243 should be entitled 'Works transport services'.

cl 267 Exemption of vouchers and tokens for incidental overnight expenses

In the Commentary, the cl 267 heading in bold is abbreviated.

Chapter 7 – Exemptions: removal benefits and expenses

cl 271 Removal benefits and expenses to which section 270 applies

(1)(c)(i) The description of s 276 is 'acquisition benefits and expenses' rather than 'acquisitions'.

Chapter 8 – Exemptions: special kinds of employees

cl 291 Termination payments to MPs and others ceasing to hold office

(1) It would be clearer if the bracketed words instead formed a second sentence, stating that Chapter 3 of Part 6 does apply.

cl 294 Overnight expenses of other elected representatives

(2)(a) Insert 'the' before 'Scotland'.

cl 295 Transport and subsistence for Government ministers, etc

(6)(c) If it is intended to restrict the meaning of 'vehicle' to a car (Commentary 1253), it would be clearer to define 'vehicle' as meaning 'car' as defined in cl 115(1), as a van is also a type of 'mechanically propelled road vehicle'.

Chapter 10 – Exemptions: termination of employment

cl 309 Limited exemptions for statutory redundancy payments

(3) In Commentary 1327, the word 'that' is duplicated in the first line.

Part 5 – Employment income: deductions allowed from earnings

Chapter 1 – Deductions allowed from earnings: general rules

cl 328 Deductions from earnings not to exceed earnings

(3) The drafting relates to the third bullet point in Commentary 1456. Whilst favourable to the taxpayer, what is the basis in law for this sub-clause? Why should deductions be permitted in the absence of any taxable earnings, whereas deductions cannot exceed earnings under cl 328(1)?

Chapter 2 – Deductions for employee's expenses

cl 338 Travel between group employments

(6),(7) In Commentary 1504 the reference should be to subsection (7). It is not clear what the second sentence in Commentary 1504 means; but it presumably refers to cls 335 and 336 where the expenses must be necessarily incurred (cl 335(1)(b)) and the attendance necessary (cl 336(1)(b))?

In Commentary 1505, the reference should be to subsection (6).

cl 342 Deduction for annual subscriptions

In Commentary 1529, line one, 'Inaland' should be 'Inland'.

cl 351 Deductions from earnings charged on remittance

(1) The reference to 'subsection (3)' should be to 'subsection (2)', and the reference to 'subsection (2)' should be to 'subsection (3)'.

In Commentary 1568 the reference to 'clause 22(3)' should be to 'clause 23(3)'.

cl 357 Disallowance of deductions under sections 334 to 338 where expenses relate to unremitted or untaxed earnings

(2) This sub-clause consists of a long sentence which is not readily comprehensible. As its title effectively explains what cl 357 is about, it might be clearer to delete the final words 'to which earnings within subsection (1) relate' and insert 'within subsection (1)' after the first 'employment' in the second line of the sentence.

Chapter 5 – Deduction for earnings representing benefits or reimbursed expenses

cl 367 Scope of this Chapter: earnings representing benefits or reimbursed expenses

(3) In the final line, 'benefit' should be 'benefits'.

In the penultimate line, it would be clearer to insert 'instead' before 'be allowed …'.

Part 6 – Employment income: income which is not earnings or share-related

Chapter 1 – Payments to non-approved pension schemes

cl 388 Exception: non-domiciled employees with foreign employers

(c) Is it intended to still involve 'the Board of Inland Revenue'?

cl 390 Relief when no benefits are paid or payable

(1),(4), (5) Is it intended to still involve 'the Board of Inland Revenue'?

Chapter 3 – Payments and benefits on termination of employment etc

cl 399 Meaning of "benefit"

(1) In the first line, at the end, delete 'were'.

cl 404 Exception for payments and benefits under tax-exempt pension schemes

(2)(b) Is it necessary to include '1970' after 'ICTA' at the beginning of the second line? Similarly before the closing bracket in the last line?

cl 411 Reduction in other cases of foreign service

(6) In the definition of 'personal relief' should the ICTA reference be to 'Part 7' or to 'Part VII'. Strictly it should be the latter.

cl 412 Valuation of benefits

In Commentary 1835, in the second sentence, 'so that' is duplicated.

In Commentary 1841, first line, the reference to clause '104104' should be to clause '104'.

Part 7 – Employment income: share-related income and exemptions

Chapter 3 – Convertible shares

cl 438 Amount or value of consideration given for right to acquire shares

In Commentary 1931 should the comparison be with cl 425 rather than with cl 479?

Chapter 5 – Share options

cl 480 Duty to provide information relating to share options

(4)(b) The reference should be to 'Class 1' rather than 'Class'.

Chapter 6 – Approved share incentive plans

cl 483 Operation of tax advantages in connection with approved SIP

(2) The reference in Commentary 2063 to 'required employment' should be to 'eligible employment'.

Chapter 7 - Approved SAYE option schemes

Overview In Commentary 2150 and 2151 the references to 'Sch 2' should be to 'Sch 3'.

Chapter 9 – Enterprise Management Incentives

cl 535 Effects on other income tax changes

The reference in Commentary 2262 should be to 'Chapter 9 of Part 3' rather than to 'Chapter 10 of Part 2'.

Part 10 – Pension income

Chapter 1 – Tax on pension income

cl 561 Charge to tax on pension income

(2) In the 'Type of income' column, the spacing needs attention in the case of Sections 585, 588, 600 and 621; and possibly in Sections 570 and 608.

Chapter 4 – Approved retirement benefits schemes

cl 578 Meaning of "employee" and "ex-spouse"

(2)(b) Before the second comma, it might be preferable to replace 'person' by 'individual'.

Chapter 5 – Former approved superannuation funds

cl 583 Unauthorised payments: application of section 573

(1)(a) At the end of the first line, 'an' should be 'a'.

Chapter 11 Supplementary provisions about employee benefit trusts

General In Commentary 2291 the reference to ‘paragraph 1’ in the first sentence should presumably be to Commentary 2287.

The Commentary 2294 references to ‘the basic rule’ and ‘paragraph 1’ are not readily intelligible.

Chapter 14 – Voluntary annual payments

cl 625 Voluntary annual payments

(4) In the first line, delete ‘a’ before ‘behalf’.

Chapter 16 – Exemptions: any taxpayer

cl 637 Pensions payable where employment ceased due to disablement

(2)(b)(i) Should ‘performance of’ be inserted before ‘the duties’? The wording would then be the same as that in cl 637(3)(b)(i).

Chapter 17 – Exemptions: Non-UK resident taxpayers

cl 640 Exemptions: non-UK resident taxpayers

In Commentary 2717 the reference to ICTA 1970 is now otiose.

cl 645 Overseas Service Act 1958

(6)(c) The ‘l’ is missing from ‘public’.

(8) In the definition of ‘certified’, ‘ICTA’ appears to be unnecessary in view of the reference also to ‘ICTA 1970’. Similarly in cl 647(4).

Part 12 – Pay As You Earn

Chapter 2 – PAYE: General

cl 674 PAYE regulations

In Commentary 2968, in the final sentence, the reference to ‘Paragraph 36’ should be to ‘Paragraph 44’.

Chapter 3 – PAYE: Special types of payer or payee

cl 678 Agency workers

(3) Does s 701 (Interpretation of Part) also need to be included as part of the relevant provisions?

cl 680 Employee non-resident etc

(2) In the final line, insert 'PAYE' before 'income'.

(10)(b) In the first line, insert 'to' after 'reference'.

Chapter 4 – PAYE: Special types of income

cl 684 Non-cash vouchers

(3),(4) It might be helpful to signpost the definition of 'readily convertible asset' in cl 692. Similar comments apply to cl 685(1) and cl 687(1). Cl 686 might also have a signpost to cl 692.

cl 685 Credit-tokens

Commentary 3088 refers to a non-existent Subsection (4), the definition of 'credit token' now being in Schedule 1 Part 2 (Index of defined expressions).

cl 687 Enhancing the value of an asset

In Commentary 3097, the reference should be to 'clause 691(2)(c)' and not to 'clause 686(8)(c)'.

cl 690 PAYE: gains from share options

In Commentary 3124, the references to sections '203F(3)(a)', '203F(3)(b)' and '203F(6A)' should be to sections '203FB(3)(a)', '203FB(3)(b)' and '203FB(6A)' respectively.

Part 14 – Supplementary provisions

cl 704 Alteration of amounts by Treasury order

(2)(b) The title of s 242 includes 'and benefits'.

cl 708 Other definitions

(2)(b) It needs to be made clearer that the reference to 'the 1987 Act' is to the Family Law Reform Act 1987 referred to in cl 708(2)(a).

Schedule 1 Part 2 - Index of Defined Expressions

'company vehicle (in Chapter 2 of Part 4)' is defined in 'section 237(2)'.

'taxable earnings' is defined in s 10(2) and not in 10(3).

'taxable specific income' is defined in s 10(3) and not in 10(2).

Schedule 2 – Approved share incentive plans

para 23 Meaning of "associate": trustees of employee benefit trust

(4) The reference to 'this Part' should be to 'Part 7'.

para 100 'the Board of Inland Revenue' is defined in 'section 707(2)' and not in 'section 707(3)'.

Schedule 3 – Approved SAYE option schemes

para 13(5)(a) Material interest: options and interests in SIPs

At the end of the third line, 'be' should be 'been'.

para 15(4) Meaning of 'associate': trustees of employee benefit trust

Should the reference to 'this Part' be to 'Part 7'? Similar comments apply to Sch 5 para 32(4).

para 38(2)(b)(i) Exchange of options on change of control etc

'(c.6)' to be inserted after 'Computer Act 1985'.

para 42(1) Withdrawal of approval

In Commentary 3657, in the first sentence, is it intended to use the apostrophe as the words are not in fact a quotation from para 42(1) Sch 3? Similar comments apply to Commentary 3763, as regards Sch 4 para 30.

para 49 Indexed of defined expansions

In the definition of 'employee and employment' the reference should be to '5(2)(b)' rather than to '5(2)(c)'. In the equivalent Sch 4 para 37 definition the reference is to '5(2)' only.

Schedule 4 – Approved CSOP schemes

para 9 The "no material interest requirement"

In Commentary 3704 the word 'have' in the second line is superfluous.

para 11 Material interests: options and interests in SIPs

(3) In Commentary 3707 the reference should be to *'sub-paragraph (3)'* rather than to *'sub-paragraph (2)'*.

(5)(a) At the end of the third line, 'be' should be 'been'.

para 14(3) Meaning of "associate": trustee of discretionary trust

In the second line, insert 'the' before 'omission'.

para 22 Requirements as to price for acquisition of shares

In Commentary 3743, in the penultimate line, delete the word 'into'.

para 26 Exchange of options on change of control etc

In Commentary 3748, the reference should be to ‘paragraph 27’ and not to ‘paragraph 39’.

para 37 ***Index of defined expressions***

‘the Inland Revenue’ is defined by reference to ‘section 707(1)’, whereas the equivalent Sch 3 definition is by reference to ‘section 707’ only.

Schedule 5 – Enterprise management incentive

para 30(7)(a) Material interest: options and interests in SIPs

In the first line at the top of page 434 of the Bill, ‘be’ should be ‘been’.

para 44 ***Notice of option to be given to Inland Revenue***

In Commentary 3873 the references to the origin of this clause is confused.

para 59 ***Index of defined expressions***

In the definition of ‘child’, insert ‘section’ before ‘708(2)’.

In the definition of ‘shares’ the reference to ‘section 521(5)’ is incorrect.

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