TAXREP 13/02

TAX LAW REWRITE: EMPLOYMENT INCOME

Memorandum submitted in April 2002 to the Revenue by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Exposure Draft No 12: Employment Income: Part 3 issued in December 2001

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`TAX LAW REWRITE: EXPOSURE DRAFT No 12: EMPLOYMENT INCOME: PART 3

A GENERAL POINTS

Introduction

1. We welcome the opportunity to comment on ED12 issued in December 2001.

2. In reviewing ED12, we found the Provisional Contents included in Volume 2: Draft Clauses and Table of Origins a helpful indication of the overall structure of the Income Tax (Earnings and Pensions) Bill, and as also indicating how the provisions in EDs 6, 11 and 12 fit together.

3. We have drawn attention to any errors in the Commentary, on the understanding that this will substantially become the Explanatory Notes to accompany the Bill.

Comments on the Bill

4. We agree that Part 2 (Employment income) is lengthy, and that it does naturally break down into the separately identifiable components of the charging provisions, deductions and exemptions; but we see no particular need to put these components into separate Parts. The length and present structure of Part 2 does not cause the reader any obvious difficulty.

5. We are not convinced that the provision of services through an intermediary should be included in Part 2 Employment income, and consider it misleading to place this legislation in Chapter 1 under a heading 'Income taxed as Employment Income'. The personal service company legislation provides that if an employee's actual income from employment with the intermediary is less than a calculated deemed income, then further PAYE and National Insurance Contributions will be due on a *deemed* Schedule E payment to the employee normally at the end of the tax year by reference to the shortfall.

6. We consider also that it is inappropriate for cl 8 (Provision of services through an intermediary) to simply introduce Schedule 1. The contents of Schedule 1 are mainstream provisions which ought to be in the body of the legislation.

7. We would therefore prefer to see this legislation in a new separate Part of the Bill, perhaps inserted after Part 2, to recognise both its unique nature and the volume of the relevant legislation.

8. We commend the structure of Part 2 updated Chapter 7 (Taxable Benefits: Cars, Vans and Related Benefits). The contents are well marshalled. The General introduction in clauses 51- 56 is particularly helpful to the reader; the structure for calculating the benefit of a car in clauses 57 – 81 is easy to follow; the special cases and apportionment where a car is shared fit well in clauses 83 – 85, and the calculation of the car fuel benefit in clauses 86 – 88 is also easy to follow, as are the provisions in clauses 89 –101 calculating the benefit of a van. Whilst we realise that the rewrite is

not concerned with policy issues, other than noting these, it may be questioned whether legislation concerning the taxation of van benefits through seven pages in the rewrite Bill is necessary in view of the small amount of revenue that is collected under these provisions.

9. There may be a case for merging Chapters 9 and 10 of Part 2 (see our response to Questions 27 and 37 in Section B). It is questionable whether they ought to be in Part 2 at all, as they appear to fit more comfortably as one of the opening Chapters of Part 3.

10. We note that work continues on the provisions of Part 3 (Employment Income: Shares).

11. Chapter 4 of Part 3 (Post-Acquisition Benefits from Shares) is particularly effective in setting out the provision for tax charges arising under the three headings (where restrictions or rights are varied, on an increase in the value of shares in dependent subsidiaries, and on other chargeable benefits from shares)

12. We are satisfied with the approach taken in the rewritten Chapters 6 – 9 (Approved SIPs; Approved SAYE option schemes; Approved CSOP option schemes and Enterprise Management Incentives).

13. We agree the modelling of the SAYE and CSOP rewrite on the FA 2000 drafting of the Enterprise Management Incentive and Approved share incentive plans, both as a matter of style and for consistency where possible. It will be helpful to a reader to be following similar structures within each code.

14. We agree that it is unnecessary to rewrite the Approved profit-sharing scheme rules; but any appropriate transitional provisions will remain necessary.

15. Commentary 704 refers to Question 5 on page 37 of the Commentary regarding the split between clauses and Schedule. This question refers specifically to the service companies legislation in Schedule 1; but we interpret the Commentary 704 reference as generally referring to the choice of what to put in the clauses and what in the Schedules, and the decision to focus on the broad scope and tax consequences in the clauses with the detail relating to approval, etc being put in the schedule. In the case of the schedules to the Bill we agree with this approach; but noting that compared to The Capital Allowance Act 2001 there is a greater use of schedules in this Bill, why this should be so in relation to employment income but not to capital allowances might nevertheless be challengeable. As a general principle, a consistent approach to the use of schedules should be maintained.

16. Chapter 6 of Part 3 and Schedule 2 (Approved share incentive plans) rewrite the relatively recent legislation introduced by s 47 and Schedule 8 FA 2000, as amended in some respects by FA 2001. It is not to be expected that any material rewriting of this legislation would be necessary; but there has been some re-arrangement of the material in the rewritten clauses 420 – 446 and in the lengthy Schedule 2. The opportunity has also been taken to clarify the legislation in various respects through proposed rewrite changes, as well as the deletion of some minor unnecessary material. In each of Parts 2 – 9 of Schedule 2 the introductory listing of the paragraphs setting

out the requirements relevant for that Part is a helpful introduction to it. Altogether, the rewrite improves the intelligibility of this legislation for the reader and in general we are satisfied with the changes made.

17. We agree that the separation of the Approved SAYE option scheme rules (in Chapter 7 of Part 3 and Schedule 3) ('SAYE') from the Approved CSOP option scheme rules (in Chapter 8 of Part 3 and Schedule 4) ('CSOP') does make these schemes easier to read and understand. However, we wonder whether any attempt was made to produce a schedule containing provisions common to Schedules 2 – 5; thereby leaving the reader able to consider the differences only between the various plans/schedules by reference to the schedules specific to them. What a user wants to be able to do is to readily ascertain which type of schedule he ought to use, and it is much easier for him to do this if the common elements are highlighted in some way so that he need only consider the differences. We appreciate that this would involve some trade-off between the clarity of comprehensive schedules, as drafted, and their enhanced usefulness in practice, and assume that the drafting difficulties (particularly any necessary cross-referencing) precluded such an approach.

18. We agree the location of the provisions relating to former employees' deductions for liabilities in Part 4, and comment further on this in our response to Question 95 in Section B.

19. We are content with the structure and contents of Part 5, which identifies income taxable as pension income (including foreign pensions); with different Chapters identifying the various categories of pension income and in the case of each specifying the income chargeable and the person chargeable; together with the exemptions applicable to pension income. We agree that income from general savings products, which frequently supplement pension income during a person's retirement, should remain in the savings and investment income Part (prospectively part of the second income tax rewrite Bill).

20. We are not happy, however, with the heading of Chapter 8 (Other Purchased Annuities). We would prefer a heading such as 'Other employment-related annuities'. 'Purchased Annuities' is a well-understood technical term describing annuities within s 656 ICTA and it will be confusing to use the term for quite different types of annuity.

21. We agree with the exclusion of the retirement income scheme rules, for the reason explained in Commentary 851.

22. We do not agree with the exclusion of the rules governing relief for members' contributions to retirement income schemes, on the grounds in Commentary 852. We consider it preferable to include the relief for pension contributions in Employment Income (possibly after Chapter 17 of Part 2). The fact that pension contributions are a deduction from total income appears to be an anomaly that ought to be corrected in the rewrite, as the deduction is limited to the amount of the earnings and so in reality has to be deducted from earnings.

23. It has clearly not proved easy to bring order into Part 5 of the Bill; but the introductory cl 500 (Income taxed as pension income) is a useful signpost to the

component Chapters and gives some cohesion to the variety of the categories dealt with. It is also logical drafting to deal with the various pension categories first in Chapters 2 – 14, followed by the various exemptions in Chapters 15 – 17 and concluding with the disregard of certain income (Chapter 18).

24. The contents of Part 5 appear comprehensive and, in the unlikely event that any further categories of pension income should yet emerge at the margin where forms of pension income shade into savings and investment income, they could be readily integrated within the overall framework of the Part.

25. Whilst Chapters 2 – 14 of Part 5 correctly rewrite the existing legislation, we note as a policy matter that the consequence is that the basis of charge is not consistent throughout. In certain cases it is on a pension or voluntary annual payments accruing basis; in others on an arising basis, and where appropriate subject to relief for unremittable income and delayed remittances; and in others on a payment made basis.

26. We agree that it is sensible to deal with the exemption for lump sums paid under tax-advantaged pension schemes in the pension income Part, which is where readers will normally expect to find it.

27. The aim of Part 6 (Social security income), to set out all the rules charging or exempting social security benefits (both UK and, despite the difficulties referred to in Commentary 1352 and 1353, foreign), is appropriate and in this context Tables A and B, respectively listing the taxable UK social security benefits (subject to the limitations in cls 588 – 590) and the exempt UK social security benefits are helpful. Chapter 3 (UK benefits taxed as social security income: exemptions) is, however, not easy to follow; with the key definition of 'applicable amount' to be found only in other legislation (see our comments in Section D).

28. Our statutory references are to the Income and Corporation Taxes Act 1988 ("ICTA") unless otherwise stated. Part, Chapter, Sch (Schedule) and cl (clause) references are to those contained in ED12 Volume 2; Draft Clauses and Table of Origins (December 2001), unless otherwise stated. References to "Commentary" are to the Commentary in ED12 Volume 1: Introduction and Commentary (December 2001), and the numbering refers to the paragraphs in that Commentary.

B QUESTIONS

We agree with the PRCs proposed, except where we comment to the contrary below. In a number of cases, where we do agree, we have additional comments to make as below. We reply by reference to the question numbering in ED12.

Q1 The modernity of the words 'counts as' (employment income) jars a little (PRC(1)); but we agree that it is shorter and neater than 'amounts charged to tax as' (employment income). In the context of introducing a category of 'employment income', this is acceptable. An alternative might be to use wording such as 'is treated as'.

Q2 We agree the change in approach to allocate an item which counts as employment income to its 'relevant tax year' and to specify that year (PRC(2)).

Q3 We agree in the interest of the greater alignment of the wording used the proposal to use, where appropriate, expressions such as 'no liability to income tax arises' and 'an employee is not liable to income tax' for exemptions from income tax (PRC(31)).

Q4 The effect of PRC(46) will be to authorise any Inland Revenue officer who is not an inspector to exercise *all* of the functions conferred on an inspector, rather than for specifically permitted purposes only as currently under s 1(2B) TMA 1970. We would not wish to restrict the Revenue's ability to decide how it can most effectively use its staff and we realise that some functions previously carried out by Inspectors are now carried out by lower grade staff. We have no objection in principle to the legislation recognising this. However, there are areas in the legislation, particularly in the PAYE regulations, where discretion is given to Inspectors. We consider that in those particular cases the word 'Inspector' should be retained, as a taxpayer should be entitled to the reassurance that such decisions will always be made by individuals with the necessary level of training.

Q5 We consider that it is fundamentally preferable, when rewriting a schedule, to bring its material into the main run of clauses wherever possible. Please also see our comments in paragraph 5 of Section A.

Q6 We agree that it is not necessary to rewrite s 168A(3) ICTA (PRC(145)).

Q7 We agree PRC(47), the proposal not to distinguish between superior and non-superior replacement accessories when avoiding double counting in the determination of the cash equivalent of the benefit of a car.

Q8 We agree PRC(50), removing the concept of a 'materially worse' replacement car on the ground that it has no tax effect. As regards Commentary 145, we do not consider that it follows that only a replacement car of identical quality to the one it replaced could cause regulations 5 and 6 of the Income Tax (Replacement Cars) Regulations 1994 (S 1 1994 No. 778) to apply. 'Materially' better or worse must give some margin here. This

point is, however, academic; except insofar as the materiality concept recurs in cl 82(5)(a) and (b). To reduce the inherent uncertainty of this term, might a maximum percentage increase above the interim sum at least be introduced into cl 82(5)(b)?

Q9 If the cl 83 reduction is applied after Step 1 of cl 58 (as proposed in PRC(51)) and only to the price found at that Step, then no reduction will be given for any additional price of any non-standard accessory available to the employee when the car was first made available to him which is attributable to the car being manufactured to run on road fuel gas only. S 168AB(2) ICTA allows a reduction in these circumstances.

If no reduction is to be given for any additional price of such a non-standard accessory, then PRC(51) could have an adverse tax effect to the taxpayer, contrary to the view expressed in Commentary 149. It would be preferable to provide for an additional Step immediately after Step 2, to allow for reductions in respect of the price in both Steps 1 and 2. Cl 83 would then need to be amended accordingly. There would also be consequential changes in the cross-referencing to the Steps of s 58(1).

Q10 We agree PRC(37), which revises the definition of a 'diesel car' by reference to it using diesel as opposed to heavy oil.

Q14 Agreed (PRC(6)). If a PRC is considered necessary in the case of cars, it would appear necessary for there to be a similar PRC in the case of vans; contrary to the view expressed in Commentary 195. S 159AB (Pooled vans) is a separate section applying s 159, and it is s 159AB which is effectively being rewritten here with a change in approach but not in the underlying law.

Q15 We welcome PRC(52), legislating paragraphs 1 and 2 of ESC A71. Cl 104(3), however, appears to legislate Condition A more restrictively than in ESC A71. The comparable fellow employee must not be a member 'of the family or household of other employees of that employer', which is a wider requirement than the ESC A71 requirement that the comparable employee must be 'unrelated to directors and those earning £8,500 a year or more' only.

Q17 We note that making the legislation explicit creates the need for the proviso to the new cl 109(3). We are also somewhat surprised at the Revenue's view that it is implicit in the current legislation that a charge cannot arise unless the employee was chargeable to tax on income from the employment at the time the loan is made. As an example, if an individual takes a mortgage loan from a bank at 8% and a year later applies for a job at the bank and is accepted as an employee and as part of his employment terms the bank reduces the interest to 2%, is it intended that no charge should arise on the 6% differential under the existing legislation? Is not the benefit of a loan the interest foregone, rather than the making of the loan itself?

Would such an employee be instead treated as a 'prospective employee' for the purposes of cl 109(1), so that a charge would arise? If so, is an employee to be treated as a 'prospective employee' for the entire period before he becomes an employee? If not, when does he become a prospective employee – is this a question of fact, dating perhaps from when he makes the job application? The lack of a definition of 'prospective employee' causes the uncertainty here.

Q18 We consider that it is appropriate in the case of cls 111(7), (8) and (9), to put together the provisions which apply to two or more of the clause 111 conditions A, B and C.

Q19 The use of the words 'cannot be changed' in cl 112 (Exceptions for loans at fixed rate of interest) is acceptable.

Q21 Agreed (PRC(53)). It clearly makes sense to compute the actual interest paid also on a same loan basis.

Q22 We agree PRC(8), but the following comments now arise on Commentary 289 and 290.

If an employee moves and leaves employment and the employer does not know his new address, he may well not expect the loan to be repaid; but that does not mean that if he later discovers his new address he will not sue for recovery. In reality the loan has not been released or written off; but would the Revenue still take the view that for taxation purposes, on the authority of Collins v Addies (1992) 65 TC 190, it had been?

With reference to Commentary 290, we do not readily understand why any amount written off should immediately constitute earnings rather than a Benefits Code benefit. S 160 ICTA is contained in the Benefits Code. Whilst s 160(2) ICTA refers to a charge as emoluments under Schedule E, so does s 154 ICTA which is clearly part of the Benefits Code. In practice, we note that amounts treated as earnings under the Benefits Code (as in cl 123(2)) are included within 'earnings' and hence included within 'employment income' (as 4.1.1 of ED11), so that the charge will always be as earnings.

However, we do not understand why this particular provision should be taken out of the current benefit rules to be treated now as a basic Schedule E provision, when there appears to be nothing to distinguish it from other benefit provisions.

Q25 Clauses 305 and 306 sit better in Chapter 29 (Exemptions: Removal Benefits and Expenses) as being primarily concerned with the availability of the removal benefit exemption; but there should be a cross-reference to and from Chapter 8 (Taxable Benefits: Loans) signposting the necessity of a benefit calculation where that exemption was insufficient. In Commentary 299 and 300 there is an incorrect reference to Chapter 34, which probably

originates from Chapter 4.34 in ED11 (Exemptions: Removal Benefits and Expenses). The cross-reference should be to Chapter 29 of the draft Bill.

Q27 & Q37 In principle it makes their understanding easier if the provisions of s 162 ICTA are split into Chapters 9 (acquisition of shares) and 10 (disposals of shares). Chapter 10, however, deals essentially only with the disposal of shares at a price greater than their market value; but to do so, necessarily includes in cls 132 and 134 material substantially similar to that in cls 127 and 131 in Chapter 9. We do not think that understanding of these relatively straightforward provisions would be impaired if the two Chapters were to be appropriately merged. This would also reduce the volume of the legislation, albeit only slightly. We hold no strong view on this, however, and can in particular see the merit in dealing with acquisitions only in Chapter 9 in view of the relationship to Chapter 8 (taxable benefits: loans).

Q29 Agreed (PRC(54)). PRC(54) refers to allowing payments made *shortly* before a share issue or transfer. Cl 128(1) refers to 'before' only, which is preferable. The same comments apply in the case of cl 129(2)(a).

Q35 Agreed (PRC(13)); but the references in PRC(13) and Commentary 337 should be to cl 130 rather than to s 162(5) ICTA.

Q41 Agreed (PRC(15)); but the references in PRC(15) and Commentary 354 should be to cl 133 rather than to s 162(7) ICTA.

Q43 We are content to accept the introduction of the words 'to or' in cl 154(1)(a).

Q44 Agreed (PRC(60). The use of the description 'dispensation' recognises common practice, and it is appropriate to describe it as a notice.

Q48 & Q49 We do not agree PRCs (16) and (17). Whilst s 585(1)(b) ICTA refers to the impossibility of obtaining 'foreign currency' in the territory where the income arose, we interpret this as meaning the inability to obtain sterling there; whereas cl 173(2)(c)(iii) is rewritten on the basis of the impossibility of obtaining remittable currency of any country. As drafted the cl 173 relief will not apply if it is possible to obtain any remittable currency of whatever country, even though the taxpayer might choose on commercial grounds not to exchange into it; for example, because it was a weak or too volatile currency. This surely does not reflect the intention of the original legislation? In support of our view, in the case of the similarly worded s 584(1) ICTA, s 584(1)(b) clearly leaves with the taxpayer the decision whether to transfer to the UK sterling or some other remittable currency through the positive action of realising the overseas income for a consideration in sterling or another currency. Accordingly, in the s 584 ICTA context the income can be left out of account until the taxpayer actually realises it outside the overseas territory for a consideration in sterling, regardless of whether he might earlier have been able to so realise it in some other currency. The difficulty here lies with the original drafting of the legislation and in particular with what 'foreign currency' means in s 585(1)(b) ICTA and what the intention of the original legislation was. We

do not believe that its intention was to deny the taxpayer relief where he could remit in a currency which he would not choose to buy commercially. The PRCs should be redrafted to reflect this.

Q50 We do not agree PRC(63). In practice, there should rarely be a need to identify which earnings become remittable because the whole of the earnings are likely to become remittable at the same time. Our concern is however with a possible situation where, for whatever reason, only part of the total blocked earnings for a number of earlier years becomes remittable. Where the legislation is unclear a taxpayer is entitled to choose to do whatever is most favourable to him; whereas cl 173(4)(b) would apparently mean that such a partial remittance had to be apportioned rateably between all the years affected by reference to their respective earnings received amounts. This could work against the taxpayer's interests, for example, where he has placed the earnings of Year 1 into a separate bank account and wishes to remit those particular earnings, when the overseas territory permits remittances to the UK out of a number of years' earnings up to a specified limit only, because he has a trading loss available in Year 1 which he can set against the earnings income in that year. As drafted, cl 173(4)(b) could apparently hinder such a strategy.

Q52 Agreed. Commentary 377 refers to cl 174 (Election in respect of delayed remittances) as a change in law and policy; whereas PRC(65) is listed under Changes to the law but not to policy on page 19 of Volume 1: Introduction and Commentary.

Q57 We agree that it is appropriate to split the material on share schemes so that the provisions with a direct impact on an employee's tax liability appear in the main run of clauses, with the administrative material in an associated Schedule. We question, however, whether the administrative material should be in the Employment Income section at all. A basic decision needs to be taken as to how to deal with situations where both employee and employer have to satisfy different requirements. There is a logic in the matters concerning the employee being included in the body of the legislation and matters concerning the employer, which have no real interest to the employee, being relegated to a schedule; but is there a logic in doing this for share schemes but not for pension schemes?

Please also see our comments in paragraph 15 of Section A.

Q58 Agreed (PRC(18)). We agree the inclusion of cl 360(2)(c) and (e) as falling within the scope of s 140A(7)(b) ICTA. We also agree that amounts chargeable under s 162(1) ICTA (being a quasi-interest charge, on revenue account) should not be treated as deductible amounts for the purposes of cl 360(1).

With reference to Commentary 490, as s 140A ICTA was introduced only recently, by FA 1998, it is surprising that the meaning of s 140A(7)(b) should be unclear.

Q59 We do not agree PRC(151). Contrary to the view expressed in Commentary 494, s 140G(1)(b)(i) ICTA can apply to impose a charge on acquisition where the interest in shares will cease to be only conditional more than 5 years after the employee's acquisition of the interest. It follows that cl 364 should not be rewritten on the basis only that subsequent events may result in a s 359 charge.

Q61 We agree PRC(68). The two references in cl 379(5) to 'a company' are, however, a little confusing, the first referring to the company to which the shares or interest in shares relate whilst the reference after 'director or employee of' is to any company.

It might also be preferable to delete the words 'of the company', referring to the company referred to in the second reference, as more accurately rewriting s 83(1) FA1988.

Q62 This question raises a more fundamental question as to whether it is right to make rewrite changes which have an anti-avoidance effect. Whilst we do not disagree with the two specific clarifications to be effected through PRC(69), as detailed in Commentary 528, as a general principle where anti-avoidance issues are concerned we consider that any ambiguities in the legislation should be for Parliament to correct rather than by making changes through the rewrite process. We hold a similar view with regard to PRCs (20) and (77).

Q63 We have some concern that PRC(152) might create initial confusion for the reader. If the exclusion of a dependent subsidiary is not written into cl 382(4)(c), the reader will need to go through cl 384(4) and (5) to establish that the cl 385 charge will replace a charge under cl 381. We would accordingly prefer to retain the words 'which is not a dependent subsidiary' in cl 382(4)(c), so that the reader can appreciate this more directly.

Q67 Agreed (PRC(72)). The reference in Commentary 555 should be to s 83(1) and not to s 83(2), and to new cl 379(5) and not to new cl 379(4).

Q69 Agreed (PRC(74)). The structure of the rewritten legislation does ensure that shares or an interest in shares acquired within cl 393 (additional shares) are to be notified under cl 397(1) – (3), as explained in Commentary 563; but it is not easy for the reader to appreciate this. It would be preferable to qualify cl 397(1) (Duty to provide information) expressly to the effect that it also applies to acquisitions in the circumstances of cl 393 and, subject to our comments below, cl 394.

Whilst the point of concern over cl 393 acquisitions is now effectively removed by cl 393(2)(b), that sub-clause does not apply to cl 394, so is there still the same potential difficulty with cl 394 in seeking to apply cl 397? Commentary 563 does not dwell at any length on cl 394, but does refer to providing particulars of the issue of new shares in a reorganisation as plainly within the requirement in s 85 FA 1988 to provide information on the acquisition of shares.

Q71 PRC(153). This needs further consideration. It is not clear what s 87(1) FA 1988 meant by the proceeds of sale of 'part of the shares'. This could mean some of the shares or some less than full interest in the shares. If the latter can apply the cl 402(1) definition of 'interest in shares' as including an interest in 'the proceeds of sale of the shares' could be interpreted more restrictively as meaning in *all* the shares. Accordingly if the concept of 'the proceeds of sale of part (of the shares)' has a legal validity then the reference should be retained in the definition.

Q72 We do not agree PRC(154). It would be prudent to include a transitional provision in respect of s 136(4) ICTA, should there be any pre- 3 May 1966 options still unexercised. It is important that taxpayers' rights should be protected, even where it is thought that few people will be affected.

Q73 PRC(155). We would prefer s 137 ICTA to be preserved on a transitional basis. We note the proposal to then impose, say, an expiry date of 31 December 2010. We are happy with the principle of such sunset clauses, except that as a general principle they should not be introduced only where potentially advantageous to the Revenue; but if such a clause is introduced here it will become important to publicise it.

Q79 Agreed (PRC(80). Should a provision similar to cl 409(2), not charging personal representatives when they exercise, assign or release a share option after the death of the person to whom it was granted, be incorporated also into cl 408 (Charge on exercise, assignment or release of option by the employee)?

Q81 S 135(9) ICTA applies for the specific purposes of s 135(8) ICTA, now rewritten as cl 410. Cl 410 is effective through a tax charge under cl 408 or 409 and, in that context, cl 411(3) applies through its reference to ss 408 or 409 to restrict the deductible consideration for the grant of the share option. To that extent it can rather be said that s 135(9) ICTA is rewritten through cl 411(3) (and cl 412(3)), with an appropriate attribution in the Table of Origins, rather than being unnecessary material to be removed.

It is, moreover, also provided in s 135(9) ICTA that where s 135(8) ICTA has had effect on any occasion then it shall not affect the application of s 135 ICTA in relation to a gain realised on a subsequent occasion. It is not clear what this means in practice; but as s 135(8) treats the *whole* right as assigned or released if *any* of the shares to which it relates are affected, and s 135(9) appears to envisage the possibility of a gain being realised on a subsequent occasion by the holder of the right concerned, it is presumably intended to forestall any argument that the right had already been assigned or released, on the incidence of cl 135(8), thereby stopping s 135 from applying on any later actual assignment or transfer.

In a situation, for example, where an employee is granted an option to buy shares at any time during a 5 year period but if he does not do so then he can buy them in 8 years' time if he wishes, and he subsequently receives payment not to exercise the option within the 5 year period, s 135(9) ICTA

preserves the charge if he does exercise his right to acquire in Year 8. Does the rewrite similarly preserve a charge in such circumstances? – presumably cl 408 imposes a charge on the release of the right to acquire at Year 5 and again on the Year 8 exercise, with cl 411(3) applying to allocate the consideration given for the grant of the share option between the two gain calculations?

Q84 Agreed (PRC(43)). We consider, *as a policy matter*, that it would be fairer as a general principle to provide for a deduction from the gain on exercise for the gain on grant, rather than giving relief for tax against tax, and are pleased to note that it is proposed to make provision for this in the forthcoming Finance Bill.

Q86 Agreed (PRC(158)); but is it now made sufficiently clear that a charge to tax under s 162(6) ICTA (stop loss provision) can arise? Cl 133 (Disposal for more than market value: amount treated as earnings) applies in consequence of Chapter 6 and Schedule 2 not excluding it. This is logical, but it would be more reader-friendly to retain a clearer indication that Chapter 10 can apply.

Q93 Agreed (PRC(170)). However, the reference to the original option in paragraph 47(2)(b)(ii) was purposeful, as indicating that the two year period runs from that date. It would therefore be helpful to have an appropriate signpost from cl 466(5) to paragraph 41(5) Schedule 5, to remind the reader (as this will not otherwise be obvious to him) that a replacement option is treated as granted (through any earlier "old options" which were themselves replacement options where necessary) on the date of the original option, so that the two year period will still run from the original grant date.

Q94 As 'working time', within the paragraph 27 Schedule 5 definition, will include all of an individual's employments and self-employments if he is to come within cl 467(4)(b) he will need to limit his involvement in all employments and self-employed activity to not more than 33 hours a week, with three-quarters of his time being spent on the relevant employment. Otherwise he must spend at least 25 hours a week on the relevant employment; which, of course, would then permit him to spend unlimited time (within the 24 hours of each day) upon other employments and self-employed activity. If he wishes to retain EMI tax benefits, this will impact upon the structure of his working life.

Would it be preferable to review whether a s 467(2) event has occurred after the end of a tax year, rather than on the cl 468 cumulative basis throughout it which could throw up anomalies such as any adverse effects of flexi-time, as mentioned in Commentary 778?

Q95 Allocating an entire Part to the short run of provisions regarding former employees' deductions for liabilities looks disproportionate at first glance; but we agree that Part 4 (Former employees: deductions for liabilities) sits logically after Parts 2 and 3, dealing with employment income, and before Parts 5 – 8, as relating to former employees; and can be separated from the cl 201 – 215 provisions (where a deduction can only be set against earnings

from the employment giving rise to the liabilities that led to the payment being incurred) in that under cls 489 – 499 the relief is against total income and secondarily against capital gains tax.

Q96 We accept the trade-off of their greater length, compared with the original s 92 FA 1995 provisions, for the ease of use of the more self-contained cls 489 – 499.

Q108 As cross-references *within* the Bill, we consider that it is appropriate to cross-refer from cl 522 (Unauthorised payments: application of section 512) to cls 512, 513, 514 and 517.

Q109 We do not agree PRC(124). Whilst there is merit in a consistent basis of assessment between personal pension scheme annuities and retirement annuities, we do not agree that the arising basis should be the preferred common basis. The concept of 'receivability without receipt is nothing' ought to apply. In most cases the date on which the right to an annuity payment arises and the date of its receipt are likely to be identical. However, if payment is made late it seems to us far more understandable to taxpayers that the tax charge should arise when payment is received rather than when it is receivable.

Q123 We prefer to leave cls 554 – 559 (Return of surplus employee additional voluntary contributions) where they are, in Chapter 12 of Part 5 – Pension income.

Q131 & Q136 PRC(35). We agree the use of Tables A and B; but why doesn't the wording in cl 587(1) and in cl 602(a) simply say 'listed in Table A' (or B, as appropriate) rather than 'listed in the first column of (Table A/B)'?

Q133 PRC(135). We do not agree that the rewrite is the appropriate means to correct a conflict of law. Rather than a particular provision overriding a general one, as proposed in Commentary 1389, we regard s 139 FA 1994 as instead being in conflict with another specific provision, s 617(1)(a) ICTA. Moreover, the references to short-term incapacity benefit in s 617(1)(a) were incorporated into s 617 ICTA subsequent to FA 1994, and our understanding is that later legislation is deemed to override earlier legislation where the two are in conflict. We do not disagree with the view set out in Commentary 1389 that s 139 FA 1994 prevails, as the basis of PRC(135); but take the view that it is a matter for Parliament to resolve such a conflict, and that the appropriate approach is to repeal the relevant part of s 617(1)(a) ICTA through the Finance Bill process.

Q134 We do not agree PRC(136). We consider that taxation by reference to receipt is more appropriate than an income accruing basis in the case of UK benefits taxed as social security income.

Q 137 PRC(138). We agree that it is appropriate to include an explicit charge to tax on foreign social security benefits, in cl 604, and that the approach

referred to in Commentary 1463 and 1464 results in a suitably worded provision.

The drafting of cl 604, in accordance with practice, assumes that the Revenue will decide what foreign social security benefit is 'substantially similar' to a UK one. Should there not be an appeal procedure?

Q138 We agree that in principle it is preferable to legislate an extra-statutory concession (PRC(139)). However, the detail in ESC A24, particularly as it relates to benefits corresponding to incapacity benefit, is lost in cl 607 which now applies more broadly to 'substantially similar' foreign benefits. The detailed guidance in ESC A24 could now only be retained in a new Statement of Practice or other published guidance, which would not sit well with the concept of the rewrite; but it might be reassuring to taxpayers for the Revenue to state in the Explanatory Notes that cl 607 would not be interpreted more restrictively than ESC A24 which it replaces.

Q140 We are content with the location of cls 611 and 612 in Chapter 2 of Part 7 (the payroll giving material), to follow the rewritten PAYE provisions. The vital link between these clauses and s 203 ICTA and their nature binds them more closely into Part 7 than alternatively into any of the earlier deductions in Part 2 Chapters 16 – 21. Nothing is lost by the distance of cls 611 and 612 from the earlier deduction clauses which deal with entirely separate matters. The deduction clauses in Part 4 (Former employees: deductions for liabilities) similarly stand on their own and might be seen as a precedent for isolating cls 611 and 612, or at least a fellow instance.

Q141 As pensioners can qualify under the payroll deduction scheme, we agree that it is appropriate in cl 611(1) to refer simply to "the individual" and not to the "employee".

We agree that, as the primary concern of s 202(1) ICTA is with 'an individual', no PRC is necessary to eliminate references to "the employee".

Q142 We agree the proposal to change the description of the person who makes the deduction from "the employer" to "the payer".

We agree that the primary concern of s 202(1) ICTA is with 'the person liable to make the payments' and that no PRC is necessary to eliminate references to "the employer".

Q143 We are content with the proposal to replace the s 202(1) ICTA phrase "from which income tax falls to be deducted by virtue of section 203 and regulations under that section" with "subject to PAYE" as defined in cl 611(4). We agree that no PRC is necessary to make this change.

Q145 We are content to characterise the sums withheld as "donations".

[The following questions relate to Schedule 1]

Q148 We agree that the fact that a worker holds an office with the client has no relevance to the operation of the Schedule 1 provisions, and that paragraph 1(5) of Schedule 12 to FA 2000 need not be rewritten (PRC(144)).

Q149 The widening of the definition of 'associated company' (PRC(47)) in accordance with Inland Revenue practice, widening the scope for intermediaries to be excluded from the application of Schedule 1, is welcomed.

Q150 The changes made to the method statement in paragraph 6 Schedule 1 are acceptable.

Q151 We welcome the treatment, in accordance with Inland Revenue practice, of all relevant engagements as the duties of a continuous employment with the intermediary when deciding what travel expenses are deductible in calculating the Schedule 1 deemed employment payment (PRC(48)).

Q152 We agree that new paragraph 10(5)(b) Schedule 1 does fill a gap in paragraph 10(5) Schedule 12 FA 2000, in determining that benefits calculated over a period of time are to be brought into account at the end of a tax year when calculating the deemed employment payment (PRC(36)).

[The following questions relate to Schedule 2]

Q153 The description 'constituent' is less readily intelligible than 'participating'; but in view of the use of the words 'participants' and 'participate' elsewhere we have no objection on the proposed grounds of clarity.

Q155 We consider that it is more helpful to the reader of paragraph 32 Schedule 2 to set out the relevant material in cl 430(2) again in paragraph 32(2).

Q160 We are not entirely happy with PRC(86). In this context, we also note that Q160 in Commentary 1718 is incorrectly phrased. S 41(2)(b) places the focus on those eligible to participate in the *award* of partnership shares. Partnership share agreements related to that specific award only are at issue here. It needs to be made clearer in paragraph 51(4)(b) that the partnership share agreements referred to are those relating only to the award referred to in paragraph 51(4)(b).

Q164 We consider that it is helpful to retain the explanatory material in paragraph 79(4) Schedule 2 (Approved share incentive plans). It serves to remind the trustees that, on their disposing of any of the participant's remaining plan shares, charges to tax may arise which themselves have PAYE implications.

Q165 Agreed (PRC(87)). It is reasonable that an application for approval of a SIP should be in writing (paragraph 81(2)). Should the Inland Revenue be required to give notice of their decision within a set period following reaching that decision (paragraph 81(3))?

[The following questions relate to Schedule 3]

Q171 The use of the term 'participate' is appropriate. The term 'the scheme organiser', as defined, is acceptable; but perhaps 'the scheme founder' would be more descriptive?

Q172 We consider that the introductions to certain Parts will be helpful to the reader, as providing an initial overview and ready guide to the Part and alerting him to the topics covered by the contents.

Q173 Agreed (PRC(91)). In Q173, within the brackets, the wording should presumably be 'as well as current employees and directors'?

Q176 In the context of paragraph 13 (Material Interest: options, etc) we agree that in the next draft a disregard for unappropriated shares held by trustees of a SIP trust should be introduced, as paragraph 39 Schedule 9 ICTA will not be rewritten.

Q181 'Manifestly' essentially means 'obviously', and will be difficult to define. It is clearly included in paragraph 25 Schedule 9 ICTA to afford some degree of tolerance when determining the acquisition price, whilst seeking to limit any discount to market value as closely as possible to 20%. It is a reasonably common word still, if a little old-fashioned, and we do not consider that replacing it by 'markedly' would be an improvement. The use of a phrase such as 'to a material extent' would need an accompanying definition of 'material', and if this is to be applied by reference to the shares' 'market value' then the determination of that market value will also assume a greater basic importance; whereas valuation is not something which can be done wholly objectively. We would retain the word 'manifestly', in default of any obviously preferable word.

Q183 With reference to Commentary 1925, the clarification of the 6 months' period after the bonus date, to make clear that paragraph 32 (Exercise of options: death) applies to a death on the bonus date, is helpful.

Q184 Rewriting paragraph 21(1)(e) Schedule 9 ICTA as paragraph 34(4) and (5) Schedule 3 does make it easier for the reader to appreciate the circumstances in which an option obtained 3 years or less before the employment ends may exceptionally be exercised. This is certainly clearer than in Schedule 9 ICTA where paragraph 19 required a reference across to paragraph 21(1)(e).

Q186 In principle it is preferable to legislate the existing practice regarding changes of control triggered by overseas legislation, and we note as stated in Commentary 1938 that this is under consideration. If legislation could only be drafted more inflexibly than current practice, then it will be preferable not to legislate. If current practice is applied on a flexible basis, however, it may prove possible to draft adequate legislation with a similar broad approach;

possibly supported still by a practice statement as to how the Revenue would propose to interpret and apply it (i.e. as now).

[The following questions relate to Schedule 4]

Q194 We agree the inclusion of the definition of 'participate' in paragraph 2(2) for the purposes of approved CSOP option schemes. As regards the term 'scheme organiser', 'the scheme founder' might be more descriptive (see our reply to Q171).

Q195 The new layout is helpful to the reader. The use of introductory paragraphs adds more precision to Parts 2 – 5 and does help to focus the reader's attention upon the overall contents of each of those Parts.

Q197 In the context of paragraph 11 (Material Interest: options, etc) we agree that in the next draft a disregard for unappropriated shares held by trustees of a SIP trust should be introduced, as paragraph 39 Schedule 9 ICTA will not be rewritten.

Q201 Please see our reply to Q181.

Q203 Please see our reply to Q186.

[The following questions relate to Schedule 5]

Q211 In principle, as a policy matter extending the scope of paragraph 41 (Grant of replacement option) to a situation which could arise commercially, it would be a worthwhile future policy change to extend the definition of a replacement option, where the acquiring company is itself a subsidiary, to include options over shares in the parent.

Q215 We do not support PRC(45). The £100,000 limit is a fundamental feature of the EMI code and, as recent legislation, it was evidently Parliament's decision in 2000 not to provide for the Treasury to amend this figure by order. We do not therefore consider that it is appropriate to now give the Treasury power to change it; but that any change should instead be made in a Finance Bill.

Alternatively, Schedule 5 paragraph 54(b) might refer to 'higher sums' rather than 'different sums', so that increases in the limit could then be made by Treasury order; but reductions to it would be made by Parliament only.

C SPECIFIC COMMENTS ON MATTERS OF PRINCIPLE

Part 2 – Employment income

Chapter 7 – Taxable benefits: cars, vans and related benefits

cl 60 The list price of a car

(1) We note that the meaning and necessity of the phrase '(as the case may be)' remains under review and agree that this needs to be clarified. Would it help to include 'to any purchaser' after the word 'appropriate' in the third line of cl 60(1)? Cl 60(1) already clearly specifies the point of sale of a new car to its first purchaser as the time when the list price is relevant, and hence refers to the applicable list at that time. By including these words it would be made clear that it is the then universally applicable list price (whoever prepared it) which is relevant, regardless of any actual commercial sale 'below list price'.

Similar comments apply to cl 61 (The notional price of a car with no list price).

cl 69 Capital contributions by employee

(3)(b) *As a policy matter,* in calculating the cash equivalent of the benefit of a car, why should the deductible total of capital contributions made by the employee be limited to £5,000?

cl 80 Deduction for periods when car unavailable

(3)(c) With reference to Commentary 136, it would be helpful to make it clear that the period of 30 days could 'straddle' two tax years. Possibly the words '(whether falling wholly within the tax year or partly within it and partly within the preceding or following tax year)' could be inserted after 'more'. The word 'throughout' effectively makes clear that the period has to be continuous; but this might also be put beyond doubt by inserting 'continuous' before 'period'.

cl 81 Deductions for payments for private use

Cl 81 correctly rewrites paragraph 7 Schedule 6 ICTA; but it would be helpful to make clearer that the payment required does not have to be made within the tax year concerned. The requirement to do this must be in force in the tax year; but as the payment is made 'in respect of the year' the legislation clearly envisages the acceptability of an actual payment after the year end.

cl 85 Apportionment of cash equivalent where car is shared

We note from Commentary 154 that this clause remains under review, in particular the method of determining the cash equivalent to be apportioned. In Commentary 154 the reference should be to cl 88(3) rather than to cl 88(2).

cl 91 Meaning of 'shared van'

We note that further work remains to be done on this clause, to clarify that all employees count as users of the van(s) involved even if outside the scope of Chapter 7.

Chapter 8 – Taxable benefits: loans

cl 112 Exceptions for loans at fixed rate of interest

(2) Commentary 244 is an important accompaniment to cl 112(2), as it is not readily apparent to the reader that the cl 112(1) exception may not be met where increases in the official rate occur in the tax year in which the loan is first made.

cl 115 Threshold for benefit of loan to be treated as earnings

The distinction between cl 115(1)(a) and cl 115(1)(b) is not readily apparent to the reader, nor is it clear from the Commentary. It would be helpful to have this explained more clearly in the Notes. As we understand it, the key is that cl 115(1)(a) *includes* as taxable charge loans those loans under which only *part* of the loan interest paid or deemed paid is eligible for tax relief or deduction; whereas cl 115(1)(b) proceeds on the basis that such loans can be ignored.

Cl 115(3) 'qualifying loan' *includes* loans which are not excepted loans for cl 113, because only *part of* the interest paid is eligible for tax relief or is tax deductible. Such loans *remain* taxable cheap loans, and are taken into account for the purposes of cl 115(1)(a). If the existence of such loans causes the £5,000 threshold in cl 115(1)(a) to be exceeded than, as 'qualifying loans' for the purposes of cl 115(3), they are to be disregarded for the purposes of the £5,000 threshold test under cl 115(1)(b) which then proceeds by reference to the non-qualifying loans only.

cl 118 Alternative method of computation

(3) It should be made clear that Step 2 applies for each period in which the official rate of interest differs from that in the preceding period within the same tax year.

cl 119 Interest treated as paid

(2) The significance of the bracketed words is not sufficiently clear to the reader, and the explanatory Commentary 274 is not readily understandable. It would be preferable to remove the bracketed words from cl 119(2) and include them as a separate sub-clause, with a clearer form of wording explaining that the interest is still to be regarded as *not* paid for the purposes of the cl 148(2) provisions in order that the cash equivalent in cl 119(1) should not be nil (which would otherwise be the effect of cl 119(2), the cash equivalent being offset by an equivalent deemed interest paid deduction).

Chapter 13 – Taxable benefits: provisions not applicable to lower-paid employment

cl 154 Dispensations relating to benefits within provisions not applicable to lower-paid employment

(11) S 166(4) continued the validity of any notification under s 199 ICTA in relation to tax liability under ss 153 to 156 ICTA. Does the caveat to cl 154(11) have the identical scope? This is not clear from the wording in cl 154(11) which limits the continuity to 'tax arising by virtue of Chapter 4 (expenses payments) or 12 (residual liability to charge).

Chapter 35 – Supplementary provisions

cl 349 Board to determine dispute as to domicile or ordinary residence

(2) It is not made clear in the legislation itself who is obliged to refer the question in dispute to the Board of Inland Revenue. It is implied by cl 349(1) that it is one of the parties to the dispute, and Commentary 438 states that the intention is that persons responsible for operating PAYE can use this provision; but can any more precision be introduced?

Similarly in cl 350(1) can it be specified to whom the Board are to give notice? The opportunity might also be taken through a PRC to introduce a time limit within which the Board are to determine any dispute.

The use of the same word 'person' in both cls 349(1) and 350(1) is perhaps a little confusing in this extent.

Part 3 – Employment income: shares

Chapter 2 – Conditional interests in shares

cl 355 Interest in shares acquired 'as a director or employee'

We note from Commentary 477 that further work is being done on the interaction between ss 140H(2)(b) and 140H(4) ICTA to see whether it is possible to simplify these provisions. This is necessary, as the relationship between cl 355(5) and cl 355(2)(b) is not readily apparent. Cl 355(2) appears to relate to a right or opportunity arising from convertible shares within cl 355(1); whereas cl 355(5) relates to a right or opportunity arising from convertible shares replacing earlier convertible shares within cl 355(1).

Chapter 3 – Convertible shares

cl 368 Shares acquired 'as director or employee'

(3) We note from Commentary 504 that this clause will if possible be simplified. As presently drafted, is it correct in cls 368(3)(a) and 368(3)(c)(ii) to delete

the s 140H(4) ICTA references to 'securities'? In this context, there is no deeming provision in Chapter 3 that 'shares' includes 'securities', as there is (in cl 366(1)) for the purposes of Chapter 2 (Conditional interests in shares); unless the cl 378(1) definition of 'shares', by excluding 'stock' only for the purposes of cl 368 by default leaves 'securities within the meaning of 'shares' for cl 368 purposes? If so, this would be tortuous for the reader to follow.

cl 374 Amount or value of consideration given for shares or conversion

(1) S 140E(1) ICTA applies s 140E to the determination of the amount or value of any consideration given for the conversion in question under s 140D(6)(b) ICTA; but it does not appear to determine this with any particular accuracy, subsections (4) – (6) being instead guidance towards this end. The drafting of cl 374, while accurate, still reflects this vagueness. How do you determine the consideration given for the conversion, applying cl 374?

Chapter 4 Post-acquisition benefits from shares

As ss 138 and 139 ICTA, together with transitional provisions in s 88 FA 1988, still apply to increases in value and benefits attaching to shares issued before 26 October 1987; but is not being rewritten, it would be helpful to have a signpost of some kind to that legislation. We agree that it is appropriate not to rewrite s 84 FA 1988 (Capital gains tax).

cl 380 Cases where this Chapter does not apply

(1) A signpost to cl 400 would be helpful. A case could also be made for merging cl 400 into cl 380.

cl 397 Duty to provide information

As a policy matter, why is there a need to have different time limits in cl 397(3) and (6)?

Chapter 5 – Share options

cl 406 No charge in respect of receipt of shorter-term option

(3) In Commentary 587, as regards the first example in the second bullet point, what is the tax situation if the employee is within the existing Case 1 at the time of grant, the option can be exercised within 10 years after it is obtained (so that cl 406(2) removes any income tax liability on its grant), and the employee subsequently moves outside the scope of the existing Case 1 within that 10 year period but before the option is exercised? In this situation a charge on grant under cl 404(1) could presumably only arise if cl 406 was void ab initio. This could only arise if cl 405(1) applied, as effectively requiring the earnings from the office or employment to remain within s 162 *throughout* the life of the option; whereas cl 405 appears instead to focus that requirement only as at the time of grant.

cl 408 Charge on exercise, assignment or release of option by the employee

(4) If this is a change in the law (Commentary 593), a PRC will be necessary. We note that in Commentary 56, a PRC was proposed on the basis of a change in approach but not in the underlying law.

Similar comments apply to cl 409(6) (Charge on the employee where option exercised, assigned or released by another person).

cl 412 Amount of gain realised by assigning or releasing option

Commentary 605 appears to be incorrect. S 135(4) ICTA, so far as no account is to be taken of the value of any duties performed by the employee when determining consideration given, is rewritten in cl 415(3).

Chapter 6 – Approved share incentive plans

cl 439 Charge on disposal of beneficial interest during holding period

(2) As a policy matter, why doesn't cl 439 include a provision equivalent to cl 437(3) where the shares were subject to the plan for 3 years or more but less than 5 years? Alternatively the logic of having cl 437(3) could be queried.

Chapter 7 – Approved SAYE option shares

cl 448 Share options to which this Chapter applies

(1)(b) The phrase 'by reason of' (the individual's office or employment) is used, as in s 185(1) ICTA. The meaning of this should be self-apparent, but we note that no explanation is given (there was none either in s 185 ICTA).

Chapter 8 – Approved CSOP option schemes

cl 457 Charge when option granted at a discount

(1)(b) Although correctly rewriting s 185(6) ICTA, the use of the word 'price' in cl 457(1)(b) is not ideal. The comparison in cl 457 is between the (higher) market value of the quantity of shares issued and the total amount paid for them (in obtaining both the option and the shares). 'Price' implies an amount payable per share. It would be preferable to refer to the amount or value of the consideration to be given by the individual for the acquisition of the shares on exercising the option. This point is also relevant elsewhere (see comments on paragraph 25(1), Schedule 3)

Chapter 11 – Supplementary provisions

cl 484 "Qualifying disposals" for the purposes of section 483

(1)(a) Para 7(6) Sch 8 ICTA refers to 'ordinary share capital', which is more restrictive than 'share capital' as rewritten in cl 484(1)(a).

cl 485 Interests of beneficiaries of employee benefit trusts for purposes of share schemes

(3) The reference to 'the individuals having an interest in shares or obligations of the trust' accurately rewrites paragraph 12 Sch 8 ICTA; but, having regard to s 417(3)(c) ICTA should the reference in fact be to the individual having an interest in shares or obligations of *the company which are subject to* the trust?

Part 5 – Pension income

Chapter 2 – United Kingdom pensions

cl 503 Income chargeable

The meaning of the word 'accruing' is not necessarily readily apparent to a reader. We would retain the qualifying words 'irrespective of when any amount is actually paid' (Commentary 879). Similar comments apply to cls 510(1), 545(1), 548(1), 565 and 591(1).

(1) We note that how best to indicate to readers which payments are and which are not within the scope of PAYE remains to be resolved. Similar comments apply to cls 510(2), 513(3), 520(2), 525(2), 528(2), 531(3), 536(2), 541(2), 542(5), 545(2), 548(2), 552(2), 555(3), 562(4), 565(2), 566(4) and 590(2).

Chapter 3 – Foreign pensions

cl 507 Income chargeable

With reference to Commentary 912, we agree that it is preferable to rewrite the rules of Schedule D Case V once only, and on that basis that the foreign income Part of the second income tax rewrite Bill is the most appropriate location for them; with cross-references from the pension income and social security income Parts.

Chapter 6 – Approved personal pension schemes

cl 528 Income chargeable

(1) We agree that tax should be charged on the total of the income withdrawals made in the tax year (Commentary 1013), as a logical interpretation of 'withdrawals' in s 643(5) ICTA as meaning completed transactions.

cl 533 Meaning of "personal pension scheme" and related expressions

It would be more reader-friendly to set out in full the s 630(1) ICTA definitions of (a) – (d). It is debatable whether shortening the text should be at the cost of some inconvenience to the reader. The definitions in (b) – (d) in particular are brief.

Chapter 8 – Other purchased annuities

The Overview in Commentary 1058 – 1065 is not as clear as it might be. It would help to indicate more clearly that the annuities listed in s 657(2) ICTA include purchased life annuities in the nature of pension income *and* purchased life annuities which are *not* in the nature of pension income; and that Chapter 8 is concerned only with the former, and, amongst these, only with the three types of purchased annuities now rewritten in cls 538, 539 and 540 (the former originating in s 657(2)(b) and the latter two in s 657(2)(d).

Without any consequential amendment to s 657(2) ICTA, we note from Commentary 1063 that it will accordingly continue to apply to the annuities to be taxed in the pension income Part (being all the annuities paid under the tax advantaged schemes and the three above types of annuities, as Commentary 1062). S 657(2) ICTA excludes the application of s 656 ICTA which exempts the capital element of an annuity payment from income tax. Why is it considered necessary to retain the application of s 657(2) ICTA to the annuities to be included in the pension income Part if that Part expressly taxes the full amount of them anyway? As s 657(2) ICTA is needed in respect of certain purchased life annuities not in the nature of pension income, it would seem preferable to make a consequential adjustment to exclude its application to the purchased life annuities in the nature of pension income (unless there is any other reason for retaining this).

Chapter 11 – House of Commons Members' Fund

cl 553 Person chargeable

The charge is on the person receiving the payments, whereas Commentary 1149 refers also to entitlement. If the recipient has an entitlement, should the additional words 'or entitled to' also be included in cl 553 after 'receiving'?

Chapter 12 – Return of surplus employee additional voluntary contributions

cl 555 Income chargeable

(4) S 599A(9) ICTA gives s 599A ICTA (Charge to tax: payments out of surplus funds) priority over s 600 ICTA as well as ss 598 and 599 ICTA. Why does cl 555(4) not provide similarly?

Chapter 15 – Exemptions for certain lump sums

cl 568 Exemption for lump sums provided under certain pension schemes etc

(2) Commentary 1233 is not very clearly worded. Cl 568(2) applies to tax-exempt pension schemes only within cl 568(1)(b), and does not apply only where ill health is involved. Cls 568(2)(a) and 568(2)(b) are alternatives.

Chapter 16 – Exemptions: any taxpayer

cl 573 Wounds and disability pensions

(2) Why is the requirement for the Secretary of State to consult first with the appropriate government department not being rewritten in cl 573(2)?

cl 576 Pensions payable where employment ceases due to disablement

(8)(a) It needs to be made clear in cl 576(8)(a) that incurring injury or a work-related illness in the performance of the duties is essential to the 'qualifying cause', and not simply performance of the duties.

Part 7 – PAYE and payroll giving

Chapter 2 – Payroll giving

cl 611 Donations to charity: payroll deduction scheme

(2) We note from Commentary 1502 that this subclause may be further revised, if the payments referred to are to be described more fully.

Schedule 1 – Provision of services through an intermediary

Para 13 (2) Paragraph 13(2) Schedule 12 FA 2000 required a claim for relief, in the case of distributions by an intermediary, to be made by the intermediary by notice *in writing* to the Inland Revenue; whereas paragraph 13(2)(a) requires notice only (in any form). Paragraph 13(2)(b) also now stipulates that the claim for relief must be made within 5 years after the 31st January following the tax year in which the distribution is made; whereas paragraph 13(2) Schedule 12 FA 2000 did not set any time limit. The Commentary does not remark upon these two changes. Is a PRC needed in respect of them?

Schedule 2 – Approved share incentive plans

Para 8 All-employee nature of plan

(6) Both employees within (a) and (b) have to be invited to participate. We appreciate that the rewrite aims to distinguish the mandatory invitation under (a) from the discretionary invitation under (b); but it would be preferable to drop the words in (b) "…and has been invited to do so" down a line, so that they qualify both 6(a) and 6(b).

Para 32 Permitted restrictions: provision for forfeiture

(2) Although the Commentary on paragraph 32 does not refer to it, we note that cl 32(2) is now expressly applied to cl 32(1)(a) only. We agree that this is the better construction of paragraph 65(2) Schedule 8 FA 2000.

Schedule 3 – Approved SAYE option schemes

Para 25 Requirements as to contributions to savings schemes

(1) The reference to repayment of an amount equal to 'the option price' is confusing. Paragraph 24 Schedule 9 ICTA was directed at ensuring that the contractual savings were sufficient to finance the cost of acquisition of shares acquired on exercise of the option. This is the purpose of paragraph 25 with the term 'the option price' intended to mean the cost of acquiring the shares on exercise of the option; but, having regard to the commonly understood meaning of 'price' it would be preferable in this paragraph to refer to the cost of acquisition rather than the 'price'.

Para 26 Repayments under a savings scheme: whether bonuses included

It would be helpful to the operation of paragraph 30 if paragraph 26(2) could take more obvious account of the lower bonus (payable after 5 years' SAYE contributions have been paid) and the higher maximum bonus (payable after 7 years' contributions have been paid); and that it must be specified which of the two bonuses is appropriate to a particular scheme. There is a signpost from paragraph 30(4) which implies that 'the maximum bonus' can be understood by referring to paragraph 26 but this is not the case presently. Paragraph 30(4)(a) and (b) evidently recognise the distinction between the maximum (a) and the lower (b) bonuses.

Schedule 4 – Approved CSOP option scheme

Para 19 Only certain kinds of restriction allowed

(6) What is the origin of paragraph 19(6)? Why is there no equivalent subparagraph in paragraph 30, Schedule 2 (Approved Share Incentive Plans) or in paragraph 21, Schedule 3 (Approved SAYE option schemes)?

Schedule 5 – Enterprise management incentives

Para 51 Power to require information

(1)(a)(ii) Why is the bracketed reference to Schedule 14 FA 2000 retained at paragraph 51(1)(a)(ii)?

We note from Commentary 2130 that the necessary consequential amendment to the Table in s 98 TMA 70 (Special returns, etc) will be made when the rewrite Bill is introduced (similarly as regards paragraph 52 – Commentary 2135).

D DETAILED COMMENTS ON DRAFTING

The Table of Origins refers to subclause 53(4), which does not exist.

The reference to Commentary 89 to 'section 168(8) and (9)' should be to 'section 168A(8) and (9)'.

The reference in Commentary 149 to 'section 168(4) and (5)' should be to 'section 168A(4) and (5)'.

Part 2 – Employment income

Chapter 7 – Taxable benefits: cars, vans and related benefits

cl 84 Classic cars

As a minor point in cl 84(5), whilst accurately rewriting s 168F(5) ICTA is there a case for deleting the word 'or' in cl 84(5)(a)? The contributions referred to in (a) and (b) are cumulative rather than alternative; albeit the word 'or' is used in a cumulative sense in s 168F(5) ICTA.

cl 86 Benefit of car fuel treated as earnings

In cl 86(3)(b) and (c) are cross-references needed to the definitions of 'non-cash voucher' and 'credit-token'?

cl 105 Orders etc relating to this Chapter

The opportunity should be taken, through a PRC, to align cl 105(2) with cl 105(6) to ensure that the Treasury orders in cl 105(1) can only have prospective effect and cannot be applied retrospectively.

cl 106 Minor definitions: general

(1) In the definition of 'diesel' should the reference be to the definition *in* Article 2 rather than 'of' Article 2?

In the definition of 'EC type-approval certificate', 'type approval' should be hyphenated.

(2) Does it need to be made clear that 'VERA 1994' means the Vehicle Excise and Registration Act 1994?

Why does the Table of Origins show the origin of the definition of 'road' in cl 106 as a PRC? Is this related perhaps to the Road Traffic Act 1988 replacing the Road Traffic Act 1972?

The Table of Origins refers to subclause 123(6), which does not exist.

Chapter 8 – Taxable benefits: loans

cl 114 Exception for certain advances for necessary expenses

(2)(c) It would be more accurate to provide that the employee should account 'for the expenditure of the amount advanced' rather than for ' the amount advanced'.

(3)(b) The use of the phrase 'wholly, exclusively and necessarily' is too restrictive, as deductible travel expenses necessarily incurred are presumably also intended to be treated as 'necessary expenses'.

cl 120 Apportionment of cash equivalent in case of joint loan etc

(a) We note the use of the phrase 'just and reasonable' instead of 'fair and reasonable' in this clause and throughout the Exposure Draft, and have no objection to this.

Chapter 10 – Taxable benefits: disposals of shares

cl 134 Minor definitions

In the definition of 'acquisition' would it be preferable to use the same definition as in cl 131(1), replacing 'shares or an interest in shares' by 'the employment-related shares'?

In cls 130(3)(b) and 133(5)(b) the bracketed description of s168 does not accord with that section's description in the Provisional Contents.

Chapter 23 – Other employment income: benefits from non-approved pension schemes

cl 245 Chargeability of certain lump sums

(9) Should the definition of 'market value' also now include a reference to s 273 TCGA 1992, as for example in cl 134(1)?

cl 248 Interpretation

(1) In the definition of 'employee' the cross-referencing to s 612(1) ICTA is almost as long as the wording of s 612(1) ICTA itself. It would be more convenient to a reader to simply reproduce the s 612(1) definition 'employee' in cl 248(1).

Whilst admittedly fairly lengthy, it would also be more helpful to the reader to similarly include the s 612(1) ICTA definition of 'relevant benefits' in full in cl 248(1).

(2) To understand this subsection the reader is obliged to refer to s 612(2) ICTA. It would again be more reader friendly to rewrite s 612(2) to the extent appropriate as cl 248(2).

In Commentary 461, in the second line of the bullet point at the top of page 97, the word 'the' is duplicated.

Part 3 – Employment income: shares

Chapter 1 - Introduction

cl 353 Introduction

(3) Should the reference to 'Chapters 2 to 6, and' be to 'Chapters 2 to 5, and'?

(4) Should the reference to 'chapters 5 to 10.' Be to 'Chapters 6 to 10.'?

In Commentary 469, in the first line, 'by reason for' should be 'by reason of'.

Chapter 2 – Conditional interests in shares

cl 355 Interests in shares acquired "as a director or employee"

(6) Should the cross-reference to s 378, which does not refer to convertible shares (other than back through the cross-reference to s 367(1) and (4)), be removed?

cl 368 Shares acquired "as a director or employee"

(2) There is a lack of symmetry in that the counterpart cl 355(2) closes with the words 'convertible shares', whereas cl 368(2) closes with 'convertible'.

The reference in Commentary 504 should also be to cl 355 rather than to cl 358.

(6) Is the cross-reference to s 366 necessary?

cl 371 Amount of charge

In Commentary 507 the references to cl 363 should be to cl 360.

In Commentary 508 the reference to subsection (3) should be to subsection (4).

In Commentary 509 the reference to subsection (4) should be to subsection (5).

For the purposes of cl 371(2)(e) is a further subclause equivalent to cl 360(4) needed (reference to an event to include the expiry of a period)?

Chapter 4 – Post-acquisition benefits from shares

cl 381 Charge on occurrence of chargeable event

(5) The relevance of the reference to FA 1988 s 78(2) (part) in the Table of Origins is not obvious.

cl 382 Chargeable events

(4) The reference in the Table of Origins should be to 'FA 1988' and not 'FA 2000'.

(4)(b) A signpost to the definition of 'outside shareholders' in cl 401 would be helpful.

cl 385 Charge where chargeable increase in value of shares of dependent subsidiaries

(5) The relevance of the reference to FA 1988 s 79(3) (part) in the Table of Origins is not obvious.

cl 388 Cases outside charge under section 385

Why are the words 'if different' in (b) within brackets? This contrasts with the approach in cl 384(3).

cl 389 Charge on other chargeable benefits from shares

(6) The relevance of the reference to FA 1988 s 80 (3) (part) in the Table of Origins is not obvious.

cl 390 Chargeable benefits

(5)(a) A signpost to the definition of 'outside shareholders' in cl 401 would be helpful.

Chapter 5 – Share options

cl 403 Share options to which this Chapter applies

(3) Having regard to Commentary 580, in the definition of 'the employer' it may be preferable to say 'means the director or employee mentioned …' rather than 'means the person mentioned…'.

cl 404 Introduction to taxation of share options

(2)(b) It is probably unavoidable, but the reference in the title after '409' to assignment or release of options does distract from the purpose of cl 404(2) which is to deal solely with the exercise of options (assignment and releases being dealt with in cl 404(3)).

cl 405 Share options to which sections 406 to 418 do not apply

(1) This subclause does not make it sufficiently clear that ss 406-418 do not apply to a share option granted *at a time when* the employee is resident and ordinarily resident in the UK. The word 'if' in the second line needs to be replaced by 'at a time when'.

(2) In the third line, replace ‘it’ by ‘they’ as referring to ss 406 to 418.

(3) In the second line, replace ‘it’ by ‘they’ as referring to ss 406 to 418.

cl 407 Value of longer-term option for purposes of liability to tax in respect of receipt

(3) The reference to the entirety of Part 8 of TCGA 1992 is too wide. S 140(3) ICTA refers to s 272 TCGA 1992 only. It is sufficient now to refer to ss 272 and 273 TCGA 1992 only.

Chapter 6 – Approved share incentive plans

In Commentary 628, the reference to cl 462 should be to cl 446.

cl 420 Approved share incentive plans (SIPs)

(1)(d) As a minor point the words ‘such changes’ relate to income tax liabilities arising under cl 420(1)(c); but this jars a little. Perhaps replace by wording such as ‘income tax liabilities resulting from (c) above’?

cl 424 No charge on partnership share money deducted from salary

(2)(a) The words ‘the amount of’ are duplicated.

cl 425 No charge on acquisition of dividend shares

(4)(a) Why is there a signpost to paragraph 93(1) Schedule 8 FA 2000? Is this paragraph not to be rewritten and, if not, why not? The Commentary does not comment on this.

(5) Why is there a signpost to paragraph 93(4) Schedule 8 FA 2000? Is this paragraph not to be rewritten and, if not, why not? The Commentary does not comment on this.

cl 426 No charge on removal of restrictions applying to shares

(2)(a) Should the bracketed description of s 359 include ‘or on disposal’ after ‘conditional’?

cl 428 No charge on cash dividend retained for reinvestment

(3)(a) Why is there a signpost to paragraph 92 Schedule 8 FA 2000? Is this paragraph not to be rewritten and, if not, why not? The Commentary does not comment on this.

(3)(b) Why is there a signpost to paragraph 93 Schedule 8 FA 2000? Is this paragraph not to be rewritten and, if not, why not? The Commentary does not comment on this.

cl 429 Limitations on charges on shares ceasing to be subject to plan

(4) Why is there a signpost to paragraph 93 Schedule 8 FA 2000? Is this paragraph not to be rewritten and, if not, why not? The Commentary does not comment on this.

cl 430 No charge on shares ceasing to be subject to the plan in certain circumstances

In Commentary 656 the two references to 'Schedule 1' should be to 'Schedule 2'.

cl 435 Charge on partnership share money paid over to employee

(1) Does the word (paid) 'over' add anything to 'paid'?

cl 436 Charge on cancellation payments in respect of partnership share agreement

(1),(3) We would delete subclause (3) and insert 'or money's worth' after 'money' in the first line of cl 436(1), as in s 85 ICTA. The reference to 'value of any money' reads unnecessarily oddly in rewritten cl 436(1).

This would involve a consequential amendment in cl 436(2) that the relevant tax year 'means the tax year of receipt'.

cl 438 Charge on partnership shares ceasing to be subject to plan

In the Table of Origins, subclauses (2) – (4) are omitted although their origins are stated. The references to cl 438(1) should be to cl 438(2) – (4).

In Commentary 679 on cl 438, in the third line, the reference should be to cl 437 and not to cl 438.

Chapter 7 – Approved SAYE option schemes

In Commentary 703, at the end of the first line, 'then' should presumably read 'the'?

cl 450 No charge in respect of exercise of option

With reference to Commentary 713, it is presumably intended in due course to rewrite s 149A TCGA 1992 (Share Option Schemes) as part of the rewrite of the capital gains tax legislation; in order to ensure that s 17(1) TCGA 1992 (assets deemed to be acquired at market value) does not apply to the acquisition of shares on exercise of an option (and to any corresponding disposal). S 149A TCGA 1992 does not apply to options granted before 16 March 1993. On this understanding, we agree that it is not necessary to now rewrite s 185(3)(b) ICTA.

It is not entirely clear what the final sentence in Commentary 713 is intended to convey. 'Elsewhere' is where, and what does 'mainly specific' mean?

(1) With reference to Commentary 714, it would be more helpful to have a signpost direct to paragraph 42(3) Schedule 3. The existing signpost through the definition of 'approved' takes the reader into paragraph 49 (incorrectly described as paragraph 48 in Commentary 714) and back again into paragraph 42(3) before the reader can appreciate the reference to cl

450(1). A reader will not readily seize upon the word 'approved' in cl 450(1) as being the starting point for this.

(3) Is subclause 450(3) correctly drafted? Paragraph 17 Schedule 9 ICTA provides, subject to paragraphs 18 – 21, that rights obtained under a savings-related share option scheme must not be capable of being exercised before the bonus date. Paragraph 21 Schedule 9 ICTA permits an exercise on various grounds (those now specified in cl 450(3)(b)) within the first three year period; but s 185(4) ICTA then prevents the s 185(3)(a) tax exemption on exercise from applying. As drafted, cl 450 doesn't achieve this. It effectively excludes the various above grounds (rewritten paragraphs 34(5), 36 and 37) from relief (as failing Condition B); but, as worded, admits relief for any other exercise within the first three year period. What is the authority for this in s 185 ICTA? In what circumstances is it envisaged that an exercise in accordance with the provisions of an approved SAYE option scheme could fall within cl 450(3)(b) but not within any of the three types of exercise specified?

It seems necessary to delete the references to any Condition B, and simply provide that, when the exercise is within the first three years following the obtaining of the right, the tax exemption on exercise is not to apply (which cl 450(2) already provides for) .

cl 451 No charge in respect of post-acquisition benefits

With reference to our comments on cl 450(3), above, this clause will require consequential amendment as regards its reference to Condition B.

Chapter 8 – Approved CSOP option scheme

cl 455 No charge in respect of exercise of option

In the first line of Commentary 733, 'and' is missing after '(5)'.

In the last line of Commentary 735, at the end, delete ' 's death'.

cl 457 Charge where option granted at a discount

In Commentary 748 the reference should be to subsection (4).

Chapter 9 – Enterprise Management Incentives

cl 466 Disqualifying events relating to relevant company

(1)(b) The use of the word 'of' in the first three lines of cl 466(1)(b) needs to be corrected; either by deleting the 'of' in the first line after 'control' or by deleting the introductory 'of' in each of (b)(i) and (b)(ii).

cl 467 Disqualifying events relating to employee

In the second line of Commentary 776 the word 'may' should presumably be 'make'.

(2) We note that the term 'relevant working time' in paragraph 52 Schedule 14 FA 2000 is now replaced by 'reckonable time in relevant employment' which, in view of calculation required in cl 468, is a more appropriate description.

Chapter 11 – Supplementary provisions

In Commentary 796, the reference in the first line to paragraph '5' should be to paragraph '793'.

In the fourth line, 'employment' (benefit trust) should read 'employee'; and in the final line the reference should be to 'paragraphs 7(9) to (12)' and not to paragraphs 9 to 12 of Sch 8 (ICTA).

cl 484 "Qualifying disposals" for the purposes of section 483

(2)(c) If the word 'individual' (employees) is to be retained in cl 484(2)(a), then it ought also to be rewritten into cl 484(2)(c) where reference is currently made to 'employee' only.

(4)(c) Paragraph 7(6)(c) Sch 8 ICTA refers to the definition of an approved profit-sharing scheme being in s 187 ICTA, whereas cl 484(4)(c) refers to s 186 ICTA. Whilst s 186 ICTA does deal exclusively with approved profit-sharing schemes, the definition appears rather to be via the definition of 'approval' in s 187(2) ICTA meaning approval under Sch 9 ICTA.

Part 4 – Former employees: deductions for liabilities

cl 498 Other interpretation

In the definition of 'former employer', in (c), the reference to paragraph (a) is confusing as there is in fact no business or undertaking mentioned in paragraph (a). In the originating s 92(4)(c) FA 1995 the cross- reference is more clearly to the business or undertaking of the person mentioned in s 92(4)(a) FA 1995 who is the person referred to in rewritten (a). It might be clearer to also insert in (c) 'of the person' between 'undertaking'and 'mentioned'.

Part 5 – Pension Income

In Commentary 839 (third line) and 848, is the use of the number '2' intended or should the word 'two' be used?

Chapter 1 – Income taxed as pension income

cl 500 Income taxed as pension income

(2) It might be appropriate to insert the word 'paid' after 'pensions' in (q) and, as s 564 also covers voluntary annual payments to other relatives of former employees or office holders, it might be preferable to restrict the bracketed description in (r) to 'voluntary annual payments' only. Otherwise, the bracketed descriptions in (a) – (r), as a mix of re-stating the section heading or summarising its subject, are appropriate.

Is the lack of a signpost to Chapter 18 (Disregard of certain income) intended?

In Commentary 858, in the second sentence, should 'approved' be inserted before 'superannuation'?

Chapter 3 – Foreign pensions

cl 505 Foreign pensions

In Commentary 895 (fourth line) and 897 (first and fourth lines), is the use of the number '2' intended or should the word 'two' be used?

cl 507 Income chargeable

In Commentary 909, is the use of the number '2' intended or should the word 'two' be used?

Chapter 4 – Approved retirement benefit schemes

cl 512 Unauthorised payments

In Commentary 936, is the use of the number '2' intended or should the word 'two' be used?

cl 513 Income chargeable

In Commentary 948, is the use of the number '2' in lines 5 and 6 intended or should the word 'two' be used?

cl 517 Meaning of "employee" and "ex-spouse"

(3) In principle, it is not reader-friendly to oblige him to refer to a definition in another Act; although this necessity is unlikely to be unfamiliar. In the case of lengthy definitions such as 'administrator of the scheme', defined in s 611AA ICTA for the purposes of cl 515(2)(b)(i), this is understandable; but as the definition of director is an important and not over-lengthy one, there is a case for setting it out in full at cl 517(2). The present signpost might lead the reader to expect that there was something unusual about the definition; which it might of course be argued is a reason for having a signpost, to ensure that by having to look it up he does come to understand its meaning.

Chapter 5 – Old code approved superannuation funds

cl 519 ***Annuities***

In Commentary 973, in line 6, is the use of the number '2' intended or should the word 'two' be used?

cl 522 ***Unauthorised payments: application of section 512***

(1)(b) Why does the layout of cl 522(1)(b) differ from that in cl 512(2)(b)? The latter layout is clearer.

In Commentary 990, the cross-references should be to cls 512, 513, 514 and 517. The references to cl 513 is omitted and the reference to cl 517 duplicated.

Chapter 6 – Approved personal pension schemes

cl 524 ***Annuities***

We note from Commentary 996 that the effect of s 648(1)(b) ICTA is to be preserved in a boundary clause yet to be drafted.

Chapter 7 – Retirement annuity contracts

cl 534 ***Annuities***

In Commentary 1043, in the last line, is the use of the number '2' intended or should the word 'two' be used?

Chapter 8 – Purchased life annuities

In Commentary 1059, in the third line, is the use of the number '2' intended or should the word 'two' be used?

In Commentary 1065, in the second line, is the use of the number '3' intended or should the word 'three' be used?

Chapter 9 – United Kingdom state retirement pensions

cl 544 ***United Kingdom retirement pensions***

In Commentary 1100 and 1105, in the third line of each, is the use of the number '2' intended or should the word 'two' be used?

Chapter 10 – Certain overseas government pensions paid in the United Kingdom

cl 547 Certain overseas government pensions paid in the United Kingdom

In Commentary 1119, in the first line, is the use of the number '3' intended or should the word 'three' be used?

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

cl 561 Pre-1973 pensions paid under the Overseas Pensions Act 1973

(2) In the Table of Origins it would appear more appropriate to cite ICTA s 616(3) and drafting as the origin, rather than ICTA s 616(1).

Chapter 14 – Voluntary annual payments

cl 564 Voluntary annual payments

In Commentary 1213 the references should be to 'subsection (4)' (twice) and not to 'subsection (3)'.

Chapter 16 – Exemptions: any taxpayer

cl 569 Exemptions: any taxpayer

(1) The reference to 'sections 570 to 571 …' looks odd. Perhaps change to 'sections 570, 571 or sections 573 to 575 …'?

cl 570 Awards for bravery

We assume that the word 'additional' (pension) used in the original s 317 ICTA has no significance, with the *entirety* of the pension being disregarded for all the purposes of the Income Tax Acts; and cl 570 is rewritten on this basis. We note from Commentary 1247 that the exemption for annuities will be rewritten in the savings and investment income Part of the second income tax rewrite Bill.

Is the correct title 'Conspicuous Gallantry Award', as in s 317 ICTA, or 'Distinguished Gallantry Award' as in cl 570?

cl 571 Pensions in respect of death due to military or war service

In the Table of Origins, the origin of cl 571 should be shown as 'ICTA s 318(1),(2).'

cl 573 Wounds and disability pensions

In Commentary 1263, second line, is the use of the number '2' intended or should the word 'two' be used?

cl 574 Compensation for National-Socialist persecution

We note from Commentary 1269 that the exemption for annuities will be rewritten in the savings and investment Part of the second income tax rewrite Bill.

cl 575 Malawi, Trinidad and Tobago and Zambia government pensions

Cl 576 originates from s 616(1) and (2) ICTA primarily (as recognised in Commentary 1271), but also from s 616(3) and (4) ICTA; whereas the Table of Origins refers to ICTA s 613(3), (4)(part) and the PRC only.

In Commentary 1272, fifth line, and in Commentary 1274, second line, is the use of the number '3' intended or should the word 'three' be used?

Chapter 17 – Exemptions: Non-UK resident taxpayers

cl 579 Commonwealth government pensions

With reference to Commentary 1311, it might make it clearer that not all Commonwealth government pensions are exempt if the clause heading were changed to 'Certain Commonwealth government pensions'?

cl 584 The Pensions (India, Pakistan and Burma) Act 1955

(2)(b) In cl 584(2)(b)(ii) should the word 'provision' be replaced by 'the provisions of'?

Chapter 18 – Disregard of certain income

cl 585 General disregard of certain income for income tax purposes

In the Table of Origins a reference is also needed to s 617(1)(b) ICTA, as the origin of cl 544(2).

As cl 576 (pensions payable where employment ceases due to disablement) originates from the enactment of ESC A62, the inclusion of the reference to s 576 in cl 585 presumably requires a PRC or an appropriate cross-reference into PRC (134).

Part 6 – Social security income

In Commentary 1350, second line, is the use of the number '2' intended or should the word 'two' be used?

Chapter 3 - UK benefits taxed as social security income: exemptions

Cls 594 – 596 are difficult to understand, particularly as the meaning of 'applicable amount' is not readily apparent from cls 596(1) and (2) without

recourse to SSCBA 1992 and SSCB(NI)A 1992. As we understand, the essential concept is that Income support is taxable only where the claimant is on strike and then is taxable up to a 'taxable maximum' amount which is the weekly Income support allowance attributable to him personally.

The difficulty arises from the emphasis on exemption in cl 594. Whilst the identified excess is exempt from income tax, the purpose of cl 594 is primarily to restrict the Chapter 2 charge on Income support to the Income support attributable to the striking claimant only. Perhaps cl 594 might be better headed 'Limitation of charge'?

cl 594 Exemptions

In Commentary 1406 and 1407, is the use of the number '2' intended or should the word 'two' be used?

In Commentary 1407 and 1410, the references to 'section 617(2)(ae)' should be to 'section 617(2)(ad)' as in the Table of Origins.

cl 595 Taxable maximum

(1)(b) It would improve understanding if it could be made clearer in cl 595(1)(b) that the 'other amounts' are attributable to individuals other than the claimant or his partner (as explained in Commentary 1414). Perhaps insert 'attributable to individuals other than the relevant couple' after 'other amounts'?

With reference to Commentary 1417, the reader is presumably given to understand that the second way in which any increase in the benefit for a child is exempted (apart from cl 593) is through treating such increase as a payment of an 'other amount' for the purposes of cl 595(1)(b), so that it falls out of account in calculating the claimant's taxable maximum?

cls 597 – 601 Jobseeker's allowance

General As regards cls 597 – 601 (Jobseeker's allowance) it would be helpful to have a fuller explanation of jobseeker's allowance in Commentary 1420. It is informative to state that there are two kinds of allowance; but, as appears to be deducible from cls 599(3) and (4) and cl 600(3), it would also be helpful to indicate that in the case of a couple a single enhanced allowance is paid in respect of both of them.

It would be helpful to explain in the Commentary why cl 600 does not include an equivalent of cl 599(4), where one of a couple is on strike. Is this because cl 600 is concerned with a contribution-based allowance and not with an income-related allowance?

An explanation why cl 599(2) operates in the case of a single claimant by reference to a notional contribution-based jobseeker's allowance, and why cl 600(3) operates in the case of a claimant who is a member of a couple by reference to a notional income-based jobseeker's allowance, would also be useful.

cl 597 Exemptions

In Commentary 1420, in the first and second lines, is the use of the number '2' intended or should the word 'two' be used?

In Commentary 1421 and 1425 the references to 'section 617(2)(ae)' should be to 'section 617(2)(ad)'.

(4) In the second line of cl 597(3) the word 'of' immediately before '10' should be deleted.

cl 598 Taxable maximum: general

(1) Why does the Table of Origins refer to ICTA s 151A(3)? Cl 598(1) appears to be wholly drafting.

In Commentary 1427 why is there a reference to s 151A(2)? Cl 598 appears to be based on s 151A(3) ICTA and drafting.

(2) We note that 7 is the denominator of the fraction, which appears correct in the case of a week. Why is '6' used in cl 595(2) – is a PRC needed to correct this?

cl 599 Taxable maximum: income-based jobseeker's allowance

(3),(4) Is the applicable amount in cl 599(3) and (4) determined by reference to the income-based jobseeker's allowance, or does this determination take account of the notional contribution-based jobseeker's allowance as in cl 599(2)? Again, it is the term 'applicable amount' which causes the confusion, and obliges the reader to search in JSA 1995 or in JS(NI)O 1995 for an answer. A fuller explanation of this term in Commentary 1445 (which we assume will become basis of the Explanatory Notes) would be helpful.

(4)(b) In the first line, the word 'of' before '14' needs to be moved to immediately following it.

Chapter 4 – UK benefits wholly exempt from income tax

cl 603 Table B

In Commentary 1455, in the first line, is the use of the number '2' intended or should the word 'two' be used?

Schedule 1 – Provision of services through an intermediary

Commentary 1514 states that Schedule 1 excludes the material from paragraph 24 Schedule 12 FA 2000 as being a transitional provision. This is incorrect, paragraph 24 being rewritten as cl 8(2)(a) which gives priority to cl 7 (Treatment of workers supplied by agencies).

In the final sentence of Commentary 1516 there is an incorrect reference to paragraph (1) of Schedule 12 to FA 2000. The reference should be to paragraph 1(2).

As a minor point, there is some inconsistency in the reference to payment or benefit in paragraphs 3 and 5 (in the singular) and paragraph 4 (in the plural). This seems to stem from paragraph 4(3) Schedule 12 FA 2000, which includes both plural and singular references, and which appears to have been standardised in the plural in paragraph 4(3).

Para 1 (5) We agree that bringing forward the explanation of 'engagement to which this Schedule applies' to paragraph 1(5) is an improvement. As paragraph 1(1) does not mention the word 'engagement' as such, however, it might be preferable to replace 'any such engagement' by the words 'any such provision of services'.

Schedule 2 – Approved share incentive plans

Para 4 Group plans

In Commentary 1579, in the third line 'Schedule 33' should be 'Schedule 3'.

Para 5 Meaning of "award of shares", "participant" etc

In Commentary 1581, at the end of the second line 'full-out' should presumably be 'fall-out'? Similarly in Commentary 1639.

Para 8 All-employee nature of plan

In Commentary 1588, the reference to paragraph 9(1)(b) of Schedule 8 should be to 'paragraph 8(1)(b)'.

Para 9 Participation on same terms

(6) Should the reference be to "performance allowances" in the plural?

Para 17 Meaning of "qualifying company"

(3)(c) Commentary 1616 is not readily intelligible.

Para 18 Requirement not to participate in other share schemes

We note in Commentary 1621 that transitional provisions are to be included, to the extent that references to approved profit-sharing schemes in paragraph 16(1) of Schedule 8 FA 2000 remain capable of having a legal effect after the enactment of the rewritten legislation. Similarly, Commentary 1629 concerning paragraph 21.

Para 19 The "no material interest" requirement

(2)(b) Should 'of' be inserted after 'more'?

Para 21 Material interest: options and interests in SIPs

(6)(a) In the second line of paragraph 21(6)(a) 'be' should be 'been', at the end of the line.

Para 32 Permitted restrictions: provision for forfeiture

(2)(e) The signpost should be to paragraph 98 and not to paragraph 97.

Para 34 Free shares: introduction

(5) A closing bracket is required before the full stop at the end of paragraph 34(2).

Para 36 The holding period

In Commentary 1677 the reference should be to paragraph 34(2) rather than to 34(1).

Para 52 Application of money deducted in accumulation period

(4) A closing bracket is needed after 'awarded' at the end of the sentence.

Para 54 Stopping and re-starting deductions

Paragraphs 44(1) and (2) Schedule 8 FA 2000 required the requisite notice to be given in writing. The requirement to give written notice is not rewritten into paragraphs 54(1) and (2). Is it intended that such a notice might also be given verbally (including by telephone) and by e-mail, in all of which cases a written record might not be made?

In the Table of Origins the origin of paragraph 54 should be shown as FA 2000 Schedule 8, paragraph 44 (not 54).

Para 55 Withdrawal from partnership share agreement

Paragraph 45(1) Schedule 8 FA 2000 required notice of withdrawal to be given in writing. Paragraph 55 does not require this. Is this intended? As there is no obligation placed on the company to confirm the date of receipt of any verbal or e-mail notice, will the 39 days period in paragraph 55(2) operate effectively?

Para 57 Access to partnership shares

In the Table of Origins the origin of paragraph 57 should be shown as FA 2000 Schedule 8, paragraph 47 (not 57).

Para 80 Other duties of trustees in relation to tax liabilities

(4) The Table of Origins omits the origin of this subparagraph as FA 2000 Schedule 8, paragraph 90.

Para 85 Appeal against withdrawal of approval

(1)(b) Is it appropriate for paragraph 85(1)(b), dealing with appeals against the withdrawal of corporation tax deductions, to be rewritten in an Income Tax Bill?

Para 89 Termination of plan

(1) The wording of the paragraph does not make it clear that the company can only terminate the plan if it issues a termination notice. The word 'may' could be read as implying that the company doesn't have to provide for the issue of a plan termination notice on termination of the plan, if it chooses not

to. The rewrite does, however, accurately rewrite paragraph 120(1) Schedule 8 FA 2000 which conveyed the same implication.

Para 91 Jointly owned companies

In Commentary 1824 the reference to 'sub-paragraph (3)' should be to 'sub-paragraph (5)'.

In Commentary 1825 the word 'has' is superfluous.

Para 93 Power to require information

We note in Commentary 1831 that the square bracketed passages will be considered further.

We also note from Commentary 1834 that the rewrite of paragraph 117(4) Schedule 8 FA 2000 will be dealt with in the consequential amendments Schedule.

Para 99 Minor definitions

Paragraph 129(2) Schedule 8 FA 2000 applies the s 839 ICTA definition of connected persons for the purposes of Schedule 8. Where is this dealt with in the rewrite?

We note that a definition of 'close company' is also now included in paragraph 99.

Paragraphs 88, 90, 92 and 93 Schedule 8 FA 2000 appear not to have been rewritten. What is proposed in respect of these paragraphs?

We assume that the provisions in Part XI Schedule 8 FA 2000 (Capital Gains Tax) are to be rewritten in a Capital Gains Tax Act, the provisions in Part XII Schedule 8 FA 2000 (Corporation Tax deductions) in a Corporation Tax Act and paragraph 116A in the rewritten provisions relating to Stamp Duty; as they are not rewritten in ED12 Volume 2.

Schedule 3 – Approved SAYE option schemes

Para 2 SAYE option schemes

The Table of Origins refers to ICTA Schedule 9, paragraph 8 (part). This does not appear to have relevance to paragraph 2.

Para 3 Group schemes

(1) It would be preferable to move the bracketed words '(a "parent company")' from the second line into the first line after the word 'company'.

In the first line it would be preferable to replace 'other' by 'one or more'. This would more accurately reflect paragraph 1(3) Schedule 9 ICTA, which more clearly refers to control of 'another company or companies' so that a parent company with a single subsidiary can be members of a group scheme.

The wording of paragraph 3(3) Schedule 3 would be consistent with such a change of wording.

Para 5 The statutory purpose of the scheme

(2) There appears to be little point in defining "statutory purposes" if it is only referred to in paragraph 5. Paragraphs 5(1) and (2) might be combined and the heading changed to something like 'Prohibited features'. If there is merit in retaining such a definition, it would then be preferable to reverse sub-paragraphs (1) and (2).

Para 6 All-employees nature of scheme

In Commentary 1870, in the second sentence, it would be clearer to add 'and employees' after 'directors' and to add 'and directors' after 'employees' as the entitlement of both directors and employees is the key issue.

Para 11 The 'no material interest' requirement'

(1),(2) Should the references to 'person' be changed to 'individual', as Schedule 3 relates to individuals only?

Para 13 Material interest: options, etc

In Commentary 1886, in the third sentence, the reference to sub-paragraph (2) should be to sub-paragraph (3).

Para 14 Meaning of 'associate'

In establishing whether an individual is an associate of another, paragraph 39 Schedule 9 ICTA provides for shares held by the trustees of approved profit-sharing schemes to be disregarded (applying s 417(3)(c) ICTA, via s 187(3) ICTA). Whilst approved profit-sharing schemes still exist, is it sufficient to preserve the effect of paragraph 39 Schedule 9 ICTA only in a Schedule dealing with transitional provisions (as proposed in Commentary 1891)? We would prefer a signpost from paragraph 14 Schedule 3 or in a separate clause.

Para 15 Meaning of "associate": trustees of employee benefit trust

In Commentary 1893, in the final sentence, the reference to 'Part 6' should be to 'Part 3'.

Para 24 Payment for shares to be from approved savings scheme

We note from Commentary 1912 that paragraph 16(2) and (3) Schedule 9 ICTA will be reflected in the transitional provisions.

Para 27 Requirements relating to share options: introduction

The signpost to paragraph 35 should be to paragraph 36, and the signpost to paragraph 36 should be to paragraph 37.

Para 44 Approval ineffective after unapproved alteration

The second sentence in Commentary 1955 might be better worded to state clearly that it is the approval of the entire scheme which is ineffective after an unapproved alteration is made.

Para 47 Meaning of 'associated company'

(1) Sub-paragraph (1) appears to exclude the entire definition of 'associated company' for the purpose of paragraph 35(3) which rewrites paragraph 23 Schedule 9 ICTA. The s 187(2) ICTA definition of 'associated company' imports the same meaning as in s 416 ICTA including the one year following actual disassociation, except that, for paragraph 23 Schedule 9 purposes this period is to be ignored. It is only the ignoring of this one year disassociation period with which paragraph 47(1) Schedule 3 should be concerned.

Schedule 4 – Approved CSOP option schemes

Para 6 Limit on value of shares subject to options

(1) In the first line of Commentary 1980 the word 'for' should be 'from'.

Should the references to 'person' be changed to 'individual', as Schedule 4 relates to individuals only?

Para 9 The "no material interest requirement"

(1),(2) Should the references to 'person' be changed to 'individual'?

Para 10 Meaning of "material interest"

In the first sentence in Commentary 1992, the reference should be to paragraph 9(1) and not to paragraph 11(1).

Para 12 Meaning of "associate"

With reference to Commentary 1998, and our comments on paragraph 14 Schedule 3, we would prefer a signpost from paragraph 12 Schedule 4 to the Schedule dealing with transitional provisions, or in a separate clause.

Para 28 Application for approval

(1) At the beginning of the fifth line the wording 'the Inland Revenue' is employed, whereas in the counterpart paragraph 40(1) Schedule 3 (Approved SAYE option scheme) this is replaced by 'they'. For consistency, we prefer the former (as paragraph 81(1) Schedule 2 (Approved SIP plans) is also drafted).

Para 31 Appeal against withdrawal of approval etc

In the first sentence in Commentary 2037 the reference should be to sub-paragraph (2).

Para 32 Approval ineffective after unapproved alteration

The second sentence in Commentary 2038 might be better worded to state clearly that it is the approval of the entire scheme which is ineffective after an unapproved alteration is made.

Para 33 Power to require information

In Commentary 2040, first line, 'can not' contracts with 'cannot' in Commentary 1957, and in Commentary 2041, second line, '30-day' contrasts with 30 day' in Commentary 1958.

Para 37 Index of defined expressions

The definition of 'member of a consortium' is in paragraph 36(2) and not paragraph 47(2).

Schedule 5 – Enterprise management incentives

Para 19 Excluded activities: receipt of royalties or licence fees

(5)(b) The reference should be to 'paragraph (a)' and not to 'paragraph (b)'.

In the second line of Commentary 2074 the reference should be to paragraph 19 and not 18.

Para 23 Excluded activities: provision of facilities for another business

(7) In the first line 'an person' should be 'a person'.

Para 30 Material interest: option and interests in SIPs

(7) We note in Commentary 2092 that any residual effects of the approved profit-sharing scheme legislation will be preserved by transitional provisions.

Para 31 Meaning of 'associate'

(1) Commentary 2094 is not readily intelligible. The references in the originating paragraph 34 Schedule 14 FA 2000 are to an individual and not to a 'person'.

Para 50 Appeals

In Commentary 2128, the 'that' at the end of the second line is superfluous; and the reference to paragraph (2) in the fourth line should be to paragraph (3).

Para 55 Meaning of "market value" of shares

Commentary 2140 states that this paragraph is derived from paragraph 66(1) and (2) Schedule 14 FA 2000. It is not apparent that it is derived at all from paragraph 66(2).

Para 57 Appeal against determination of market value of shares

In Commentary 2143 the word 'that' at the end of the second line is superfluous.

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TJH/PCB
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