



Faculty of Taxation

TAXREP 45/03

TAX LAW REWRITE: RECEIPTS FROM INTELLECTUAL PROPERTY

Memorandum submitted in December 2003 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(03) (15) issued in October 2003 by the Inland Revenue

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TAX LAW REWRITE: PAPER CC/SC(03)(15) RECEIPTS FROM INTELLECTUAL PROPERTY

A GENERAL COMMENTS

1. We welcome the opportunity to comment on Paper CC/SC(03)(15) published on 24 October 2003 at <http://www.inlandrevenue.gov.uk/rewrite/index.htm>.
2. The proposal to impose a specific charging provision to income tax for royalties and other income from intellectual property was first put forward in ED 2 and it is clearly sensible to base Part 5 Chapter 3 (Receipts from Intellectual Property) on this foundation, in clause 536.
3. We are content with the structure of Chapter 3, and support the use of the term ‘disclosure’ (rather than ‘disposal’) of know-how in clause 540 for the reason set out in paragraph 21 of the Commentary.
4. We also support the proposal in Change 233 to restore the definition of ‘mineral deposits’ and the proposal in Change 225 to revise the time limit in s 525(2) ICTA rewritten in clause 550 (Death of seller).
5. How are ss 529 and 531(6) ICTA – amounts to be treated as earned income – being dealt with in the rewrite? Similarly s 531(6) ICTA?
6. From the signpost to it in clause 537(5)(b), it is evident that s 527 ICTA (spreading of patent royalties etc over several years) is not to be rewritten in Part 5 Chapter 3, although there is no reference to the reason for this in the commentary on clause 537. The signpost in clause 537(5)(b) also does not make it readily obvious that the taxpayer can claim to have receipts in the form of patent royalties and other annual payments taxed on a spread basis. This is an important aspect from the taxpayer’s viewpoint, and we suggest that the relevance of the clause 537(5)(b) reference to s 527 ICTA needs to be made clearer – at least by means of appropriate commentary.
7. We also note that s 536 (Taxation of royalties where owner abroad), s 537 (Public lending right) and s 537B ICTA (Taxation of design royalties where owner abroad), which relate to the application of s 349(1) ICTA (Payments not out of profits or gains brought into charge to income tax, and annual interest), are not being rewritten in Part 5 Chapter 3. They will presumably feature in the Bill 4 rewrite of s 319 ICTA, although there does not appear to be any specific reference to this in the Commentary.

B RESPONSE TO QUESTIONS

Q1: cl 540: *Change 233 restores (for income tax purposes) a definition of “mineral deposit” that, before certain amendments of Chapter 1 of Part 13 of ICTA were made by the Capital Allowances Act 2001, applied for the purposes of “know-how” in the*

source material for clause 163 and clause 540. We welcome comments on this proposed change.

8. Change agreed. We support the proposal to restore a definition of ‘mineral deposits’ in clause 540(5), in the same terms as the definition in s 452(3) Capital Allowances Act 2001.

Q2: cl 550: *Change 225 corrects an omission to revise, in connection with the self assessment reforms, the time limit for serving a notice under section 525(2) of ICTA. We welcome comments on this proposed change.*

9. Change agreed. In clause 550(4) it is sensible to change the s 525(2) ICTA time limit to fit in with the normal self-assessment filing date for the year in which the taxpayer dies (Change 225).

C SPECIFIC COMMENTS

cl 537 Income chargeable under s 536

10. (4) The wording in Commentary paragraph 10 is more readily intelligible than clause 537(4). Could not the latter also simply say that any deductions due under clause 683 or clause 684 are given in addition to any deductions due under clause 539?

cl 548 Non-UK resident sellers: election for spreading

cl 549 Non-UK resident sellers: proceeds received in instalments

11. Can the titles of these two clauses be changed to better show their relationship? Both deal with chargeability and the taxpayer’s ability to elect for spreading, clause 548 where the consideration is received in a single amount and clause 549 where it is received in instalments? As presently drafted, clause 548 leads the reader to suppose that it will deal with elections for spreading and clause 549 (for whatever purpose) with proceeds received in instalments.

cl 551 Winding up of a body corporate

12. It will look odd to have a section dealing with a body corporate in an Income Tax Act, however justified. Perhaps the words ‘chargeable to income tax’ should be added on to the section title?

cl 556 Sums paid for Crown use etc treated as paid under licence

13. S 533(4) ICTA refers to ‘the making, user, exercise or vending’ (of the invention). The reference in clause 556 is to ‘used’. In s 533(4) ICTA it does not appear necessary for actual use to follow the ‘making . . . exercise or vending’. If, as is the case with the original legislation, these terms are distinct from ‘user’ then account still needs to be taken of them in the rewritten clause 556.

cl 560 Contributions to expenditure

14. Whilst the exclusion of the general rule is helpful to the taxpayer, should the commentary not make some reference to the justification for clause 560(3)?

D DETAILED COMMENTS ON DRAFTING

cl 544 Charge to tax on income from sales of patent rights

15. In Commentary paragraph 31, in the final sentence, should 'by' be omitted before 'which'?
16. (1) Should 'profits' be 'profit', as the reference is to a single sale? If so, the word 'are' becomes 'is'.

14-13-36
TJH/PCB
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