Tax Representation

ICAEW TAX FACULTY

TAXREP 30/09

FINANCE BILL 2009

Memorandum on the Finance Bill 2009 submitted on 18 May 2009 to Government by the Tax Faculty of the Institute of Chartered Accountants in England and Wales.

Contents	**Paragraphs**

FINANCE BILL 2009

INTRODUCTION

1 We are writing to provide our comments on the provisions contained in the Finance Bill 2009.

2 In relation to the 2009 Budget and Finance Bill, we have published already:

- written evidence to the Treasury Committee on the 2009 Budget (published as TAXREP 23/09);
- a summary of key issues in a briefing paper for the Committee of Whole House (published as TAXREP 26/09); and
- written evidence to the House of Lords Economic Committee (published as TAXREP 297/09).

3 This paper brings together our comments on the Finance Bill, including our general comments on the overarching themes in the Bill. The comments here are consistent with our earlier briefing papers.

4 Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Appendix 3.

5 As in previous years, we have judged the Finance Bill 2009 by reference to our 'Ten Tenets for a Better Tax System'. These are the ten key principles that we believe should underpin a good tax system and they are set out in Appendix 4.

EXECUTIVE SUMMARY

General comments on the Finance Bill – Highlights

(For further details see paragraphs 34 to 55 below)

Tax policy formulation

6 There remains a need to improve tax policy formulation. Government should undertake consultation before major policy decisions. Both external stakeholders and HMRC must have a greater input at the earliest possible stage.

The Budget timetable

7 The Budget should be held in early March and two month's notice should be given. The Finance Bill should be published within 14 days of the Budget or 6 April if earlier.

Effect on UK competitiveness

8 The key to economic recovery is that the UK is competitive and the tax system needs to support that aim. Neither the Budget nor the Finance Bill recognise that many businesses are fighting for survival. In 2009, UK business does not need a 433 page Finance Bill containing major tax changes and imposing increased compliance costs. What UK business needs is a period of stability and certainty from the UK tax system. Any changes to the tax system should reduce business burdens and costs.

Fair and reasonable

9 The proposed way in which personal allowances will be withdrawn and the special annual allowance charge operates create high marginal rates and fails the 'fair and reasonable' test.

Complexity

10 The UK has one of the most complicated tax systems in the world together with the longest tax code and this Bill aggravates both of these. The tax simplification measures in this Bill ostensibly use 'principles-based drafting', but we do not think that the experiment has worked particularly well so far and think that there should be further consultation before this approach is rolled out more generally.

The need for reasonable transitional rules

11 Changes to the tax system need to made in such a way as to respect taxpayers' reasonable expectations. This is necessary not only to preserve the integrity of the UK tax system but also to comply with the EU law doctrine of legitimate expectation. The proposed pensions forestalling rules do not provide for adequate transitional arrangements and are retroactive for some taxpayers.

Drafting and the use of Schedules and Regulations

12 This Bill contains a record-breaking number of Schedules. Substantive tax measures should be in the body of the Bill rather than delegated to Schedules: this has been the approach that has been adopted by the Tax Law Rewrite Project, most recently in the Corporation Tax Act 2009 which contains only three Schedules.

13 We remain concerned about the considerable amount of detail that is left to be determined by way of regulations. We believe it is wrong in principle to delegate substantive tax provisions to regulations, particularly where relevant regulations have not yet been published and thus parliament has to scrutinise legislation without seeing the detail contained in the regulations.

Detailed comments on the Finance Bill – Highlights

(For further details see paragraphs 56 to 250 below)

Clause 4 to 6, income tax

14 We are concerned that the proposed changes to the income tax rules, namely:

- the withdrawal of personal allowances for those earning over £100,000; and
- the new 50% tax rate;

create unhelpful anomalies and are likely to do little to address the budget deficit.

Clause 9 and Schedule 3, VAT - extension of reduced standard rate

15 We remain of the view that this date should be deferred although we recognise that it will have revenue implications.

Clause 23 and Schedule 6, Temporary extension of loss carry back provision

16 We welcome the extension of the relief to two years and recommend that this area is kept under review - if necessary the proposed relief should be extended for income tax purposes to include claims for carry back of losses arising in the tax year 2010/11.

Clause 24, First year capital allowances for expenditure in 2009-2010

17 This measure seems unlikely to influence the decision to make a purchase - the biggest issue facing businesses in the current economic climate is managing and preserving cash-flow.

Clause 31 and Schedule 12, Reallocation of chargeable gain or loss within a group

18 We very much welcome the greater flexibility which the amended provisions offer in being able to move capital gains and losses within groups. However, the drafting of the schedule currently seems to exclude capital gains and losses which arise as a result of the operation of the foreign exchange matching rules.

Clause 33, FSCS payments representing interest

19 Clause 33 clarifies the tax treatment of payments made under the Financial Services Compensation Scheme (FSCS) where the payment includes an amount representing interest. However, we are not convinced that it deals properly with all the situations that might arise in practice and think that this clause should be amended to clarify that notwithstanding the FSCS rules, any FSCS payment is first treated as a return of the deposit in question and only the excess is treated as taxable interest.

Clauses 34 to 37 and Schedules 14 to 17, Foreign profits etc

20 We welcome the broad thrust of these provisions and that the introduction of the worldwide debt cap will be delayed until accounting periods beginning on or after 1 January 2010. We remain concerned about the overall balance of the Foreign Company profit proposals and that rather than improving the UK's tax competitiveness these proposals will make the UK less competitive.

Clauses 48 to 50 and Schedules 24 to 26, Tax simplification

21 These provisions seek to simplify some existing anti-avoidance rules by adopting some principles based drafting. However, whilst we appreciate that there has been extensive consultation, the results so far are disappointing. We are concerned that the existing set of complicated and unclear rules will be replaced by a new set of complicated and unclear rules. We sympathise with the problems and think that there needs to be further consultation and that a more radical approach needs to be adopted through the Tax Law Rewrite project.

Clauses 51 and 52, Remittance basis

22 We welcome these clauses which introduce minor changes to the existing legislation in order to correct various anomalies and make some simplifications. It is also helpful that these changes are back-dated to 6 April 2008. However, there still remain a number of areas of difficulty and uncertainty in the original FA 2008 legislation and we recommend that the HMRC consultative committee that was established to review the FA 2008 changes to the remittance basis rules should continue to meet.

Clause 71 and Schedule 35, Pensions special annual allowance charge

23 We have a number of major concerns with the proposed changes to the pensions rules and the anti-forestalling proposals:

- the proposed measures are likely to damage the pension industry and discourage saving for retirement using a pension;

- the proposals accelerate, rather than simply forestalling, the reduction in tax relief on pension inputs for certain taxpayers because past tax years are taken into account; and

- the provisions discriminate against the self employed who usually pay annual pension contributions and those made redundant who top up their pension as part of any termination arrangements.

Clause 75 and Schedule 36, VAT Place of supply of services

24 We remain concerned that the changes, taken as a whole, will:

- deter some UK businesses, particularly SMEs, from supplying goods and services cross-border within the EU; and

- encourage others to re-route supplies, transferring business activity away from the UK.

25 Proposals in respect of the provisions in this package that are not in the Finance Bill need to be published as soon as possible so that taxpayers and their advisers can comment on these proposals in the light of the overall package of measures. Given the complexity of the changes and the need for stakeholders to be given more time to examine them in detail, HM Treasury and HMRC need to work closely with stakeholders during the passage of this Bill so as to ensure that problems are identified and resolved.

Clause 91, HMRC Charter

26 In principle we welcome this clause but believe that it needs to be redrafted to reflect:

- a clear statement on taxpayers' rights;

- that HMRC must be required to act in accordance with independently determined standards of service;

- that there should be independent oversight of the Charter; and

- a regular review process that should be under the aegis of a Parliamentary Select Committee.

Clause 92 and Schedule 46, Duties of senior accounting officers in large companies

27 We are deeply concerned about this clause, which imposes onerous new requirements whilst adding little new in terms of improved tax compliance. We are very disappointed that there was no prior consultation about this measure. We believe that this clause and Schedule should be deleted from the Bill pending further consultation with the professional bodies. If HMRC is concerned about internal accounting systems, then we would have thought that a more targeted approach should be adopted rather than a blanket measure that applies to all large companies.

Clause 93, Publishing details of deliberate tax defaulters

28 The ICAEW supports efforts to combat tax evasion, but this proposal raises a number of serious issues. We are disappointed that there was no prior consultation on this proposal given the continuing review of HMRC's powers. Any measure adopted must be:

- proportionate - such that it does not infringe human rights and provides adequate statutory safeguards for taxpayers; and
- appropriate - such that it achieves the stated objective.

29 We think that this measure falls short of these standards and should be dropped from the Bill pending consultation about what would be a proportionate and appropriate approach.

Clause 94 and Schedule 47, Amendment of information and inspection powers

30 We are concerned that significant changes could be made to primary legislation without adequate consultation or parliamentary scrutiny. We recommend that future changes to Sch 36, FA 2008, other than very minor and trivial ones, should be made by primary legislation.

Clause 96 and Schedule 49, Powers to obtain contact details for debtors

31 There should be a requirement in legislation for HMRC to make all reasonable efforts to trace the debtor, including checking HMRC's own records, before approaching a third party. It should be possible for a third party to appeal on the grounds that the third party did not have the information.

Clause 99 and Schedule 52, Recovery of overpaid tax etc

32 We understand why it was felt necessary to change the existing rules but the new provisions are highly complicated by comparison with the existing rules. We are concerned that a claim to recover overpaid tax will be rejected where the taxpayer '*ought reasonably to have known'* that the relief was available. We should like clarification of how this requirement will be applied as we are concerned that HMRC could always refuse relief on the basis that the taxpayer could have changed the return during the amendment window.

Clauses 100–104, Interest on late payment and repayment interest

33 These provisions do not include any formulae to show how interest will be calculated and it is difficult to judge whether the rates are likely to be fair.

GENERAL COMMENTS

34 We are disappointed that many of the measures in the Bill fail to meet our Ten Tenets for a Better Tax System by which we judge the efficiency and effectiveness of new tax legislation. Our key concerns with the Bill are highlighted below.

Tax policy formulation

35 Tax policy formulation needs to be improved. Government should commit to undertaking consultation before making policy decisions, and both external stakeholders and HMRC must have a greater input at the earliest possible stage so that impractical proposals can be weeded out and compliance burdens and hence resource implications for both taxpayers and HMRC can be minimised. Whilst we welcome the increasing amount of consultation, two key policy changes in the Bill received no pre-consultation (clauses 92 and 93). Consultation should always be undertaken on policy changes unless:

- the changes are market sensitive; or

- action needs to be taken to prevent unacceptable avoidance.

The Budget timetable

36 A late Budget that falls after the start of the new tax year leads to uncertainty as taxpayers wait to see what new announcements will be made. This can also affect those from overseas considering whether to invest in or move to the UK. Another problem is that it restricts time for proper consideration of the Finance Bill.

37 The Finance Bill, which runs to 443 pages, was published only on 30 April 2009. This has given even less time than normal to engage our members to review the Bill and to provide constructive comment.

38 We consider that as a matter of public policy (which could be set out in statute) that:

- the Budget should be held in, say, early March each year and no later than 31 March (ie before the start of the financial and fiscal years to which the Budget refers) and the date should be announced at least two months in advance; and

- the Finance Bill should be published within 14 days of Budget Day or by 6 April, whichever is the earlier.

Effect on UK competitiveness

39 We are concerned that many of the measures in this Bill will impose further complexity and costs on UK businesses, individual taxpayers and on HMRC, thus undermining the UK's competitiveness.

40 We have cautioned in the past that the UK is increasingly being perceived as a 'difficult place to do business' and this Bill continues that trend, with further substantial costs imposed on businesses through such measures as:

- duties of a senior accounting officer; and

- the changes to the VAT place of Supply rules.

41 Further, whilst we welcome the broad thrust of the new rules for taxation of foreign profits, there remain concerns that the new rules, in particular the debt-cap provisions, could still impose onerous burdens on business rather than provide a more attractive regime.

42 The overall perception is that, with HMRC under pressure to cut costs, the approach is to shift costs away from HMRC and on to the taxpayer. In view of the difficult economic times, the aim should be to minimise burdens on business. What UK business needs from the UK tax system is a period of stability and certainty as well as improved customer service. In terms of imposing burdens and costs on business, this does not appear to us to be a Finance Bill for helping businesses through the credit crunch.

Fair and reasonable

43 There is a need for tax measures to be fair and reasonable. In terms of income tax, the proposed way in which the personal allowance is withdrawn introduces distortions into the

effective UK tax rates and results in a tax system that is not progressive – the marginal income tax rate rises to 60% before falling back to 40% - and so does not meet the 'fair and reasonable' test.

44 In relation to the need for additional powers, there should be a proportionate response to any emerging issues. There needs to be a fair balance between the powers invested in the state (in this case HMRC) and the responsibilities of taxpayers. Further, any powers need to be balanced by real safeguards.

45 The proposed HMRC Charter and the new requirements placed on senior accounting officers go to the heart of this concern about the need for a fair and proportionate balance. On the one hand, senior accounting officers of some large companies are facing potentially onerous new personal liabilities when existing rules should be capable of ensuring good tax accounting systems. On the other hand HMRC are being asked merely to 'aspire' to standards that they will set and monitor with no sanctions if they do not meet them. We are concerned that that these two measures do not strike a fair balance and as a result they undermine taxpayers' confidence in the tax system.

Complexity

46 The UK is acknowledged to have one of the longest tax codes in the world. Hand in hand with the growth in legislation is increased complexity. A typical example is the new provisions in relation to the changes to the 'error or mistake' claim rules set out in clause 99 and Schedule 52. The previous short s 33 Taxes Management Act 1970 (and the corresponding rules for corporation tax in paragraph 51 of Schedule 18 to the FA 1998) will now be replaced by 13 pages of complicated legislation. This increased complexity will impose further costs on taxpayers who may have overpaid tax.

47 Another problem with complexity is that many provisions in successive Finance Bills subsequently prove to be deficient and therefore need to be changed, see for example further changes in this Finance Bill to the:

- rules for REITs introduced in FA 2006 and amended each year since then;
- amendments to the HMRC powers in Schedule 36 of the FA 2008;
- further changes to the tax rules for leasing; and
- the remittance basis rules introduced in the FA 2008.

48 Whilst we appreciate that in some cases these changes reflect the value of continued consultation, the fact remains that provisions such as the above are so complicated that many of the problems are not identified until much later when difficulties arise in practice.

49 In relation to tax simplification, while we welcome the previous commitment to tax simplification, we are concerned that the simplification message is being lost in practice. This Bill contains three measures (clauses 48 to 50 and Schedules 24 to 26) which ostensibly set out a principles-based approach to tax simplification. However, a taxpayer would not recognise them as such if they read the Bill. We think that there is a need for a much more radical and innovative approach to principles-based tax simplification and that the drafting of these provisions needs to be improved. We would welcome the opportunity to discuss purposive legislation further with HMRC.

The need for reasonable transitional rules

50 Changes to the tax system need to respect taxpayers' legitimate expectations. We are concerned that, for example, the changes to the pensions rules do not provide reasonable transitional provisions.

Drafting and the use of schedules and regulations

51 We have a number of concerns with the drafting of this Bill.

52 First, the Bill makes far too much use of Schedules. There are 61 in this Bill and they take up 367 pages of the 434 pages in the Bill - far higher in number and proportion than we have ever seen in a Finance Bill. This excessive use of Schedules means that almost all the substantive provisions are relegated to Schedules rather than being contained in the body of the Bill. This makes it confusing to follow, especially when some of the provisions are in the main Bill and others are included in Schedules.

53 We believe that substantive provisions should always be in the Bill and that Schedules should only be used for administrative and transitional provisions etc. This approach has been used in the Tax Law Rewrite (TLR), most recently in the Corporation Tax Act 2009 (CTA 2009) which consists of 1,330 clauses and only 3 Schedules which deal with minor amendments, transitional provisions and repeals respectively. We believe that the approach adopted in the TLR is far better because it results in more understandable legislation and we are disappointed that the TLR is being wound down. The Government should commit to reducing the use of Schedules to a minimum in line with the TLR principles.

54 Second, we remain concerned about the considerable number of tax rules that are left to be determined (or completely amended) by way of regulations. For example, paragraph 18 of the new pensions forestalling rules in Schedule 34 enable the Treasury to:

- vary the rate of the new special allowance charge; and
- amend any of the substantive provisions in the previous 17 paragraphs.

55 We have expressed concerns about the use of regulations for a number of years now but we do not see any improvement. We believe it is wrong in principle to delegate substantive tax provisions to regulations, particularly where the relevant regulations that have not yet been published and thus Parliament is forced to scrutinise primary legislation without seeing the detail which will be in regulations.

DETAILED COMMENTS ON THE BILL

INCOME TAX

Introduction

56 Tax rates are properly a matter for government to decide. Nevertheless, the ICAEW is concerned that the proposed changes to the income tax rules to take effect in 2010/11, namely:

- the withdrawal of personal allowances for those earning over £100,000 (creating a marginal 60% tax rate); and

- the new 50% tax rate (replacing the 45% rate proposed in the 2008 PBR and now to be introduced in 2010/11 rather than 2011/12);

create unhelpful anomalies and are likely to do little to address the budget deficit.

57 The 2009 Budget Red Book states that the above two measures will yield £1.23bn in 2010/11, rising to £1.99bn in 2011/12. This compares with predicted budget deficits for 2010/11 and 2011/12 which are now estimated to be £173bn and £140bn respectively. It is inevitable that action will be needed to bring the UK's finances back into balance and that this is likely to require a mixture of much more broadly based tax increases than have been proposed, together with cut-backs in public expenditure.

58 However these changes, together with measures such as the proposed restrictions on tax relief for pension contributions (see our further comments on this below) are likely to create a disincentive for high earners to work and invest in the UK, thereby hitting business and competitiveness.

Clause 4, Reduction of personal allowance for those with incomes exceeding £100,000

59 The way in which the personal allowance is withdrawn does not result in a progressive tax system. Withdrawing the personal allowance at a rate of £1 for every £2 of income above £100,000 results in an effective marginal income tax rate of 60% (61½% with NIC) on income between £100,000 and £112,950 (using the 2009/10 personal allowance of £6,475).

60 Aside from this concern, these proposals introduce considerable complexity into the income tax system and associated tax calculations creating problems similar to those surrounding the income-related withdrawal of age allowance.

61 There is a major practical problem with the proposals where the taxpayer is within PAYE and this will result in additional costs for both HMRC and taxpayers. At taxable income of over £100,000, the precise amount of the allowance depends upon the level of income in the tax year. This figure will not be known until after the end of the tax year. In these circumstances the PAYE system relies on estimates of income and will have allocated the personal allowance accordingly.

62 Where an individual usually has income well below £100,000 the full amount of the personal allowance will be included in the tax code. If that individual then receives a one-off bonus which takes income up to above £113,000, that taxpayer will face an unexpected underpayment of in excess of £2,590 simply because the PAYE system cannot automatically deal with this situation. That taxpayer will have expected PAYE to be collecting the right amount of tax during the year and will no doubt want an explanation from their employers and HMRC.

63 The result will be more HMRC staff dealing with enquiries and, where the increased income is notified in time, coding adjustments, the issue and processing of further forms or returns as well as making the associated payment demands (or in the case of those whose income has reduced, repayments). This will add to the administrative burden and costs for HMRC and taxpayers. Current experience shows that HMRC's level of accuracy of coding notices is well below acceptable standards and this measure will exacerbate the problem.

64 We recognise that a similar situation happens at present for the less well off elderly taxpayers within age allowance taper. This is a source of irritation and upset to those taxpayers and, we suspect, HMRC too who also have to bear the additional administrative

burden of dealing with the estimates and adjustments needed. We therefore consider that such a poor precedent should be avoided.

ICAEW recommendations

65 There are alternatives which could give a less burdensome result. For example, setting aside for the time being observations about the potential effectiveness of very high tax rates, a more straightforward option would be to continue to give personal allowances in full, but to increase the rate of tax applying to taxable income over £100,000 to an appropriate percentage. This would have the benefit that PAYE would then be able to deal effectively with bonuses because no estimations would be required for income levels and underpayments of tax would be rare.

66 This would also have the advantages that:

- tax would be collected earlier through PAYE rather than several months after the year end through self assessment; and

- the costs to HMRC of making the changes to the manuals and guidance and for HMRC and employers of dealing with enquiries from taxpayers would be very much reduced.; and

- it would result in a much fairer, progressive, simpler and more easily explained and understood system.

67 Some analysis would need to be done to identify an appropriate rate of tax and we recognise that it would create winners and losers as compared to the current proposal in the Finance Bill.

Clause 5 and Schedule 1, Abolition of personal reliefs for non-residents

68 The proposed removal of entitlement to personal and other allowances from non UK resident Commonwealth citizens is expected mainly to affect citizens of fourteen countries.

69 The introduction of the change from the 2010/11 tax year may result in hardship where the foreign nationals are subject to legally binding contracts which were negotiated by reference to their expected net pay position.

ICAEW recommendation

70 We recommend that consideration be given to putting back the start date to a later tax year.

Clause 6 and Schedule 2, Additional rate, dividend additional rate, trust rates and pension tax rates

71 The Institute for Fiscal Studies (IFS) expressed doubts before the Budget as to whether the 45% tax rate would result in a net increase in revenues and suggested that the optimal maximum income tax rate was 40%. Above this rate there is a disproportionately greater perceived benefit of rearranging one's affairs legally or illegally to pay less tax. We suggested in our 2009 pre-Budget submission (TAXREP 14/09)[1] that a detailed economic analysis should be made of the proposed change before any final decision is made to proceed with the increase. We also note that, in evidence to the Treasury Committee

[1] See
http://www.icaew.com/index.cfm/route/164119/icaew_ga/Faculties/Tax/Publications_and_technical_guidance/TAXREP_14_09_2009_Budget_submission/pdf

following the Budget, an HM Treasury official stated that their calculations assumed that the measure would only yield 31% of the proposed maximum based upon the number of taxpayers affected (see page 42 of the Treasury Committee's *Budget 2009*[2], published on 6 May 2009).

72 The present higher rate of income tax is 40%. In order to encourage equity investment, there is a separate rate of 32.5% on dividends. Since companies pay tax on profits and shareholders pay tax when those profits are distributed to them, the tax system prevents complete double taxation of the profits to shareholders in two ways. The first is by providing a tax credit to shareholders of 10% of the dividends. The second is by taxing the dividend and credit at a lower rate than other income. The result is an effective rate of tax of 25% on dividends for higher rate taxpayers.

73 It is proposed to increase the top rate of income tax by 25% from 40% to 50%, but the proposed increases in the rate of income tax on dividends are much higher. An increase in the dividend rate from 32.5% to 42.5% raises the effective rate by over 44% from 25% to 36.1%. Such a change will discourage equity investment. The proposed higher dividend rate should be 38% to give an effective rate of 31.1% which is 25% higher than the present effective rate of 25%.

74 The proposed increase in the trust rate of tax to 50% and the trust dividend rate to 42.5% also create the following problems.

- The introduction of a 50% trust rate is likely to result in many more beneficiaries filing repayment claims. This will not only create more work for beneficiaries and their advisers, it will also create more work for HMRC. This is because whereas a trust rate of 40% reflects the marginal rate of tax paid by most individuals on high incomes, currently only 2% of taxpayers are in the £100,000-plus income bracket (according to paragraph 2.48 of the PBR 2008) so we would expect significantly fewer than this will be in the 50% marginal rate band which starts at income of £150,000.

- The proposals may also result in a cash flow disadvantage for HMRC. This is because many beneficiaries, for example minor children, vulnerable beneficiaries and all those not liable at the new 50% higher rate who receive payments of trust income will be able to apply for tax refunds before the trustees have necessarily paid all of the higher rates of tax on the income.

- Where amounts are paid out to beneficiaries, the detailed operation of the trust tax pool provisions means that where those amounts include dividend income the actual effective tax rate on dividends is considerably more than the rate for dividends received directly. While this problem already exists, these proposals will make the problem worse and will again discourage trustees from holding equities.

ICAEW recommendations

75 Given the weight of evidence that such rates may not be effective in raising revenue and the undesirability of encouraging tax avoidance we remain of the view that the Government must make a detailed economic analysis of the impact of the proposed 50% tax rate before implementing any such policy.

[2] See http://www.publications.parliament.uk/pa/cm200809/cmselect/cmtreasy/438/438.pdf

76 The dividend upper rate and the dividend trust rate should be reduced so that the net effective tax increases are the same as that for other non-dividend income.

CORPORATION TAX

Clause 8, Small companies' rates and fractions for financial year 2009

77 We welcome the decision previously announced to keep the small companies' corporation tax rate at 21% for a further year.

78 The main rate of corporation tax is announced one year in advance and it would be helpful if the small companies' rate could be set one year ahead in the same way. Whilst the rate for the Financial Year 2010 has already been announced, it would be helpful if this could become a regular feature of the Budget.

79 The higher rates of income tax (see our comments above on clauses 4 and 6) have introduced a further distortion between incorporated and unincorporated businesses. The effect of this is likely to be similar to the effect of the 0% rate of corporation tax on smaller businesses in 2003. This caused the incorporation of many thousands of small businesses and a considerable increase in the administrative burden, both for business and for HMRC. We are concerned that this further distortion will encourage further unincorporated businesses to incorporate.

VALUE ADDED TAX

Clause 9 and Schedule 3, Extension of reduced standard rate and anti-avoidance provisions

Date when VAT rate reverts to 17.5%

80 Clause 9(1) confirms that the date when the standard rate of VAT reverts to 17.5% is 1 January 2010. In our 2009 Budget submission we expressed concern that changing the VAT rate back to 17.5% on 1 January 2010 is highly inconvenient timing for businesses, particularly retailers. 1 January 2010 is also the start date for the major changes to the VAT place of supply rules for services and additional reporting requirements (see below for our detailed comments). Businesses, who in VAT act as unpaid tax collectors for government, should not be required to deal with a major change in the VAT system, additional reporting requirements and a change in VAT rate all at the same time.

ICAEW recommendation

81 We remain of the view that this date should be deferred although we recognise that it will have revenue implications. In our Budget submission, we suggested that the date that VAT reverts to 17.5% is put back to 1 April 2010 (ie a three month deferral). If this date will produce too large a loss in revenue, we suggest that the date is deferred by, say, one month to 1 February 2010. Even if the suggested date is not accepted, the change will be burdensome and we would welcome confirmation that HMRC will adopt a 'light touch' approach to any mistakes and errors that arise during the changeover.

Anti-avoidance provisions

82 Schedule 3 sets out anti-avoidance provisions designed to stop businesses entering into arrangements to pay VAT at the 15% rate on supplies which would otherwise occur after the rate has reverted to 17.5%. The proposals will only apply to businesses which cannot

recover all of their VAT and, very broadly, where the supplier and recipient are connected and the supply is for more than £100,000.

83 These highly complicated provisions take up almost nine pages of legislation. They could apply in unexpected situations given the importation of the wide definition of connected persons as set out in s 839, ICTA 1988 and appear a disproportionate response to the problem given that any VAT saving will only be a maximum of 2.5%.

ICAEW recommendation

84 We recommend that HMRC engage in detailed discussions with the profession to see whether these rules can be simplified.

SUPPORT FOR BUSINESS

Clause 23 and Schedule 6, Temporary extension of loss carry back provision

Introduction

85 The ICAEW welcomes and supports the tax-related changes to help the cash-flow of businesses hard hit by the economic downturn, namely:

- the expanded debt management service and the ability to make in-year loss relief claims; and
- the extension of the loss carry-back rules to cover losses for a two-year period rather than a one-year period.

86 In our 2009 Budget submission, we proposed that the losses eligible for the extended three year carry-back proposed in the 2008 PBR should be extended from one to three years. Our rationale was that for many unincorporated businesses, the proposed operation of the relief would discriminate against unincorporated businesses in that the relief was likely to be available in the wrong year, although we recognised that it may have revenue implications.

87 The proposal set out in Schedule 6 is that losses arising in a two-year period can be carried back for three years, up to a limit of £50,000 per year.

88 Whilst the extended two-year loss period is very welcome, given the difficulty in forecasting exactly when the economy may move back into growth we consider that these rules should be kept under review and that they may require greater flexibility, particularly in respect of unincorporated businesses. Whilst the Government expects growth to resume later this year, many commentators are forecasting that the UK could experience negative growth in 2010, and it is only now that many businesses are beginning to experience serious problems.

89 An unincorporated business with a year end of, say, 30 April may find that it makes losses in the year to 30 April 2010. This would be outside the proposed extended two-year time limit which is for accounting periods ending in the tax year 2009/10.

90 The loss relief for unincorporated businesses is restricted to profits arising from the same trade whilst for companies it is against all income and chargeable gains. We think that the relief for all businesses should be available to offset against all income.

91 We are concerned that although these claims can be submitted immediately, there has yet to be any guidance issued on the process, either for electronic or paper tax returns. The process for losses carried back for corporation tax will need particular care. Our members are already experiencing repayment delays and this needs urgent attention if the policy is to have the desired affect.

ICAEW recommendations

92 We recommend that this area is kept under review and if necessary the proposed relief is extended for income tax purposes to include claims for carry back of losses arising in the tax year 2010/11.

93 All businesses (including unincorporated businesses) should be able to offset losses against all other income.

Clause 24, First year capital allowances for expenditure in 2009-2010

94 The Chancellor proposed in his Budget that first year allowances of 40% would be reintroduced for one-year. The Budget Red Book states that this measure will cost £1.64bn, the single most 'expensive' fiscal change that was announced in the Budget.

95 We do not think that the proposed increase to 40% will have much influence on purchasing decisions. Most expenditure by smaller businesses will already be relieved in full by the Annual Investment Allowance covering expenditure up to £50,000. Larger businesses will have already prepared cash flow budgets some way into the future. Whilst the temporary allowance will recompense them for such investment after the event, when the business eventually pays tax on the profits of the period, it seems unlikely to influence the decision to make the purchase. Indeed, the biggest issue facing businesses is managing and preserving cash-flow.

Clause 25, Agreements to forgo tax reliefs

96 It is not clear how these provisions are intended to apply in practice.

97 If the designated person 'P' has made such large losses that there is no reasonable likelihood that these losses will be used within the foreseeable future, then giving immediate value for such losses in return for, valuable, guarantees, indemnities etc would seem to be favouring 'P' in a manner which is not available to the general corporate taxpayer.

ICAEW recommendation

98 We would welcome practical clarification and confirmation that the constitutional *vires* of this proposal has been considered.

Clause 27 and Schedule 8, Venture Capital Schemes

99 We welcome these amendments.

Clause 28 and Schedule 9, Group relief: preference shares

100 We welcome this provision which will make it more difficult to inadvertently break a group structure, or trigger an anti-avoidance provision, through issuing a common commercial financing instrument to external investors.

Clause 30 and Schedule 11, Tax relief for business expenditure on cars and motor cycles

101 We do not see why a different definition for car is to be used in s 268A to that already used in the benefits legislation.

ICAEW recommendation

102 The definitions should be consistent.

Clause 31 and Schedule 12, Reallocation of chargeable gain or loss within a group

103 We very much welcome the greater flexibility which the amended provisions offer in being able to move capital gains and losses within groups.

104 However, the drafting of the schedule currently seems to exclude capital gains and losses which arise as a result of the operation of the foreign exchange matching rules (under the regulations in SI 2002/1970), from the s 171A, TCGA 1992 reallocation provisions; as such gains and losses accrue as a result of the operation of statutory provisions (and actually relate to an underlying liability), rather than being 'in respect of an asset'. We do not believe that there is any policy reason why such amounts should be excluded from the scope of these provisions.

ICAEW recommendation

105 That the requirement that a gain or loss should accrue 'in respect of an asset' should be dropped.

Clause 33, FSCS payments representing interest

106 Clause 33 clarifies that where FSCS payments are received which include a payment representing interest, such interest will be treated as interest for the purposes of income tax. In principle, this looks a reasonable provision. However, we are not convinced that it deals properly with all the situations that might arise in practice.

107 For example, what is the position if an FSCS payment is received which is less than the original deposit? The depositor has made a loss but if the FSCS stated that any payment nevertheless included an interest element, then under this provision the depositor would be faced with an income tax charge on the amount identified by the FSCS as interest even though the compensation actually received was for less than the full deposit. This does not seem right and the net result would be to increase the loss.

108 We think that this clause should be amended to clarify that notwithstanding the FSCS rules, any FSCS payment is first treated as a return of the deposit in question and only the excess will be treated as taxable interest.

109 In our 2009 Budget submission, we recommended that as a temporary measure any interest credited in a tax year which cannot be withdrawn due to the illiquidity or insolvency of the financial institution should not be taxed until actually received. We also requested clarification of how payments received under the Financial Services Compensation Scheme (FSCS) would be taxed and that payments from FSCS should be treated firstly as a return of capital and only amounts in excess of the capital contributed to the account should be treated as interest.

110 We also recommend consideration of a temporary relief where any interest credited in a tax year cannot be withdrawn from the account until a later tax year due to withdrawals from the account being temporarily blocked by the financial institution.

ICAEW recommendation

111 The Bill should be amended to take account of these concerns.

FOREIGN PROFITS ETC

Clauses 34 to 37 and Schedules 14 to 17

Introduction

112 We welcome the broad thrust of these provisions. We also welcome that these provisions will apply to dividends paid by overseas subsidiaries on or after 1 July 2009 while the introduction of the worldwide debt cap will be delayed until accounting periods beginning on or after 1 January 2010.

113 However, we remain concerned about the overall balance of the Foreign Company profit proposals and that rather than improving the UK's tax competitiveness these proposals will make the UK less competitive. Headquartering a multi-national business in the UK, or inward investment into the UK looks likely to be less attractive in the future on account of these changes.

Clause 34 and Schedule 14, Corporation tax treatment of company distributions received

114 We welcome this clause and Schedule under which all distributions (both UK and foreign) will be exempt provided they fall within one of the five specified exemptions. We also welcome the decision to extend the exemption to small companies, which were excluded from the original, 9 December 2008, proposals. We note that the related issue of the taxation of foreign branches has not yet been addressed.

115 These provisions apply to dividends and other distributions but new s 930H, to be incorporated into the Corporation Tax Act 2009, applies only to dividends and would appear to need to be extended to cover 'other distributions'.

116 But it would appear that as currently drafted the scope of dividend exemption for small companies is narrower than for the corresponding provisions for medium and large companies. For example:

- the small company rules appear to deny any exemption for dividends paid by a small tax haven company that has been brought under UK central management and control, when the exemption would not be denied to a medium and large company in the equivalent circumstances; and

- a dividend received by a small company as part of a 'tax advantage scheme' may bear double or disproportionate tax – the amount of the dividend may either duplicate or be unrelated in size to the underlying 'tax advantage' – whereas a medium and large company is faced only with targeted sanctions.

ICAEW recommendation

117 The small company provisions need to be amended so that all companies are subject to the same rules.

Clause 35 and Schedule 15, Tax treatment of financing costs and income

118 We remain concerned about the introduction of the worldwide debt cap as currently proposed. The purpose of the world wide debt cap is to restrict tax relief for interest against UK profits to an amount which is reasonable in the context of the worldwide activities of the particular group. In broad terms the amount of that UK deduction is limited by reference to the consolidated gross (external) finance expense of the particular group.

119 We appreciate the policy objectives but are concerned that the 32 ½ pages of the debt cap provisions will add considerable unnecessary complexity to the UK tax system which will affect the UK's competitiveness. We believe that there are other less burdensome ways to address these concerns.

120 We believe that the same policy objectives, which are to prevent the 'dumping' of debt into the UK part of worldwide operations and the penalisation of upstream loans to the UK, could equally well be achieved by tightening up the existing thin capitalisation regime and introducing targeted rules against upstream loans.

121 We welcome the decision not to introduce the new worldwide debt cap rules before accounting periods beginning on or after 1 January 2010 so that international groups have time to reconsider their existing arrangements. This deferral provides an opportunity for further consultation so as to ensure that the identified problems with the debt cap are addressed.

122 The revisions to the December 2008 proposals, announced on 7 April 2009, will remove many of the practical difficulties that would have been posed by the original proposals, but the rules remain complex and it is anticipated that a significant proportion of companies, including nearly all entirely UK based and UK headquartered groups, will still fall within the worldwide debt cap rules. This will add considerably to the UK tax compliance burden.

123 We note that HMRC has assessed the administrative burden of these rules at £8.7m per annum which we consider is likely to prove extremely conservative.

124 We believe that the provisions need to be amended to take account of the fact that provisions that were previously in Income and Corporation Taxes Act (ICTA) 1988 are now consolidated in Corporation Taxes Act 2009. In paragraph 49(5), the reference should be to 'Part 16 of Corporation Taxes Act 2009' and not to 'Part 4 of ICTA' and rather than providing that 'company B is an investment company' the condition should be that 'company B is a company with investment business'.

125 In paragraph 49(6) of Sch 15, the reference should be to s 1219 Corporation Tax Act 2009 and not to s 75 of ICTA.

ICAEW recommendation

126 Further consideration needs to be given to the debt-cap rules so as to ensure that the identified concerns are addressed in ways that minimise UK compliance burdens and which do not harm the UK's competitiveness.

127 As noted above, we believe that there are alternative approaches to address the problem of debt dumping without imposing such onerous burdens on UK businesses. HM Treasury should consult further with stakeholders on these proposals.

Clause 36 and Schedule 16, Controlled foreign companies

128 We believe that as part of the wider review of the existing controlled foreign companies (CFC) legislation there is merit in considering, as an alternative, a tightening up of the existing anti-avoidance legislation which has as its aim to prevent artificial diversion of profits from the UK.

129 We welcome the decision to retain the exemption for local holding companies which was to have been removed under the 9 December 2008 proposals.

130 We also welcome the decision not to make changes to the 'unallowed purpose' provisions.

Clause 37 and Schedule 17, International movement of capital

131 We welcome the abolition of the existing Treasury consents and their replacement by new reporting requirements. We welcome the extension of the time period during which companies have to comply with the new reporting requirements from 14 days of the end of the quarter in which the transaction took place, as proposed in the 9 December 2009 draft legislation, to the Finance Bill proposal of within six months of the transaction.

Clause 38 and Schedule 19, Corporation tax: foreign currency accounting

132 These provisions remain of considerable complexity but we believe the changes that have been made are an improvement.

ICAEW recommendation

133 In order to simplify the provisions we suggest that the provisions are amended so that the carry back should be able to be carried out in the functional currency.

Clause 40 and Schedule 19, Income tax credits for foreign distributions

134 We welcome this relieving provision. However, if different rules apply to distributions depending on whether they are made in the period from 6 April 2009 or on or after 22 April 2009, it will create considerable extra work for all and require costly additional guidance and reporting changes. Given that the proposal is to improve the position of those receiving such distributions, the earlier start date will be advantageous to all and be in keeping with the intended policy objective.

ICAEW recommendation

135 In order to reduce costs for HMRC, taxpayers, companies and financial institutions we strongly recommend that the amendments should have effect from 6 April 2009 rather than 22 April 2009.

LOAN RELATIONSHIPS AND DERIVATIVES

Clause 43 and Schedule 21, Foreign exchange matching: anti-avoidance

136 We are concerned at the complexity of the provisions set out in schedule 21, and also believe that they could have an adverse effect in situations where certain kinds of

derivatives (in particular 'collar' arrangements) are used within groups in non-abusive situations.

ICAEW recommendations

137 We recommend a review of the drafting of the provision as a whole in order to simplify the current provisions.

138 We also recommend that the provisions should only apply in situations where the option, or contingent contract, has been entered into for tax avoidance purposes.

COLLECTIVE INVESTMENT

Clause 44 and Schedule 22, Tax treatment of participants in offshore funds

139 These proposals have been subject to prior consultation.

ICAEW recommendation

140 We recommend that the draft regulations to be introduced under powers set out in this primary legislation should be fully consulted on before they come into force to ensure that they address all issues raised, achieve the intended objectives and work well in practice.

Clause 45, Power to enable dividends of investment trusts to be taxed as interest

141 The legislation will allow investment trusts to invest in securities more tax efficiently and this will benefit investors. The detailed legislation is to be contained in regulations.

ICAEW recommendation

142 There needs to be full consultation on these regulations to ensure that they achieve their stated intention and that they will work well in practice.

SIMPLIFICATION

Introduction

143 Clauses 48 to 50 and Schedules 24 to 26 are results of the proposals announced previously to simplify the tax rules, in this case some existing anti-avoidance provisions, with principles based drafting.

144 So far the results of this exercise are disappointing, although this is perhaps not surprising given the nature of the existing provisions. The new provisions appear to have been drafted in the normal manner and we are not convinced that a taxpayer would understand the underlying principles that should be applied. We are concerned that the result is that existing complicated and unclear legislation will be replaced by new legislation that still lacks clarity.

Clause 48 and Schedule 24, Disguised interest

145 In new s 486A(1) of the CTA 2009, the reference should be to 486B and not 485B as currently drafted.

Clause 49 and Schedule 25, Transfer of income streams

146 As noted above, it is not easy to divine the underlying principles and it is not clear whether bona fide business restructurings could be caught by these provisions.

147 Further it is not clear whether the provisions, which charge a disposal of a right to income as an income tax receipt equal to the market value of the right disposed of if that is less than the actual consideration received, apply to the following situations:

- the creation of an IIP by the trustees of a discretionary trust;
- the transfer by the trustees of an existing IIP from one life tenant to another; and
- the sale of an interest in a discretionary trust or of an IIP trust by the beneficiary.

148 We understand that the provisions are not intended to apply in these circumstances.

ICAEW recommendations

149 We would welcome clarification of the above points.

150 The rewriting of these principles-based provisions should be made the responsibility of HMRC's Tax 0Law Rewrite team and further consultation should be undertaken with the profession to see whether 'principles-based drafting' can provide real simplification.

RESIDENCE AND DOMICILE

Clauses 51 and 52, Remittance basis and Exemption for certain non-domiciled persons

151 We welcome these clauses which introduce minor changes to the existing legislation in order to correct various anomalies and make some simplifications. It is also helpful that these changes are back-dated to 6 April 2008.

152 However, there still remain a number of areas of difficulty and uncertainty in the original FA 2008 legislation.

ICAEW recommendation

153 We recommend that the HMRC consultative committee that was established to review the FA 2008 changes to the remittance basis rules should continue to meet and bring forward any proposals for changes that will improve the operation of the rules.

EMPLOYMENT INCOME

Clause 53 and Schedule 28, Taxable benefits: cars

154 We have some concerns that the abolition of the price limit of £80,000 for calculating the car benefit charge will damage the UK car industry.

ICAEW recommendation

155 We recommend that research is undertaken on the likely impact of this change on the market for high value cars and that consideration should be given to raising the cap rather than abolishing it altogether.

Clause 54, Taxable benefit of cars: price of automatic car for disabled employee

156 We welcome this change. However, it has not been sufficiently publicised. We note that it has not appeared in all copies of the employers Bulletin and we are concerned that there is

no mechanism for advising HMRC of the change in value of a benefit to be reflected in the notice of coding.

ICAEW recommendation

157 Further publicity needs to be given to this measure and a mechanism needs to be put in place to enable those affected to notify HMRC.

Clause 55, Exemption of benefit consisting of health-screening or medical check-up

158 We welcome this provision which accords with representations made by ourselves and other Representative Bodies. The previous rules are needlessly restrictive and require medical check-ups and health screening to be provided to all employees for the benefit to be tax free.

DOUBLE TAXATION

Clause 59, Payments by reference to foreign tax etc

159 We believe that the current drafting could cause Swedish or Finnish group contributions, i.e. subvention payments, to be caught by the provision together with grossing up provisions in loan agreements.

ICAEW recommendation

160 We suggest that in new s 804G(1)(b) ICTA 1988 the beginning of the provision should read 'a payment is made by a tax authority to P, ….'.

MISCELLANEOUS ANTI-AVOIDANCE RULES

Clause 61 and Schedule 30, Financial arrangements avoidance

161 While we recognise the need to prevent avoidance schemes which are based on mismatches in the tax and/or accounting treatment between the debtor and creditor of intra-group convertible loans, we believe that the provisions set out in para 4 of Schedule 30 are too broad in seeking to adjust the results in *any* situation where there is a mismatch between the debtor and creditor of a convertible loan. In particular, the provisions as drafted would seem to impose adjustments in cases where such mismatches arise from purely innocent factors, such as difference in functional currency between the parties to the loan.

ICAEW recommendation

162 We recommend that the provisions should only apply where the proposed condition B (i.e. that there is a mismatch between the debits and credits) arises as a result of a tax avoidance purpose.

PENSIONS

Clause 71 and Schedule 35, Special annual allowance charge

Introduction

163 It was announced in the Budget that from April 2011 tax relief on pension contributions will be restricted for those earning over £150,000. In addition, whilst existing pension arrangements should not be affected, an anti-forestalling measure was announced aimed at

limiting tax relief for those with income of £150,000 and over seeking to make additional pension contributions in the period from 22 April 2009 until 5 April 2011.

164 Schedule 35 enacts the anti-forestalling provision. In broad terms, where:

- an individual has income of £150,000 or more; and
- makes pension contributions in excess of £20,000; and
- where the contributions are not regular (quarterly or more frequently)

then any pension contribution that exceeds the permitted amount is charged to 20% tax.

165 We have a number of major concerns with these proposals, as follows:

- the proposed measures taken as a whole are likely to damage the pension industry and discourage saving for retirement using a pension;
- the measure can apply if total income in 2009/10 and either of the two tax years prior to that was £150,000 or more; and
- the anti-forestalling provisions discriminate against the self employed who decide what they are going to pay each year once they know how much profit they have made and against those made redundant who might top up their pension as part of any termination arrangements.

Damage to the pension industry

166 The proposed restriction on tax relief breaches the fundamental principle which underlies tax relief for pensions, which is that tax relief is given on contributions at the marginal rate but is then taxed in full (including at higher rates of income tax, where applicable) when the amount is paid out as a pension.

167 This principle was confirmed most recently in the changes that were made to the pension rules in the FA 2004 and introduced on 6 April 2006, which included a generous annual limit specifically to enable top up contributions to be made. Set out in Appendix 1 are some comments made by the Government during the passage of the FA 2004 which confirm these principles.

168 When major changes were made in April 2006, taxpayers were promised certainty in their future pension planning and this now evaporated. Long term plans started several years ago to increase pension contributions over a period of time to provide adequate income in retirement will now be thrown into jeopardy. Furthermore, taxpayers will no longer have confidence that other disadvantageous changes will not be made in the future.

169 It is our view that the proposals will discourage long-term saving using pensions and are likely further to damage confidence in the UK pensions industry, which has already been hit by the drop in capital values as a result of stock market falls.

170 Taxpayers on incomes in excess of £150,000 a year are likely to draw pensions on retirement which will put them into higher rate tax bands of 40% or the proposed 50%. Many will consider that, given the relative inflexibility of pension savings (particularly extracting

money on retirement), the return on after-tax investment will be too low to make contributions worthwhile and will therefore stop saving for retirement using pensions.

171 In addition, at the margins around £150,000, taxpayers may opt to reduce income by reducing hours etc rather than fall within the new regime.

172 The government is keen to encourage taxpayers to make pension provision, as evidenced by the new compulsory pension accounts for employees and the general availability of tax relief on pension contributions. Those approaching retirement may be discouraged from making such contributions as a result of the new measures. Consideration could be given to not implementing the new measures where the individual is over a certain age.

Anti-forestalling provisions

173 The provisions effectively bring forward the restriction on tax relief by up to two years and as drafted discriminate against, for example, the self employed many of whom contribute annually to a pension fund but are not in a position to decide how much to pay until after their accounts have been prepared and profits calculated. The provisions are also likely to apply in cases of redundancy, when taxpayers may receive termination payments which significantly increase current year income and often pay larger than usual contributions to improve their pension provision. As currently drafted the provisions are likely to affect far more taxpayers than those at which we are told they are targeted and the provisions can result in marginal rates of tax far in excess of 100%.

174 It would appear that the anti-forestalling provisions for 2009/10 and 2010/11 are more penal than the proposals for post-2011 rules, although in the absence of any detail for 2011 and beyond we cannot be certain on this point. This is because the anti-forestalling rules:

- do not appear to include a ‘tapering provision’ as proposed for the post 2001 rules, and
- can give rise to ‘cliff edge’ effect mentioned below, and
- take into account the income of three tax years rather than only the tax year in question so that a taxpayer who has income of £150,000 or more in any of the three years, rather than only the year of the pension input will be affected.

175 It appears that the charge applies only if the £150,000 income is breached but then the charge applies in full. We have calculated that a difference in income of just 1p between two individuals who otherwise have identical levels of income and pension contributions results in one paying £6,000 more tax than the other, a marginal rate of 600,000%. We therefore challenge the premise that the anti-forestalling rules will not increase tax take. This seems to be based on the assumption that taxpayers with incomes of over £150,000 will choose not to increase pension inputs and ignores those who fall within the provisions as a result of increases in income in any one of three tax years.

176 We are also very concerned by the level of complexity of the provision. One only has to look at the bulk of guidance which has already been issued to realise just how difficult are these proposals, particularly for unrepresented taxpayers. As noted above, complex legislation leads to significant extra costs for HMRC as well as taxpayers.

177 The provisions apply to prevent higher rate tax relief for most pension contributions on or after 22 April 2009 other than where contributions 'are paid quarterly or more frequently'. We are unclear about the rationale for ongoing regular contributions being limited to quarterly or more frequently and consider that this is far too restrictive. As noted above, this discriminates in particular against the self-employed.

178 Pension contributions paid by self-employed individuals are often one-off or annual contributions made once the likely level of profits for the tax year is known. As currently drafted, many self-employed who make regular annual contributions face the possible immediate loss of higher rate relief. We note that in his Ministerial Statement on 22 April 2009 the Financial Secretary to the Treasury stated:

> *The Government recognise that those with less regular contribution patterns may be affected and would welcome views on whether there are ways of ensuring the contributions of this group are protected in the same way as those making more regular patterns, while continuing to meet the objectives above*.

179 The inclusion of pension contributions made by employers in pension inputs (as defined for this purpose) is likely to result in additional costs for employers who will now need to provide this information to employees (although it should be noted that the provisions do not oblige employers to do so, or to do so within a specified time limit).

180 Employees who make additional pension contributions personally may not be aware that they need to take account of employer contributions when considering whether the £20,000 special allowance has been exceeded.

181 Para 18)(1) gives HM Treasury the power to vary by way of Regulations the rate of the special allowance charge. Para 18(3) allows HM Treasury by way of Regulations to amend any of the preceding 17 paragraphs, ie the substantive provisions of the forestalling charge. The net effect is that these provisions could be completely revised. We strongly believe that it is wrong in principle to enable provisions to be, in effect, rewritten at a later date without full debate.

182 We would expect that these provisions would be repealed when the proposals for 2011 onwards are introduced. Para 20(1) provides that the Sch 35 will have effect for 2009/10 and subsequent years but subject to the provisions ceasing to have effect following an Order by HM Treasury under para 20(2). We would welcome confirmation that it is the intention that Schedule 35 will only apply for the years 2009/10 and 2010/11.

ICAEW recommendations

183 We recommend that this provision is removed from the Bill and that there is full consultation on these proposals with a view to arriving at an alternative way of producing the required outcome which is less complex and less likely to catch those at whom it is not intended to be targeted. If this provision is not dropped from the Finance Bill then we should welcome a statement from the Minister explaining the reasons behind the change in policy from that set out in 2004 as per Appendix 1.

184 If this is not accepted then individuals who make regular annual contributions should be able to benefit from higher rate relief until the proposed changes in 2011. We therefore suggest that the proposed rules should be amended to cater for annual contributions. This could be done a number of ways. One approach would be to have a further test calculated by

reference to average contributions made in, say, the highest two tax years out of 2006/07, 2007/08 and 2008/09 – perhaps indexed up by reference to the changes in the annual personal allowance.

185 Consideration should be given to increasing the £20,000 de minimis to a higher level, say £50,000. This will take more individuals out of the anti-forestalling measures who are within it not for tax avoidance motives and will also reduce compliance costs for HMRC and taxpayers.

186 For the purposes of ascertaining whether the £150,000 income level has been exceeded, we recommend that only income of the year of the pension contribution should be taken into account, rather than for that year and two previous tax years.

187 The threshold of £150,000 should be increased in line with inflation in the same way as personal allowances.

188 Whilst we recognise that this would increase the complexity of the anti-forestalling measures, it cannot be right that individuals can face marginal tax rates of several thousand percent. We therefore recommend that consideration be given to tapering the relief.

189 Consideration should be given to not applying the anti-forestalling provisions to those above a certain age, for example 50.

190 The wording of various clauses needs to be addressed to give certainty of interpretation.

VALUE ADDED TAX

Clause 75 and Schedule 36, Place of supply of services etc

191 The proposed changes to the VAT place of supply rules for services is of fundamental importance and the most major change since the VAT Single Market rules were introduced in 1993. In our 2009 Budget submission, we expressed a number of concerns about the proposals, namely:

- the complexity of the changes;
- the continuing uncertainty as to how certain services will be treated;
- the complex change to the time of supply for VAT purposes;
- the onerous extra reporting requirements; and
- the added risk to business of the joint and several liability proposals,

192 We appreciate that these proposals have been agreed by the UK and other Member States at EU level, and that, following this agreement HM Treasury has tried to identify the issues and how they should be resolved. The provisions in the Finance Bill address some, but not all, of the concerns that have been identified. However, the changes published so far in the

Finance Bill do not provide a complete picture since they do not include, for example, the proposed changes to the time of supply rules and the joint and several liability provisions.

193 We remain concerned that the changes, taken as a whole, will:

- deter some UK businesses, particularly SMEs, from supplying goods and services cross-border within the EU; and
- encourage others to re-route supplies, transferring business activity away from the UK.

194 From 1 January 2010 it will be much simpler, and less risky, for UK businesses to trade within the UK and/or with non- EC countries, rather than with businesses in other EC Member States. It will also be considerably cheaper, since the extra compliance costs will not be incurred. That cannot be sensible.

195 We remain unconvinced that the changes will combat cross-border (MTIC) VAT fraud. As we have stated publicly on many occasions, MTIC fraud will only be halted when the obvious loophole in the VAT system, known to the Commission and to Member States including the UK since before 1993, is blocked, and VAT is charged on intra-EC cross-border supplies as it is on domestic transactions. However, Member States cannot agree on this and the result is that we continue with the faulty, fraud-prone 'transitional' system, but with the Commission and national tax authorities increasingly placing further costs on business to police it. In addition, by extending the range of services subject to the reverse charge, the Commission and Member States need to recognise that they have also extended the opportunities for cross-border VAT fraud.

ICAEW recommendations

196 Proposals in respect of the provisions in this package that are not in the Finance Bill need to be published as soon as possible (even if just in draft) so that taxpayers and their advisers can comment on them in the light of the overall package of measures. Given the complexity of the changes and the need for stakeholders to be given more time to examine them in detail, HM Treasury and HMRC need to work closely with stakeholders during the passage of this Bill so as to ensure that problems are identified and resolved.

Clause 76, Repayment to those in business in other states

197 We understand that a number of Member States have sought permission to delay applying these provisions. We are concerned that existing 8th Directive repayment claims are often difficult to achieve and question whether the proposals in clause 76 will improve matters or merely make the existing problematic procedures and processing delays even worse.

Clause 77, Information relating to cross-border supplies of services to taxable recipients

198 This provision will impose onerous new reporting requirements on the cross border supply of services within the EU. Currently, businesses need to submit lists of supplies of goods but no such requirement exists for services. Clarification is requested as to the precise purpose of this new requirement. Is it solely designed to help counter cross border fraud in services? Both HMRC and the Commission have stated that this is not seen as a problem. It would therefore appear to be yet another example of increasing regulation with no practical advantage for government but imposing extra costs on business.

199 Some of our detailed concerns about this proposal were contained in our earlier representation, TAXREP 8/09[3], to which we would refer you.

Clause 78, Effect of VAT changes on arbitration of rent for agricultural holdings

200 Whilst of relatively minor importance, we welcome this clause. It restores clarity following doubt caused by the High Court judgment in *Mason v Boscawen.*

ADMINISTRATION

Clause 91, HMRC Charter

201 We recommended previously that the proposed Taxpayer's Charter (now referred to as an HMRC Charter) should have statutory backing so in principle we welcome this clause. However, we cannot support this clause as it is entirely in the favour of HMRC: HMRC will set its own standards to which it aspires and will then report on its own behaviour and whether it met those standards. There is no independent oversight of whether those standards are reasonable in the eyes of taxpayers, no verification of whether those standards were actually reached and no sanctions against HMRC if they fail to reach them.

202 The purpose of the statutory backing is to enable it to be relied on in Court. If the Charter provides taxpayers with no substantive remedies or clarity on taxpayers' rights the Charter lacks real value. Statutory backing will also ensure that the Charter remains in existence and does not lapse as happened to the earlier Charters introduced in the 1980s.

203 In view of our rationale set out above of the need for statutory backing, we are very disappointed with the clause itself and the underlying draft Charter. We have always expected that any Charter should set out clearly taxpayers' rights: the dictionary definition of a Charter refers to 'a written grant of rights by the Sovereign or legislature'. However, this clause and the draft Charter bear little resemblance to what taxpayers have a right to expect and we are concerned that the Charter will be of limited use in protecting taxpayers' rights.

204 The confusion over what is the actual purpose of this Charter is reflected in the supporting material to the Bill. New s 16A(2) of Commissioners for Revenue and Customs Act 2005 will lay down that the Charter will 'include standards of behaviour and values to which HMRC will aspire when dealing with people in the exercise of their functions'. In other words, the clause makes it clear that the Charter is entirely aspirational on the part of HMRC about their standards. However the explanatory note to clause 91 the Finance Bill states that the new Charter is intended to 'set out the rights and responsibilities of taxpayers and other persons that HMRC deals with'. There is a world of difference between these two statements. If the new Charter is to achieve its intended purpose and have support outside HMRC, we believe that the provisions of new 16A(2) need to reflect the wording in the explanatory notes

205 In summary we do not think that this clause is good enough, particularly when compared to the detailed and onerous requirements being imposed upon 'senior accounting officers in Clause 92 (see below). There needs to be a proper balance of powers, responsibilities and safeguards as between taxpayers and HMRC.

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[3] See http://www.icaew.com/index.cfm/route/163726/icaew_ga/Faculties/Tax/Publications_and_technical_guidance/TAXREP_08_09/TAXREP_08_09/pdf

ICAEW recommendations

206 We believe that this clause needs to be redrafted to reflect:

- a clear statement on taxpayers' rights;
- that HMRC must be required to act in accordance with independently determined standards of service levels;
- that there should be independent oversight of the Charter; and
- a regular review process that should be under the aegis of a Parliamentary Select Committee.

Clause 92 and Schedule 46, Duties of senior accounting officers in large companies

207 Schedule 46 imposes new requirements and a personal liability on the senior accounting officer to verify that the company maintains appropriate tax accounting arrangements.

208 We are deeply concerned about this clause which imposes onerous new requirements whilst adding little new in terms of improved tax compliance. We are very disappointed that there was no consultation about this measure before it was announced in the Budget, especially given that the measure appears to have arisen out of the ongoing work on the review of HMRC's powers and the 'Tax in the Boardroom' agenda. We have been very involved in the HMRC powers review, contributing to the discussions and responding to consultations, often on a confidential basis.

209 We note the recent announcements by The Financial Secretary to the Treasury to slightly amend these provisions, but we still believe more has to be done.

210 We think there should have been proper consultation on this measure beforehand which should have involved detailed discussions with the professional accounting bodies given that the measure:

- will apply a personal liability to many of our members who typically will be the nominated senior accounting officer;
- appears to impose potential further requirements on auditors; and
- is almost certain to impose considerable costs on business out of proportion to the expected yield.

211 The measure appears to reflect a Sarbanes Oxley style requirement on all large companies but which appears disproportionate to the likely risk and we would have thought largely unnecessary under existing tax rules. For example, for corporation tax a tax return must include a declaration that the return is correct and complete. It needs to be signed by someone authorised to do so, invariably a senior officer of the company. A corporation tax return cannot be correct and complete if the company does not have processes and internal systems that enable a correct and complete return to be made. The result is that under current rules a company would be liable to penalties for submitting an incorrect return and we do not see why further penalties need to be levied,

212 Ultimately, it is the responsibility of the directors as a whole to maintain proper systems and it is their collective responsibility. It is right that the company should be liable to a penalty where it submits an incorrect return due to poor systems but we do not think that the senior accounting officer should then be personally liable to a further penalty.

213 This is a potentially wide and extremely onerous requirement, to which there appears to be no territoriality limit and which does not reflect the multinational nature in which large businesses operate. The senior accounting officer (who may not be based in the UK) could be held personally liable for any perceived infringements in arrangements (which includes not just for taxes but also duties albeit only in respect of the UK) by any subsidiary in any country.

214 With the best will in the world, things can and do go wrong even with good accounting systems and problems may arise which are outside the effective control of the senior accounting officer. There is no 'de minimis' provision nor any recognition of risk or materiality which is a disproportionate approach given that the UK has one of the longest and most complicated tax systems in the world.

215 The measure is likely to result in increased costs on UK businesses for advisory and assurance work to provide protection which could well exceed the projected yield.

216 Paragraph 8 levies any penalty on the most recent accounting officer. This could operate unfairly on a new officer who may have inherited poor tax accounting arrangements but who nevertheless is taking steps to address them.

217 The original proposals required the senior accounting officer to tell the auditors if the company and any group companies did not have appropriate accounting arrangements. This appeared to confuse auditing and tax requirements. The Companies Acts require a true and fair view which includes, for example, consideration of materiality. We are pleased to hear this requirement will be amended.

218 The officer named does not seem to have a say, nor any right of appeal against being the named senior accounting officer. In practice tax accounting issues might normally be dealt with by, say, a tax director rather than the person who has responsibility for financial accounting.

219 If the company pays indemnity insurance premiums, will tax relief be given and will there be a benefit in kind on the nominated officer?

220 The provisions are likely to prove problematic to apply in practice, particularly where groups have international operations or are located overseas. It is unclear how the provisions would operate in respect of, say, a UK branch of an overseas large company.

ICAEW recommendations

221 We believe that this clause and Schedule should be deleted from the Bill pending further consultation with the professional bodies. If HMRC is concerned about internal accounting systems, then we would have thought that a more targeted approach should be adopted rather than a blanket measure that applies to all large companies. For example, we would have expected HMRC's risk analysis procedures to identify the small number of large companies that do not have adequate accounting systems to prepare correct and complete

returns. It might then be reasonable to target those companies with measures such as those set out in this Schedule, in other words that companies are first put 'on notice' and given an opportunity to put any perceived failings right.

222 An alternative approach would be to amend existing requirements, for example the existing declaration that is required on the corporation tax return could be extended so that it refers to the company maintaining records sufficient to enable a correct and complete tax return to be made.

Clause 93, Publishing details of deliberate tax defaulters

223 The ICAEW supports efforts to combat tax evasion and it is right that Government considers a variety of policy options. However, the proposal raises a number of serious issues and we are disappointed that there was no prior consultation on this proposal given the continuing review of HMRC's powers.

224 The proposed measure is based closely upon the approach that has been adopted in Ireland for a number of years. However, discussions with our Irish counterparts suggest that beyond the high profile reminder that tax defaulters are being pursued, it does not make much difference.

225 We note that in the past the Government has itself expressed similar concerns about this proposal. The Treasury Committee raised exactly this issue in 2002 when they conducted an inquiry into self assessment. The Committee questioned the then Paymaster General about the Irish proposals and her response (set out in Appendix 2) clearly states that she was not attracted to it.

226 Whilst we recognise that times change, we have a number of serious concerns with the proposal which we have set out in more detail below. We are also concerned that it could be counterproductive, not least because it may actually discourage people from coming forward to put their affairs in order. Accordingly, we would prefer that this clause is dropped from the Bill pending further consultation.

227 We are not convinced that the measure is fully compliant with the Human Rights Act 1998 and believe that there is need for a detailed statement about this aspect. The proposal to list people's addresses and businesses appears even more draconian than corresponding disclosure in criminal prosecutions where it appears a person is only identified by name and place where they live (see for example the press release https://nds.coi.gov.uk/environment/fullDetail.asp?ReleaseID=399071&NewsAreaID=2&NavigatedFromDepartment=False). We are particularly concerned at the intention to publish the person's address, which could put an individual at risk. For businesses, publication could cause reputational damage which results in business failure and consequent loss of jobs.

228 Under para 93(5)(b) a taxpayer is only allowed to make representations to HMRC about whether information should be published. This measure is in the nature of a further penalty on the taxpayer and we think that there should be a separate right of appeal to the First-tier Tribunal.

229 One consequence of this measure is that all those likely to be affected will appeal against any penalty determinations, which may increase the volume of penalty appeals going to the Tribunal and is likely to lead to delays and extra costs.

230 Para 93(11)(a) provides that no information will be published if the penalty is fully reduced as set out in Sch 24 of FA 2007, ie the penalty would have to have been reduced by the maximum based upon the quality of disclosure. This introduces considerable uncertainty as to whether a full reduction would be achieved and is likely to be very hard for taxpayers to meet. This uncertainty leaves taxpayers exposed to being named even where they sought (even if not as well as they could have done) to put their affairs in order. This hurdle could therefore discourage taxpayers from coming forward.

231 In the interests of fairness and the need to discourage fraud, we think that if this proposal is to proceed then false tax credit claims should also be subject to 'naming and shaming'. Tax credit frauds are often for sums in excess of £25,000 - see for example the press release referred to above.

232 Para 93(1)(a) says that the Commissioners **'may**' publish information, and the draft legislation describes the criteria to be applied. However, even if all the criteria are met, the working of clause 93(1) suggests that HMRC will still have discretion about which names are published. We should like to know what additional criteria HMRC will apply. In the interests of fairness, these criteria should be published and consistently applied.

233 The £25,000 trigger point applies irrespective of the taxpayer. The same trigger point applied to all taxpayers could lead to inequity.

ICAEW recommendation

234 We appreciate that the objective behind this measure is to cut down on tax evasion and are, and have always been, completely supportive of this objective. However, any measure adopted must be:

- proportionate - such that it does not infringe human rights and that there are adequate statutory safeguards for taxpayers; and
- appropriate - such that it achieves the stated objective.

235 In the light of the concerns expressed in our commentary above we think that this measure falls short of these standards and should, therefore, be dropped from the Bill and that there should be consultation about what would be a proportionate and appropriate approach. If this provision is not dropped from the Finance Bill then we should welcome a statement from the Minister explaining the reasons behind the change in policy in the light of the clear Ministerial statement expressed in 2002 as set out in Appendix 2.

Clause 94 and Schedule 47, Amendment of information and inspection powers

236 Clause 94(2) gives a power to amend the provisions of primary legislation (Sch 36, FA 2008, and Sch 47 of this Bill) by Treasury Order. This power to make amendments is wide in scope. The relevant statutory instrument may be passed by negative resolution.

237 We are concerned that significant changes could be made to primary legislation without adequate consultation or parliamentary scrutiny. We assume that with this power in place, amendments such as those set out in Sch 47 to this Bill will no longer need to be included in a Finance Act but will be made by secondary legislation. That would be wholly inappropriate, given that Sch 47 makes a considerable number of important changes, including the introduction of a new penalty. The Explanatory Notes say that HMRC will use this power to

repeal provisions which are no longer required – but the clause as drafted does not confine the power to such repeals.

ICAEW recommendation

238 We strongly recommend that future changes to Sch 36, FA 2008, other than very minor and trivial ones, should be made by primary legislation. If they are made by statutory instrument, we should like HMRC to give an undertaking that changes under the Clause 94(2) power will be subject to public consultation beforehand and that the statutory instrument should follow the affirmative resolution procedure.

239 *Para 9(5), Sch 47*: We find it hard to understand the effect of this new paragraph. Para 21, Sch 36, FA 2008 is about information notices which can be given to a person who has made a tax return. We are not sure what is meant by 'the capacity in which the return was made'. Is the intention that a person who makes a return as, say, the executor of a deceased relative, will only have to provide information in relation to the estate tax return and not in relation to his or her individual tax return? If so, the drafting needs to be much clearer.

Clause 95 and Schedule 48, Extension of information and inspection powers

240 Clause 95(5) – this is a similar clause to 94(2) and we have the same concerns about a power to make significant changes to primary legislation (Sch 36, FA 2008) without proper scrutiny.

241 Para 3, Sch 48 introduces a new power for HMRC to inspect the business premises, assets and documents of 'involved third parties' as defined in para 14. Para 33 of the explanatory notes refers to an 'involved third party' as a person closely involved in a potentially taxable event or transaction. Although it adds the caveat that these are persons who are currently required to provide information about the activity, and at present are precisely defined in para 14 in relation to particular taxes, we are concerned that it is only a small step away from inclusion of tax advisers generally. We seek assurances that this is categorically not the case nor is it intended to be in future.

242 Para 5, Sch 48 gives HMRC the power to enter and inspect premises for valuation purposes. The explanatory notes state that this replaces s 110, TMA 1970. However, it seems to go further and adds apparently new powers of inspection.

243 New para 12A(2)(b) in Sch 36, FA 2008 includes a power to inspect 'any other property on the premises' to determine its character. Admittedly this is apparently restricted to checking capital gains/IHT/SDLT/SDRT, but we would welcome clarification as to what this is likely to cover.

Clause 96 and Schedule 49, Powers to obtain contact details for debtors

244 We are pleased to note that some of our points on the previous version of this legislation have been addressed. However, some of our concerns remain.

- There is no requirement for HMRC to make all reasonable efforts to trace the debtor, including checking HMRC's own records, before approaching a third party.

- Para 3 of Sch 49 does not specify how or when the information should be provided – HMRC has complete discretion about this, provided it is 'reasonably specified or described'. This does not provide adequate safeguards for the third party.

- The third party can appeal (para 4) but on the grounds that the requirements of the notice are 'unduly onerous'.

ICAEW recommendations

245 We recommend that:

- There should be a requirement in legislation for HMRC to make all reasonable efforts to trace the debtor, including checking HMRC's own records, before approaching a third party.

- Para 3 of Sch 49 should incorporate adequate safeguards for the third party and the requirements should be defined in legislation. This would ensure that, for example, the third party is given a reasonable time to reply (we suggest, 30 days).

- Para 4 of Sch 49 should allow appeals on the grounds of the third party simply not having the information.

Clause 99 and Schedule 52, Recovery of overpaid tax etc

246 We understand why it was felt necessary to change the existing rules but the new provisions are highly complicated by comparison with the existing rules. Para 2, Sch 52 sets out situations under which an error or mistake claim will not be permitted (in para 2 of new Sch 1AB, TMA 1970). One of those situations (called Case C) is where the claimant could have obtained relief another way but the period has expired if he knew or '**ought reasonably to have known'** before that period expired that the relief was available.

ICAEW recommendation

247 We should like clarification of how this requirement will be applied. We are concerned that HMRC could always refuse relief on the basis that the taxpayer could have changed the return during the amendment window and (unless he or she was negligent) should have known it was incorrect at that time. We seek clarification or an assurance that this is not the intention.

Clauses 100–104, Interest on late payment and repayment interest

248 Our main concern with these sections is that they do not include any formulae to show how interest will be calculated. Therefore, it is difficult to judge whether the rates are likely to be fair, as clause 102 gives the Treasury considerable latitude in how it sets rates.

249 We would ask that the draft regulations containing these details be published as soon as possible so that Parliament can consider them with the legislation.

ICAEW recommendation

250 We request:

- Inclusion of formulae to show how interest should be calculated; and
- Publication of draft regulations in time for Parliament to consider when scrutinising these Finance Bill clauses.

FURTHER CONTACT

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FJH/IKY
18 May 2009

Appendix 1

Paragraph 167 - Pensions – special annual allowance charge
Comments made by the Financial Secretary during the passage of the FA 2004

The FA 2004 provisions, which came into effect in 2006, were the result of considerable consultation and when the changes were being debated in the Public Bill Committee the then Financial Secretary to the Treasury noted that:

> ‘We are sweeping away the existing rules and regulations and replacing them with a single regime for all tax-privileged pension saving. That represents a hugely positive step for those saving or looking to save towards their retirement.
>
> Simplification will introduce greater individual choice and flexibility. For the first time, everyone will have the same opportunity to make tax-relieved pension savings over a lifetime. Our proposals will create a transparent, consistent and flexible system that is readily understood. That will make it easier for people to concentrate on things that matter, such as when and how much to save for their retirement, rather than on trying to understand anomalies between the different tax regimes.
>
> Simplification will reduce the administrative burdens and regulatory cost for pension schemes, their members, operators and sponsors, and will create opportunities for people to save more towards a pension and a retirement lump sum. The new rules will allow everyone to pay what they can afford when they can afford it.
>
> The pension simplification provisions represent the outcome of two formal consultations and extensive informal consultation. At every stage, we have had regard to the views of those who will be affected, whether individuals, employers or pension providers.
>
> The new regime will consist of two key controls: a lifetime allowance and an annual allowance for the amount of tax-relieved savings that can be made. It is important to recognise that the allowances will not prevent people from saving more in registered schemes if they wish to. The lifetime allowance will initially be set at £1.5 million and will rise to £1.8 million by 2010. The annual allowance will initially be set at £215,000 and will increase to £255,000 by 2010. **Those allowances represent very generous levels of tax-relieved savings. They are far in excess of what 99 per cent. of the population currently save or are ever likely to. However, they limit the amount of tax relief that very high earners can obtain, which is fair.[our emphasis]’**

These new (2006) provisions introduced both an annual allowance and a lifetime allowance so that that the tax relief obtained is restricted in a clear and transparent manner. Those taxpayers who took on board the message that the annual allowance was generous enough that they could make top up payments in later years should have time to re-arrange there affairs before the changes come in.

Appendix 2

Paragraph 225 - Oral evidence given by the then Paymaster General to the Treasury Committee on Wednesday 22 May 2002 in connection with the Committee's inquiry into self assessment (Eight Report,)
(Questions posed by David Ruffley MP)

368. On that point I have one specific question. I stress for anyone listening that I am not advocating this. In Ireland, which in very many ways is comparable to our own political system, it is a western, liberal, democratic, industrialised state, it is a member of the European Union, they actually has a system of naming and shaming. I think we were told that it is in the region of just over 12,000 in unpaid tax liability and after going through all the hoops and warnings and determinations you could end up named in a local newspaper, even a national newspaper. I just wondered, in the course of running an efficient tax system and I think we have heard a lot of empirical evidence that you as a Minister and your officials really do think through how the systems can be improved and all the evidence supports that you really are monitoring the operation of the British tax system closely, have you ever thought of that one? Have you considered it?

(*Dawn Primarolo*) I have to say that I thought it was interesting. Like you, I am not advocating it for a minute. I am a little bit worried and I wonder on closer inspection whether the Irish system could become a bit of a badge of honour. The other thing is that when we prosecute people they get named, but we also take a lighter touch approach on the basis that some people make genuine errors, nonetheless they are in the penalty system. I was intrigued with this proposition that we might name and shame. I am not attracted to it, but the principle of putting pressure on is something that we can look at. It would probably be a bit expensive on advertising as well.

369. [Not relevant].

370. There were differing views as to the efficacy of this system, the badge of honour point was also raised. I only mention it. If this were a system in Pinochet's Chile we would say of course it is ridiculous and we would never touch it. The fact that the Irish Government has operated it for in excess of 20 years or in that region made me just wonder whether it was something you were looking at. I stress that you do look at these issues and your officials are trying hard to look at new things and innovative things. Is this something you are looking at?

(*Dawn Primarolo*) Certainly you could not look at the Irish system without looking at the issue of naming and shaming, but I have to say that I am not at all attracted to it because of naming and shaming incorrectly or the consequences and the balance with taxpayer confidentiality. We operate in a slightly different way. It works for the Irish and it might not work for us. It is an interesting point to look at.

371. Fine. Your officials have not said, "This would be a brave decision, Minister".

(*Dawn Primarolo*) No. I do not think they would even try to do that. I would consider it in the "This would be a very, very brave and courageous decision, Minister" category. "You're out of your tiny head" approach.

For a copy of the transcript, see http://www.publications.parliament.uk/pa/cm200102/cmselect/cmtreasy/681/2052205.htm.

Appendix 3

ICAEW AND THE TAX FACULTY: WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales (ICAEW) is the largest accountancy body in Europe, with more than 130,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Enterprise and Regulatory Reform through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.

3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 10,000 members of the ICAEW who pay an additional subscription.

4. To find our more about the Tax Faculty and ICAEW including how to become a member, please call us on +44 (0)20 7920 8646 or email us at taxfac@icaew.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

Appendix 4

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.

4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99**; see http://www.icaew.co.uk/index.cfm?route=128518.