Tax Representation

THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND & WALES

Tax Faculty

TAXREP 21/06

CORPORATION TAX

TAX LAW REWRITE: BILL 5

ITTOIA-RELATED PROVISIONS

Memorandum submitted in August 2006 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment on Paper CC/SC(06)06 issued in May 2006 by HMRC Tax Law Rewrite Team

CONTENTS

	Paragraph
INTRODUCTION	1-2
GENERAL COMMENTS	3-5
ANSWERS TO QUESTIONS	6-35
SPECIFIC COMMENTS ON DRAFT LEGISLATION	36-46
DETAILED COMMENTS ON DRAFTING	47-58
	Annex
WHO WE ARE	A
TEN TENETS FOR A BETTER TAX SYSTEM	B

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC/SC(06)06 (Bill 5: Corporation tax – ITTOIA-related provisions) published on 25 May 2006 by HMRC's Tax Law Rewrite team at http://www.hmrc.gov.uk/rewrite/exposure/menu.htm which covers the following topics in six Appendices:
    - Appendix A: Gains from contracts for life insurance etc,
    - Appendix B: Sales of Foreign dividend coupons,
    - Appendix C: Miscellaneous income – annual payments not otherwise charged,
    - Appendix D: Miscellaneous income – beneficiaries' income from estates in administration,
    - Appendix E: Miscellaneous income – income not otherwise charged,
    - Appendix F: Incentives to use electronic communications, and
    - Appendix G: Unremittable income.

2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

GENERAL COMMENTS

3. Apart from minor comments, we are content with the drafting of the ITTOIA-related provisions in Appendices A-G, which appropriately adopt for corporation tax rewrite purposes the style and approach used in earlier rewriting the same source legislation for income tax purposes in ITTOIA 2005.

4. Although repetitive in appearance, we have formally replied to each Question separately.

5. As indicated in paragraph 4.8 of Tax Law Rewrite Report and Plans 2006/07 (May 2006), it is clearly a sound approach to keep the Bill 5 clauses as close as possible to the wording and structure of the ITTOIA equivalent sections; to preferably draft the corporation tax clauses in full rather than rely on cross-referencing to the ITTOIA sections; and to incorporate in the rewrite for corporation tax purposes all relevant ITTOIA Changes to the law in order to bring the income tax and corporation tax codes back into line.

ANSWERS TO QUESTIONS

Appendix A

6. **Q1** We agree the proposal to carry Change 14 in ITTOIA across to corporation tax in clause 8.

7. **Q2** We agree the proposal to omit the exception in s 545(1)(a) of ICTA and to omit s 486 of ITTOIA on the basis, having regard to the explanation in Change 2, that these provisions can have no possible legal effect in practice.

8. However, if these provisions are based on a misconception and beat the air, it may not be entirely appropriate that the italicised footnote to the Change should state that it will have no practical effect "as it is in line with current practice". It would perhaps be more accurate to state that the exception is considered to have always been and to remain inoperable. This would also act as a marker for the future amendment of Appendix A clause 22, should a need for the exception unexpectedly be found to arise.

9. **Q3** We agree the proposal to carry Change 89 in ITTOIA across to corporation tax in clauses 25 and 26.

10. **Q4** We agree the proposal to carry Change 90 in ITTOIA across to corporation tax, in clause 28.

11. **Q5** We agree the proposal to carry Change 91 in ITTOIA across to corporation tax, in clause 34.

12. **Q6** We agree the proposal to carry Change 92 in ITTOIA across to corporation tax, in clause 35.

13. **Q7** We agree the proposal to carry Change 93 in ITTOIA across to corporation tax, in clause 37(b).

14. **Q8** We agree the proposal to carry Change 94 in ITTOIA across to corporation tax, in clause 63.

15. **Q9** We agree the proposal to carry Change 95 in ITTOIA across to corporation tax, in clause 64.

16. **Q10** We agree the proposal to carry Change 96 in ITTOIA across to corporation tax, in clause 66.

17. **Q11** We agree the proposal to carry Change 149 in ITTOIA (as modified to reflect section 50 of the Commissioners for Revenue and Customs Act 2005) across to corporation tax, in clause 67.

18. **Q12** We agree the proposal to carry Change 99 in ITTOIA across to corporation tax, in clause 71(1).

19. **Q13** We agree the proposal to carry Change 100 in ITTOIA across to corporation tax, in clause 71(1).

20. **Q14** We agree the proposal to carry Change 157 in ITTOIA across to corporation tax, in paragraphs 18 and 19 Schedule 1.

Appendix B

21. **Q1** We agree the proposal to carry Change 103 in ITTOIA across to corporation tax, in clause 1(3).

22. **Q2** We agree the proposal to carry Change 103 in ITTOIA across to corporation tax, in clause 1(4).

Appendix C

23. **Q1** We agree the proposal to carry Change 47 in ITTOIA across to corporation tax, in clause 8(2).

24. **Q2** We support the proposal to carry Change 46 in ITTOIA across to corporation tax. However, is this effectively done in clause 8(3)? That clause specifically refers to capital expenditure 'at a ground to be used for the purposes of association football'. This does not encompass 'the support of athletic sports or athletic games but with power to support the arts', as intended. The source legislation also refers to the 'playing' of association football, which may carry a narrower meaning. It would appear necessary for clause 8 to also include the equivalent of Condition C in s 748 ITTOIA.

Appendix D

25. **Q1** We agree the proposal to carry Change 106 in ITTOIA across to corporation tax, in clause 10(3).

26. **Q2** We agree the proposal to carry Change 107 in ITTOIA across to corporation tax, in clause 14(5)(a).

27. **Q3** We agree the proposal to carry Change 108 in ITTOIA across to corporation tax, in clause 16(2)(a).

28. **Q4** In accordance with our agreement to the proposal in Appendix D Q2, we agree the proposal to simply exclude income from specific dispositions from what counts as the aggregate income of the estate.

29. **Q5** We agree the proposal to carry Change 109 in ITTOIA across to corporation tax, in clause 21(5) and (6).

30. **Q6** We agree the proposal to carry Change 110 in ITTOIA across to corporation tax, in clause 26.

31. **Q7** We agree the proposal to carry Change 111 in ITTOIA across to corporation tax, in clause 28.

Appendix G

32. **Q1** We agree the proposal to carry Change 142 in ITTOIA across to corporation tax, in Appendix G Part 1 (Unremiitable income).

33. **Q2** We agree the proposal to carry Change 135 in ITTOIA (in part) across to corporation tax, in Appendix G clause 1(3).

34. **Q3** We agree the proposal to carry Change 141 in ITTOIA across to corporation tax, in Appendix G clause 3(4).

35. **Q4** We agree the proposal to carry Change 22 in ITTOIA across to corporation tax, in Appendix G clause 4.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

Appendix A

cl 31(3) The total allowable deductions for a policy or contract

36. Should 'and in subsection (2)' be inserted after 'in subsection (1)', as in s 494(3) ITTOIA?

cl 33(2)(a) Modification of section 31: qualifying endowment policies held as security for company debts

37. We note that the reference in cl 33(2)(a) is to "the amount referred to " whereas in the income tax equivalent s 496(2)(a) ITTOIA it is to "the amounts referred to"

Sch 1, para 7 Modifications relating to pre-14 March 1989 policies of life insurance treated as later ones under paragraph 6

38. As paragraph 7 applies relatively rarely (Explanatory Notes paragraph 263) we agree the drafting of Schedule 1 paragraph 7, applying the rules exceptionally by cross-reference to the applicable ITTOIA rules; but this is an instructive demonstration of the reduced clarity compared with rewriting the rules fully in Schedule 1.

Sch 1, para 10

39. We do not readily see how paragraph 104 of Schedule 2 to ITTOIA (certain pre-23 February 1984 policies not foreign capital redemption policies) is applied for the purposes of corporation tax by paragraph 7, Schedule 1, Appendix A. The latter does not appear to refer to paragraph 104. Is an amendment required to paragraph 10, to include the equivalent of paragraph 113A(b) of Schedule 2 to ITTOIA?

Appendix B

cl 2 Meaning of a "foreign holding" etc

40. We agree the rewriting of s 18(3B)-(3E) ICTA, for corporation tax purposes, to exclude the sales of coupons on foreign securities.

Appendix C

cl 2 Income charged

41. For the avoidance of any confusion is it also intended to amend s 684 ITTOIA to include the equivalent of the reference in clause 2(2) to s 527 ICTA (spreading of patent royalties etc over several years)?

cl 7 Discretionary payments by trustees

42. **(2)(b)** It may be helpful to the user to insert '(heritage bodies)' after 'ICTA' in clause 7(2)(b), as in s 687A(2)(b) ICTA.

Appendix D

cl 9(1) Income charged: foreign estates

43. We note that the tax charge is on 'the amount' (of estate income) whereas in the equivalent s 657(1) ITTOIA for income tax the charge is on 'the full amount' of the income treated as arising.

cl 16 The residuary income of the estate

44. With reference to Appendix D Explanatory Notes 58, we agree that it is implicit in clause 16 that the taxpayer may choose whichever allocation of allowable estate deductions against different categories of income is most advantageous. Whilst we hold no strong view it is nevertheless arguable, on grounds of clarity, that this ought to be explicitly provided in clause 16.

cl 27 Relief where UK income tax borne by foreign estate: absolute interests

45. Should the references in clause 27(1)(b), (1)(c) and (2) to 'the relevant tax year' instead be to 'the accounting period', on the basis that the relief given relates to income arising in the accounting period which has already borne UK income tax(and not only to income arising in the same tax year, as in the equivalent s 677 ITTOIA)?

cl 28 Relief where UK income tax borne by foreign estate: limited and discretionary interests

46. Should the references in clause 28(1)(b), (1)(c) and (2) to the 'relevant tax year' instead be to 'the accounting period', on the basis that the relief given relates to income arising in the accounting period which has already borne UK income tax (and not only to income arising in the same tax year, as in the equivalent s 678 ITTOIA)?

DETAILED COMMENTS ON DRAFTING

Appendix A

cl 5 Circumstances when company liable

47. In the Explanatory Notes, paragraph 28, should the reference to 'paragraph 5(1)(a)' be to 'paragraph 5(2)'?

cl 7(9) Interests in rights under a policy or contract for section 6

48. The Origin of clause 7(9) is ICTA s 547(17) and not ICTA s 547(14).

Change 2

49. In the first paragraph the reference should be to 'Chapter 9 of Part 4' and not 'Chapter 4 of Part 9' of ITTOIA.

cl 52 Requirement for annual calculations in relation to personal portfolio bonds

50. Explanatory Notes paragraph 191, in the second sentence, refers to a non-existent subsection 62(3).

cl 65 Reduction in amount charged: non-UK resident policy holder

51. **(4)** We note the use of the word 'to' in the bracketed 'exceptions to this section', as compared to 'from' in s 528(4) ITTOIA

cl 67 Recovery of tax from trustees

52. **(5)** Should the origin of this clause be ICTA s 551A(3) rather than ICTA s 551(3)?

Annex 1

53. "Change 21" (references to "officer of Revenue and Customs") should be headed "Change 11".

Appendix B

Overview Chapter 1: Sales of foreign dividend coupons

54. In Overview Explanatory Notes paragraph 1, in the fourth line, the reference should be to Chapter 13 of Part 4 (rather than 3) of ITTOIA.

Appendix C

Overview Chapter 1: Annual payments not otherwise charged

55. In Explanatory Notes paragraph 5, in the second line of (ii), delete the first 'a'.

Appendix D

Overview Chapter 1: Beneficiaries' income from estates in administration

56. In Explanatory Notes paragraph 1, in the fourth line, the reference should be to 'Chapter 6 of Part 5 of ITTOIA'.

cl 1 Charge to tax on estate income

57. In Explanatory Notes paragraph 6, in the second line, 'Part 5 of Chapter 6 of ITTOIA' should read 'Chapter 6 of Part 5 of ITTOIA'.

cl 5 In the clause heading, and in sub-clause 5(4), "the final year" should read "the final tax year".

cl 15 Assumed income entitlement

58. Explanatory Notes paragraph 52 is drafted in terms of 'tax years', whereas it relates to accounting periods.

TJH/PCB
9.8.06

ANNEX

WHO WE ARE

The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.

The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

To find our more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at tdtf@icaew.co.uk or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

ANNEX B

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory**: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. **Certain**: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. **Simple**: the tax rules should aim to be simple, understandable and clear in their objectives.

4. **Easy to collect and to calculate**: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. **Properly targeted**: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. **Constant**: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. **Subject to proper consultation**: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. **Regularly reviewed**: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. **Fair and reasonable**: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. **Competitive**: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99; see http://www.icaew.co.uk/taxfac/index.cfm?AUB=TB2I_43160,MNXI_43160.