TAXREP 19/02

TAX LAW REWRITE

FOREIGN INCOME, PROPERTY INCOME

Memorandum submitted in July 2002 to the Revenue by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Exposure Draft No 13: Foreign Income, Property Income issued in March 2002

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TAX LAW REWRITE: EXPOSURE DRAFT No 13:

FOREIGN INCOME, PROPERTY INCOME

A GENERAL POINTS

Introduction

1. We welcome the opportunity to comment on ED13 issued in March 2002.

2. Although specific comment is not called for on the italicised clauses in Volume 2, a number of comments do nevertheless arise and we have included these in sections C and D.

Comments on the Bill

3. Generally, the structure of Part 2 (Trading income) is substantially the same as the structure of Part 3 (Trading income) set out in Exposure Draft 10, Volume 2. There has been some minor re-arrangement of the clauses and some clause additions and deletions; but this reflects the ongoing rewriting. The main change to content is of course the adoption now of the 'integrated approach' as regards the rules for foreign income throughout the Bill. The final draft layout and contents of Part 2 will be apparent when the second income tax rewrite Bill is published, and we will be responding in due course to that Bill.

4. As an overall comment on the rewritten Part 3 (Property income), this is a commendable effort by the Tax Law Rewrite team in rewriting particularly complex legislation. Whilst we have raised a number of points, we are generally content with the approach adopted in the rewrite and with the resulting structure and contents of Part 3.

5. We agree that it is appropriate to adopt the name 'Property Income' for income that is charged under Part 3. We also agree that it is necessary to keep the references to the property law terms involved, as effectively being unavoidable in a context where the property income provisions tax income from land interests as defined in property law. As regards the complexity of the Schedule A provisions, we support your approach to this on the basis of what you consider best reflects the underlying approach of the 1995 reforms and the rewrite's aim to make the effect of the legislation clear whilst making no more than minor changes to the law, and in particular adhering to the central 'business' concept.

6. We also support the new approach to defining 'property business', starting with the person engaged in the letting, etc activity and linking to that person the UK or overseas property business which this activity creates for tax purposes. We agree that this makes it clearer that such a property business is an artificial entity, comprising real businesses and activities and individual transactions deemed to be businesses. In

this context, the concept of 'generating income from UK/ overseas property' is appropriate.

7. A reader may well view a 'property business' as including dealing in land, which is not the intention. In particular, in the Commentary on Chapter 2 of Part 3 as concerns the exclusion of those trading income rules having no practical effect it is stated a number of times that a property business does not have trading stock (or work in progress). The clause 228(1) definition of 'generating income from property', which underpins the definition of 'property business' is, however, a little ambiguous in this context. Arguably dealing in land is the exploitation of an estate or interest in land or a right over land as 'a source of . . . other receipts', being the sale proceeds of that land. The doubt here is whether 'source' could mean both an asset from which income can be generated and a resource which can itself be turned into a receipt.

8. Although it makes Chapter 2 of Part 3 a little cumbersome, we agree that it will be more intelligible to the reader if reference is made specifically to every trading income calculation rule that can apply to a property business, and that the exclusion of any such rule as incapable of applying will be a proposed rewrite change ('PRC') (through the proposed one composite PRC) unless already excluded by the current provisions.

9. In Chapter 3 of Part 3 (Leases: Amounts treated as receipts) we agree that the approach of dealing with one rule in one clause is helpful to the reader (Commentary 515). We also agree the treatment of the deemed income under clauses 250, 252, 253 and 254 as a receipt of a property business rather than rent in a landlord's hands; and the standardising of the timing rule in these clauses for all recipients to mean the tax year in which the amount of the deemed income is to be brought into account, without specifying when within that tax year (Commentary 530-532). The use of new term 'effective duration' of a lease is also appropriate.

10. The relief provisions in clauses 258-266 are complex; but reflect the complexity of the legislation. They will not be readily intelligible to the reader; but they represent a commendable attempt to present them in a way which is intelligible with the unavoidable expenditure of sufficient mental effort. We have a number of comments on clause 258 in particular; but, in general, the rewrite is a difficult job well done.

11. We note that work continues on Chapter 7 (Accrued income profits), Chapter 10 (Gains from contracts for life insurance, etc) and Chapter 13 (Disposals of futures and options involving guaranteed returns) of Part 4 (Savings and investment income) and that these Chapters will be part of a later consultation exercise. We also note that work continues to establish whether income arising outside the UK chargeable under any of the special regimes under Schedule D Case VI or under a specific non-schedular provision can have a foreign source (similarly as regards Part 5). We agree that it is appropriate to apply a territorial restriction to all income within Part 4, so that income arising outside the UK is chargeable only if it arises to a UK resident.

12. We note that the consultation on Part 5 (Miscellaneous income) is limited to those clauses that have foreign specific adaptations and the clauses in new Chapter 4 (Films and Sound Recordings: Non-Trade Business). In Chapter 5 (Beneficiaries'

Income from Estates in Administration) we agree that it is best to have separate basis of assessment clauses for income chargeable: UK estates and for income chargeable: foreign estates. We note that work continues on a number of the clauses in Part 5 and in particular regarding Chapter 3: income from intellectual property and Chapter 6: income not otherwise chargeable (the latter with a view to replicating the 'sweep up' charging functions of Schedule D Cases V and VI), and that this will form part of a later consultation exercise. In this context, we also note that you will be considering the consequences for the Case VI loss regime.

13. With regard to Part 6 (Exempt income) we note that you are reviewing all exemption clauses to ensure that they continue to apply the current rules correctly in view of the 'integrated approach' to foreign income and that you are also reconsidering the location of exemptions in the Act, and that there will be later consultation on this.

14. In view of the difficulties referred to in Commentary 1058-1067 Part 7, Chapter 1 (Rent a Room Relief) is commendably structured. We agree the change of name to Rent a Room, and clause 597 (Scope of Chapter) is a particularly effective introduction to the essential features of the relief. The rewriting by reference to the three income types – trading income, property income and 'section 557 income' - works well (Commentary 1066). The use of drafting devices such as the 'income period' (Commentary 1092) and the 'exclusive receipts condition' and 'exclusive receipts period' (Commentary 1103) are innovative ways of making the legislation clearer to the reader, and the correcting of various recognised anomalies is also welcome. We support the location of the rent a room rules as Chapter 1 in Part 7 (Losses and reliefs (against general income)) on the basis that it is a relief and is available against several types of income.

15. In the application of Part 8 (Foreign Income etc: Special Rules) we agree the use of the term 'foreign income', for the reason given in Commentary 1147, and note that the definition of foreign income as arising from a source outside the UK by virtue of listed provisions (or where identified as foreign source income in any clause – Commentary 1164) as proposed in clause 616 is at an early stage and is subject to the outcome of continuing work (Commentary 1148 and 1164).

16. Our statutory references are to the Income and Corporation Taxes Act 1988 ('ICTA') unless otherwise stated. Part, Chapter, Schedule and cl (clause) references are to those contained in ED13 Volume 2: Draft Clauses and Table of Origins (March 2002), unless otherwise stated. References to 'Commentary' are to the Commentary in ED13 Volume 1: Introduction and Commentary (March 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 ED13 Volume 1: Introduction and Commentary.

Q2 Agreed (PRC(37)).
It is appropriate to have the same boundary between both UK and foreign trading income and property income, and note that it is proposed to give priority to the latter. This is a little surprising in view of the approach adopted in clauses 15-19, where the rental income concerned is treated as a receipt of the trade; although, in fairness, the principle there is that the charge as rental income will otherwise take priority.

Q4 Agreed (PRC(38)).
We note that PRC(38) is explained on p 175 Volume 1: Introduction and Commentary ED13 as a proposal to treat *some* foreign wayleaves as trade receipts. The word 'some' should presumably be deleted?

Q9 Agreed (PRC(56)).
We note that the distinction between Case 1 and Case V trades in the charge to Class 4 National insurance contributions will be preserved, and that you have still to consider generally how to deal with Case VI loss relief rules.

Q11 Agreed (PRC(8).
We agree that the term 'property income' is the most appropriate name for income charged under Part 3 as the replacement for 'Schedule A income'.

Q12 Agreed (PRC(44)).
We note that you have yet to consider how to deal with the Case VI loss relief rules.

Q19 Agreed (PRC(70)).
Should the opportunity now be taken to treat Irish property income in the same way as income from any other overseas country? It seems an historic anomaly that it is currently treated differently for reasons that clearly no longer have any justification.

Q20 Agreed (PRC(11)).
It is surprising that, as these provisions were introduced as recently as FA 1998, the relationship between s 21A(1) and s 21A(2) ICTA should be unclear. S 21A(2)-(4) look more like an attempt to produce a comprehensive list of provisions relevant to the computation of the amount chargeable, rather than merely examples of these. We nevertheless agree now the proposal 'to list all the trading income calculation rules that can apply to a property business, as clearly in accord with the s 21A(1) purpose of computing the profits of a (property business) 'in the same way as the profits of a trade are computed . .'. This will however mean that the

application of any future relevant statutory provisions to both the trading and property income rules will require attention.

Q21 Agreed (PRC(12)).
This proposal is probably helpful as it reinforces the completeness of the Question 20 proposal. However, we are a little uneasy if it is proposed to list both the trading income rules that do apply (clause 238) and those that do not apply to a property business, because if something is accidentally missed it will be unclear which category it falls into. If the legislation instead merely contains a list of which provisions do apply, anything overlooked would automatically not apply unless the law is changed to specifically apply it.

Q22 We have reservations concerning PRC(47). Whilst the amounts at issue may be small, there is far less justification for including interest in trading profits than including rental income; yet the proposal is to exclude rental income (Question 2). We do not regard clause 20, treating certain interest arising to a person carrying on a trade as profits of the trade, as necessarily determining the treatment of interest arising to a person carrying on a property business. We incidentally foresee practical difficulties in the operation of clause 20(3) in the case of a trade, having regard to clause 20(4). It is also common banking practice to operate daily sweeping arrangements to and from a deposit account associated with a current account, and it seems in principle irrational that interest on the current account should be treated as trading income; whilst interest on the associated deposit account should not be. This represents an unwarranted tax distortion affecting the way a business is run.

We believe there are significant differences in the case of a property business. Amounts outstanding may be due from an agent and interest may well arise on these amounts outstanding rather than from the underlying rents or other clause 228(1) receipts. If any such interest was held to fall outside clause 240(2), it would evidently need to be specifically excluded from the profits of the property business. As with clause 20(3), we can also see difficulties in applying clause 240(3). In particular, if interest is to be included in the profits of the property business then it would in principle appear that interest on reserve funds ought to be included; whereas clause 240(4) would exclude this. A property business is more likely to hold funds on short-term deposit than a trading company, if only because service charge provisions may well require this. In applying clause 240(4) the concept of day to day money will also be less clear in the context of a property business which, unlike a trading business, will not normally receive income nor incur expenditure on a day to day basis.

Q28 Agreed (PRC(48)).
We note that the incidence of Case VI losses remains to be considered.

Q36 PRC(75). We have no objection to it being made clear that payments made to persons not connected with the landlord are not subject to the clause 254 charge; but we are not convinced that clause 254(1)(b) does involve a

change in the law. It seems clear that s 34(5) ICTA applies to the landlord and s 34(6) ICTA (subject to s 34(7) ICTA) to persons other than the landlord; but s 34(7) ICTA then restricts the application of s 34(6) ICTA as regards s 34(5) ICTA to persons connected with the landlord only.

Q54 Agreed (PRC(52)).
S 38(7) ICTA concerns paragraphs 2 and 3 only of Schedule 30 ICTA (Duration of leases). If paragraph 2(1) is not rewritten, the effect of s 38 ICTA (Rules for ascertaining duration of leases) will be retrospectively backdated from leases granted etc after 12 June 1969 to leases granted etc after 31 July 1963 (the date on which FA 1963 was passed). This would then evidently make paragraph 4 Schedule 30 ICTA otiose, as it applies only where s 38 ICTA does not have effect (for the purposes of ss 34-36 ICTA) and that will presumably only be in respect of the above pre-12 June 1969 leases. If paragraph 3 is not rewritten the rules for determining the duration of leases granted etc after 12 June 1969 and before 25 August 1971 will also be retrospectively amended by bringing them into line with the s 38 ICTA rules as now rewritten. In principle we do not agree with retrospective changes in the law; but if these Schedule 30 rules are unlikely to be ever used (Commentary 654), then in the interest of simplifying the legislation we agree the removal of these particular lengthy, complex and in practice unnecessary rules.

Q61 Agreed (PRC926)).
We agree that the reader will intuitively expect to find the definition of 'the commercial letting of furnished holiday accommodation' in the property income Part, and its location in a separate Chapter within that Part as a definition serving for general tax purposes is acceptable. There is clearly no ideal answer, and the consequence that the related tax advantages are prescribed in other legislation to which the reader will need to refer appears to be an unavoidable inconvenience. Clause 280(1) does give Chapter 6 some focus through its direct application to s 245 (Furnished holiday lettings) and, as implied in Commentary 730, there will be appropriate references to this definition from the other legislation containing the associated tax advantages.

In this context, we agree the proposal to rewrite s 503(3) and (5) ICTA with the loss relief rules in due course, with a cross-reference back to the above definition in Part 3 Chapter 6 of the second income tax Bill.

Q62 Agreed (PRC(85)).
We welcome the certainty that this PRC will bring, aligning the legislation with Revenue practice and removing any uncertainty inherent in s 504(3)(c) ICTA.

Q64 Agreed (PRC(27).
On reading clause 224(1) with 224(2)(d) a UK resident may well assume that the reference to overseas property income includes all such income. It is not until he reads on to clause 288 (which the bracketed reference in clause 224(2)(d) to Chapter 8 will not necessarily lead him to do) that he

will discover that it does not include Irish income. It would be more helpful to indicate in some way in clause 224(2)(d) itself that overseas property income does not include rents arising in Ireland. Please also see our more fundamental suggestion in our response to Question 19.

Q66 Agreed (PRC(58)).
We note, however, that further consideration is being given to this clause (Commentary 851, and potentially under Commentary 852).

Q69 Agreed (PRC(1)).
We have no objection to a separate charge on overseas dividends. We are not happy however that these should be chargeable by reference to the amount arising in the tax year (clause 323(1)). This overrides the maxim that 'receivability without receipt is nothing'. It is in any event unclear when a dividend arises. As an example, if a US company in which a UK resident taxpayer holds shares, declares a dividend on 5 April and despatches a cheque which is received on 9 April, it is doubtful under current law that it is technically the taxpayer's income until 9 April but it probably arises on 5 April. There can be difficulties also in determining when a dividend is received. It might therefore be more appropriate to base the charge on the date when the dividend is paid by the company on the basis that, subject to transmission vagaries, the taxpayer might reasonably expect to receive it soon thereafter.

Q73 Agreed (PRC(61)).
We note, however, that further consideration is being given to this clause (Commentary 957 and 958).

Q75 PRC(29). As a general principle, we are opposed to a proliferation of charging provisions as this can make it more difficult to identify the correct one. Does non-trading income from films or sound recording businesses in fact create a major problem under current law, sufficient to justify the separate Chapter 4 of Part 5? We find it hard to envisage circumstances in which the exploitation of a film or sound recording does not amount to a trade – perhaps an example would be where the whole of the rights in a film are sold in return for a royalty flow (this being fairly rare in itself) and the trader dies leaving his heirs to inherit the royalty flow; but it is unlikely that this would be of sufficient occurrence to justify a separate charge.

We note that the Schedule D Case V/VI loss position consequences of the Question 75 proposal remain to be considered.

Q76 Agreed (PRC(62)), subject to our comments under Question 75.
In the absence of specific legislation regarding deductions in calculating Schedule D Case V/VI income we agree that it is appropriate for the purposes of clause 522 (Films and sound recordings: non-trade business) to base these on existing practice, as a PRC. In this context, the sub-clauses of clause 525 are also appropriate (but please see our comments on clause 525(2) in section C).

Q87 Agreed (PRC(35)).
In the summary of Proposed Rewrite Changes in ED13 Volume 1 (page 175), the reference should be to 'property income' rather than 'trading income'.

Q92 We do not agree PRC(3).
We commented in detail upon the rewrite of s 585(1)(b) ICTA, in the employment income context, in our response to Questions 48 and 49 in ED12 (Employment Income: Part 3). We refer you to those comments, as also applicable to the rewritten clause 620(2) (Relief for delayed remittances). We believe that 'foreign currency' means sterling in the context of s 585(1)(b) ICTA and that the legislation should be rewritten on this basis.

Q96 We do not agree PRC(4). Please see our reply to Q92 above.
We believe that the reference to foreign currency in the context of s 584 ICTA is intended to mean sterling, and that this PRC is a change in the law that ought not to be made by the rewrite.

Whilst s 584(1)(b) ICTA provides for the realisation of overseas income in sterling or other currency, that is in the context of an actual sale in a third country of the right to receive income and clearly it is unlikely that such a sale would be for sterling. This contrasts with the reference to 'foreign currency' (being the same description used in s 585(1)(b) ICTA) in s 584(1)(a) ICTA. If the s 584(1)(a) ICTA reference to foreign currency was intended to include both sterling and other currencies, why should the draftsman have used a different wording in s 584(1)(b) ICTA where he felt it important to cover currencies other than sterling? In our view s 584(1)(a) ICTA is looking solely at a transfer to the UK. In that context the most natural interpretation of 'foreign currency' is sterling. We do not believe that parliament could have intended to oblige a taxpayer to go through two currency conversions in order to bring what might only be a small amount of money back to the UK. Furthermore, had this been the intention, it is reasonable to assume that relief would have been specifically provided for the costs of doing so.

Q97 We do not agree PRC(42).
S 584(2)(b) ICTA must have been intended to mean something. We agree that the taxpayer may have little or no influence over the applicable laws of the territory concerned or any executive action of its government; but that he can nevertheless be expected to exercise reasonable endeavours to obtain foreign currency (in our view, sterling) in that territory. We believe the intention of s 584(1)(a) and s 584(2)(b) ICTA, taken together, is that the taxpayer is not expected to remit at any cost – where foreign currency may be available but only in consequence of incurring uneconomic cost and unreasonable endeavour. The 'reasonable endeavours' provision protects the taxpayer from having to incur such uneconomic cost and effort in such a situation, and we believe that it should be retained. Otherwise, as s 584 ICTA is now rewritten, the taxpayer will fail the clause 625(3)(c) condition and would accordingly be unable to make any claim under clause 626 in this

type of situation when it would be reasonable to allow a claim to be made and where a claim might reasonably be made under s 584 ICTA.

C SPECIFIC COMMENTS ON MATTERS OF PRINCIPLE

Part 2 – Trading income

Chapter 1 – Income taxed as trading income

cl 20 Interest arising

Please see our comments in response to question 22 in Section B.

Part 5 – Miscellaneous income

Chapter 4 – Films and sound recordings: non-trade business

cl 525 Calculation of income

(2) Commentary 980 refers to capital expenditure only whereas, as drafted, clauses 525(2) could apply to both capital receipts and expenditure which would be appropriate in the context of calculating income. We seek confirmation that it is not intended to include capital receipts in the calculation.

How, if at all, does clause 525(2) tie in with the Finance Bill 2002 proposals on intangibles? Schedule 29, paragraph 80 of the Finance Bill does not exclude all capital expenditure in connection with films from these rules (which treat capital items in the same way as income); but merely excludes expenditure on the production of a master version of a film. We assume that where the new post-31 March 2002 regime applies it will apply for corporation tax purposes only.

Part 7 – Losses and reliefs (against general income)

Chapter 1 – Rent a room relief

cl 599 Meaning of "rent a room receipts"

(1)(d) Commentary 1092 states that the period during which the 'only or main residence' requirement must be met is concurrent with the letting period in clause 599(3). Is this correct? Isn't the clause 599(1)(d) requirement that the residence should be the individual's only or main residence for 'some or all' of the income period only; if for only some of it, there would not be concurrence (except for the period when the property concerned was the individual's residence).

cl 611 Interpretation for Chapter 1

(2) With reference to Commentary 1141, we assume that the basis in the current legislation for not applying rent a room relief to amounts taken into account

as profits following a change of accounting basis is paragraph 2(2)(b) Schedule 6 FA 1998 which charges such amounts to tax under Schedule D Case VI (and not Schedule D Case 1 or Schedule A). It would be helpful to explain this in the accompanying Notes.

D DETAILED COMMENTS ON DRAFTING

Part 2 – Trading income

Chapter 1 – Income taxed as trading income

cl 16 Caravan sites where trade carried on

(1)(a) As we commented on 3.1.13(1)(a) ED 10, in the absence of any definition of 'material activities', guidance will remain necessary concerning the sort of activities which could qualify. We note that the definitions relating to 'caravan' have now been added in clause 16(5) and (6).

Chapter 2 – Trade Profits: Basic rules

cl 22 Profits chargeable

(3) It would be helpful to have a signpost to Part 8 Chapter 2 at the end of the sentence.

Chapter 4 – Trade Profits: Rules permitting deductions

cl 46 Tenant under relieving lease

Commentary 157 refers to this clause requiring a 'just and reasonable' apportionment, presumably in the application of clause 47(5)(b). We have no objection to this; but it is not clear how the clause requires this, as no mention is made of it. Such a requirement is built into the calculation of 'F' in clause 261(2) (Daily relief limit); but it is not clear how this relates to clause 46; unless, on a wide construction of 'F', through clause 49(1) (Interpretation of sections 46 to 48).

cl 62 Redundancy payments and approved contractual payments

(2) In the definition of "redundancy payment" there is an inconsistency in the numbering between 'Part 11' and Part XII'. It would be preferable to use either Arabic or Roman numerals only.

Part 3 – Property Income

Chapter 1 – Income taxed as property income

cl 228 Generating income from property

(3),(4) In the Table of Origins, the origin attributed to clause 228(4) is in fact attributable to clause 228(3); and vice versa.

Chapter 2 – Profits of a property business

cl 248 Adjustment on change of accounting basis

(1) There is too much space between the words 'requirement', 'to', and calculate'.

Chapter 3 – Leases: amounts treated as receipts

cl 258 Cases where there is an available relieving receipt

General Although cleverly drafted this clause needs some amendment in order to make it easier for the reader to understand. It would be helpful if an introductory sub-clause could explain the basic concept that where a lessee is entitled to relief for receipts assessed under clauses 250-255 on his landlord (denoted 'A' here, for ease of reference) then he can set that relief against similar receipts arising to himself when he sublets, etc ('B').

(1) The words 'available relieving receipts' and following that 'receipt' in the first line of clause 258(1) refer respectively to A and to B; but this is not immediately clear to a reader. Despite clause 258(2) it also takes some concentration to appreciate that the references to the 'relieving lease' are to the lease granted to the superior lessee and giving rise to the 'A' receipts assessable on his landlord and in particular that the references to 'the lessee' throughout clause 258(1) are to a sublease granted by that lessee in the case of clauses 250-254 and to the lessee's leasehold interest in the case of clause 255. It could also be made clearer that 'the later receipt' in the third line refers to '(a) receipt' in the first line. The bracketed description of clauses 250 to 255 in the second line interferes here and is also a little misleading, insofar as the word 'grant' within the brackets encompasses clauses 250-253 where the four types of receipts are connected to the grant but, for example, in the case of clause 253 only because the consideration for the surrender of the lease is a term of the grant, and a reader would regard the receipt as arising from a surrender. It might be better perhaps in this instance to delete the bracketed description (similarly in clause 258(2)(a)).

(2) Again it would be helpful to make clearer that the 'relieving lease' is the immediately superior interest to 'the lease' in clause 258(1)(a)(i) and (ii) in the case of clause 250-254 receipts, and the same interest in the case of a clause 255 receipt. The receipt in this sub-clause relates to the landlord's receipt within clauses 250-255 whereas the receipt in clause 258(1) relates to the lessee's receipt on any sub-letting or assignment for profit, and this is confusing to the reader.

(3) The reader is likely to need to refer to the Explanatory Notes to understand this sub-clause. Sub-clause (3)(a) is cumbersome in its wording, and the purpose of (3)(b) will not be readily evident. We understand, in a case where a short-term lease is assigned within clause 255, that the available relieving receipt will have been partly relieved under clause 46 or 266 (deductions where premises used for purposes of trade or property business)

on a daily relief basis and that the remainder of it will become available against the clause 255 receipt (on assignment for profit of lease granted at an undervalue) applying clause 259(d) where the remaining term of the lease will clearly be 'common' to the available relieving receipt and to the clause 255 receipt on the assignment, the same lease being involved.

Chapter 6 – Furnished holiday accommodation

cl 283 Under-used holiday accommodation: averaging elections

(3)(b) As a minor point, it might be helpful to insert 'all' before 'the' at the end of the first line in clause 283(3)(b). This would make it entirely clear to the reader that 'the accommodation specified in the election' means all the properties specified.

The drafting does not make it clear that more than one property can be included under each of sub-clauses 283(2)(a) and (b).

Chapter 8 – Overseas Property income charged on remittance basis

cl 288 Meaning of "overseas property income"

Commentary 797 refers to the clause having a signpost to the special Irish rule in clause 234. This presumably relates to clause 288(2)(b)(ii) itself; but it might be clearer to add at the end of that sub-clause a specific signpost in brackets to clause 234.

In Commentary 797 the bracketed reference to paragraph 323 should be to paragraph 325.

Part 4 – Savings and investment income

Chapter 1 – Income taxed as savings and investment income

cl 294 Income taxed as savings and investment income

(b) The bracketed description in clause 294(b) should refer to 'dividends etc' rather than 'dividends'.

Part 5 – Miscellaneous income

Chapter 5 – Beneficiaries' income from estates in administration

cl 528 Income chargeable: UK estates

Commentary 997 refers to a non-existent subsection (4) as containing new drafting material.

cl 549 Relief where foreign estate has borne UK tax: absolute interests

(1)(c) It might be clearer to put the bracketed description "the taxed income of the estate" after the first word 'income' in the second line, as referring to the income which has already borne UK income tax rather than the aggregate income of the estate for the tax year.

cl 555 Meaning of 'UK estate' and 'foreign estate'

(1) The reference to 'conditions A and B or condition C' is a little confusing. It can be read as contrasting A and B with condition C or as C being an alternative to B. The necessity for both A and B to apply but that, in its specified circumstances, condition C also gives rise to a UK estate is not made sufficiently clear. It might be clearer to say ' . . . that meets both conditions A and B or meets condition C'. Commentary 1029 might also be more explanatory of the circumstances in which condition C applies, without leaving the reader to consult clause 552.

Part 6 – Exempt income

Chapter 8 – Foreign income of consular officers and employees

cl 591 Foreign income of consular officers and employees

(1) Although based on s 322(1) (ICTA) (Consular officers and employees), the opening lines might read more fluently as 'Foreign income of a consular officer or employee of a foreign state who is in the United Kingdom is exempt from income tax if . . .'

Part 7 – Losses and reliefs (against general income)

Chapter 1 – Rent a room relief

cl 607 Alternative calculation of profits: income charged under section 557

The Table of Origins refers to clause 607 as originating in a PRC. There is no related PRC listed in the ED13 Volume 1 Summary of Proposed Rewrite Changes; but we assume that this awaits completion of the work on the Schedule D Case VI replacement clause (clause 557).

Part 8 – Foreign income etc: special rules

Chapter 2 – Foreign income charged on remittance basis

cl 621 Relief for delayed remittances: back-dated pensions

(2) In the second line, it may be preferable to refer to 'that previous year', as meaning the previous year in the first line rather than the year previous to

the tax year in the first line (even though on occasion they could be the same).

Chapter 3 – Deductions from foreign income charged on arising basis

cl 624 Annual payments payable out of foreign income

(1) In the Table of Origins, the reference should be to 347A(2)(c).

Chapter 4 – Unremittable income

General We note that Chapter 4 will not apply to accrued income profits, and that this will be made clear when s 723 ICTA is rewritten.

cl 627 Withdrawal of relief

(4)(b) What is the authority for clause 627(4)(b) in s 584(5) ICTA?

14-13-36
TJH/PCB
4.7.02