

# Tax Representation



**TAXREP 35/08**

## **TAX LAW REWRITE: DRAFT BILL 5: CORPORATION TAX**

***Memorandum submitted in May 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales commenting on a draft Bill published in February 2008 by HMRC Tax Law Rewrite Team***

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Annex 2 - The Tax Faculty's Ten Tenets for a Better Tax System

ICAEW Tax Faculty, Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ <a href="http://www.icaew.com/taxfac">www.icaew.com/taxfac</a>
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T	+44 (0)20 7920 8646
F	+44 (0)20 7920 8780
E	<a href="mailto:taxfac@icaew.com">taxfac@icaew.com</a>

# TAX LAW REWRITE: DRAFT BILL 5: CORPORATION TAX

## INTRODUCTION

1. We welcome the opportunity to comment on draft Bill 5: Corporation Tax published by HMRC Tax Law Rewrite project team on 22 February 2008 at [http://www.hmrc.gov.uk/rewrite/draft\\_legislation\\_menu.htm](http://www.hmrc.gov.uk/rewrite/draft_legislation_menu.htm).
2. We have previously commented in various TAXREPs on the Committee papers listed in Appendix B in Volume 2 of the February 2008 Draft Corporation Tax Bill (List of publications issued) containing earlier versions of the majority of the draft clauses and have also reviewed the related response documents listed in that Appendix. In consequence of this detailed past review further relatively minor comments only now arise. As an essential guide, we have also drawn attention to necessary amendments to the Explanatory Notes (Commentary) in Volume 1 of the February 2008 Draft Bill.
3. We note that the draft clauses issued in Paper CC/SC(07)15 (Bill 5: Currency) are not included in the draft Bill. We assume that these will be added later, or are to be deferred to Bill 6 or the further proposed short rewrite Bill.
4. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in Annex 1. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex 2.

## GENERAL COMMENTS

5. As an overall comment, despite its large size and extensive coverage, Bill 5 is suitably constructed and we commend its drafting in rewriting those parts of the corporation tax legislation with which it deals (to be complemented in due course by Bill 6) resulting in its more reader-friendly form and content. Whilst we are aware that their inclusion has attracted some criticism, the lengthy loan relationships and derivative contracts provisions do now appear to fit appropriately within Bill 5.
6. We note from Explanatory Notes paragraphs 53-56, 71, 1912, 2077, 3535 and 3536 that further work remains to be done on Bill 5 (including to Schedules 1 and 2) and that any changes arising from FA 2008 will be incorporated in the draft Bill over the course of the summer (Explanatory Notes paragraph 35 refers). We also note that the rewritten provisions will be amended if the source legislation changes in consequence of ongoing consultation (Explanatory Notes paragraph 57 refers). We understand that the ITTOIA-related clauses relating to intangibles having application for companies and not falling within the intangible fixed asset regime and the clauses for provisions amended or supplemented by the Regulations implementing the EU Mergers Directive are also still to be included in Bill 5.
7. We note from Explanatory Notes paragraph 1178 that the draft loan relationships provisions do not reflect proposed changes to the source legislation, nor at this stage do they rewrite the paragraphs substituted and inserted as paragraphs 12A(5A) and

12B to 12I of Schedule 9 to FA 1996 by the 2007 Regulations referred to (resulting also in Paper CC/SC(07)18 draft clauses 55-57 not being included in draft Bill 5).

8. We note from Explanatory Notes paragraph 1468 that holdings by companies in OEICs (and relevant definitions) are temporarily excluded from Part 7 Chapter 3.
9. We note from Explanatory Notes paragraph 1849 that the drafting of clause 612 (Derivative contracts with non-UK residents) is still under review in the light of comments from respondents to the clauses published in Paper CC/SC(07)21.
10. The more abbreviated drafting of the Explanatory Notes reflects past discussion at the Consultative and Steering Committees regarding the detail into which these should go. Generally, the explanations are sufficient; but, as a minor criticism, there are instances where it might better assist users' understanding if more detailed explanatory notes were to be included. As examples, the explanatory notes in respect of clauses 873-904 (Part 10: Chapter 2: Beneficiaries' income from estates in administration) as compared with those in Paper CC/SC(06)06 Appendix D and the explanatory notes in respect of clauses 1198-1202 (Part 17: Unremittable income) as compared with those in Paper CC/SC(06)06 Appendix G. It is, however, clearly a difficult task to always draft the explanatory notes in sufficient detail. We suggest that as a rule of thumb, the more complex the legislation then the more detailed the explanatory notes need to be.

## **ANSWERS TO QUESTIONS**

11. **Q1** We support the proposal to maintain parity of treatment throughout the United Kingdom by updating the text of affected clauses to reflect recent devolution settlements
12. **Q2** We support the proposal to reinstate section 108 of ICTA for corporation tax in clause 190 (Election to carry back).
13. **Q3** We support the proposal to provide, in clause 192 (Election given effect in accounting period in which receipt is received), a procedure for dealing with elections under clause 190 by a company to carry back a post-cessation receipt.
14. **Q4** We support the proposal to carry Change 119 in ITTOIA across to corporation tax in clause 290(5) (Extent of exemption under section 288).
15. **Q5** We support the proposal to carry Change 14 in ITTOIA across to corporation tax in clause 290(8) (Extent of exemption under section 288).
16. **Q6** We support the proposal to carry Change 118 in ITTOIA across to corporation tax through clause 290(4) (Extent of exemption under section 288).
17. **Q7** We support the proposal to carry Change 120 in ITTOIA across to corporation tax in clause 291(4)(b) (Exempt proportion: term dependent solely on duration of life).
18. **Q8** We support the proposal to carry Change 66 in ITTOIA across to corporation tax in clause 300(1) (Provisions which must be given priority over this Part).

19. **Q9** We have no objection to stating that clause 354 (Application of amortised cost basis to connected companies relationships) is subject to clauses 442 and 521, giving precedence to the fair value basis (the more specific rule taking precedence over the more general rule) in line with generally accepted practice.
20. **Q10** Whilst we appreciate the administrative convenience to both the taxpayer and HMRC resulting from Change 62 in Annex 1, we consider that the view of the insurance companies should primarily be taken into account in this context. Dropping the requirement for a claim is essentially in return for less flexibility in offsetting non-trading deficits, because of the resulting mandatory set off of the deficit first against any other income and gains of the deficit period. If the insurance companies find this acceptable, however, we have no objection to the change.
21. **Q11** We agree that “the Board” should be rewritten as “an officer of Revenue and Customs” in draft clause 395(5) (Claim to carry back deficit).
22. **Q12** Having regard to the analysis set out in Change 64 in Annex 1, we support the interpretation that the definition of “offshore fund” in paragraph 7 of Schedule 10 to FA 1996 applies for the entire Chapter 3 of Part 7 (Relationships treated as loan relationships etc – Unit trusts and offshore funds).
23. **Q13** Having regard to the commentary in Explanatory Notes paragraph 1516 we have no objection to the proposal, on the ground of consistent treatment with the three other kinds of alternative finance arrangements, to replace the term “profit share return” with “alternative finance return” in relation to deposit arrangements and profit share agency arrangements.
24. We note that it is also proposed to amend FA 2005 to also remove the term “profit share return” for income tax purposes.
25. **Q14** Clause 522(7) adds clarity by stating that fair value accounting under clause 522 overrides the clause 354 requirement for amortised cost basis where both clauses 354 and 522 apply, as being in line with generally accepted practice.
26. **Q15** Having regard to the explanation in Change 64 of Annex 1, we do not object to the proposal to apply in clause 561 (Contracts relating to holdings in unit trusts, OEICs or offshore funds) the wider definition of “offshore fund” in clause 476.
27. **Q16** We support the proposal not to rewrite the words “the interest component of the asset” in clause 575(5)(b) (Credits and debits treated as relating to capital expenditure).
28. **Q17** We support the proposal to add a rule in clause 591(3) ceding priority to clauses 603 and 604 in cases where either of those clauses applies to the same circumstances as clause 591 (Company ceasing to be UK resident treated as assigning derivative contracts).
29. **Q18** We support the proposal to add a rule in clause 592(3) ceding priority to clauses 603 and 604 in cases where either of those clauses applies to the same circumstances as clause 592 (Non-UK resident companies treated as assigning derivative contracts no longer held for permanent establishment in UK..

30. **Q19** In view of the complexity of the derivative contracts legislation it does appear preferable to distinguish within Part 8 itself when profits and losses in relation to derivative contracts are dealt with as chargeable gains or allowable losses under TCGA and not under Part 8. Is any corresponding signpost to Part 8 intended within TCGA?
31. **Q20** Having regard to the explanation in Change 70 in Annex 1, we agree the drafting of clause 655(6) (Contracts which became derivative contracts on 16 March 2005) as appropriately setting out the accounting period the end of which is relevant to identifying consideration for the deemed disposal in clause 655. We are unclear, however, why the more straightforward approach adopted in the similar clause 656 (Contracts which became derivative contracts on 28 July 2005), based on fair value at the change date, could not also be adopted in clause 655.
32. **Q21** With reference to clause 724(1)(b) (Conditions relating to expenditure on other assets), we support the proposal to change the references to “Inland Revenue” in paragraphs 35(2) and 39(1)(a) of Schedule 29 to FA 2002 to “officer of Revenue and Customs”.
33. **Q22** We support the proposal in drafting clause 829(5) (Delayed payment of employees’ remuneration: supplemental provisions) to drop the requirement to make a claim for deduction of remuneration paid after the return is submitted but within the nine months’ time limit, mirroring the general calculation rule in clause 1213(3).
34. **Q23** We support the proposal to legislate the practice of accepting claims by companies which qualify as SMEs at some time during, but not throughout, the accounting period.
35. **Q24** We support the proposal to prescribe the formula to be used where an accounting period is less than 12 months, in clause 981 (R & D threshold), incorporating a denominator of 365 regardless of the length of the calendar year.
36. **Q25** We have no objection to the proposal to replace “employee costs” with “staffing costs” in clause 1094 (Meaning of “staffing costs”) as in clause 1046.
37. **Q26** We support the use of straightforward apportionment only in clause 1095 (Staffing costs attributable to relevant land remediation) where a director or employee is partly engaged directly and actively in relevant land remediation. The ‘appropriate’ proportion’ approach, which is also adopted in clause 1047, will more accurately identify the extent of the director’s or employee’s involvement than the broader brush approach under the source paragraph 5(3) of Schedule 22 to FA 2001.
38. **Q27** We support the proposal that clause 1109(2) (Meaning of “UK expenditure” etc) should refer to apportionment as being on a “just and reasonable” basis where section 35(2) FA 2006 refers to a “fair and reasonable” basis.
39. **Q28** We support the proposal that clause 1118 (Estimates) should refer to apportionment as being on a “just and reasonable” basis where paragraph 8 of Schedule 4 to FA 2006 refers to a “fair and reasonable” basis.
40. **Q29** We support the proposal to carry Change 19 in ITTOIA across to corporation tax.

41. **Q30** We assume that this question refers to both clause 1209(2) and (3). Clause 1209(2) of course correctly rewrites the relevant part of s 208 ICTA. Having regard to the judgement in *Strand Options and Futures Ltd v Vojak* (2004) STC 64, we agree that clause 1209(3) is appropriately drafted insofar as s 208 ICTA does not expressly (nor under the judicial interpretation) prevent any dividends or other distributions from being taken into account in the calculation of chargeable gains so that a statutory provision to that effect now in clause 1209(3) appears to be in order.
42. **Q31** We assume that the reference is to “as receipts” in clause 1209(2) rather than to “on receipts” as in Q31 and Explanatory Notes paragraph 3348. We agree that the inclusion of “as receipts” are helpful in clarifying the role of clause 1209, as explained in Explanatory Notes paragraph 3348.
43. **32** We welcome the proposal to extend the exceptions from disallowable business gifts to gifts made to charities and the named bodies in sub-clause 1224(5) (Business gifts: exceptions) by non-trade and non-property businesses.
44. **Q33** We support the proposal to extend the benefit of the apportionment rules to income charged under Schedule D Case V in the source legislation.
45. **Q34** We support the proposal to carry Change 148 in ITTOIA across to corporation tax in clause 1237 (Meaning of “caravan”).
46. **Q35** We note the proposal to extend the restriction in s 48(4) of ITTOIA through the paragraph 422(3) Schedule 1 amendment. Strictly, this correction together with those in paragraphs 422(2), 423 and 460 of Schedule 1, should be made by order under s 882 ITTOIA but it is clearly convenient to now make these amendments as proposed. Please also see our response to Q36 below.
47. **Q36** We support the proposal to clarify the application of s 860 of ITTOIA (Adjustment income), through the paragraph 465 Schedule 1 amendments, so that for income tax there is an explicit rule about how to deal with partners’ share of adjustment income in a property business and to accordingly bring the income tax and corporation tax codes back into line. We note that, by not instead applying the s 882 ITTOIA procedure to amend s 860 ITTOIA, this amendment is not retrospective to the introduction of ITTOIA but we assume that the continuity of the law provision in Part 1 Schedule 2 ITTOIA would nevertheless apply should any taxpayer be otherwise disadvantaged in the period between ITTOIA and CTA 2009 coming into effect.

## **SPECIFIC COMMENTS ON DRAFT LEGISLATION**

- cl 70 Employees seconded to charities and educational establishments**
48. **(3)** Draft clause 54(2)(h) in Paper CC/SC(06)07 included within the definition of an ‘educational establishment’ in Scotland an educational body approved for the time being for the purposes of section 53 [now Bill 5 section 70] by the Scottish Ministers. Clause 70(3)(d) does not replicate this. With reference to clause 105(1) and the comments in paragraph 161 of the Response Document dated 3.4.07, we assume that the approval for such a body in Scotland now lies with the Secretary of State.

- cl 79 Additional payments**
49. With reference to paragraphs 139-141 of the 3.4.07 Response Document to Papers CC/SC(06)06 and CC/SC(06)07, clause 79 does not appear to have been amended to achieve the intended result of Change 18 in Paper CC/SC(06)07. Subsection 79(2) still denies a deduction for an additional payment if there is a cessation of part of a trade, and, at the same time, some “corporate continuity” in the carrying on of the trade in partnership.
- cl 81 Contributions to local enterprise organisations or urban regeneration companies**
50. Why does Schedule 2 (Transitionals and savings etc) not provide that clause 81 is inapplicable to any contribution to an urban regeneration company before 1 April 2003?
- cl 190 Election to carry back**
51. (4) The reference to ‘in this section’ in clause 190(4) is inappropriate as regards “the period of the cessation” which is not referred to in clause 190.
- cl 192 Election given effect in accounting period in which receipt is received**
52. (2)(b) Would it be clearer to replace ‘for that accounting period’ by ‘for the period of cessation’, to avoid any confusion with the reference to ‘later accounting period’ in clause 192(1)?
- Part 5 Investment income**
53. We note that the clauses in Appendix A to Paper CC/SC(06)06, dealing with gains from contracts for life insurance, are not included in Part 5 of Bill 5. What is the explanation for this?
- cl 295 Overview of Chapter**
54. We note that clause 4 in Paper CC/SC(07)17 (Treatment of income of unauthorised unit trust) is not included in draft Bill 5. We also note from the Table of Destinations that this is yet to be rewritten; whereas the source s 469 ICTA is repealed by Schedule 3.
- cl 316 General principle for credits and debits: amounts fairly representing profits and losses**
55. (3) Should the reference in clause 316(3) (and in the heading to clause 338) be to ‘pre-loan relationship *and* abortive expenses’?
- cl 330 Credits and debits treated as relating to capital expenditure**
56. (6) Whilst correctly rewriting paragraph 14(4)(b) Schedule 9 FA 1996, is it intended to refer to the interest component of ‘the asset’ only and not of ‘the asset or project’? Paragraph 14(1) of that Schedule applies to any debit brought into account in determining the value of a project and paragraph 14(4) applies in consequence of paragraph 14(1) applying, so that in consequence it could apply to an asset or a project; but we assume that there was a policy purpose in excluding ‘or project’ from the drafting of the source legislation. We note, however, that Explanatory Notes paragraph 1230 does refer to ‘asset or project’.
- cl 338 Pre-loan relationship or abortive expenses**
57. (1)(c) In clause 338(1) the reference should be to ‘section 316(1)(c)’.

- cl 394 Basic rule: deficit set off against income and gains of deficit period**
58. The commentary in the third paragraph of Change 62 in Annex 1 is misleading. It states that a non-trading deficit will be set off against other income and gains of the deficit period ‘unless a claim is made to carry it back’. This implies that the loss carry back takes priority, whereas under clause 395(1) on a claim such a deficit for a deficit period could only be carried back to the extent that it exceeds the other income and gains of the deficit period.
- cl 440 Exchange gains and losses where loan not on arm’s length terms**
59. In Explanatory Notes paragraph 1407, in the second sentence, would it be clearer to omit the words ‘made the loan and therefore’ so that the reference would then be to the guarantor company being treated as if it had paid the interest. The loan at issue is treated as made to the guarantor rather than the guarantor company being treated as making a loan.
- cl 451 Priority of this Part for corporation tax purposes**
60. (1) Is it considered that clause 451(1) now adequately reflects s 337A(2)(a) ICTA, that in calculating a company’s income for corporation tax purposes a deduction for interest is allowed only under the loan relationships provisions? Is s 337A(2)(a) ICTA to be repealed?
- cl 494 Investment bond arrangements**
61. (1)(h) Whilst ‘recognised stock exchange’ is defined in s 841(1) ICTA, by reference to the s 1005 ITA 2007 definition, should source s 48A(3) FA 2005 as inserted by FA 2007 nevertheless be rewritten in clause 494?
- cl 544 Overview of Part**
62. (1) With reference to paragraphs 11-14 of the 28.12.07 response document to Paper CC/SC(07)21 (Derivative contracts) we note that “profits and losses” are now referred to in clause 544(1) Part 8, whereas for loan relationships purposes the reference is to “profits and deficits” in clause 301(1). We are surprised at this lack of consistency.
- cl 678 Other definitions**
63. “capital redemption policy” is defined by reference to capital redemption business ‘within the meaning of Chapter 1 of Part 12 of ICTA’. As sections 458 and 458A of ICTA (Capital redemption business) were repealed by FA 2007, subject to transitional provisions, is this definition now sufficient?
- cl 769 Effect of partial exclusion**
64. (1) In the last line in clause 769(1) insert ‘not so’ before ‘excluded’.
- Part 10 Miscellaneous income – Annual payments not otherwise charged**
65. **Chpt 3** We note that clauses 4-6 in Appendix C to Paper CC/SC(06)06, dealing with the exemption for certain annual payments by individuals, are not now included in Chapter 3 of Part 10 of Bill 5 (Miscellaneous income – Annual payments not otherwise charged). What is the explanation for this?
- cl 915 Overview of Chapter**
66. We note that clause 1(8) in Paper CC/SC(07)16 (now Bill 5 clause 915), which gives Chapter 1 in their Paper priority over (now) Bill 5 clause 54(1) (no deduction for items of a capital nature), is omitted from the signposts in Bill 5 clause 915. Is Bill 5 s

54(2), to the effect that clause 54(1) is subject to provision to the contrary in the Corporation Tax Acts, now considered sufficient to establish this priority? Would an express provision that Part 11 has priority over s 54(1) be preferable?

**cl 961 Transfer of qualifying business by group transfers**

67. In Explanatory Notes paragraph 2725, it would be preferable to delete the second sentence. With reference to paragraph 18 of TAXREP 36/07 dated 3.5.07, clause 956 refers to an “option period” whereas the focus of Explanatory Notes paragraph 2726 is the ‘interim period’.

**cl 969 Priority of Chapter 1 of Part 11**

68. (2) What is the authority for the words in brackets? The source paragraph 24(2) of Schedule 23 to FA 2003 refers to a deduction which ‘is allowable, or has been made’ (under the share incentive plans provisions). This does not appear to encompass a deduction which has been withdrawn.

**cl 1043 Qualifications to section 1042**

69. With reference to the final sentence of paragraph 12 of TAXREP 37/07 it remains unclear how the effect of clause 1043 is to cause the company to fail to qualify as an SME in the second accounting period and not in the first as well. It would be helpful if the Explanatory Notes could clarify this.

**cl 1067 Overview of Part**

70. (1) Should it be made clear at the outset that the contaminated land must be in the United Kingdom?

**cl 1103 Definitions**

71. In (c) of the definition of “controlled waters” should ‘water in’ be inserted, either before ‘waterways’ or before ‘underground strata’?

**cl 1189 Apportionment of profit share between partner’s accounting periods**

72. We note that clause 253(4) in Paper CC/SC(06)07 – that the apportionment must be on a time basis – has been excluded from Bill 5 clause 1189. Why is this?

**cl 1195 Sale of patent rights: effect of partnership changes**

73. In the 3.4.07 Response Document (Responses to Papers CC/SC(06)06 and CC/SC(06)07, under clause 257 (now Bill 5 clause 1195), it was anticipated in conclusion that the clause would be re-worked (Response Document paragraph 296). We note that clause 1195 remains unchanged.

**cl 1226 Penalties, interest and VAT surcharges**

74. In Explanatory Notes paragraph 3384, in the sixth line, should “for accounting periods ending after 30 September 1993” read “for accounting periods ending before 1 October 1993”?

**Sch 1 Minor and consequential amendments**

75. **para 131** In view of the omission of s 531(1)-(3A) ICTA, the opening words at least of s 531(7) ICTA also require amendment. Are subsections 531(7) and (8) ICTA still required?

**DETAILED COMMENTS ON DRAFTING**

**cl 1 Overview of Act**

76. **(1)(a)** In clause 1(1)(a), within the brackets, are the words ‘in the sense of appropriate’?
77. In Explanatory Notes paragraph 64, for ‘treatement’ substitute ‘treatment’.

**cl 153 Conditions to be met by reserve fund**

78. **(2)** ‘These’ should read ‘The’ (first condition).

**Part 3 Chapter 14 Post-cessation receipts**

79. In Explanatory Notes paragraph 766, ‘This’ appears to be missing before ‘Chapter’.

**cl 190 Election to carry back**

80. In Explanatory Notes paragraph 799, in the first line, ‘it’ should be ‘is’.

**cl 219 Circumstances in which additional calculation rule applies**

81. In Explanatory Notes paragraph 900, in the fourth line, delete the duplicated ‘that’.

**cl 227 Limit on reductions and deductions**

82. In Explanatory Notes paragraph 933, in the first bullet point, ‘291’ should read ‘292’ (of ITTOIA).

**cl 298 Charge to tax under this Chapter**

83. **(5)** We note that clause 298(5) is currently blank.

**Part 6 Loan Relationships**

84. **Overview** In Explanatory Notes paragraph 1172, in the first sentence, insert ‘as’ before ‘loan relationships’.

**cl 318 Generally accepted accounting practice and recognised amounts**

85. In Explanatory Notes paragraph 1121, for ‘principles’ substitute ‘practice’.

**cl 323 Basis of accounting: “amortised cost basis”, “fair value accounting” and “fair value”**

86. In Explanatory Notes paragraph 1220, in the first line, for ‘costs’ substitute ‘cost’. Similarly in the second line of Explanatory Notes paragraph 1221.

**cl 327 Meaning of “accounting value” and “carrying value”**

87. **(1)** At the end of clause 327(1), within the brackets, for ‘debts’ substitute ‘debts’.

88. **(5)(a)** Within the brackets, for ‘debts’ substitute ‘debts’.

**cl 374 Carry forward of claims for group relief where there are no net consortium debits**

89. In Explanatory Notes paragraph 1300, in the clause heading, for ‘debts’ substitute ‘debts’.

**cl 412 Meaning of “strip”**

90. In Explanatory Notes paragraph 1361, in the second sentence, for ‘FA 1947’ substitute ‘section 47 of FA 1942’.

**cl 414 Non-UK resident bankers, insurers and security dealers with interest on 3½ % War Loan 1952 Or After**

91. (3) Can the Explanatory Notes give guidance as to how the average rate of interest is to be calculated for the purposes of Step 4? A weighted average would appear appropriate.
92. (4) Similarly, can the Explanatory Notes give guidance as to how the average holding in the period ('AH') is to be calculated? A weighted average would again appear appropriate.

**cl 455 Connection between companies to be ignored in some circumstances**

93. In Explanatory Notes paragraph 1438, in the second sentence, for 'clause 456' substitute 'clauses 456 and 458'.

**cl 459 Meaning of "control"**

94. (4)(b) Should 'an insurance company's long-term insurance fund' be defined? Similarly for clause 460(3)(b).

**cl 481 Meaning of "qualifying investments"**

95. (2) In the definition of "derivative contract", should there be a reference to 'OEICs' within the final brackets?

**cl 489 Meaning of "financial institution"**

96. (2)(b) In clause 489(2)(b), delete 'or' immediately after 'on behalf of'.

**cl 494 Investment bond arrangements**

97. (1)(d) In the first line of clause 494(1)(d) insert 'under' immediately before 'the arrangements'.

**cl 503 Treatment of principal under profit sharing agency arrangements**

98. Is the explanation in Explanatory Notes paragraph 1520 sufficiently clear? The reference to the agent's entitlement to relief 'for payments made' under the arrangements to the depositor is confusing, as clause 503 itself does not refer to any payment. Is this intended to be a reference to the profit sharing mechanism?

**cl 505 Alternative finance investment bonds treated as securities for corporation tax purposes**

99. (2) In clause 505(2)(a) and (b) is it preferable to refer to an 'enactment' rather than 'the enactment'?

**cl 575 Credits and debits treated as relating to capital expenditure**

100. In Explanatory Notes paragraph 1713, in the second line of the first sentence, delete 'of' immediately following 'writes down'.

**cl 597 Elections under section 596: groups of companies**

101. In Explanatory Notes paragraph 1791, in the first sentence, 'make' should be 'makes'.

**cl 603 Transferee leaving group otherwise than because of exempt distribution**

102. (4)(b) In clause 603(4)(b) for 'transferor', in the s 351 bracketed heading, substitute 'transferee'.

**cl 616 Some non-trading credits and debits not to be brought into account under Part 6**

103. In Explanatory Notes paragraph 1865, in the final line, 'Chargeable' should be 'chargeable'.

**cl 619 Derivative contracts relating to land or certain tangible movable property**

104. In Explanatory Notes paragraph 1871 for 'A', '(2)', 'B' and '(3)' substitute 'B', '(3)', 'C' and '(4)'.

In Explanatory Notes paragraph 1872 for 'C' and '(4)' substitute 'A' and '(2)'.

**cl 651 Treatment of net gains and losses on exercise of option**

105. In Explanatory Notes paragraph 1980, the spacing has gone awry in the penultimate line.

**Part 9 Intangible fixed assets**

106. **Overview** In Explanatory Notes paragraph 2077, in the penultimate line, the spacing has gone awry.

**cl 823 Treatment of postponed gain on subsequent realisation**

107. In Explanatory Notes paragraph 2318, in the first line, insert '822' after the second 'clause'.

**cl 838 Change of accounting policy involving disaggregation: original asset subject to fixed-rate writing down**

108. **(1)(b)** In clause 838(1)(b) we note the differing bracketed description of section 698 compared with clause 836(1)(c).

**(3)** In the definitions of 'AVL' in clause 838(3), the words 'is the accounting value' are duplicated.

**Chapter 16 Pre-FA 2002 assets etc**

109. **Overview** In Explanatory Notes paragraph 2356, in the second sentence, 'that that' should be 'that'.

**cl 859 Application of this Part to some pre-FA 2002 assets consisting of telecommunication rights**

110. In Explanatory Notes paragraph 2398 'ensure' should be 'ensures'.

**cl 869 Pre-FA 2002 assets: Lloyd's syndicate capacity**

111. In Explanatory Notes paragraph 2413 insert 'Schedule 29 to' before 'FA 2002'.

**cl 910 Charge to tax on income from holding an office**

112. **(3)(a)** In clause 910(3)(a) for 'in' substitute 'into'.

113. **(7)** In Explanatory Notes paragraph 2548 for '(6)' substitute '(7)'.

**cl 951 Calculation of amount of relief if shares are restricted or convertible**

114. **(3)** Delete 'is' after the third 'shares'.

**cl 971 Overview of Part**

115. Explanatory Notes paragraph 2752, the reference to Part '9B' should be to '9BA'.

**cl 1068 Meaning of "qualifying land remediation expenditure"**

116. (3) Should there be a signpost in clause 1068(3) to the definition of "in a contaminated state" in clause 1069?

**cl 1070 SMEs: deemed trading loss for pre-trading expenditure**

117. (10) We note that clause 1070(10) is drafted differently from clause 1016(8) and (9), clause 1017(7) and (8), from clause 1019(6) and (7) and from clause 1024(3) and (4). Would a common approach be preferable?

**cl 1112 Activities of film production company treated as a separate trade**

118. In Explanatory Notes paragraph 3066, in the final line, insert 'is' immediately following 'it'.

**cl 1175 Business entertainment and gifts**

119. (3) The reference to 'section 1212' should be to '1222'.

**cl 1221 Life assurance business**

120. In Explanatory Notes paragraph 3373, in the final line, for 'paragraph 27' substitute 'paragraph 7'.

**cl 1227 Crime-related payments**

121. (1),(2) In sub-clauses 1227(1) and (2) the references to 'subsection (2) or (3)' should be to 'subsection (3) or (4)'.

**Sch 1 para 431**

122. In Explanatory Notes paragraph 3508, and in its heading, for '92A' substitute '94A'.
123. Explanatory Notes paragraph 3512 refers to a non-existent section 127 of FA 2005 and is unintelligible.

**Sch 4**

124. 'child' is defined by reference to s 832(5) of ICTA which was repealed by ITA 2007.
125. 'registered industrial and provident society' is defined by reference to s 834(1) of ICTA which does not appear to contain such a definition.

TJH/PCB  
21.5.08

## 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 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
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 out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at [taxfac@icaew.com](mailto:taxfac@icaew.com) or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

**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>.