Tax Representation

ICAEW TAX FACULTY

TAXREP 19/08

RESIDENCE AND DOMICILE – DRAFT LEGISLATION

Representation submitted in February 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales to HM Treasury on the draft legislation published on 18 January 2008

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Chartered Accountants' Hall PO Box 433 Moorgate Place London EC2P 2BJ www.icaew.com	T +44 (0)20 7920 8646 F +44 (0)20 7920 8780 E taxfac@icaew.com

RESIDENCE AND DOMICILE – DRAFT LEGISLATION

INTRODUCTION

1. The draft legislation to be included in Finance Bill 2008 was issued on 18 January 2008 at http://www.hmrc.gov.uk/cnr/res-dom-tax-amends.htm. This representation sets out our response to that legislation. It should be read in conjunction with our previous responses to the consultation document published on 16 December 2007 (TAXREP 80/07 – see http://www.icaew.com/index.cfm?route=153402) and 18 February 2008 (TAXREP 10/08 – see http://www.icaew.com/index.cfm?route=154509).

2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex 1. The Tax Faculty's *Ten Tenets for a Better Tax System* that we use as a benchmark are summarised in Annex 2.

GENERAL CONCERNS

3. As currently drafted the legislation radically overhauls the taxation regime that has applied to foreign domiciliaries for many years. Such individuals have legitimately arranged their tax affairs in accordance with that regime. Given the legitimate expectations of taxpayers, we think it is wrong in principle to publish legislation that completely changes the tax system for a large group of taxpayers less than three months before the new rules are to come into effect. Given the many complexities, we do not think that this gives taxpayers adequate time to review their affairs and make any necessary changes. It is also contrary to assurances given at the time of the consultation that such changes would be announced with sufficient notice to enable taxpayers to undertake orderly restructuring of their affairs, should they so desire.

4. The draft legislation deals with a highly complicated subject matter and sufficient time needs to be built into the process to allow an informed policy to be developed and draft legislation to be properly reviewed.

5. Our detailed comments on the legislation are made by reference to our *Ten Tenets for a Better Tax System* (see Annex 2). The legislation as drafted fails those tests in a number of important respects but it also appears to fail the tests set out in the Government's Budget 2002 review on this area which said that any changes in this area should be fair, support the competitiveness of the UK economy and they should be clear and easy to operate.

6. As mentioned in our previous submissions and meetings, we would prefer the Government to defer the start date of these rules in their entirety until 6 April 2009 so as to give adequate time for full consultation and sufficient time for taxpayers to reorganise their affairs. However, if the start date is not to be deferred, we think that the Government should:

    - consider deferring some of the more complex measures until 6 April 2009; and
    - amend the draft legislation in the light of the comments arising from this consultation period. The revised draft legislation should be subject to the

scrutiny of a working party made up of HMRC and key external stakeholders (such as representatives from the professional bodies) before revised draft legislation is put out to public scrutiny at the time of the pre Budget Report.

7. We remain very concerned at the effect of these changes on the UK's reputation and economic competitiveness. The abrupt change to the taxation of foreign domiciliaries has created the perception that the UK no longer provides a stable tax environment for non-domiciles. A swift announcement that the legislation will be deferred could undo much of the damage caused by these changes. If this does not happen, we fear that the UK will no longer be seen by the highly skilled high net worth individuals, that the Government wants to attract and retain, as an attractive place to do business.

8. Furthermore, we are concerned that the negative impact that the changes will have on investment in the UK by UK resident non domiciliaries has not been fully appreciated by the Government. We are also concerned that unless the legislation is deferred there will be significant disposals of UK investments – properties and holdings in UK companies - before 5 April 2008. We fear that the amounts disposed of, and the short time during which the disposals will be made, will significantly distort the market.

DRAFT LEGISLATION - KEY POINT SUMMARY

9. General matters
   - the commencement provisions for many of the sections are unclear;
   - the standard of drafting of the legislation is disappointing; and
   - the technical notes were unhelpful as generally they did little more than paraphrase the legislation.

10. Residence
   - there is an urgent need for a statutory test of residence;
   - the 'transit passenger' provisions need to be improved; and
   - the changes to s 831, ITA 2007 do not address the inherent uncertainty of the 90 day averaging test.

11. Remittance basis
   - the de minimis exemption is too low;
   - we do not understand the policy purpose behind removing personal allowances from all those who claim the remittance basis and would welcome clarification;
   - removing the capital gains tax annual exempt amount means that even very small gains need to be reported, leading to disproportionately high additional compliance costs for both taxpayers and HMRC as compared to the increase in the tax raised as a result of the measure;
   - the Remittance Basis Charge of £30,000 should be reworded so that credit might be available under double taxation agreements; and
   - removing s 33 TMA 1970 is inequitable and we think that this should be retained.

12. Meaning of remittance and amount remitted
    - the provisions are too widely drafted, making them difficult, if not impossible, to police and likely to lead to inadvertent non-compliance;
    - the draft legislation would mean that assets that have been brought to the UK using foreign investment income will give rise to a tax charge on 6 April 2008 and that there could be multiple tax charges in the case of a movable asset (such as a watch) which is brought in and out of the UK a number of times;
    - the wording is imprecise and unclear and does not address important points of detail; and
    - a de minimis limit would assist.

13. Relevant foreign income charged on the remittance basis
    - the provision to prevent the practice, known as "source ceasing", of converting income to capital is too widely drafted; and
    - in cases where the source ceased some years ago it will be impossible to identify the income/capital split. We suggest that the provisions only apply to accounts closed after 6 April 2007.

14. Transfers from mixed funds
    - the provisions are not comprehensive and fail to address a number of important computational issues; and
    - comprehensive legislation would not require a 'just and reasonable' test.

15. Capital losses
    - denying relief for capital losses on the basis of domicile alone is discriminatory.

16. Non-resident companies and trusts. This legislation is highly complex and the current drafting has a number of significant flaws:
    - we have identified several situations where a double charge to taxation arises;
    - the measures are retrospective;
    - by extending the provisions of s 87 TCGA 1992 to foreign domiciled beneficiaries, without regard to remittance, the provisions penalise trusts and other structured foreign holding arrangements;
    - in keeping with the income tax transfer of assets abroad anti-avoidance legislation, a motive defence should be available to exempt the taxpayer from the capital gains tax charge where the avoidance of tax was not the purpose, or one of the purposes, behind the transactions or where commercial considerations predominate;
    - record keeping requirements imposed in respect of earlier years may be difficult to fulfil;
    - tax credit relief may be unavailable due to timing differences and the mismatch of chargeable persons;
    - the anomalous effect of the provisions on the taxation of offshore income gains; and
    - the disclosure of information provisions are unnecessary and intrusive.

GENERAL COMMENTS ON THE DRAFT LEGISLATION

17. We appreciate that the draft legislation was described as 'work in progress' but nevertheless we were disappointed with the standard of drafting and that the accompanying technical notes were of little assistance. This is not intended as a reflection on the quality of the personnel involved in the drafting but rather we suspect reflects the complexities of the issues that need to be addressed and the short timetable imposed.

18. We have read the letter from Dave Hartnett dated 12 February 2008, Acting Chairman of HMRC, which sets out the Government's intentions on certain aspects of the draft legislation. In particular we welcome the fact that bringing monies into the UK to pay the £30,000 charge will not now be taxable and that it will continue to be possible to bring art works into the UK for public display without incurring a tax charge. We also welcome the ongoing discussions with the US tax authorities to enable the £30,000 charge to be creditable against US tax.

19. We continue to have serious concerns about other aspects of the legislation which have not been addressed in the letter. As an example we note that the letter indicates that there will be no retrospection in the treatment of trusts, although the letter is unclear as to the amendments to the legislation which will be put through to give effect to this intention. However, there remains retrospective taxation of income brought to the UK.

20. Given the major changes we would ask that a new transitional provision is enacted for foreign domiciliaries, who would otherwise be out of time to make a main residence election, giving them two years from the date the legislation comes into effect to make an election.

21. We have not yet seen, or received details, of the changes to the draft legislation which will be required to give effect to the matters noted in the letter. Our detailed response is thus on the legislation as originally drafted.

DETAILED COMMENTS ON THE DRAFT LEGISLATION

We set out our comments in detail using the statutory references.

Section 1. Periods of residence: days of arrival and departure etc

22. We have previously expressed our view in writing, and in meetings with officials, that there should now be a clear statutory test of residence that is used for all purposes. We do not consider it helpful to amend s 831 ITA 2007 in isolation. This does nothing to change the current practice, or the inherent uncertainties, in the '90 day test'. We understand that IR20 is being updated and will be substantially rewritten in the near future. However it is, in our view, no longer acceptable for such a fundamental concept as residence to be governed by interpretation and case law only.

23. We understand that it is considered difficult to draft a comprehensive residence test but we do not see why this should be so. Most other countries have a statutory residence test and there are a number of possible models to choose

from. We would be happy to be involved in the drafting of such a test and would ask for a commitment to enact a statutory residence test in FA 2009. We would recommend initially that Government looks to model a new residence rule on the Irish residence rules.

24. The detail of proposed amendment s 832(1B) is inadequate. It simply permits an allowance for passengers remaining airside, but in many cases transit passengers need to change terminals or airports or may need to fly in late one evening for an early flight the next day. Anecdotal evidence suggests that many people so affected would seek alternative transport hubs outside the UK. The Transport Minister reported to the House of Commons in 2005 that 23 million people transferred and transited through Heathrow in 2004.

25. We would suggest that the test used by the United States could be a useful working model. The US does not count a day of less than 24 hours spent in the US while in transit between two foreign locations, unless engaged in a business meeting while in the US, as a day of residence. This seems to us to be a useful definition. We are unclear whether the existing concession for ignoring days spent in the UK, as a result of exceptional circumstances outside the individual's control, will continue. We do not believe, however, that an individual should have to rely on a concession when determining a matter as fundamentally important as residence. We request that legislation is included in the 2008 Finance Bill to give effect to the exceptional circumstances concession.

26. We also note that the legislation and existing practice takes no account of the fact that the majority of persons resident in the UK on the basis of the 90 day test will almost always be resident in another jurisdiction. The tie breaker clause in the relevant treaty will often override the UK's claim. As such we are unclear as to the purpose of these proposals. If it is simply to identify those with a close connection to the UK who have not ceased being resident we do not believe it achieves this aim for the reasons stated.

27. These uncertainties emphasise why it is now necessary to have a statutory test of residence and not simply rely on persons being 'untaxed by concession'. We trust this will be given a high priority.

Chapter A1 Remittance Basis

Section 809C

28. We do not consider that £1,000 is an adequate level at which to set the de minimis. In our TAXREP 10/08 we suggested that a more appropriate level would be to align the exemption with the annual personal allowances for income tax. Our concern is that there will be a large number of additional tax returns required, putting a significant administrative burden on HMRC for relatively little tax take. In many cases the income will be covered under a double tax treaty but that will not obviate the need for a tax return to be filed and the relief claimed. We are also concerned that as the figure applies to income and gains it is practically very difficult for anyone with overseas assets to ensure this figure is not breached in a year.

29. As the majority of the people affected are likely to be in employment we have real concerns that the PAYE system will not be able to cope in a timely manner with the withdrawal of personal allowances. Furthermore the resulting underpayments of tax will be small for the Exchequer but could be significant for the individual.

The costs of collection are likely to be out of proportion with the revenue raised. There will also be the costs of identifying and assisting the taxpayers involved. We understand that 1.375 million National Insurance numbers were issued to overseas nationals entering the UK in the two years ended 2007. Each of these individuals would need to consider their position under the new rules. We think that it is likely there will be substantial non-compliance, or incorrect compliance, and that this will undermine the culture of good tax compliance that lies at the heart of the UK tax system.

30. Sub-section (3) needs to have signposts to the definitions of the various terms used in this section.

Section 809E

31. We do not see why the allowances should be removed from UK income since they are in great part an administrative measure to ease the compliance burden for both the taxpayer and HMRC. We also consider that it is wrong as a matter of principle. Personal allowances were originally given to provide a minimum threshold before tax liability arises. It recognises the fact that a certain level of income is needed to provide for basic needs.

32. We echo the comments made above about the difficulties of operating the PAYE system successfully.

33. We also have a concern that for many individuals on tax equalisation packages, even at modest levels, the cost to the employer of a short term posting to the UK will increase. As a result, the attractiveness of the UK as a centre of international business will be reduced.

34. The reporting requirements for capital gains tax are currently linked to the level of the annual exempt amount (AEA). If the AEA is reduced to zero, as proposed, there will be, again, a disproportionate increase in the administrative burden for both the taxpayer and HMRC. As a simple example, the present law regarding foreign currency could present very difficult computations where regular sums are brought to the UK from overseas. These computations exist in theory at present but the effect is minimised by the use of sensible reporting limits.

Section 809F

35. We have previously expressed concerns that the charge of £30,000 is not creditable under double tax treaties. We appreciate this is not a direct concern for the UK authorities but we would stress that this aspect of the changes is causing concern amongst the affected community. We have suggested alternative wording in TAXREP 10/08 which might help to ensure that the charge is treated as creditable by other jurisdictions.

36. In s 809F(5) we have concerns about the removal of relief under s 33 TMA 1970 which seems to us to be inequitable. We would be grateful for an explanation of the policy purpose of this proposal.

Section 809H

37. We have major concerns about this provision as drafted. We understand that the policy and intention behind the legislation was to catch situations where there is a UK benefit to the donor. However, the provision in the draft legislation goes much further than this as it catches any UK benefit to the connected person. The draft legislation is so widely drafted as to be impossible both for taxpayers to

comply with it and for HMRC to police it. For example if a sister made an offshore gift of £10,000 to her brother (who is resident outside the UK) and he came to the UK on holiday and used the funds gifted to settle his hotel bill, this could in theory constitute a taxable remittance by his sister (who is UK resident but not UK domiciled).

38. Our view is that clause 57 of the draft legislation makes it clear that the definition of relevant person only includes connected persons where the gift is of income and/or gains arising after 6 April 2008. That is, neither the gift nor the remittance has to be effected before 6 April 2008 but it has to be demonstrable that the gift is out of income or gains arising before that date. There does, however, seem to be confusion over the precise interpretation of this provision and we recommend that HMRC publicly confirms the interpretation set out above.

39. We do not consider it reasonable that individuals who have made absolute gifts overseas to others out of income or gains arising after 5 April 2008 can be expected to know if, and when, the money or the asset has come to the UK. We suggest that a more tightly targeted provision, which would satisfy the Government's policy intention, might be that the asset or funds are brought to the UK for the benefit of the original donor. We also feel that a de minimis limit would be helpful.

40. In 2(b) again we consider the wording to be imprecise. May we suggest that services might be defined along the lines of the VAT rules?

41. We are particularly concerned that the implications for foreign borrowings may be affected. The present practice is that foreign income used to pay foreign interest does not constitute a remittance. We should be grateful to receive confirmation that this is not changing. We understand that HMRC is not clear on this point. We can only emphasise again that it is crucial, in our view, that legislation is unambiguous and clear. We also consider that if it is intended that service costs of borrowings be treated as remittances, that there should be a transitional relief for existing arrangements. The need to unwind existing financial arrangements, which have been incurred to finance investment in the UK, may otherwise have serious economic consequences.

42. In (4) a relevant person is defined as the individual or a person connected with him. Should this read 'natural person'? We are concerned that as the draft legislation currently stands a taxpayer will be taxed under these provisions on the amount invested in the UK by an offshore company with which he or she is connected. We feel sure that discouraging investment in the UK was not the policy intention but this is what the draft legislation will do if enacted unchanged. As we have stated we consider that there should be some benefit to the donor if the provision is to be triggered. The provisions ought to be targeted to that effect and there should be an exemption for gifts to charitable trusts.

43. In (5) we are surprised at the width of the legislation and we wonder if there should be a definition in accordance with the DWP or tax credits equivalent. For the purposes of compliance, we wonder how HMRC are intending to identify such cases? Will there be an additional question on the tax return form?

44. We find the wording of subsection (6) unclear and would welcome clarification. Is this merely repeating s 809H 3(B)?

Section 809I

45. Please clarify the proposed commencement date for this provision. We are concerned that the definition of what constitutes a remittance is drafted too widely. In principle we do not think that legislation should be drafted so widely in scope that it then needs to be cut down by guidance published by HMRC.

46. In particular, we are concerned that there is no de minimis limit for personal property. Without a reasonable de minimis we do not see how this measure will be policed or enforced with any kind of consistency. As drafted the legislation appears to catch trivial amounts of property brought back from an overseas stay, an oft-quoted example being a half open bottle of shampoo. Such a situation is clearly de minimis and in any event impractical to police. The definition needs to be amended to take de minimis situations out of charge. We propose that a minimum de minimis should be the Customs Duties thresholds but realistically, we think the de minimis should be at a higher monetary level, say, £1,000.

Section 809J

47. The inclusion of legislation as opposed to informal practice is what we have been seeking throughout and we welcome the provisions in this respect. However, the drafting of the legislation needs to be improved.

48. In (3) there are some points that need to be further clarified. In particular does the use of the word 'transfer' include any transfer from the account or is it simply concerned with transfers to the UK? In addition we assume, but we should be grateful for clarification, that withdrawals from the account are taken on a chronological basis regardless of where they are made. The legislation is unclear as to how re-credits to an account are to be treated. We assume that any tax charge can only occur once.

49. In (4) we suggest that it is equitable, since they attract UK tax on the arising basis, if all sources of UK income and gains are included after employment income. We also think that matching should be to foreign income and gains with foreign tax credits attached before matching to untaxed foreign income and gains.

50. Sub-paragraph (4)(e) could suggest that only current year's income could ever be remitted. We believe that this is clearly not the intention from the wording of Step 5 of sub-paragraph (3), but there is a tension between the wording of the provisions which requires further consideration and clarification.

51. In (5) we should be grateful for clarification of the phrase 'derives from'.

Section 809K

52. We are confused as to the need for a 'just and reasonable' test since s 809H purports to be comprehensive. In particular we should be most concerned if it is implied that transfers or expenditure abroad were to be dealt with under such an arbitrary test rather than being strictly matched in accordance with s 809J. We think that the rules should be such that it is not necessary to include a provision for a 'just and reasonable' test.

53. Does (3) refer only to UK debts? Or is it borrowings where the proceeds have been brought to the UK?

Section 809L

54. Our concerns on this section are again the uncertainty of a start date and the possible retroactivity of the provision. We understand that the intention of the legislation is that disposals that transferred assets at a gain prior to 6 April 2008 are excluded. The legislation is not clear, however, and we would welcome confirmation of this and an amendment to make the legislation clearer.

55. To aid clarity, in s 809L(2), after the words 'treat the asset' add 'referred to in subsection(1) above'.

Paragraph 32

56. We are concerned that the new s 832 does not work properly in conjunction with the revisions to s 87 TCGA 1992. The capital payment regime will apply to non-domiciled individuals who may also claim the remittance basis. If a payment of income is made from a non-resident trust then this will fall to be taxed as income subject to the remittance rules. It is not clear, however, that such a receipt is not a capital payment within s 97(1)(a) TCGA 1992 since it is only chargeable to income tax when remitted. It should be made clear that such a payment of income is not a capital payment or else double taxation would arise.

57. In addition the new s 832 should contain the equivalent provisions to s 832(3) & (4) to make it clear that deductions are allowed in computing the income of overseas rental businesses.

Paragraph 36

58. The withdrawal of the annual exempt amount and the consequential changes to reporting requirements will cause a significant and disproportionate compliance burden for HMRC and taxpayers alike. We have commented in detail on this matter previously.

Paragraph 40

59. We believe that to deny loss relief for foreign losses on the grounds of domicile alone is discriminatory and in breach of EU law. We understand that HMRC is advised otherwise but we maintain this is not by any means beyond doubt. We are aware of Government's policy concerns on this issue but believe that it is possible to draft legislation to meet these concerns which is not inequitable and in danger of breaching of EU law. We suggest that the relief for foreign losses is ring-fenced so as to be available only in a year in which the individual is taxed on an arising basis and/or only available against foreign gains remitted to the UK. We are aware that others have offered to assist in the drafting of an appropriate measure and that HMRC has undertaken to look at all proposals submitted and we look forward to reviewing this matter further in due course.

Paragraphs 53 to 58

60. We find the presentation of the commencement provisions to be confusing and unhelpful. We are particularly concerned to ensure that there is no retrospection but we fear this is not the case. Please will HMRC reconsider this section of the proposals to put matters beyond any doubt and to ensure that transactions previously undertaken within the law are not re-categorised and subject to future taxation.

Paragraphs 59 and 60

61. We also bring to your attention the anomalous effect of the provisions in relation to the taxation of offshore income gains (OIGs) arising in an offshore trust. As

the legislation is currently drafted, a UK resident non-domiciled settlor will be taxable on OIGs on an arising basis, with no possibility of claiming the remittance basis and regardless of whether any capital payment has been made. This is despite the fact that the remittance basis is available to such a settlor in respect of relevant foreign income and foreign chargeable gains arising to the trustees. We understand that it is accepted that the draft provisions are flawed in this respect and that it is not intended that there should be an arising basis of tax (where the settlor claims the remittance basis). We believe that HMRC is amending the legislation in this area and look forward to reviewing this matter further in due course.

Paragraph 63

62. The extension of s 13 TCGA 1992 to non domiciliaries is flawed since it is an absolute test and gives no motive defence. The existence of offshore corporate structures investing in the UK is a major contributor to the UK economy. This is a disincentive to investment in the UK and we would urge that the measure is amended.

63. In terms of the measure as drafted we are concerned that there may be a double charge to taxation where, for example, a transaction takes place at the end of a fiscal year and there is no possibility of gaining the tax credit which is limited to a current year. We also believe that subsection (5) is discriminatory.

Paragraph 68 et seq

64. We understand that these provisions are to be subject to extensive revisions and that grandfathering provisions may be inserted such that:

- payments made before 6 April 2008 will not be taken into account; and
- gains realised or accrued before 6 April 2008 will be excluded from attribution.

Furthermore, we understand that HMRC will consider the application of the remittance basis to gains attributable under both sections 86 & 87 TCGA 1992.

65. We welcome these developments but maintain that the complexity of the drafting required to achieve this and to remove the anomalies in the present draft legislation demonstrate the need for proper consultation, which can be achieved only by deferring the introduction of these provisions. We await details before commenting further.

66. As originally drafted, the provisions seek to include all gains and capital payments (in most cases with effect from 1998 onwards) where the coincidence of payment and gain arises after 6 April 2008. We consider this to be onerous and retrospective. We trust that the measure is amended so that capital payments made before 6 April 2008 are disregarded and that the s 87 TCGA 1992 pool commences only when there is a UK resident beneficiary. It is not uncommon that a trust is created outside the UK at a time when no-one connected with it has any links with the UK whatsoever. It seems incongruous that merely because a beneficiary becomes UK resident some years later the gains of the trust can come into the UK tax net regardless of any foreign taxes suffered previously. Furthermore, the measures taken as a whole make it more disadvantageous to own assets via a trust than personally and we do not believe the tax system should discriminate in this way.

67. We suggest that the provisions in paragraph 88 of the draft legislation could be adapted for the purpose of amending these provisions.

68. We would point out that in the past trustees will not necessarily have been operating under English law or have had to give any regard to UK record keeping requirements. It will in some cases be simply impossible to ascertain the 'correct' position.

69. We appreciate that this is a difficult area and we are anxious that such far-reaching legislation should not be drafted in a rushed and hurried manner. This will lead to unfairness and potentially unworkable legislation. We urge that these measures are deferred until properly thought out legislation can be drafted.

70. The legislation as proposed is a further major disincentive to invest in the United Kingdom.

71. In terms of the detailed provisions paragraph 69 of the draft legislation purports to dis-apply the supplementary charge but we are unconvinced that this is effective.

72. The increase in the s 87 TCGA 1992 pool to reflect 'unremitted s 86 gains' is unworkable in practice since neither the trustees nor the beneficiaries can necessarily know whether the settlor has subsequently remitted the gains to the UK. There appears to be a potential double charge since it is possible for gains to be taxed under both s 86 and s 87 TCGA 1992 with no credit mechanism. In addition there may be no credit available for any foreign tax paid due to timing differences or the identity of the taxable person. We understand that double charging is not a policy intention and would suggest that an overriding provision be inserted into the legislation to prevent double charging and to set down an order or priority where double charging could potentially occur.

73. We request confirmation that the right of recovery in paragraph 6 of Schedule 5 TCGA 1992 does not itself constitute a remittance.

74. We are also surprised that the legislation appears to discourage offshore trustees from using UK advisers, which cannot possibly assist with UK tax compliance. Again we understand that this was not Government policy and that it has come about as a result of the draft legislation being wider in scope that was the original intention. We would request that the legislation be amended.

75. The disclosure requirements in paragraph 77 of the draft legislation seems designed to act only as a deterrent. The information sought does not seem to us to be of any relevance and is merely a further administrative burden. It is our belief that HMRC should only have the power to request information that is directly relevant to determining an individual's UK tax liability. The measure may undermine the competitiveness of the UK without achieving any positive results.

PC/FH
27.2.08

ANNEX 1

THE ICAEW AND THE TAX FACULTY: WHO WE ARE

1. 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.

2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Enterprise and Regulatory Reform through the Financial Reporting Council. 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.

3. 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.

4. 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.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

ANNEX 2

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.com/index.cfm?route=128518).