

TAXREP 22/04

DRAFT INCOME TAX (TRADING AND OTHER INCOME) BILL

Memorandum submitted in May 2004 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in March 2004 by the Inland Revenue Tax Law Rewrite team

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DRAFT INCOME TAX (TRADING AND OTHER INCOME) BILL (TAX LAW REWRITE)

A PRELIMINARY

INTRODUCTION

1. We welcome the opportunity to comment on the draft Income Tax (Trading and Other Income) Bill ('Bill 3') published on 4 March 2004 by the Revenue's Tax Law Rewrite team at <http://www.inlandrevenue.gov.uk/rewrite/index.htm>. We have over the years commented on previous versions of the legislation as referred to below, and where published as TAXREPs, our memoranda can be found at www.icaew.co.uk/taxfac.

WHO WE ARE

2. 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.
3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.
4. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

B GENERAL COMMENTS

5. As an overall comment, Bill 3 is well constructed and we commend its drafting. It covers important ground and, as it facilitates taxpayers' easier understanding of legislation which will affect very many of them, it is a useful addition to the rewritten legislation. There are, nevertheless, parts of the draft Bill which taxpayers will still struggle to understand, but this reflects the complexity of the underlying legislation and not any failing on the part of the tax law rewrite draftsmen. This again brings into focus the need for simplification of the tax system itself in line with our ten tenets for a better tax system (see Annex) which would flow through to the tax legislation, which the Tax Faculty has long advocated.

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6. The relatively few areas where we question what is proposed in the draft Bill are explained below, including in our replies to Q9, where clause 148 appears to be extending the ambit of section 473 ICTA 1988 which as an anti-avoidance measure should be dealt with in a Finance Bill, Q26 on clause 605 where the gains or losses of associated companies seem not to be able to be attributed, Q42 where clause 846 may not achieve what is intended, Q43 on clause 857 where the user of the Act will have to undertake further research to work out what he should do and Q48 where clause 890 should probably be the subject of a PRC. Clauses which remain unclear include 366-368 (OEICs) and 692 (administration periods).
7. Bill 3 deals with a variety of income tax topics, following on from the Income Tax (Earnings and Pensions) Act 2003 ('ITEPA') and in advance of 'Bill 4'; but these fit acceptably within it. It remains for consideration whether, at some future stage, the entire income tax legislation in ITEPA and Bills 3 and 4 should be consolidated.

Part 1: Overview (Clauses 1-2)

8. Clause 1 Overview of Act is an appropriate first clause, summarising and signposting the contents of the Act well.

Part 2: Trading Income (Clauses 3–256)

9. As regards Part 2 we responded to ED10 (Trading income of individuals: Part 3), issued in May 2000, on 30.6.2000 in TAXREP 22/00. We have noted the Inland Revenue's responses in the Response Document CC(00)18 dated 7.11.2000. We also responded to the further material concerning the trading income clauses contained in ED13 (Foreign Income Property Income) issued in March 2002, in TAXREP 19/02 dated 4.7.2002. We have also noted the Inland Revenue's response to this submission in the Response Document SC/CC(02)22 of December 2002.
10. The majority of the Part 2 draft clauses originate from ED10, with subsequent amendments. A minority of the clauses, or parts of them, originate from ED13, again with subsequent amendment, and a number of the Bill clauses are new, reflecting relatively recent changes to the legislation.
11. The structure of Part 2 remains substantially the same as in EDs 10 and 13 and we confirm the views expressed in TAXREP 22/00 (paragraph 2) and in particular that the structure is a logical and helpful one. The following specific comments arise.
12. We agree that it is appropriate to now include clause 17 (Effect of company starting or ceasing to be within charge to income tax) as applicable where a company becomes or ceases to be liable to income tax on UK trade profits (as explained in the explanatory notes on clause 17).
13. With reference to our comments in TAXREP 22/00 paragraph 3 (regarding Trade Profits: Basic Rules) we now agree the location of clause 30 (Relationship between rules restricting and permitting deductions) as a key clause linking to the following Chapters 4 and 5.

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14. We note the inclusion now of clauses 39-46 (Employee benefit contributions), deriving from FA 2003 Schedule 24. This is an interesting example of the drafting of Finance Act legislation and TLR drafting. Whilst materially the same, the rearrangement of paragraphs and sub-paragraphs is evident from the Table of Origins and, in view of the relative recency of this legislation, is surprisingly extensive. See also, however, our comments in paragraph 31 (Foster-care relief).
15. Clauses 60-67 (Tenants under taxed leases) remain difficult for a lay reader to understand, even with the assistance of the explanatory notes.
16. We note that clauses 75 and 76 (Counselling and retraining expenses) are now more abbreviated than ED13 clauses 57-59 and 61, as a result of the cross-references to relevant definitions in ss 310 and 311 ITEPA. This does make these clauses less obviously intelligible to the reader, who will need to refer also to ITEPA; but the alternative of duplicating the same text in two Acts, particularly where it is quite lengthy as here, is arguably the less desirable approach.
17. We note that Chapter 16 (Averaging profits of farmers and creative artists) is now rewritten to apply to creative artists as well as to farming and market gardening, and follows the Chapter on Basis Periods rather than, as in ED13, preceding it.
18. We note that Chapter 17 (Adjustment income) is now rewritten from FA 2002 Schedule 22.

Part 3: Property Income (Clauses 257-357)

19. The Part 3 clauses were first included in ED13 (Foreign Income Property Income) issued in March 2002 and to which we responded in TAXREP 19/02 dated 4.7.2002. In December 2002 the Inland Revenue issued document SC/CC(02)22 in response to the responses to ED13. The clauses concerning lease premiums, etc were issued for further consultation in Paper CC/SC(03)08 in July 2003, to which we responded in TAXREP 38/03 dated 28.10.2003, and they now form Part 3, Chapter 4 of the draft Bill.
20. Having been materially redrafted, Part 3, Chapters 1 and 2 are an improvement on Part 3, Chapter 1 in ED13 and are more logically structured.
21. Following the consultation on the original clauses in ED13 (Foreign Income Property Income), although part of an informal consultation process, we responded to Paper CC/SC(03)08 issued in July 2003 containing further revised draft clauses for Part 3, Chapter 4 (Profits of Property Businesses: Lease Premiums, etc) in TAXREP 38/03 dated 28.10.2003. We note the amendments made to these particular clauses 272-303, and only minor further comments now arise.
22. With reference to our comments in paragraphs 16-21 of TAXREP 38/03, we note that clauses 251 and 252 of Paper CC/SC(03)08 have now been rewritten as clauses 287-290, with commentary in explanatory notes 1268-1292. The source legislation is complex and it will still be difficult for the lay reader to understand clauses 287-290

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even with the help of the explanatory notes; but they do correctly rewrite the source legislation, now with the proposed rewrite changes made, and are intelligible with sufficient mental effort. It is not obvious how the drafting of these clauses might be further improved.

23. We also note the inclusion now of clauses 292-294 (Relationship with ICTA). The explanatory notes in paragraphs 1294-1298 are not easy to follow and we suggest that consideration be given to clarifying these explanations.
24. We note the introduction of Part 3, Chapter 5 (Profits of Property Businesses: Other Rules about receipts and deductions) which now includes some of the material in ED13 Part 3, Chapter 2 together with Chapters 4 and 5 comprising ED13 clauses 244, 246, 243, 275, 276-279, 241 and 242, in that order, together with clause 311 (Relief in respect of mineral royalties). We also note the decision to omit clause 240 (Interest arising) of ED13, and that clause 306 (Acquisition of business: receipts from transferor's UK property business) is now restricted to UK property businesses. We are satisfied with the use of Chapter 5 as an 'Other Rules' Chapter, and a comment arises on clause 307(1)(a) only, in Section C.
25. As regards Part 3, Chapter 6 (Commercial Letting of Furnished Holiday Accommodation) we responded to ED13 (clauses 245 and 280-283) in TAXREP 19/02 dated 4.7.2002, and we have also seen the Inland Revenue's response document SC/CC(02)22 (December 2002) to the responses to ED13. We note that Part 3, Chapter 6 now includes ED13 clause 245 as clause 319 (Capital allowances and loss relief) and 320 (Relevant earnings for pension purposes and earned income). This is clearly appropriate, both clauses being necessary to give effect to the tax advantages of qualifying holiday lettings where there are both furnished holiday lettings and other lettings within a UK property business.
26. Part 3, Chapter 7 (Adjustment income) builds considerably upon clause 248 (Adjustment on change of accounting basis) in ED13, and suitably aligns with the similar rules applicable to trades. We note that these clauses are now limited to UK property businesses only and are not applicable to overseas property businesses, as explained in explanatory note 1443 and earlier discussed in paragraphs 142-144 of the SC/CC(02)22 Inland Revenue response document to the responses to ED13. We agree with this treatment.
27. Instead of being repealed, as proposed in PRC(54) in ED13, we note that s 119(1) ICTA is now rewritten in Part 3, Chapter 8 (Rent receivable in connection with a section 10(2) concern). As the rent charged is Schedule D Case VI income, and the purpose is to preserve the application of the Schedule D Case VI loss regime, we agree this necessary change in treatment.
28. We also agree that it is appropriate to include clauses 332-336 as relating to an associated deduction and relief, rewriting the relevant parts of s 122 ICTA (Relief in respect of mineral royalties).
29. It is also appropriate to deal with this income, deduction and relief, as affecting section 10(2) concerns only, within this separate Chapter 8.

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30. We note the inclusion now of Part 3, Chapter 9 (Rent receivable for UK electric-line wayleaves), again for the purpose of necessarily isolating what is currently Schedule D Case VI income in order to ensure that the Schedule D Case VI loss regime can continue to operate effectively.
31. We note that Part 3, Chapter 10 (Post-cessation receipts) is now applicable to UK property businesses only, on the basis of the reasoning in explanatory notes paragraph 1510 with which we agree.

Part 4: Savings and Investment Income (Clauses 358-617)

32. We agree the structure of Part 4 (Savings and investment income), and that it is appropriate to have a separate Chapter for each category of income arranged in the order in which the legislation is most likely to be used (a subjective judgement; but we assume based on Inland Revenue experience of applying the legislation) and to signpost from the charge to tax provisions to relevant exemptions.
33. We note the inability to apply the integrated approach to dividends of an income nature from non-UK resident companies, and the necessity to deal with those under a separate charge in Part 4 Chapter 4 rather than Chapter 3 (Dividends etc from UK resident companies etc), as explained in explanatory notes paragraph 1739. Basing the charge in clause 393(1) on the full amount of the dividends *arising* correctly rewrites s 65(1) ICTA; but the 'arising' basis contrasts with the 'paid' basis applied to dividends from UK resident companies in clause 376(1). The explanation in the final sentence of explanatory notes paragraph 1747 correctly explains why the term 'arising' has been used; but it will not help the reader to distinguish it from 'paid'.
34. We have not reviewed Part 4 Chapter 7 (Accrued income profits) in view of the consultation now in progress regarding the possibility of changes to the Accrued Income Scheme (AIS), perhaps extensive, in order to make it simpler. Our view is that Chapter 7 should be withdrawn from the Bill and the legislation as determined post-consultation, and in rewrite format, should be inserted later as a new Chapter into Income Tax (Trading and Other Income) Act 2005.
35. As regards Part 4, Chapter 9 (Profits from deep gain securities), we responded to Paper CC/SC(03)05 in TAXREP 28/03 dated 29 August 2003, and we have also noted the comments in the 13 February 2004 response document.
36. With the help of the explanatory notes, clauses 485-487 are more intelligible than clause 385 (Securities issued in separate tranches) of Paper CC/SC(03)05; but it might nevertheless be helpful to print in bold the third sentence in explanatory notes paragraph 2141, as directing the reader to the essential 'all or nothing' purpose of this particularly complex legislation.
37. Following the consultation through Paper CC(03)19, to which we responded in TAXREP 2/04, the further rewriting of Part 4, Chapter 10 (Gains from contracts for life assurance, etc) improves the Chapter, and our further comments now are relatively minor.

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38. As a policy matter, we drew attention to the fundamentally unacceptable complexity of this legislation in a self-assessment context in paragraph 6 of TAXREP 2/04. We note that this has been referred to those with responsibility for policy in this area of tax and, whilst appreciating the difficulties regarding anti-avoidance legislation, trust that attention will be given towards the scope for any simplification.
39. In practice, with the proposal announced on 3 March 2004 to further amend s 549 ICTA (following earlier amendments in FA 1991, FA 1993, FA 1996, F(No 2)A 1997, FA 1999 and FA 2001) this legislation is instead to become more complex. Whilst we appreciate the Treasury's anti-avoidance concern, the complexity built into the Part 4, Chapter 10 legislation already makes it close to unintelligible and, whilst the rewrite is commendable as such, the resulting rewritten legislation will remain beyond the understanding of lay taxpayers and accessible to tax experts only with considerable mental effort. Whilst no fault of the TLR team, legislation of this density is quite unacceptable in a self-assessment context. There needs to be a 'blue skies' review as to whether there is any scope to replace it with legislation which is clearer whilst remaining effective, preferably in line with our ten tenets for a better tax system (see Annex).
40. With reference to paragraph 78, Schedule 2, the commentary in explanatory note 4298 reveals an unnecessarily harsh practice (see comments in Section C). We suggested in paragraph 42 of TAXREP 2/04 that, as a policy matter, a longer period within which to effect the necessary variation ought to be permitted, whether by concession or through appropriate amendment to the legislation and we are disappointed to note that there appears to be no Revenue intention to take up this point.
41. As regards Part 4, Chapter 13 (Disposals of futures and options involving guaranteed returns) we responded to Paper CC/SC(03)09 in TAXREP 33/03 dated 23.9.2003. We noted the Inland Revenue's 13.2.2004 responses, and note now the various minor drafting changes incorporated in the Part 4, Chapter 13 clauses which remain substantially the same in content and structure to those in Paper CC/SC(03)09. No further comments arise on these. We note also that it has been decided to include Schedule 5AA of ICTA, together with clause 484 (losses) of Paper CC/SC(03)09, within Part 4, Chapter 13; and that clauses 486-488 of Paper CC/SC(03)09 are now included in Schedule 1 – Consequential amendments, as consequential amendments to TCGA.

Part 5: Miscellaneous Income (Clauses 618-725)

42. We agree the order of priority between Part 5 and other Parts of IT(TOI)A, and ITEPA 2003, as set out in clause 619 (Provisions which must be given priority over Part 5) as explained in explanatory notes paragraphs 2795-2803. We also agree the order of priority between Chapters within Part 5, as set out in clause 620 (Priority between Chapters within Part 5) and explained in explanatory notes paragraphs 2804-2808.
43. We responded to Paper CC(03)15 (Receipts from Intellectual Property), issued in October 2003, in TAXREP 45/03 dated 8.12.2003. We have noted the responses in

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the Inland Revenue's 13.2.2004 response document, and in particular the decision to revert to the 'disposal', rather than 'disclosure', of know-how and accept this for the reasons set out in paragraph 17 of the response document. Only minor points now arise in Sections C and D on clauses 626-657 forming Part 5, Chapter 3 (Receipts from Intellectual Property).

44. We note that draft clauses 666-687 now remain within Part 5 as Chapter 6 (Settlements: Amounts treated as income of settlor) rather than in any new Part for trusts, which was considered a possibility in Summary paragraph 3 of Paper CC(03) (16) issued in October 2003 and to which we responded in TAXREP 48/03 dated 23.12.2003. We have noted the responses in the Inland Revenue's 13.2.2004 response document. The breaking-up of Paper CC(03)(16) clauses 575, 577 and 578 in particular into a number of smaller clauses does assist the reader's understanding of Part 5, Chapter 6, which we agree is now a less ponderous read (but still only fully intelligible with the help of the explanatory notes). The earlier inclusion, now within Chapter 6, of the clause defining 'settlement' and 'settlor', in clause 667, is also helpful.
45. We note the uncertainty now caused by the intention to modernise and simplify the tax regime for trusts. With reference to paragraph 14 of the 13.2.2004 response document, we do not regard this as precluding rewriting ESC A 93 at this stage (paragraph 5 of TAXREP 48/03); but we agree that the view expressed in paragraph 14 is reasonable as Chapter 6 will need to take account in due course of any modernised and simplified tax regime for trusts.
46. We drew attention in paragraph 4 of TAXREP 48/03 to the controversy attaching to the application of s 660A ICTA (Income arising under a settlement where settlor retains an interest), rewritten in draft clauses 671 and 672, and this difficulty remains.
47. As regards Part 5, Chapter 7 (Beneficiaries' income from estates in administration) we responded to Paper CC/SC(03)06 in TAXREP 29/03 dated 1.9.2003. We noted the Inland Revenue's 13.2.2004 responses, and the various changes made to the draft Bill clauses 688-722. Our only further comments now are on clause 692(1) and clauses 717 with 718 in Section C, together with minor drafting points concerning clause 694(1), clause 698(4)(b) and clause 705(4) in Section D.

Part 6: Exempt Income (Clauses 726-810)

48. We support the new approach adopted in the Bill of grouping all exemptions in Part 6 (Exempt income), with appropriate signposts from the charging clauses. This brings order and improved accessibility to this miscellany of exemptions, currently spread through a number of separate Acts. We also agree the wording of the exemption clauses in following the 'no liability approach' adopted in ITEPA. We also support the inclusion of clause 810 as a general disregard of exempt income for all income tax purposes, subject to any persuasive dissenting responses which may yet be received to Q40 and which could cause this approach to be changed.

Part 7: Income Charged Under This Act: Rent-a-Room and Foster Care Relief (Clauses 811-854)

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49. Part 7 Chapter 2 (Foster-care relief) rewrites FA 2003 Schedule 36, and in practice this is instructive as regards the extent to which Finance Bill draftsmen are adopting the TLR approach. Having regard to the tighter Finance Bill time constraints, it is encouraging and commendable to now see the contents of Schedule 36 rewritten into Part 7 Chapter 2 with relatively minor changes only to the drafting of its contents and to its structure.

Part 8: Foreign Income: Special Rules (Clauses 855-869)

50. In Part 8 we support the use of the label “relevant foreign income” and its definition in clause 856 as a neat way of identifying the income, charged under various provisions in the Bill, to which the Chapter 2 remittance basis or the Chapter 3 deductions may be relevant; and also the cross-references from the relevant clauses to the Part 8 rules. It is also clearly appropriate that the Chapter 4 relief for unremittable income should not be limited to income previously charged under Schedule Cases IV and V, to which the scope of Chapters 2 and 3 is restricted, but has a wider application.
51. In clause 858(1) (Relevant foreign income charged on the remittance basis) we agree that it is reasonable to regard the Schedule D Case IV and Case V bases for charging remittances as having the same scope in practice, as discussed in explanatory notes paragraphs 3819-3826, enabling the phrase ‘sums received in the United Kingdom’ to be retained in clause 858(1) and thereby also allowing the application of the clause to be aided by case law in more complex circumstances.

Part 9: Partnerships (Clauses 870-883)

52. Whilst the consultation was on an informal basis, we responded to Paper CC/SC(03)04 (Partnerships and Changes of Ownership) issued in June 2003 in TAXREP 22/03 dated 16.7.2003. We also had sight of the clauses as amended to 23 September 2003 and, in the light also of earlier correspondence, we were able to conclude that nothing further arose on anything raised by us in TAXREP 22/03 and that the amended September 2003 clauses called for no further comment. The clauses in Part 9 (Partnerships) of the draft Bill remain substantially as they were at 23 September 2003, apart from some minor redrafting, and no further comments now arise.

Part 10: General Provisions (Clauses 884-903 and Schedules 1-4)

53. We note that further work remains to be done on the consequential amendments (Schedule 1), transitionals and savings (Schedule 2) and repeals (Schedule 3).
54. We agree the approach being adopted towards the continuity of the current Schedule D Case VI loss relief.

Abbreviations etc.

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55. In this document we refer to Exposure Draft No 10 (May 2000) as 'ED10', and to Exposure Draft No 13 (March 2002) as 'ED13'; 'cl' means clause and 'sc' sub-clause.
56. References to 'explanatory notes' are to the Draft Income Tax (Trading and Other Income) Bill Volume 1: Introduction (Explanatory Notes) Commentary (March 2004).
57. References to the masculine include references to the feminine.
58. We have commented upon any typographical or other errors in the explanatory notes on the basis that a final version of these will accompany the Bill before the Joint Committee.

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C QUESTIONS

59. **Q1** We agree that the priority rules set out in clause 2 (Overview of priority rules) do correctly reproduce the effect of the current legislation except when a Change has been identified.
60. **Q2** Agreed.
61. **Q3** Agreed.
62. **Q4** Agreed.
63. **Q5** Agreed.
64. **Q6** Agreed.
65. **Q7** Agreed.
66. **Q8** Agreed.
67. **Q9** The proposal, in rewriting clause 148 (Conversion etc of securities), to dispense with the requirement that the person carrying on the business must be beneficially entitled to the shares in question, extends the scope of s 473 ICTA which requires beneficial ownership to securities. This is clear from the final two paragraphs in Change 48 (Securities held as circulating capital – clause 148). S 473 ICTA is a relatively long-standing section, and appears to have applied throughout that period including the s 473(1)(a) ICTA requirement that beneficial entitlement should exist. There was presumably a purpose in this requirement ab initio. In principle, therefore, we do not consider that the tax law rewrite is appropriate to effect this type of extension in the scope of s 473 ICTA, as effectively an anti-avoidance measure, particularly as clauses 149 and 150 are related to clause 148. Such changes should be dealt with through the Finance Bill process.
68. **Q10** Agreed.
69. **Q11** Agreed.
70. **Q12** Agreed.
71. **Q13** Agreed; but is the bullet point reference in explanatory note 1418 (and in Change 77) to ‘is never extended beyond 155 days’ correct? Doesn’t the new 155 day rule relate to the ‘longer-term occupation’ periods, rather than to the ‘short-term basis’ occupation periods which could total 210/211 days (or more, if the periods of longer-term occupation fell short of a 155 days total)?
72. **Q14** Agreed.
73. **Q15** Agreed.

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74. **Q16** Agreed.
75. **Q17** We appreciate the need to deal in clause 361 (Territorial scope of Part 4 charges) with income which has no natural source. The ‘comparable connection’ approach in clause 361(3) is logically sound; but the lack of precision of this term may lead to future litigation as to its application in particular circumstances. Accepting the need for it, however, we cannot think of a better term.
76. **Q18** Agreed.
77. **Q19** Agreed.
78. **Q20** Agreed.
79. **Qs 21 and 22** These questions relate to the Accrued Income Scheme (‘AIS’). We have not reviewed the AIS draft clauses in view of the consultation now in progress regarding possible changes to the scheme.
80. **Q23** Agreed. The reference should be to not rewriting paragraph 9A(2)(b) of Schedule 13 to FA 1996.
81. **Q24** *cl 517(4)(c) Trusts created by two or more persons:* We agree the proposal that any necessary apportionment of property for the purposes of subsection 517(4) should be made on a ‘just and reasonable’ basis.
82. **Q25** Agreed.
83. **Q26** We have some difficulty with this proposed change. If an associated company can be one of the associated persons in schemes or arrangements involving guaranteed returns for the purposes of clause 605 (The return from one or more disposals) – and Change 110 refers to non-resident companies (having a beneficial interest) at least as capable of being involved in this context – and the existing legislation (in sub-paragraphs 5(3)(b) and (c) Schedule 5AA of ICTA) still makes provision for the involvement of associated companies, whatever the intention of FA 2002, then it is difficult to see why associated companies should be ignored now (particularly where they incur a loss under the scheme or arrangements, which would be attributed to the person liable in clause 605(2)). If they can feature in such schemes or arrangements, however unlikely that might be (paragraph 13 of the 13 February 2004 response document refers), then they ought not to be ignored – which would be the effect of Change 110. Ignoring an associated company could result in its profit, gain or loss not being attributed, through clause 605(2), to another person liable under clause 601 and to omit to provide for this appears incorrect.
84. **Q27** Agreed. Please refer to our response to Q17.
85. **Q28** With reference to clause 622 (Charge to tax on annual payments), we have no objection to the retention of the term ‘annual payments’ and agree that, in view of the large body of case law, it would be very difficult to define in concise terms.

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86. **Q29** Agreed.
87. **Q30** At this stage we are not aware of any potential overlap between the scope of the Part 5 Chapter 8 (Income not otherwise charged) charge and any other charge to income tax that is expressed to charge income that is not otherwise charged, and we note that further work continues on this. We note from explanatory notes paragraph 3248 the scope for confusion if any such overlap is identified, it then becoming unclear whether such a charge or the clause 723 charge will have priority because of the inclusion of the words “unless otherwise charged to tax” in setting out the scope of the former charge. As clause 723 (Charge to tax on income not otherwise charged) is intended to rewrite the ‘sweep-up’ functions of Schedule D Cases IV to VI, does there perhaps need to be (through a PRC) a direction in clause 723 itself that any other overlapping section has priority even though it includes the words “unless otherwise charged to tax”?
88. **Q31** We have no objection to the use of the term ‘income’ in clause 723, rather than use ‘annual profits or gains’, provided that it is clear that any attributable expenditure is deductible in arriving at the amount of such ‘income’ in this sweep-up clause. As it is inherently designed to charge unusual amounts arising, clause 723 ought to make clear that any such expenditure can be deducted. We note also that further work continues to determine that there is nothing which is ‘income’ within the usual meaning of the term, and caught by clause 723, which would not be caught at present under Schedule D Cases V or VI.
89. The scope of the clause 723 charge appears appropriate, subject to our comments above under Q30.
90. **Q32** Agreed.
91. **Q33** Agreed.
92. **Q34** It is appropriate in clause 770 (Health and employment risks and benefits) and in clause 771 (Period for which payments may be made) to include respectively insurance against loss of office as an employment risk and a period in which an office is not held as a period for which payments may be made.
93. **Q35** We agree the inclusion of clause 785(1)(c) (Interest on damages for personal injury), giving statutory effect to ESC A 30 (interest on damages for personal injuries (foreign court awards), not to give rise to any liability to income tax).
94. **Q36** We agree the extension in clause 786(1)(b) (Interest under employees’ share schemes) of the exemption of interest received by trustees of certain employees’ share schemes to interest received from any participant in the scheme.
95. **Q37** Agreed.

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96. **Q38** This question relates to the Accrued Income Scheme ('AIS'). We have not reviewed the AIS draft clauses in view of the consultation now in progress regarding possible changes to the scheme.
97. **Q39** It is logical to include the clause 798 exemptions (Amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment) within Part 6 (Exempt income), together with the miscellaneous exemptions in Chapter 9 (Other income). It is superficially unusual to include the main SIP legislation in ITEPA, but to move the s 493(1) and 496(1) ITEPA exemptions into the separate ITTOIA. The consequential amendments (428(3) and 429) to ss 493 and 496 ITEPA will, however, clearly signpost s 798 of ITTOIA 2005 so that they will be readily traceable. Nevertheless this does oblige the reader to refer to two separate Acts.
98. **Q40** Agreed. We note, however, that explanatory notes paragraph 3527 does not include a bullet-point in respect of Approved share incentive plan distributions (clause 798) and this may therefore be a late addition to Part 6 Chapter 9 (Other income). Sub-clause 798(3) provides that the clause forms part of the SIP code and the question then arises whether this might entail the provision of information regarding the clause 798 exempt amounts, such that an exemption similar to that in clause 810(2) for National Savings Bank interest might become necessary. Subject to this, we agree that it is helpful to state explicitly that 'no liability to tax' means that the Chapter 9 exempt amounts (save for National Savings Bank interest) are disregarded for all income tax purposes.
99. **Q41** Agreed.
100. **Q42** Agreed; but presumably this will only apply to the withdrawal of a s 845 election made under s 846? If the intention is to expressly permit the withdrawal of an (effectively s 845) election made within time, and which becomes undesirable following an adjustment of assessment, then clause 846(4) will not achieve that in view of clause 846(1)(a).
101. **Q43** The reference to having to make a claim in clause 857 (Claims for relevant foreign income to be charged on the remittance basis) does lead the reader to expect guidance as to whom the claim should be made. The guidance is in the clause 898(3) and (4) definitions, but these entail the reader in having to undertake further research. The reference in explanatory notes paragraph 3816 to the claim *usually* being made by applying the remittance basis in the claimant's self-assessment tax return is helpful; but the word 'usually' may create doubt. It would be clearer to include a direction in clause 857(1) itself that the claim is to be made to 'the Inland Revenue'.
102. **Q44** Agreed.
103. **Q45** Agreed.
104. **Q46** We agree that the scope of clause 889 (Business entertaining and gifts: non-trades and non-property businesses) has been correctly stated.

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105. **Q47** We agree that it is appropriate to apply the clause 49(6) exception from the application of clause 889 (non-deductibility of business entertainment expenses and gifts), in respect of gifts to charities and named bodies, to the computation of profits of a non-trade and non-property business.
106. **Q48** In principle it is unobjectionable that clause 890 should apply the denial of a deduction for certain crime-related expenses to non-trades and non-property businesses, in the same way as clause 56 applies to trades, professions and vocations and clause 268 to property businesses. We agree that the nature of profits or other income within Parts 4 and 5 which are not currently chargeable under Schedule D would appear to be such that a deduction for such expenses could not in practice arise. Nevertheless, clause 890 is a change in the law, even if it is expected to be of no practical effect, and ought accordingly to be the subject of a PRC.
107. **Q49** Subject to querying whether Chapter 3 of Part 5 (Receipts from intellectual property) should also be included, we agree that clause 891(2) does correctly state the application of clause 891 (Apportionment etc of profits to tax year), as being applicable where the source legislation is a charge under Schedule D Case VI and an apportionment may be necessary.
108. **Q50** Agreed.
109. **Q51** Agreed.
110. **Q52** We agree that it is appropriate to use a uniform definition of ‘caravan’ with Bill-wide application (clause 894 – Meaning of ‘caravan’).
111. **Q53** We agree the use of a uniform definition of ‘houseboat’ (in clause 898(1) (Other definitions)) with Bill-wide application.
112. **Q54** We have no objection to the approach of making the income tax provisions being rewritten in Bill 3 but which need to be retained, in their application to corporation tax, corporation tax specific. We note, however, that this is being kept under review.
113. **Q55** We agree the omission of all references to ‘vocation’ when amending corporation tax provisions, on the basis that companies cannot carry on vocations.
114. **Q56** We agree the consequential amendments to s 18 ICTA, so that it will apply only for corporation tax purposes, and the approach taken towards the provisions referred to in explanatory noted paragraphs 4070-4073.
115. **Q57** We agree that it is appropriate to repeal Schedule F, based on the reasoning in explanatory notes paragraphs 4075-4089.
116. **Q58** We have no objection to the use of the replacement expressions.
117. **Q59** We agree that, in view particularly of its limited application now, it is very unlikely that any interest would qualify both for MIRAS and as a deduction in

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calculating trade profits. We accordingly agree to the proposal to repeal s 74(1)(o) ICTA. Explanatory notes paragraph 4107, in error refers to the proposal not to repeal it.

118. In the context of s 74 ICTA, there must also be a case for omitting s 74(1)(h), 74(1)(k) and 74(1)(m) ICTA none of which have been rewritten for income tax purposes.
119. **Q60** Agreed.
120. **Q61** To repeal paragraph 5 Schedule 30 ICTA for income tax purposes, whilst retaining it for corporation tax purposes, is inconsistent. As it is still possible to claim the relief, although claims may now be unlikely in practice, it would be preferable to remove it for both income tax and corporation tax purposes through a Finance Bill amendment.
121. **Q62** Agreed. Q62 in explanatory notes paragraph 4160 should refer to the proposal to repeal paragraph 18 of Schedule 30 to ICTA (rather than not to repeal it).
122. **Q63** We welcome the replacing of the relief in s 109 ICTA (Charge under section 104: relief for individuals born before 6th April 1917) by an exemption, and the consequential repeal of s 109 ICTA without being rewritten.

D SPECIFIC COMMENTS ON MATTERS OF PRINCIPLE

cl 5 Charge to tax on trade profits

123. We note from explanatory notes 42 and 43 that the s 832(1) ICTA definition of ‘trade’ is adopted. In ED10 clause 3.1.5 (Ventures in the nature of trade), the inclusion in the definition of ‘trade’ of ‘any venture in the nature of trade’ was specifically excluded in relation to professions or vocations. ED13 did not refer to this ED10 clause, and it does not now appear in Bill 3. Is this intended as the s 832(1) ICTA definition makes no reference to this exclusion, nor does Part 2 of Schedule 4?

cl 79 Payments in respect of employment wholly in employer’s trade

124. **Sub-clause (2):** Despite the comments in paragraph 113 of the November 2000 response document CC(00)18, it remains unclear to the reader that, if the proviso to clause 79(2) applies, an accruals basis of deduction will apply.

Chapter 7 Trade profits: transfers of trading stock

125. A clause is needed to make clear that Chapter 7 does not apply to professions or vocations, as this may not be readily obvious to the reader. ED10 included such a clause (3.6.1).

cl 129 Preventing abuse of the herd basis rules

126. Why has ED10 clause 3.7.14(1)(b) – where the transfer is not a sale – been dropped from clause 129(1)? Paragraph 5(1) Schedule 5 ICTA does refer to transfers ‘otherwise than by way of sale’.

cl 148 Conversion etc of securities

127. **sc (7):** The drafting of subsection 148(7) will oblige the reader to either refer to s 137(1) TCGA 1992 or to explanatory notes paragraph 649. Could the sub-clause not simply state directly that subsection 2(a) does not apply to a conversion, etc which forms part of a scheme or arrangement the purpose of which is the avoidance of liability to income tax?

cl 183 Basis of valuation of work in progress

128. **sc (1):** Should it be made clearer in the clause itself that clause 183(1) applies to transfers to an unconnected person? This will not be readily apparent from a reading of clauses 183(1) and (2) without reference to explanatory notes paragraphs 796 and 797.

cl 189 Withdrawal of relief

129. Why has ED clause 3.11.4(5) been omitted (event occurring after trader has permanently ceased to carry on the trade)?

cl 191 Acquisition of know-how

130. **sc (5)(b):** Clause 191(5)(a) correctly rewrites s 531(3)(b) ICTA; but the latter is not authority for clause 191(5)(b) to apply Part 7 CAA 2001 only. As explanatory notes paragraph 844 indicates, the purchaser might exceptionally be able to treat his

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payment as a trading expense. As rewritten, clause 191(5)(b) would exclude this. In the absence of any PRC, it should be omitted from rewritten clause 191.

cl 197 Tax year in which there is no accounting date

131. **sc (2):** With reference to explanatory notes paragraph 862, should clause 197(2) be expressed as subject to clause 211 (Change of accounting date in third tax year)?

cl 203 Treatment of business start-up payments received in an overlap period

132. **sc (2)(a):** Why has the change been made from 'is brought into account' in ED10 clause 3.12.11(2)(a) to 'may be brought into account', which implies some degree of choice. Is this intended?

cl 234 Spreading on ending of exemption for barristers and advocates

133. **sc (5):** What is the authority for the statement in explanatory notes paragraph 997 that any balance of income is taxed when the profession or vocation ends? Clause 234(5), rewriting FA 2002 Schedule 22 paragraph 11(5), whilst surprising, appears to envisage the tax charge continuing to be spread over any remainder of the 10 year spreading period.

cl 235 Election to accelerate charge under section 234

134. **sc (4):** Would it be clearer to define 'A' as the additional amount in excess of one-tenth of the adjustment income (as reduced by any previous application of s 235)?

cl 267 Person liable

135. The reference is to the person receiving or entitled to 'the profits'. In the context of clauses 265 and 266 this implies the full amount of the profits; whereas clause 237 in ED13 charged the person if he/she received or was entitled to 'any of the profits', thereby providing for the profits being shared between more than one person. Having regard to explanatory note 1109, this evidently more restrictive drafting in clause 267 is not intended.

cl 292 Corporation tax receipts treated as taxed receipts

136. **sc (1)(a):** Should it be made clearer that the Schedule A business is carried on by a company? This can be deduced in the case of an overseas property business within the meaning of s 70A(4) ICTA, but might also be put beyond doubt in the case of a Schedule A business, particularly in the context of an Income Tax Act.

cl 307 Reverse premiums

137. **sc (1)(a):** Should reference also be made to 'a person connected with the recipient'?

cl 325 Treatment of adjustment income

138. **sc (2):** Paragraph 7(2) Schedule 22 FA 2002 refers to the asset being 'realised or written off', whereas clause 325(2) refers only to 'written off'. The words 'realised or' need to be included also in clause 325(2).

cl 333 Relief in respect of mineral royalties

139. **sc (1)(a) and (2)(a):** The clause 329(1) charge is on 'profits arising' and the relief in clause 333 is against the same profits. The references to 'entitled to receive' describe these profits; but the different terminology might perhaps confuse. Perhaps the

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inclusion in clause 333(1) of the words 'arising' after 'royalties', in line with the approach in clause 333(2)(a), might be prudent? Alternatively, perhaps include 'arising' after 'royalties' in clause 333(1)(b)?

cl 360 Priority between Chapters within Part 4

140. **sc (1):** We have no objection to Chapter 9 (Profits from deep gain securities) taking priority over Chapter 2 (Interest) as it is sensible that deep gains should be dealt with in accordance with the specific Chapter 9 provisions. We do not readily see the authority for this in the source legislation, however. The Table of Origins presumably refers to paragraph 1(1) Schedule 13 FA 1996, which simply establishes a Schedule D Case III charge under which head 'all discounts' now within Chapter 2 (Interest) are also charged in s 18(3) ICTA.

cl 365 Building society dividends

141. **sc (1):** Is it correct to refer to 'for the purposes of Chapter 3'? Chapter 3 does not deal with the procedure for deducting tax, whereas explanatory notes paragraph 1622 state that clause 365(2) has been drafted to ensure that building society dividends are still treated as dividends (and not as interest) for the purposes of deducting tax. Would it be clearer to expressly state, in a separate sub-section, that building society dividends are still to be treated as dividends for the purposes of deducting tax?

cl 366 Open-ended investment company interest distributions

142. It is not clear to the reader whether clause 366 (with clauses 367 and 368) deal with actual or notional distributions. The use of the phrase 'treated as made' causes confusion. If actual payments, to be treated as interest, are involved then their amount will have been determined and it is not obvious why clause 366(5) is necessary, particularly if the total amount available for distribution is distributed. The clause can alternatively be read as identifying notional payments to be taxed as interest, through the references to 'available for distribution' (clause 366(1)) and 'payments . . . treated as made' causes confusion. If actual payments, to be treated as interest, are involved then their amount will have been determined and it is not obvious why clause 366(5) is necessary, particularly if the total amount available for distribution is distributed. The clause can alternatively be read as identifying notional payments to be taxed as interest, through the references to 'available for distribution' (clause 366(1)) and 'payments . . . treated as made' (clause 366(3)); but it is then not clear how tax deduction under s 349(2) ICTA would apply.
143. The better view appears to be that clause 366 deals with actual payments, which are treated as yearly interest (in the circumstances of clause 366(1), (6) and (7)) but which would otherwise be non-interest distributions to the shareholders. Clause 366(5) presumably identifies the amount attributable to each shareholder, as his/her share of the total amount available for distribution, but it is not clear why this is necessary if payments are actually made. Whether this is so or not is again cast in doubt by clause 367 (Date when interest payments under section 366 made), which focuses upon determining the date on which payments of interest under section 366 are treated as made. If actual payments are made, it is not clear why section 367 needs to identify the date(s) of them, unless for anti-avoidance reasons.

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144. It would be helpful if the explanation of clauses 366-368 could clarify beyond doubt how the legislation operates.
- cl 386 Distribution when dividend shares cease to be subject to SIP**
145. Section 251C ICTA has effect subject to (s 251C(6)) s 498 ITEPA 2003 (no charge on shares ceasing to be subject to plan in certain circumstances). This qualification does not appear to be rewritten in clause 386.
- cl 506 Charge to tax under Chapter 10**
146. **sc (4):** With reference to explanatory notes paragraph 17, it would be preferable to signpost Part 6 as the location of exemptions, before signalling particularly Chapter 3 (income from individual investment plans). As drafted, the exemptions could be anywhere in the Bill, attention being drawn only to the one in Chapter 3 of Part 6.
- cl 512 Person liable: UK resident trustees**
147. **sc (4):** As the settlor conditions are relevant to Conditions B and C, it may be preferable to relocate sub-clause (4) after sub-clause (5) and renumber them appropriately. This will also affect the signpost from cl 515(6)(a).
- cl 548 Exception from section 546 for certain loans under qualifying policies**
148. **sc (1):** Having regard to explanatory notes paragraph 2442, for the avoidance of any doubt, would it be appropriate to insert 'or both' after 'B'?
- cl 589 Minor definitions**
149. **sc (1):** With regard to the definition of 'disability', it might be helpful to explain in Change 106 in Annex 1 why it was decided to drop the words 'or permanent disability'. We assume that such would be encompassed by the words 'serious illness or injury'.
- cl 600 Income charged**
150. **sc (1):** With reference to explanatory notes paragraph 2698, is 'the full amount of' any more meaningful than simply referring to the 'profit or gain' arising in the tax year? Although correctly rewriting the existing legislation, Part 4, Chapter 13 makes no reference to the more fundamental question as to how profits or gains are to be calculated. We recognise that there could be income or capital gains; but, despite the absence of any computational rules, the amount of the profit or gain is in practice determinable now under Schedule 5AA of ICTA and it should therefore be possible to provide through a PRC how it is to be calculated. Could it not simply be stated that the income charged is the amount of the guaranteed return, which should be self-evidently ascertainable?
- cl 633 Exceptions to charge under section 632**
151. **sc (5):** There is no definition of 'control', which for the purposes of this clause is the definition in s 574 CAA 2001. Unless this is indicated, the definition in s 840 of ICTA applies (through clause 898(7)). If it is intended that the s 840 ICTA definition should now apply, a PRC would appear to be necessary together with an appropriate explanation in the explanatory notes.

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cl 649 Relief from tax on patent income

152. As this clause deals with relief for expenses, the description ‘relief from tax’ is not ideal. Perhaps ‘Patent income: claim for expenses deduction’, or some such, would be preferable here as the italicised heading above clause 649 and also as the clause 649 heading.

cl 677 Capital sum paid to settlor by trustees of settlement

153. **sc (5):** Explanatory note 3041, read with clauses 677(5) and (6), is confusing. Is the amount treated as the settlor’s income in fact the sum of the net amount plus attributable tax at the rate applicable for trusts, i.e a ‘gross’ amount, this being the ‘income of such an amount as’ in clause 677(5)? The tax amount included in the gross is then deductible in clause 677(6), to determine whether any additional tax liability arises on the gross amount of the settlor’s income.

cl 692 Meaning of “the administration period” and “the final tax year”

154. **sc (1):** From explanatory notes 3113 and 3114 it is clear that the actual time of death is significant, insofar as certain income can arise to the personal representatives on the day of death but after the time of death (explanatory note paragraph 3114). The types of income referred to in explanatory notes paragraph 3113 are in contrast deemed to be the deceased’s immediately on commencement of the day of death.
155. This is not clear to the reader from clause 692(1). As it is important to know clearly how income on the date of death should be taxed, whether as the deceased’s or the personal representatives’, can an appropriate sub-clause be introduced in clause 692 to this effect?

cl 717 Relief where foreign estate has borne UK income Tax: absolute interests &

cl 718 Relief where foreign estate has borne UK tax: limited and discretionary interests

156. We note the explanation in explanatory notes paragraph 3216, by reference to the different source legislation in ss 695(5) and 696(7) of ICTA, but why should the fractions in clause 717(2) and clause 718(3) be different? Isn’t a PRC appropriate to align them, with a view to removing unnecessary complexity?

cl 727 National Savings Bank ordinary account interest

157. The proposed abolition of the exemption for interest not exceeding the £70 limit, in FA 2004, will affect this draft clause (and draft clause 810(2)).

cl 729 Income from Ulster Savings Certificates

158. **sc (5):** In view of the comment in explanatory notes paragraph 3289, is it necessary still to refer to ‘the Treasury’ in sub-clause (5)?

cl 741 Certification of arrangements

159. **sc (1):** We note that it is now provided that, if satisfied, the Treasury ‘may’ certify a linked savings arrangement. In ED2 clause 6.2.14(1) it was provided that they ‘must’ certify the arrangement. Why the change? If the Treasury are so satisfied, then logically they ‘must’ certify to that effect and should not retain any discretion as now inferred by the use of the word ‘may’.

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160. **cl 742 Withdrawal and variation of certifications and connected requirements**
sc (2)(b): The requirement to give notice ‘by post’ is now somewhat dated. Should this now be amended to include electronic communication? Similarly, clause 744(2)(b).
161. **cl 787 Interest on repayment of student loan**
sc (1)(a): Is the choice of the words ‘who has had a student loan’ appropriate, unless it means a student who has been awarded a loan? The past tense implies that the loan no longer exists, whereas it could remain in existence in the situation envisaged in clause 787. S 331A(1) ICTA covers situations where the loan is both wholly repaid and partly still outstanding.
162. **cl 796 Income from occupation of commercial woodlands**
sc (1): A reader will not readily appreciate the need to refer to the clause 895(3) definition of ‘woodlands’ as excluding land in the UK on which short rotation coppice is cultivated. It would be clearer to include some form of wording relating to this within clause 796(2) itself.
163. **cl 801 Income from Inter-American Development Bank securities**
The first sentence in explanatory notes paragraph 3597 is misleading. Sub-sections (2) to (4) do not set out conditions, all of which must be met for the clause 801 exemption to apply. They instead set out circumstances in which a liability would arise but for this exemption.
164. **cl 802 Income from securities issued by designated international organisations**
sc (1)-(4): The first sentence in explanatory notes paragraph 3600 is misleading. Sub-sections (2) to (4) do not set out conditions, all of which must be met for the clause 802 exemption to apply. They instead set out circumstances in which a liability would arise but for this exemption.
165. **cl 829 Minor definitions**
Why has ED13 clause 611(2) been dropped? ED13 explanatory notes paragraph 1141 stated that subsection 611(2) was necessary to ensure that rent-a-room relief is not given against amounts taken into account as profits following a change of accounting basis, thereby preserving the effect of the current legislation. We assume that as these profits are now no longer chargeable under Schedule D Case VI, but under Part 2 Chapter 17 (Trading income – adjustment income), that rent-a-room relief may now be given in respect of them; hence the dropping of ED13 clause 611(2)?
166. **cl 861 Relief for delayed remittances**
sc (3): If clause 861(3)(c) is limited to the impossibility of obtaining there currency which is foreign in the overseas country or territory concerned, then the bracketed words in explanatory notes paragraph 3843 are confusing in their reference to ‘whether the currency of that or another territory’. Clearly clause 861 applies if it is impossible to remit in any currency; but it does not now clearly express that this includes the currency of the country or territory concerned. Whilst local currency will clearly be obtainable, such a reference does not fit into clause 861(3)(c). Perhaps the

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insertion of 'whether in local or overseas currency' after 'transferred' in the first line of clause 861(3) might clarify this?

167. With reference to clause 861, we note that ED13 clause 621 (Relief for delayed remittances: back-dated pensions) is not included as a Bill clause. As s 585 ICTA (relief on delayed remittances) is not repealed and there appears to be no consequential amendment to ITTEPA 2003, does s 575(2)(c) continue to apply to the delayed remittances of backdated pensions or is a relevant consequential amendment yet to be drafted?

cl 896 Meaning of grossing up

168. **sc (3):** The definition of 'R' is confusing. It must refer to the percentage rate of tax on the gross amount. For example, if 'GA' is 100 and 'NA' is 80, at a 20% rate of tax, then the formula works if 'R' is taken as 20. It does not work if 'R' is taken as a percentage rate of tax on NA which, in the case of this example, would be 25 – the formula would then become:

$$GA = NA + \frac{(NA \times R)}{100}.$$

Schedule 1

para 134

169. We note that the amendment of s 392 ICTA (Case VI losses) is at an early stage of development. We agree the approach being adopted, to ensure that the current scheme of Case VI loss relief will continue unchanged (except for s 127 ICTA, which is now dealt with in clause 203 as part of the calculation of trade profits). Section 833A (Table of provisions to which this section applies) will clearly be a key section in this context.

Schedule 2 Policy holders becoming UK resident after 17th March 1998

para 78

170. With reference to paragraph 42 of TAXREP 2/04 and to paragraph 4298 of the explanatory notes, we note that the holder of the policy or contract may have a few days only within which to effect the necessary variation of the policy or contract, where the holder becomes UK resident after 17 March 1998 whilst not intending to become permanently UK resident or to stay at least 2 years. This appears harsh.

E DETAILED COMMENTS ON DRAFTING

cl 1 Overview of Act

171. **sc (3):** The sentence might be split into two sentences. The first ending after ‘exempt income’ and the second beginning ‘Part 6 exemptions . . .’, omitting the words ‘but any’ which perhaps rather unintentionally alert the reader to some kind of exception applying.

cl 2 Overview of priority rules

172. **sc (1)(2):** If clause 2 identifies all the priority rules within IT(TOI)A, as it should, then the words ‘some’ in clause 2(1) and ‘in particular’ in clause 2(2) are not appropriate.

cl 11 Farming and market gardening

173. In explanatory notes paragraph 75, in the penultimate line, ‘clause 12’ should read ‘clause 11’.

cl 34 Bad and doubtful debts

174. The commentary in the explanatory notes should presumably also refer to Change 11.

cl 36 Exceptions for non-UK cases

175. **sc (5):** Is it necessary to define ‘non-approved retirement benefits scheme’ when this is already defined in clause 35(5) for the purposes of clause 36? We note also that clause 36(5) contains a definition of ‘retirement benefits scheme’; but clause 35(5) does not. Should this also be included in clause 35(5), with an application also to clause 36?

cl 46 Interpretation of sections 39 to 46

176. **sc (1):** In the definition ‘accident benefit scheme’, in the final line, ‘person’ service’ should be ‘person’s service’.

cl 61 Tenants occupying land for purposes of trade treated as incurring expenses

177. In explanatory notes paragraph 269, add ‘in’ after ‘on’ at the end of the fourth line.

178. In explanatory notes paragraph 276, in the third line, ‘make’ should be ‘made’.

cl 64 Section 61 expenses and the additional calculation rule

179. In explanatory notes paragraph 283, at the end of the second line, a space is needed between ‘284’ and ‘by’.

180. In explanatory notes paragraph 284, in the second line, delete ‘an’.

cl 65 Section 61 expenses and the additional calculation rule: special case

181. In explanatory notes paragraph 296, at the beginning of the second line, a space is needed between ‘64’ and ‘are’.

cl 94 Expenses connected with foreign trades

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182. **sc (2):** The reference in the final paragraph of Change 30, to ‘Subsection (2) of the clause’, is presumably to clause 94(2) of the Bill. This might be made clearer.
- cl 96 Family expenses**
183. **sc (4):** In the definition of ‘child’, why have the words ‘and an illegitimate child’, which are included in s 80(9) ICTA and were included in ED13 clause 78(4), been omitted?
- cl 99 Debts incurred and later released**
184. Should there be a signpost to clause 245 (Debts released after cessation)? There being no definition of ‘cessation’ in Schedule 4 and no evident references now in clauses 99 or 245, how are ED13 sub-clauses 80(2)(b) and (3) – permanent cessation of trade carried on in partnership form only where all partners permanently cease to carry on the trade – now dealt with in the rewrite?
- cl 107 Industrial development grants**
185. The references in explanatory notes paragraphs 461 and 462 should be to ‘subsection (2)’ and not to ‘subsection (1)’.
- cl 126 Herd basis elections**
186. In explanatory notes paragraph 562, in the second line, delete the first ‘the’.
- cl 144 Meaning of ‘genuinely intended for theatrical release’**
187. In explanatory notes paragraph 623, in the first line, a space is needed between ‘2’ and ‘contains’.
- cl 148 Conversion etc of securities**
188. In explanatory notes paragraph 644, in the fourth line, a space is needed between ‘148’ and ‘because’.
189. In explanatory notes paragraph 645, in the second line, a space is needed between ‘149’ and ‘and’.
- cl 149 Exchanges of gilts for gilt strips**
190. **sc (1)(a):** Is it still appropriate to refer in brackets to ‘the trader’ now that the clause expressly refers to ‘trade, profession or vocation’? Similarly, the word ‘trader’ in clause 149(2) and (3) and the references to ‘trader’ in clause 150 (Consolidation of gilt strips). We appreciate however the difficulty in the choice of a suitably descriptive word.
- cl 186 Unremittable amounts: introduction**
191. It is not clear why explanatory notes paragraph 813 refers to Change 145 in the context of the inability to transfer funds not being due to any lack of reasonable endeavour on the taxpayer’s part.
- cl 190 Disposal of know-how**
192. **sc (5):** Should ‘disclosure’ now be ‘disposal’?
- cl 203 Treatment of business start-up payments received in an overlap period**

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193. **sc (2)(b):** In the first line, insert ‘be’ after ‘must not’.
- cl 213 Conditions for basis period to end with new accounting date**
194. **sc (5)(b):** The section reference should be to ‘section 12AA’ (of TMA1970).
- cl 244 Debts paid after cessation**
195. In explanatory notes paragraphs 1025 and 1027 it may be preferable to refer to ‘the recovery of the debt’ rather than ‘the writing-off of the debt’?
- cl 247 Transfer of rights where transferee does not carry on trade**
196. **sc (4)(b):** It would be clearer to insert ‘by the transferee’ after ‘received’. Similarly, insert in clause 100(3) ‘of the transferor’ after ‘receipts’.
- cl 262 Who can carry on property businesses**
197. In view of clauses 262(1), it would appear appropriate to omit ‘overseas’ from the italicised heading before clause 262, as that clause deals with both UK and overseas property businesses, albeit the content mainly relates to overseas property businesses. This also affects explanatory note 1093.
- cl 278 Assignments for profit of lease granted at undervalue**
198. **sc (2):** In explanatory notes paragraph 1205, in the third line, ‘whom’ should be ‘who’.
- cl 289 Section 288 expenses and the additional calculation rule**
199. **sc (2):** The reference to ‘section 288(5)’ should be to ‘section 288(4)’.
- cls 292-294**
200. In explanatory note 1294, in the third line, ‘2005-05’ should be ‘2004-05’.
- cl 317 Meaning of “qualifying holiday accommodation”**
201. **sc (6):** It may be clearer to the reader to move clause 317(6) before clause 317(5), and re-number them accordingly; but we hold no strong view on this.
- cl 335 Extended meaning of “mineral royalties” etc in Northern Ireland**
202. In the first line of explanatory note 1491, is it intended to say ‘to win and win and work’, or was the intention to say ‘to win and work’?
- cl 357 Meaning of “lease” and “premises”**
203. **sc (1):** In view of paragraph 246 of the ED13 response document SC/CC(02)22, which stated that respondents were in favour of defining ‘lease’ to include a sublease (as in the ED13 clause 293(2) definition of ‘lease’), why has any reference to a sublease now been omitted from clause 357(1)? There is no explanation of this in explanatory note 1544.
- cl 359 Provisions which must be given priority over Part 4**
204. **sc (2):** In explanatory notes paragraph 1555, in the third line, a space is needed between ‘section’ and ‘95’.
- cl 366 Open-ended investment company interest distribution**

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205. **sc (5):** Should ‘treated as made’ be inserted after ‘payment’, consistent with the drafting in clause 369(5) (Authorised unit trust interest distributions)?
206. **sc (6):** Should ‘throughout the distribution period’ (as in s 468L(1A) ICTA) be added after the final word ‘met’?
- cl 371 Interpretation of sections 369 and 370**
207. Does the drafting of the definition of ‘approved personal pension scheme’, for the purposes of sections 369 and 370, need to differ from that in clause 368(1)?
- cl 384 SIP shares: introduction**
208. **sc (7):** In the second line, it would be better signposting to replace ‘at the end of’ by ‘in paragraph 100 of’. Similarly in clause 395(4).
209. In explanatory notes paragraph 1687, in the first line, should the reference be to ‘clauses 385 to 387’ rather than to ‘clause 385 and clause 386’?
- cl 481 Meaning of ‘deep gain security’**
210. In paragraph 2115 explanatory notes, penultimate line, whilst the gain in the example is £10 it is more than the 10% referred to (having regard to the issue price of £90 rather than the redemption value of £100).
- cl 501 Securities issued to connected persons etc at excessive price: subsequent transfers to connected persons**
211. In explanatory notes paragraph 2237, in the last line, ‘below’ market value should read as ‘above’ market value.
- cl 502 Trustees**
212. **sc (5):** The first sentence in paragraph 2247 is confusing. S 469 ICTA (applicable to unauthorised unit trusts) takes precedence over cl 502; whereas the sentence implies the opposite. Can the sentence be appropriately redrafted?
- cl 529 When chargeable events occur**
213. The spacing in the third line of paragraph 2358 explanatory notes has gone awry.
- cl 549 Part surrenders: payments under guaranteed income bonds, etc**
214. **sc (1):** The reference should be to section 545(d) and not to 545(1).
215. **sc (5):** In explanatory notes paragraph 2449, the reference should be to subsection (5) rather than (6). It would also appear clearer to the reader to retain the closing words ‘and in that case the payment is treated as the surrender of all the rights under the contract’ as in clause 479(6) in Paper CC(03)19.
- cl 599 Charge to tax under Chapter 13**
216. In Change 109 in Annex 1, in the third paragraph in the fourth line, insert ‘be’ before ‘chargeable’.
- cl 637 Income charged under clause 636**
217. In explanatory notes paragraph 2876, at the end of the penultimate line, a gap is needed between ‘636’ and ‘are’.

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cl 642 Death of settlor

218. **sc (2):** It would be clearer to distinguish the definitions of 'A' and 'B' by appropriate spacing after the second and fifth lines.

cl 643 Winding up of a body corporate

219. **sc (2)(b):** In explanatory notes paragraph 2905, in the final line, insert 'been' after 'have'.

cl 644 Deduction of tax from payments to non-UK residents

220. **sc (2):** In explanatory notes paragraph 2907, in the first line, a gap is needed between '637' and 'shall'.

cl 650 How relief is given under section 649

221. In explanatory notes paragraph 2927, in the second line, a gap is needed between '649' and 'for'.

cl 673 Income to which section 671 does not apply

222. **sc (2)(a):** Explanatory notes paragraph 3013 refers to use of the word 'genuine'. This in fact still needs to be included, before 'commercial', in the first line of clause 673(2) (a) itself.

cl 676 Circumstances in which sections 671 and 674 do not apply

223. **Sc(4):** In the second line, insert 'as' after 'far'.

cl 687 Application of section 686(2) and (3)

224. In explanatory notes paragraph 3083, the reference should be to subsection (7) and not to (8).

cl 694 Income charged: foreign estates

225. **sc (1):** In the bracketed description of s 720, should 'income' be inserted before 'tax'?

cl 698 Person liable

226. **sc (4)(b):** In the bracketed description of s 714, 'interest' should be (successive) 'interests'.

cl 705 Reduction in share of residuary income of estate

227. **sc (4):** Should the words 'of income tax' be inserted after 'repayments'?

cl 735 Non-entitlement to exemption

228. **sc (4):** Is the reference to 'Chapter 2 of Part 13 of ICTA (life policies, life annuities and capital redemption policies)' correct?

cl 753 Exemption for part of purchased life annuity payments

229. In explanatory notes paragraph 3402, in the ninth line, 'provisions' should be 'provision'

Tax Representation

cl 772 Risk of significant loss

230. **sc (3):** Explanatory notes paragraph 3490 requires correction. Investment return on the premiums can be taken account of when determining whether a policy involves the possibility of the insurer making a significant loss.

cl 788 Redemption of funding bonds

231. The reference in explanatory notes paragraph 3543 to any interest paid on the redemption of the funding bonds is incorrect. The bonds at issue will have been taxed on issue as themselves constituting interest, under clause 373, so that their redemption (only) should not again be treated as an interest payment.
232. **sc (1):** The reference to the payment of interest ‘on them’ is misleading. These words should either be omitted or, probably with more clarity, replaced by ‘on that debt’.

cl 820 Full rent-a-room relief: property income

233. In explanatory notes paragraph 3662, in the fourth line, a space is needed between ‘820’ and ‘cannot’.

cl 850 Alternative method of calculating profits

234. **sc (1):** In explanatory notes paragraph 3751, the reference to ‘846(3)’ should be to ‘846(4)’.

cl 856 Meaning of ‘relevant foreign income’

235. In explanatory notes paragraph 3805, in the third line, the reference to ‘694(3)’ should be to ‘695(2)’.

cl 859 Income treated as remitted: repayment of UK-linked debts

236. In explanatory notes paragraph 3833, in the first line, ‘(3)(b)’ should read ‘(3)(b) or (c)’.

cl 897 Meaning of ‘the Inland Revenue’ etc

237. **sc (3),(4)** Is the use of ‘etc’, as effectively referring only to ‘the Board of Inland Revenue’, appropriate?
238. Do sub-clauses (3) and (4), particularly the latter which is vague, add anything? Sub-clause (3) is more a justification for putting the clause 897(1) focus on ‘any officer’. On the basis that such focus is justified, it is debatable whether it is necessary to justify it, albeit the references in sub-clauses (3) and (4) may be of added interest to the reader.

Schedule 1

para 254

239. In explanatory notes paragraph 4153, commenting on s 817 ICTA, in the penultimate line, insert ‘is’ after ‘it’.

Schedule 1

para 265

240. In the s 833A ICTA Part 1 table, s 601(2) or (5), in the Description column the reference should be to ‘payments to employers’ and not to employees.

Tax Representation

Schedule 1

para 277

241. In explanatory notes paragraph 4157, commenting on paragraph 5 Schedule 30 ICTA, in the penultimate line, insert 'is' after 'it'.

Schedule 2

para 62, 66

242. The bracketed descriptions of section 574(1) in paragraphs 62 and 66 are not the same.

Schedule 2 Ulster savings certificates

para 89

243. As s 729(5) already includes a reference to the Treasury should it apply in the case of certificates acquired before 27 July 1981 simply with the omission of the words 'or the Department of Finance and Personnel'?

14-13-36

TJH/PCB

1.6.04

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/taxfac/index.cfm?AUB=TB2I_43160,MNXI_43160.