

TAXREP 20/01

CAPITAL GAINS TAX: SIMPLIFYING TAPER RELIEF

Text of a letter and paper submitted in September 2001 to the Inland Revenue in response to a request for comments issued in June 2001

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17 September 2001

FJH/14-46-15

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Dear Ms Fyfield

We welcome the opportunity to comment on the request for comments announced in the Treasury consultation document dated 18 June 2001.

We have already submitted detailed comments last month as part of our involvement in the ongoing review of CGT where our representative is Maurice Parry-Wingfield. We attach a further copy.

Simplification

The paper sets out various options for simplification. We did not find this paper easy to prepare, for a number of reasons. Firstly, it is far from easy to see how the current CGT rules can be 'simplified' within the Government's existing policy. If the Government really wished to simplify CGT, then radical reforms will be required, not further tinkering with the existing rules, and this will have implications for policy. A radical approach might be, for example, to introduce a flat rate of CGT for all disposals.

If CGT is not to be radically simplified, then we are left with tinkering with the existing rules. As mentioned above, we are not sure that CGT can easily be 'simplified' within the existing rules and whether such an exercise will lead to any worthwhile simplification measures. One possible approach would be to simplify the CGT calculations for those who make gains up to a certain size, on the grounds that the complexities are out of proportion to the amount of tax at stake. However, In order to prevent unfairness, this would imply that taxpayers would need to elect for the simpler treatment. The problem with this approach is that, whilst the rules for the majority of taxpayers will be more straightforward, paradoxically the rules themselves will be more complicated. We question whether this is real simplification, but if the approach was adopted then measures could involve, for example, exempting gains and/or or proceeds up to certain limits.

Consultation process

Whilst we welcome the Government's commitment to consult, many members have expressed disappointment with this latest CGT consultation exercise. The main reasons for their disappointment with the current consultation is that it is not clear from the Treasury document what we are really being asked to do. This is not helped by the fact that, as set out in our paper, the Government's policies in respect of CGT often appear to conflict with each other.

This approach to consultation is somewhat similar to the original consultation on CGT in 1997, another consultation exercise which we found most disappointing. We do not wish to repeat in detail our disappointment with the earlier CGT consultation, but it is hardly surprising that members remain dissatisfied with the Government's approach to consultation over CGT reform. The 1997 document in effect asked for ideas as to how CGT might be reformed without giving a clear steer as to Government policy. We had expected that the Government would work up some proposals following the close of the consultation period which would then be subject to further consultation before any rules were introduced.

However, taper relief was introduced without any further consultation and only for individuals, trusts and personal representatives. Since taper relief was introduced, we have had major changes to the rules in 2000, further changes announced due to start in 2002 and further possible changes in the pipeline as a result of this review. Given that taper relief was introduced with little consultation and has been subject to constant change since introduction, the request for comments now on such a broad ranging and difficult topic without any clear steer of Government thinking is disappointing.

If you have any questions on the paper or our comments, please let us know.

REVIEW GROUP ON CAPITAL GAINS TAX
SUGGESTIONS FROM THE TAX FACULTY ON THE SCOPE
FOR SIMPLIFYING TAPER RELIEF

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Maurice Parry-Wingfield
On behalf of the Tax Faculty of the ICAEW
16 August 2001
14-46-15

1. INTRODUCTION

- 1.1 At the meeting of the capital gains tax (CGT) review group on 23 July 2001 we were invited to put forward outline ideas on how taper relief might be simplified. This paper is in response to that invitation and to the request on similar lines in the Treasury press release of 18 June 2001. The Treasury press release invited views on simplifying CGT generally and we plan to respond separately on this issue in due course.
- 1.2 It is likely that no change to the rules will be effective before 6 April 2002, so we assume in this paper that the two-year taper will be in place for business assets in time for any simplification changes.
- 1.3 Our conclusions are summarised under heading 12, at the end of this paper and we provide details of suggestions for improvement under heading 6.

2. POLICY ISSUES

The Chancellor's objectives

- 2.1 As we understand it, the Chancellor's main objectives in introducing, and later enhancing, taper relief are:

- (a) to encourage longer-term investment; and
- (b) to encourage entrepreneurial and workforce investment.

We are also told that he wishes to ensure that everyone with gains over the CGT threshold pays some tax so that, for example, nil tax for business assets is not an option.

The rationale for them

- 2.2 We find it difficult to see how some of the actual rules square with these objectives. For instance, the rationale behind the following examples is unclear to us:
 - that an employee shareholder is thought to have invested for a sufficiently long term after two years whereas a portfolio investor is encouraged to retain his shares for ten;
 - similarly, that shares in a listed company have to be held five times as long as shares in an AIM company have to be held in order to pay nearly two and a half times as much tax;
 - that business asset taper is given to a landlord who lets to an unlisted trading company but not one who lets to a partnership or listed trading company; and
 - that the effective rate of tax can be increased the longer an asset is held e.g. when an employee of a listed company leaves the company.
- 2.3 We also find that equity between taxpayers of a broadly similar class (which we think should be a guiding principle) breaks down when certain taxpayers within the class are favoured or discriminated against without clear reason. The above examples illustrate the point. So does the fact that a large number of individuals who held their

shares before 6 April 2000 are worse off than those who bought them after that date (see 6 below). It is of great concern to us that the underlying policy of CGT is now unclear. Also, the system as it currently stands appears to be creating inequities between taxpayers and encouraging distortions in decision making, the exact opposite of what the system should aim to achieve.

Need for clarification and extension of policy

- 2.4 It is, therefore, difficult to make suggestions for improvement within the existing policy framework when the framework itself is difficult to understand and appears to us to have so many conflicting rules.
- 2.5 As part and parcel of the simplification process, we would like to see the objectives clarified and, so far as is now possible, potential conflicts between them eliminated.
- 2.6 Although we understand the simplification process is meant to work within the confines of existing policy, there may be instances where a change of policy might go hand in hand with simplification.
- 2.7 There are also areas where policy changes might be made that simplify the relief without doing damage to the thrust of the policy: for example regarding five years, not ten, as a long term holding in relation to portfolio shareholdings.
- 2.8 For these reasons, we have included below suggested policy changes that we see as improvements.

Principles we have adopted

- 2.9 In making our suggestions we have tried to follow the principle that taper relief should:
 - do more to encourage the secondary market for portfolio investment, as suggested in the Treasury press release;
 - be equitable between different classes of taxpayer;
 - not distort commercial decisions;
 - be certain in application;
 - be sufficiently intuitive for businessmen and their advisers in the heat of a deal to be able to make quick decisions that do not produce costly tax liabilities;
 - be relatively easy to calculate when preparing a tax return; and
 - be fair and reasonable.

3. THE CONTEXT

Exchequer yield

- 3.1 Exchequer cost is naturally a constraint but it should be borne in mind that the total yield of capital gains tax is estimated to be quite small, at £2.0-2.5. Of this, we would imagine that a little less than half is from business assets (including assets that have been business assets for part of the time), of which shares and securities are a large component.

- 3.2 These figures are small both in absolute terms and in relation to the total Exchequer yield. We are not in a position to predict what the future trend will be, even if the economic situation remains the same. It is, however, reasonable to suppose that the effect of the political decisions to reduce the ten-year taper period for business assets to four and then to two will be that the future yield of capital gains tax will be significantly less. The remaining amount of revenue at stake, if changes are made to simplify the taper regime, must be quite small. The main problem area is, of course, the treatment of shares and securities as business assets.

Compliance and planning costs

- 3.3 We are not in a position to estimate the cost of complying with the regime. This affects the Revenue of course, but it affects taxpayers to a much larger degree. Taxpayers' costs include their own time and opportunity cost, together with fees billed by their advisers. (In our profession, we find that coping with these different aspects of taper relief is absorbing an unprecedented amount of time.) These costs are incurred both in making 'buy' and 'sell' decisions and when complying with the self-assessment regime.
- 3.4 There is concern amongst the profession that the complexities of the taper relief rules and the uncertainty of, for example, securing full business asset taper relief, are already resulting in increased litigation by clients against advisers. It appears from anecdotal evidence from within the Bar and the Professional Indemnity (PI) insurance industry that situations giving rise to potential PI claims relating to taper relief are already increasing rapidly. Although this may partly be due to the newness of such an important aspect of the tax system, it is likely also to be due to the fact that advice given on the basis of certain assumptions (e.g. that no sale will take place in the foreseeable future) leads to a worse result once the basis changes (like an unexpected offer).

Cost/benefit

- 3.5 The fact that all these are hidden costs does not mean they are not real ones. Set against the low Exchequer yield, this leaves little net revenue at stake when looking for simplification measures. Indeed, we would have thought that simplification would be capable of producing an overall reduction in costs that would offset, to quite a large extent, any drop in Exchequer yield.

4. AREAS SUITABLE FOR SIMPLIFICATION

- 4.1 As is usually the case when considering how tax rules can be simplified, it is the mix of factors that unduly complicates taper relief, not particular factors on their own. For instance, the 'bonus' year for non-business assets held before 17 March 1998, introduced for reasons of equity, is only a minor complication by itself, though one that is easily overlooked. But the cumulative effect of the following is a massive set of complications which we think can and should be avoided:

- the bonus year;
- the need for apportionment, particularly where a non-business asset became a business asset on the change of rules on 6 April 2000;

- the difference between daily apportionment where assets change their status and the requirement to calculate the rate of taper by reference to complete years of ownership;
- the need to calculate frozen indexation and taper relief thereafter for assets acquired before 6 April 1998;
- the share identification rules, especially the sequence of different rules for shares acquired before 6 April 1998;
- the different rules for shares and other assets where there is a transfer between spouses;
- the treatment of goodwill and most other partnership assets as fungible so that, every time there is a change of partners or their profit-sharing, the taper clock is reset; and
- the need for a company constantly to monitor whether its non-business assets breach the 20% threshold (and how that should be calculated) and the need for an investor somehow to find out if it has been breached.

4.2 A prime area of difficulty is, of course, where shares became business assets with the change of rules in April 2000. For an asset acquired after 5 April 2000, the computation is relatively straightforward provided the asset does not change status. It is, however, comparatively easy for an asset to lose business-asset status for reasons outside the control of its owner. Examples are an employment coming to an end, a change of tenant or a company being floated, ceasing to trade or investing a significant amount of its surplus assets in non-trading assets. Often the owner will not even know of the change, and will not be able to, say, sell his shares in time to avoid complex calculations and an escalating rate of tax. As a result, the complications, far from being in a small minority of cases, are likely to arise in a large number of them.

5. PRIORITY ISSUES

5.1 The main issues which we think should be addressed are:

- the apportionment rules;
- the share identification rules;
- the business asset test for shares;
- a possible rebasing;
- a possible flat rate of tax; and
- improving non-business taper.

5.2 An examination of these issues in 6 to 11 below could lead to solutions that also make it possible to avoid many of the complications listed above.

6. THE APPORTIONMENT RULES

- 6.1 We regard the apportionment rules as unfair, complicated and overtaken by policy developments. In particular, the changes made to business asset taper relief since it was introduced in 1998 and the move to a two-year holding period for business assets has removed the underlying policy purpose behind the need for a ten-year review period.
- 6.2 They are unfair because they penalise someone who acquired his shares before 6 April 2000 (where they become business assets on that date) as against someone who acquired them after. This leads to a sense of grievance between people who are otherwise in a similar position and will encourage distortions in investment decisions with short-term decisions being motivated by tax reasons. For example, an ex-employee of a listed company will be encouraged to sell his shareholding when he ceases to be an employee or face a rising tax charge.
- 6.3 Ministers have made the point that the object of the rule change in April 2000 was to encourage people to make new investments, not to reward people who had already made them. Not only does this policy lead to the unfairness we have described, but the effect of such an incentive is open to question as a result of the abrupt changes of policy we have had. A disappointing scenario is that it might be thought worth deferring the making of an investment in the hope that a better tax deal will appear.
- 6.4 That the apportionment rules are a major cause of complexity hardly needs demonstrating, and we have written to you about this previously. It is not really possible to factor in all the potential variables without having access to an accurate software programme, something that is denied to a large number of taxpayers.
- 6.5 We suggest that the policy should be rationalised and the rules simplified by providing that once someone has held shares or other assets for the requisite two-year period (assuming a disposal after 5 April 2002), he should qualify for maximum business assets taper regardless of any previous or subsequent holding as a non-business asset. In paragraph 11 of Schedule A1 to the TCGA 1992, there is already an anti-avoidance provision which would stop an individual from taking unfair advantage of such a change, e.g. where the owner ensures that his company ends its trade and starts investing in property. (We did, of course, write to you on 11 May 2001 saying that we thought paragraph 11 was unnecessarily harsh in its application and should be changed so as to counteract avoidance in a more appropriate way.)
- 6.6 Failing that, there should be a minimum period of (say) 24 months in which any non-business period would be disregarded if the asset had been held for at least two years as a business asset.
- 6.7 Failing also that, we suggest that a taxpayer should be entitled to elect to ignore any period of ownership prior to the change of legislation applying on 6 April 2000. Although it will be seen later that we prefer if possible to avoid introducing options, this particular option would be simpler to operate than the present apportionment rules.

7. THE SHARE IDENTIFICATION RULES

- 7.1 Undoubtedly, these rules create considerable problems and may lead to a loss of relief where it might otherwise have been expected. Take, for instance, an existing shareholder who buys more shares, or exercises one or more employee options, and sells part of his holding within 12 months of acquiring the additional shares. He loses potential taper relief on those shares without necessarily enhancing potential relief on his original shares (i.e. where the original shares already qualify for full taper). With hindsight, he would have been better off if the additional shares had been held elsewhere, e.g. in a trust or by a spouse so that he could sell part of his original holding.

No easy solution

- 7.2 Various solutions were put forward in the meeting of 23 July 2001, but we do not particularly support any of them. For instance:

- giving the taxpayer the choice of how to match shares is not really a simplification and gives rise to the danger of unwittingly applying different methods to successive sales;
- changing from LIFO to FIFO might be reasonable for shares acquired after 5 April 1998 (LIFO was presumably to enable the taxpayer to preserve his original, ten-year taper applying to all assets) but we would rather avoid yet another change that further complicates the system;
- bringing business-asset shares into a pool once they had been held for two years produces the problem that they would have to be depooled if, by the time they were disposed of, they had been held for a period as non-business assets, giving rise to apportionment.

- 7.3 We doubt if much can be done in general terms.. In any case, the two-year taper, if combined with our suggestion in 6.5 above that there should be no apportionment once the asset had been held as a business asset for two years, would avoid most of the difficulties.

- 7.4 There are, however, three specific areas where further change should be considered. These are as follows:

Employee share schemes

- 7.5 An employee who has acquired shares by exercising an unapproved option will have an income tax charge and an uplifted cost for capital gains tax. If he next exercises an approved option and then sells shares in order to pay his income tax on the first option, the LIFO matching will deny him taper relief on the second tranche of shares, which have the potential for the greater gain. Many employees have entitlements under a number of separate share schemes, encouraged in different ways by the legislation, which means that judging the best sequence to avoid being out of pocket in terms of taper relief is very difficult. The ABI would like to see annual grants of options, implying annual exercise as well, which may prevent the employee ever attaining full taper relief. The problem is not just one of taper relief and share identification, however. In the eyes of the employee, the result is unfair, hard to

understand and even harder to relate to any logic. We would hope that a way can be found to simplify the position and rationalise the interaction with income tax.

Fungible assets

- 7.6 We suggest disapplying the rule that goodwill and other fungible assets are treated in the same way as shares. This has the effect in a partnership that every change of partner and of profit sharing is treated as giving rise to a disposal and acquisition of an interest in the goodwill. This creates compliance problems, now reduced but not eliminated by the two-year taper. More serious is the problem of equity. Consider, for instance, a firm of four partners where profits are shared equally and where, in sequence, a junior partner joins, a senior partner leaves and the business is sold. A continuing partner's 25% share has had a 5% 'blip' so that he potentially loses full taper relief on that 5% without having bought and sold an interest in the firm as normally understood. The two-year taper reduces the problem but does not eliminate it.
- 7.7 Disapplying the fungible asset rule would enable the goodwill to be treated as a single asset so that increases in profit share would be treated the same way as, for example, extensions to a building.

30-day rule

- 7.8 We are not convinced that the complications caused by the 30-day rule, introduced in 1998 to counter 'bed and breakfasting', are justified by the amount of revenue at stake. As it is, the rule is an irritant which also complicates taper relief, and it would simplify matters by getting rid of it.

8. THE BUSINESS ASSET TEST FOR SHARES

- 8.1 Although the article in the June 2001 edition of Tax Bulletin undoubtedly helps companies and their shareholders discover if the company is a trading company or the holding company of a trading group, the definitions of trading company and trading group in paragraph 22(1) of Schedule A1 are unsatisfactorily worded and liable to cause complications, for the following reasons.
- 8.2 The definition of a trading company as 'a company that would [exist wholly for the purposes of one or more trades] apart from any purposes capable of having no substantial effect on the extent of the company's activities' is so convoluted that it is practically impossible to make any sense of it. We have previously criticised it in this forum, saying that it could only have been drafted by a committee. The Tax Law Rewrite team would face a real challenge in translating it into plain English. It is wrong that the wording of badly-drafted legislation should effectively be ignored in favour of guidance given in a Revenue Bulletin. In any case, the wording is law, and time has to be spent wrestling with it. It would simplify matters if it could be redrafted in a more intelligible manner.
- 8.3 The definition of a trading group as 'a group of companies the activities of which (if all the activities of a group are taken together) do not, or not to any substantial extent, include activities carried on otherwise than in the course of, or for the purposes of, a trade' is more intelligible. The definition of a trading company is far narrower than

this, leading to the absurd situation that putting a holding company on top of a trading company makes it easier for the shares to qualify as business assets. (We are happy to provide an example if that would help.)

- 8.4 We would prefer to see a ‘wholly or mainly’ test for each definition. Failing that, we suggest that the definition of a trading company should be based on that of a trading group.
- 8.5 We refer to the recent proposal for the exemption applying to capital gains on substantial corporate shareholdings in trading companies and groups. It is suggested that the same definitions of trading company and trading group should be used as in Schedule A1. This both underlines the importance of having a satisfactory definitions and creates an opportunity to review them.

9. A POSSIBLE REBASING

- 9.1 A rebasing of all assets at 6 April 1998 would eliminate certain of the problems we have identified, namely the bonus year, indexation and pooling. On the other hand, two new complications would be introduced:
- there would be a need for valuations (most problems relate to unlisted companies); and
 - equity would suggest the need for the complication of a ‘kink’ test where the existing method of calculation gives a better result. This is not a big problem for professionals, but may cause the unrepresented taxpayer to be confused and miss the better option.
- 9.2 We doubt if rebasing is an appropriate general solution, therefore. There may, however, be a role for it if it is confined to non-business assets or (so as to avoid the need for valuations) just for listed shares (see 11.6 below)

10. A POSSIBLE FLAT RATE OF TAX

- 10.1 In many ways, the simplest regime would be to have a flat rate of tax applying to gains on all assets held for more than, say, 12 months. A similar effect could be obtained by deducting a flat percentage from gains on all assets held for more than 12 months. Taper and indexation could be disregarded then, so that nearly all the problems we listed earlier would go away.
- 10.2 Either would give rise to the need to identify disposals with acquisitions for the 12-month rule, and there would be an unfortunate clog on transactions as the first anniversary of acquisition approaches. This would limit the benefit.
- 10.3 Unless the effective rate was 10%, which is unlikely to commend itself to the Chancellor, there would be losers as well as winners. This is often a necessary price for tax reform. But even at a flat rate as low as 20%, taxpayers on the starting rate and holders of business assets for at least two years would be materially worse off.

- 10.4 This suggests applying the flat rate should be an option. That would be regressive (in the sense that those who cannot afford advice may miss an opportunity to reduce their tax) and add to complexity (because those who are advised will pay for two lots of computations).
- 10.5 There may be a case, however, for having a flat rate of 10% applying to gross gains where the aggregate came to less than, for example, £10,000 more than the annual exemption. Alternatively, and avoiding the need to compute the gain, there could be a fixed tax rate of, say, 5% of proceeds where the total came to no more than for example, £30,000. Even so, there would have to be options, which carry the disadvantages we have just mentioned. It would probably also be necessary to find a way to avoid this facility being abused.

11. IMPROVING NON-BUSINESS TAPER

Importance of secondary market

- 11.1 Trying to be generous to the primary (capital-raising) market through the business-asset taper regime is liable to be less effective if the tax consequences of investing in the secondary (share-trading) market are unattractive. A good primary market depends on an efficient and actively-traded secondary market to provide an exit for the shares. So much is suggested in the Treasury press release referred to above.

Why ten years is too long

- 11.2 Particularly for portfolio investments, the incentive to invest for the longer term is very small: each anniversary that passes reduces the effective top rate of tax by a mere 2% (5% x 40%). That would deter few investors from taking a profit or cutting short a potential fall in price. Besides, in investment terms, we think that ten years is too distant a horizon. And the longer the taper period the more the tax system will cause people to invest indirectly in collective funds which do not pay tax on switching investments. This is undesirable as it reduces both investors' choice and a source of funds for small-cap companies, which fund managers tend to shun. It may also increase short-term decisions as fund managers are not hampered by CGT considerations. Ultimately, investment decisions should be driven by investment considerations and not by tax breaks.
- 11.3 In order to provide a reasonable incentive to retain investments and discourage short-termism, we think that the taper period for non-business assets should be a maximum of five years. This would also simplify the calculation of the gain, in that once the five-year holding had been achieved the taper relief percentage would remain the same.
- 11.4 We would even go further and suggest it should be reduced to two years. This would re-establish the original, 1998 balance between business and non-business assets in that their treatment would only differ in the rate of taper. It would reduce the effect of a trading company unwittingly breaching the 20% limit for non-trading activities. And if business assets were allowed to remain business assets after being held for two years as such, as we suggest in 5 above, the apportionment rules would not have the unfortunate effect of rapidly pushing the top rate of tax from 10% towards 24%.

- 11.5 Assuming this was extended to all non-business assets, apportionments would not have the effect of increasing the tax liability so dramatically, thus reducing the unfairness of the rules we have referred to under 6 above.

Other simplifications

- 11.6 Most of the complications we listed in 4.1 above apply to portfolio investors. The complications also tend to affect them more adversely as they are less likely than businessmen to be able to afford professional advice – e.g. advice on a range of smaller investments rather than advice on a large deal. For instance, this is an area where there might be a particularly good case for a rebasing or a flat rate as described in 9 and 10 above.

A radically different approach for the portfolio investor

- 11.7 Applying the CGT rules to portfolio investments has become so complicated, and so far beyond the capacity of the investor to understand them, that we feel that what is really required is a radical overhaul of the rules. This would go beyond taper relief and the matching rules, and would encompass such items as bonus and rights issues, stock dividends and buy-backs, takeovers, mergers and demergers. It would also take into account the favours given by the tax system to mutual funds, ISAs and pension funds so that direct portfolio investment is poorly treated by comparison.
- 11.8 What might result from such an overhaul is beyond the scope of this review group, though it might have an input to make. A possible approach, however, is as follows:
- Individual investors would be allowed to make unlimited contributions to a personal investment fund, managed by an accredited manager, not unlike the recently available individual pension accounts. Investments could be made through the managers in a variety of ways as at present, e.g. full advisory, discretionary or execution only, and with investments made direct or through mutual funds. The gains in the fund would be free of CGT. When the individual realised cash from the fund, there would be a CGT charge. If the whole of the fund was realised, the charge would be on the excess of the amount realised over the cumulative amount contributed. If there was a partial realisation, the charge would proportionate to the amount realised.
 - These personal investment funds would enhance investment choice and might replace ISAs. They might even provide an alternative to personal pension funding.
- 11.9 We put this forward not as a commendation, at least not at this stage, but to show that there is scope for more lateral thinking in this area.

European experience

- 11.10 A number of European regimes do not charge any tax on portfolio investments held for more than a year, subject to an anti-avoidance measure to prevent income being rolled up into the gain. The experience of these countries might suggest that a radical solution is possible.

12. CONCLUSIONS

- 12.1 We find some difficulty in suggesting ways in which taper relief can be simplified when aspects of the policy framework of the relief are unclear and even conflicting (see 2 above).
- 12.2 Particularly as there was no meaningful consultation on the introduction taper relief and on the major extensions for business assets, we are tempted to say ‘ if you want to get to there you shouldn’t start from here’.
- 12.3 As we have the present structure, however, particularly with its generous 10% rate for business assets held for two years, it is difficult to find ways of simplifying taper relief without also taking away that substantial ‘prize’. At the least, there may have to be revenue cost, though the figures referred to in 3 above suggest the cost may not need to be particularly large.
- 12.4 For these reasons, we are unable to suggest sweeping changes that would simplify the relief at a stroke. Nor do we find that there is much scope for changing particular aspects of it, as that would be but a drop in the ocean (see 4.1 above).
- 12.5 However, we can offer the following suggestions:
- certain aspects of the policy underlying taper relief should be clarified and conflicts removed (2 above);
 - once an asset has been held as a business asset for two years its status as a business asset should stick and there should be no apportionment to non-business use (6.5 above);
 - failing that, once an asset has been held as a business asset for two years, non-business periods of up to 24 months should be disregarded (6.6 above) or there should be an option to disregard periods prior to 6 April 1998 (6.7 above);
 - a better way needs to be found to deal with multiple share acquisitions under schemes for employees (7.5 above);
 - assets other than shares, such as partners’ interests in goodwill, should not be treated as fungible (7.6 above);
 - the 30-day rule should be dropped (7.7 above);
 - the definition of a trading company should be clarified by legislation, preferably by having a ‘wholly or mainly’ test but if necessary by aligning it with the definition of a trading group (8 above);
 - rebasing would not provide an easy solution, except possibly for non-business assets or listed shares (9 and 11.6 above);
 - there may be a case for having a low flat rate of tax where aggregate gross gains are below a certain threshold. Or there could be an even lower fixed rate of tax applied to the proceeds where the total is below a given threshold (10 above). This would be particularly suitable for portfolio investments (11.6 above);
 - as a matter of economic efficiency, and in order to reduce complications, the taper period for non-business assets should be reduced from ten years to, say, five (11.3 above); and

- for portfolio investment, it would be even better to have a radical overhaul of the way capital gains tax works, not just taper relief. This might take the form of CGT-free personal investment portfolios, or even exempting from CGT investments held for more than 12 months (11.7-10 above).

- 12.6 We believe that these suggestions deserve serious consideration as a contribution towards simplifying taper relief. The fact that these have policy and Exchequer effects should not be a sufficient reason for rejecting them, for reasons we give in 2 above.
- 12.7 We look forward to discussing these issues, as well as ones that other representative bodies put forward, in the meeting to be held early in September.
- 12.8 Please contact the writer if any of our points need clarifying.