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Important changes to the filing of employer End of Year returns

The Government believes that encouraging employers to make greater use of new technology is the best way to help them deal with their payroll tasks.

As part of the measures to support this change all employers will be required to file their End of Year returns electronically (e-) by 2010, either directly or through an intermediary, such as a payroll bureau or agent.

All employers with 250 or more employees will be required to e-file End of Year forms by May 2005.

Detail

The compulsory electronic filing date will depend on the number of employees an employer has:

Number of Employees	First compulsory electronic Return	Deadline
250 or more	2004/05 End of Year	May 2005
Between 50 and 249	2005/06 End of Year	May 2006
Fewer than 50	2009/10 End of Year	May 2010

The primary legislation for compulsory electronic filing is in sections 135 and 136 FA 2002. The draft regulations are expected to be published on the Inland Revenue website in March 2003. Copies may also be obtained from Press Office.

What is e-filing?

E-filing means employers will have to send their End of Year returns (both forms P35 and P14 together) by:

- Internet service for PAYE *or*
- Electronic Data Interchange (EDI) service *or*
- using an intermediary, such as a payroll bureau or agent, who will submit End of Year returns on the employers behalf using one of the above.

Tax Bulletin is also available on the Inland Revenue Website at www.inlandrevenue.gov.uk/bulletins

PLEASE NOTE: Magnetic media (CD ROM, flexible disk, data cartridge and open reel tape) are not considered electronic.

Penalties

There will be a new penalty of up to £3000 per annum per PAYE scheme for the employer’s failure to make an electronic End of Year return when they should have done so. This is in addition to the existing late filing penalty.

Financial Incentives

There will be financial incentives for employers with fewer than 50 employees to encourage them to make the transition from paper to e-filing earlier. All qualifying employers who successfully e-file for these years will receive the payment shown in the table, including those who are already e-filing.

End of Year Return	2004-05	2005-06	2006-07	2007-08	2008-09
Incentive £	250	250	150	100	75

What now

- Most agents are employers, so will have to prepare to meet their own obligation to e-file as well as considering how they will help their employer clients with e-filing.
- Agents can also help their clients by letting them know that this change is coming.
- Agents should establish that they will meet the electronic submission requirements (as shown on previous page).
- Agents who want to e-file and are already using payroll software should contact their software provider to ascertain which of the 2 services it will support and from what date, and the range of electronic forms and returns it will support (eg forms P14, P35, P6, P9 etc).
- Agents who do not already have payroll software should start considering their options now. If they use an IT payroll product they should find it will help and enable them to deal more easily with their payroll obligations. When employers, intermediaries or agents decide to file electronically they need to consider:
 - which service to use; and
 - what software or hardware they need to buy. Employers and agents will need to make sure that the payroll software that they choose include an electronic submission capability.

Details of software which is formally accredited by IR can be found at: <http://www.inlandrevenue.gov.uk/ebu/acclist.htm>
 The IR accreditation process checks that the payroll software accurately calculates tax, NICs, student loan deductions etc and also ensures that it incorporates one of the two electronic transmission service requirements.

Details of software which is EDI certificated can be found at: http://www.inlandrevenue.gov.uk/ebu/eb4_paye_edi.pdf

Details of software which has been IR checked as meeting the requirements of Internet transmissions can be found at: http://www.inlandrevenue.gov.uk/efiling/payee/payee_software_forms.htm.

Agents and Employers can find more information about EDI, the Internet service for PAYE and all the other services available on the Inland Revenue Website at: http://www.inlandrevenue.gov.uk/ebu/emp_index.htm

Additional information about the compulsory filing of employers End of Year returns, including financial incentives available, can be found on the Inland Revenue website at <http://www.inlandrevenue.gov.uk/employers/ppip/index.htm>

Employees Coming From Abroad To Work In The United Kingdom

Emoluments In Respect Of Duties Performed In The United Kingdom – Case II Schedule E

Employees who are not resident, or not ordinarily resident, in the UK are chargeable to income tax under Case II of Schedule E on emoluments in respect of duties performed in the UK (Section 19(1) 1 ICTA 1988). Where all of the duties are performed in this country the calculation is straightforward. Where duties are performed partly in the UK and partly overseas an apportionment is required to determine how much of the emoluments are in respect of UK duties. The balance will be attributable to duties performed overseas. For UK resident employees, who are not ordinarily resident, emoluments for overseas duties will be chargeable to tax under Case 111 Schedule E to the extent that they are received in the UK. Employees who are not resident in the UK are not chargeable to tax under Schedule E on their emoluments for overseas duties.

Whether emoluments are in respect of UK duties is essentially a question of fact. In *Taylor v. Provan* 49 TC 579, the courts agreed that the touchstone must be the wording of the statute. In that case, travel expenses paid to a director to come to the UK in order to perform duties here were considered to be emoluments “in respect of duties performed

in the UK.” In *Perro v Mansworth SpC 286*, a Special Commissioner found that the payment by an employer of an employee’s liability to tax under Case II Schedule E was itself “an emolument in respect of duties performed in the UK.”

Where an attribution is required, Statement of Practice 5/84 (SP5/84) approves time apportionment according to the number of days worked abroad and in the UK except where this would clearly be inappropriate. The *Perro* case is an example of where time apportionment is not appropriate. The starting point for the SP5/84 approach to time apportionment is that the employee’s contractual right to emoluments for the work performed usually accrues from day to day. Authority for this view comes from *Varnam v. Deeble 58 TC 501*, although that case was not directly concerned with attributing emoluments to Case II Schedule E. In *Platten v. Brown 59 TC 408*, it was held that correct attribution on a time apportionment basis should employ units of days rather than hours.

The courts have consistently taken the view that time apportionment should not be applied to emoluments that can be specifically allocated either to duties performed in the UK or to duties performed elsewhere. So time apportionment would be inappropriate in a case where the contract of employment specifically allocated emoluments to periods spent working in the UK or overseas. Provisions in a contract of employment that regulate the amount of time to be devoted to the employment, dealing with matters such as the number of days to be worked, the length of holidays or how to calculate compensation do not amount to an allocation of particular parts of remuneration to particular days of work.

We have been asked to give examples of how the time apportionment approach envisaged by SP5/84 applies in practice. Self-Assessment Helpsheet IR211 approaches apportionment by calculating the emoluments from the employment that are not taxable in the UK. The total emoluments are multiplied by a fraction where the numerator is the number of days worked outside the UK and the denominator is the number of days worked in pursuit of the employment during the tax year. Where there is no income assessable under Case III Schedule E, the resultant figure will be entered at Box 1.31 on the employment page as foreign earnings not taxable in the UK. Although the amount that is not taxable is sometimes referred to as ‘overseas workday relief’, it is not a statutory relief from tax subject to the claims machinery in Section 42 TMA 1970.

Note 4 to IR211 clarifies what we mean by days worked overseas. They are defined as those days that have been spent outside the UK substantially performing the duties of the employment. ‘Substantially’ should be taken as meaning ‘for the most part’.

In *Platten v. Brown* there is the example of an employee who spends a whole day working in the UK but then leaves the country that evening on an overseas business trip. It would be difficult to say as a matter of contract that the employee’s emoluments for that day were not attributable on a time apportionment basis to duties performed in the UK. It follows that the emoluments for a day spent working overseas before returning to the UK in the evening will be attributable to duties performed overseas.

There are two questions of fact to be addressed in order to attribute the emoluments for a particular day. These are

- whether the day has been spent substantially performing the duties of the employment and
- where those duties have been performed.

Employees should retain evidence such as travel documents and business diaries to demonstrate how they have calculated the emoluments from overseas workdays. The following comprehensive example illustrates some practical issues.

Example

Monica is resident but not ordinarily resident in the UK. Her salary of £100,000 is paid directly into an offshore bank account. Her contract of employment provides for a five-day 40-hour working week with 22 days holiday plus public holidays - a total of 230 workdays.

During 2001/2002, her employer sent her to work at its branch in India for the whole of October and November, a period of 45 weekdays. She also attended the branch office in India on the first Saturday and Sunday in October and spent three other Saturdays working on her employer’s Indian premises. She received a special bonus of £15,000 awarded solely in recognition of her work in India.

In addition, she attended her employer’s Munich office on five separate occasions during the year. On four of these occasions, she left the UK after work and stayed overnight before returning to the UK on the following evening. On the final occasion, she left the UK on a Friday evening and spent the weekend in Munich. She spent three hours of the Sunday reading papers relevant to a meeting on the following day. She returned to the UK on Monday evening.

Monica was substantially performing the duties of her employment on the 5 non-weekdays spent working in India, giving a total 50 workdays in India. The Sunday in Munich was not an overseas workday so her duties in Germany encompassed 5 workdays. The special bonus was on the facts solely attributable to the performance of duties in India.

Time apportionment produces the following result -

UK duties - Salary $100,000 * 180/235 = 76,595$ (Case II Schedule E)

Overseas duties - Salary $100,000 * 55/235 = 23,405$ plus $15,000 = 38,405$

Example - variation A

Following her return to the UK, Monica's employer gave her time off in lieu of the weekends spent working in India. The denominator in the fraction would become 230 and not 235.

UK duties - Salary $100,000 * 175/230 = 76,086$ (Case II Schedule E)

Overseas duties - Salary $100,000 * 55/230 = 23,914$ plus $15,000 = 38,914$

Example - variation B

Facts are as variation A plus Monica spent the whole of Sunday 30 September travelling to India and was granted a further day off in lieu when she returned to the UK. That day should also be counted as an overseas workday increasing the numerator by 1 to 56.

UK duties - Salary $100,000 * 174/230 = 75,652$ (Case II Schedule E)

Overseas duties - Salary $100,000 * 56/230 = 24,348$ plus $15,000 = 39,348$

PAYE - Coding Allowances And Section 203D ICTA 1988

Employees who are not resident or not ordinarily resident in the UK and who work in the UK and overseas may only be chargeable to UK tax under Schedule E on their emoluments in respect of duties performed in the UK. However, Section 203D(8) ICTA 1988 requires employers to deduct tax under PAYE from all payments of income to such employees unless an employer's Inland Revenue office has given a direction under Section 203D(2) ICTA 1988 authorising the employer to deduct tax from a proportion of each payment.

An application for a direction under Section 203D(2) must come from the employer or a person designated by the employer. The direction may cover more than one employee and any number of years, provided these details are specified in the direction. General guidance can be found at paragraph 121 of the Employer's Further Guide to PAYE (CWG2 - 2002) and more detailed guidance at paragraph 8095 of the Inland Revenue's Employment Procedures manual.

We are aware that a number of employees have asked their tax offices to treat the emoluments that they consider will not ultimately be assessable to UK tax under Schedule E as an

'expense' included in their tax code. Practitioners acting on behalf of such employees have made similar requests. Where a tax office has agreed to one of these requests, the result has been the issue of an unusually high code. For example, a resident but not ordinarily resident employee performing 50% of their duties in the UK with an annual salary of £70,000 might request a notice of coding of 3500. This would have the effect of excluding £35,000 from the operation of PAYE.

There is no legal basis for coding out non-assessable emoluments in this manner. The correct procedure is for the employer or a person designated by the employer to apply for a direction under Section 203D(2). We have reminded our offices that they must not agree to restrict the operation of PAYE by issuing a code that does not reflect expenses or other reliefs that the employee is entitled to. We have also asked our offices to withdraw coding allowances of this nature as they come across them.

Practitioners with similar cases may like to consider exploring how best to achieve a change to the correct procedures by liaising with tax offices and employers as appropriate.

PAYE - Relaxation For Short Term Business Visitors

The employer's Further Guide to PAYE and NICs (CWG2) states that it may be possible to relax strict PAYE requirements where an employee is likely to qualify for protection from UK income tax under the Dependent Personal Services or Employment Income article of a Double Taxation Agreement (DTA). Further guidance is given at paragraph 8127 of the Employment Procedures (EP) Manual. Employers can agree with their PAYE office the detailed arrangements for relaxing PAYE in these cases using the criteria at EP Appendix 4, which should be read in conjunction with EP8128.

An Appendix 4 arrangement requires an employer to keep as accurate as possible a record of employees visiting the UK on business. The current minimum requirement for a suitable reporting system is that –

- staff of all grades will report periodically days spent in the UK on business to the central point controlling the arrangements, and
- staff should not spend more than **14 days intermittently** in the UK in any 12 month period without reporting to that central point.

Employers and their representatives have told us that these requirements can be extremely difficult to satisfy in practice. We have been asked in particular to consider increasing the 14 days limit. We recognise that the current limit has created difficulties and we are increasing the limit to 30 days with

effect from 14 February 2003. In future, to take advantage of these arrangements, the employer's internal reporting system should have the following minimum requirements -

- staff of all grades will report periodically days spent in the UK on business to the central point controlling this arrangement, and
- staff should not spend more than **30 days in aggregate** in the UK in any 12 month period without reporting to that central point.

The relaxation to 30 days is compatible with the powers in Section 24 FA 1974 that in specified circumstances require a return of employees working in the UK for a continuous period of 30 days or more. A higher limit (eg 60 days) would make it increasingly difficult for employers to ensure they can recognise those cases where liability is possible, for example where a business visitor is working in the UK for more than 60 days spanning 2 tax years.

We have taken the opportunity to rewrite Appendix 4 to clarify certain other aspects. In particular, that the arrangements can apply to employees coming to work in the UK for the **UK branch** of an overseas company provided that they satisfy the other conditions. Also, that the arrangements will not apply where the expense of the remuneration is passed on to another UK company or branch and not recharged overseas. The revised text of Appendix 4 is to be published on 14 February 2003 and can be found in the employers' area of the Inland Revenue's Internet site.

From 14 February 2003, we have asked our officers to use the new limit of 30 days when checking whether an employer's reporting system satisfies the requirements of an existing Appendix 4 arrangement.

UK Resident And Ordinarily Resident Employees Working Overseas

PAYE - Net Of Tax Credit Relief

The Employer's Further Guide to PAYE and NICs (CWG2) advises employers to contact their tax office if they have to deduct foreign tax, as well as tax through PAYE, from the earnings of employees sent to work abroad. Where they do so, we consider the position as set out in paragraph 8198 of the Employment Procedures (EP) manual, and may authorise the employer to operate the arrangement set out in EP Appendix 5. Broadly, an Appendix 5 arrangement gives credit for foreign tax by reducing the amount of UK PAYE deducted from salary by the amount of foreign tax due on the gross salary before the employer pays the PAYE deducted to the Accounts Office.

We have rewritten the procedures at Appendix 5 of the Employment Procedures (EP) manual. The revised text can be found in the employers' area of the Inland Revenue's Internet site. Whilst the substance of the arrangement has not changed, the revised Appendix 5 clarifies that the arrangement is only to apply where an employer is required to deduct foreign tax from payments it makes to its employees **in addition** to UK PAYE. The arrangement aims to give provisional relief for double taxation to employees who must pay both UK and foreign tax from the same payments of earnings. Where an employee is obliged to pay foreign tax direct to an overseas tax authority on payments taxed through PAYE, relief for double taxation can be given through the PAYE code (see EP8204).

In many overseas contract situations, where an employee is abroad for less than 6 months, no foreign tax is ultimately found to be due usually because the employees are protected under the terms of a Double Taxation Agreement (DTA). However, the revised Appendix 5 makes it clear that it cannot be assumed that DTA protection is available simply because an employee has worked in an overseas country for less than 183 days. In particular, the 183 day protection may not be available where the employee works for a resident of the overseas country who functions as their employer or their contractual employer has an identifiable permanent establishment in the overseas country.

Where DTA protection is not available or no DTA exists, foreign tax may be due on the employee's earnings from day one. The overseas country may also impose withholding at source obligations on the employer so that the employer is faced with continuing UK PAYE/NIC responsibilities as well as those arising in the other country. It is in these specific circumstances or where the 183 day period is exceeded but the taxpayer remains UK resident, that Appendix 5 sanctions the relaxation of some PAYE requirements.

interpretation

Payments In Lieu Of Notice ('PILONs')

The Revenue's view on the tax treatment of PILONs was published in the August 1996 edition of Tax Bulletin (TB24B). Since that time the area has not stood still and the purpose of this article is to provide an update on subsequent developments. The current Revenue guidance on the IR website (www.inlandrevenue.gov.uk) is regularly updated and already reflects what follows.

Reserved rights and discretion

The 1996 article explained that *"Some contractual arrangements give the employer a reserved right, or discretion - as opposed to imposing an obligation - to make a PILON where due notice is not given on termination of*

employment. Where an employer exercises such a reserved right or discretion, we regard the contract as being terminated in accordance with its terms under the agreed contractual arrangements for the provision of services generally." The consequence is that the PILON is regarded as:

- an emolument from the employment chargeable under s19 ICTA 1988 and
- earnings derived from an employment under section 3(1)(a) Social Security Contributions & Benefits Act 1992, and so liable for Class 1 NICs.

This view was subsequently confirmed for tax purposes by the Court of Appeal in July 1999 in *EMI Group Electronics v Coldicott* (71 TC 455). In that case it was common ground that the employer had exercised a reserved right to make a PILON on redundancy.

There have been subsequent developments outside tax law concerning the options available to an employer when considering whether to exercise such discretion.

In January 2001 the employment law case *Cerberus Software Ltd v Rowley* (2001 IRLR 160) considered a contractual clause providing that the employer "may" make a PILON. The Court of Appeal held that the word "may" meant that the employer was free to give neither notice nor a PILON but instead to breach the contract and pay damages for that breach. That conclusion clearly applies wherever the contractual clause is not prescriptive in requiring a payment where notice is not given.

Such action was financially beneficial to the employer in *Cerberus* because the sum payable as compensation for breach of contract, initially calculated by reference to lost remuneration in the notice period, could be reduced or 'mitigated' to take account of the fact that the ex-employee had found alternative employment during what would have been the notice period. This reduced the loss caused by the employer's action and so lessened the sum due as damages. By contrast, if the employer had exercised the right to pay a PILON instead of giving notice (and so terminated the contract lawfully), the payment would need to have been equal to the gross salary that would have been payable during the notice period.

The relevance of the case for tax purposes is that compensation for breach of contract is not an emolument within s19 ICTA 1988 but falls within s148 ICTA 1988 as a payment in connection with termination of employment. As such:

- it qualifies for the £30,000 exemption from tax available for all such payments (subject to aggregation with other payments and benefits within the Section); and

- as a compensation payment, it is not "earnings" for NICs purposes. So no Class 1 NICs liability arises on it.

It is therefore crucial to establish and examine the facts in such cases in order to decide whether the discretion has been exercised. The following are only guidelines indicating the type of factor that may be relevant:

- although each case will depend on its own facts, a settlement that is substantially the same in value as exercise of the discretion would have produced is likely to be viewed as made by exercise of the discretion. The June 2001 High Court decision in *Richardson v Delaney* (74 TC 167) is an example of this. In that case, it was asserted by the taxpayer that such a discretion had not been exercised. The Court agreed with the Revenue's contention that, in the absence of any identifiable breach of contract, the source of the payment lay in the employer's discretion to make a payment for the remaining notice period. The *Richardson* case also demonstrates that a payment made by exercise of the employer's discretion need not be made precisely in either the sum, or in the form, provided for by the contract.
- a payment resulting from a decision not to exercise discretion could be expected to have characteristics normally associated with compensation or damages for breach of contract rather than those associated with a contractual payment.
 - One such characteristic is apparent in *Cerberus*, where the payment was reduced (or "mitigated") to reflect the fact that the employee had secured alternative employment before the end of the notice period and by doing so had reduced the loss or damage caused by the employer's breach.
 - Other adjustments are common when calculating such payments, for example to reflect the difference in tax and NIC consequences between an emolument from employment (taxed and liable for Class 1 NICs) and a payment of damages (taxed only after a £30,000 exemption and not subject to NICs).
 - A damages payment will normally take into account all salary and benefits that would have been available in the notice period
- a decision by an employer not to exercise its discretion might be evidenced in writing.

All factors need to be weighed in the balance in deciding whether the discretion has been exercised. Essentially the matter is a question of fact.

Problems in deciding the correct position, and so costs for taxpayer and Revenue, are often caused by incomplete documentation of the events surrounding termination and the calculation of the payment made.

The relevance of the *Cerberus* decision to the *EMI* case

It has been argued that the *Cerberus* decision means that the *EMI* case has effectively been overruled. The basis of this view is that *Cerberus* means that an employee has no right to sue for a payment and so it cannot be an emolument from employment.

The Revenue does not accept this analysis. Section 131 ICTA 1988, which defines an emolument for the purpose of Section 19 ICTA 1988, is not expressed in contractual terms. There are many taxable payments that are not dependent on any contractual obligation.

In *EMI* itself the employee equally had no right to sue for the PILON, but it was nevertheless held to be taxable as an emolument from employment because the employer had exercised its discretion and so ensured that the source of the payment was the employer-employee relationship, as evidenced in that case by the contractual terms.

The relevance of contractual status

In the 1996 article, it was stated that “...even where there is no such contractual arrangement, an employer may regularly make a PILON instead of giving whatever notice is due. It is then possible that an implied contractual term of service may come into being, and where it does the payment is also properly regarded as made under contractual arrangements. All the facts of an individual case, including the employee’s knowledge of an established practice, would need to be considered in deciding whether this was so.”

The Revenue now accepts that it is unlikely that an implied contractual term in relation to PILONs can exist. Contract law suggests that if something conflicts with an express or written contractual term, then it cannot be implied. Since contracts generally include a right to receive notice of termination of employment (whether directly or through the Employment Rights Act 1996) then an implied right to receive a PILON would appear to conflict with the express term that the employee is entitled to receive notice of termination.

Despite that, the Revenue maintains that a non-contractual PILON may in some circumstances fall within Section 19 ICTA 1988 and be liable for NICs. This view affects those cases where, as a response to the *EMI* decision, PILON clauses were deleted from contractual arrangements as well as other cases where no contractual provision for PILON exists. In such cases it is commonly asserted that any PILON made is in breach of contract and so liable to tax only under s148 ICTA 1988 and not liable to NICs.

What this approach overlooks is that the definition of “emoluments” in s131 ICTA 1988 is, as explained above, not expressed in contractual terms. Something can be an “emolument” even though non-contractual - for example, tips or a discretionary bonus. So removal from contractual terms is not the final test of liability, although it is accepted that such a removal means that any subsequent payment is unlikely to be contractual in nature (either express or implied).

Where a PILON is paid as an automatic response to a termination, it may be within the scope of s19 ICTA 1988 and liable for NICs. For example, every time there is a redundancy, all employees receive a payment in lieu of any period of unworked notice. In such circumstances the payment is an integral part of the employer-employee relationship for the workplace, albeit non-contractual, and has its source in that relationship and nowhere else.

The employer may well have the option in such circumstances of breaching the contract by not giving notice and paying damages, but where a sum is paid automatically the suggestion is that that route has not been chosen. Instead, the employer has followed a different route. As with discretionary contractual PILONs above, that conclusion may be shown to be incorrect where a PILON bears the characteristics or hallmarks of a payment of damages mentioned above. Again, all the relevant factors need to be considered in an individual case.

Such cases as *Corbett v Duff* (23 TC 763) and *Laidler v Perry* (42 TC 351) are examples of non-contractual payments that are emoluments from employment within s19 ICTA 1988. That all employees are not aware of the payment is not crucial in the Revenue’s view; what matters is that the payment is an automatic response in respect of any period of unworked notice.

Income Tax (Earnings and Pensions) Bill

The substance of this guidance will not be affected by any of the provisions of the Income Tax (Earnings and Pensions) Bill, currently before Parliament. That Bill is rewriting the existing Schedule E provisions without any major change in effect. The Bill will change the terminology used, but it will not alter the tax treatment of PILONs.

Avoidance via Employee Remuneration Packages:

Loans in Turkish Lira and other ‘soft’ currencies

In recent years, we have seen a variety of schemes involving the payment of remuneration to employees in non-cash form designed primarily to avoid income tax and NICs. Specific legislation to counter several types of scheme has been enacted and indeed an announcement was made in the Pre

Budget Report on 27 November 2002 that immediate legislation was to be introduced to counter the abuse of Employee Benefit Trusts.

One particular avoidance scheme has attracted considerable media attention recently. Under that scheme, instead of part of an employee's remuneration – for example, a bonus – being in cash, there is a loan to the employee in a soft currency such as the Turkish lira that is expected to depreciate substantially against sterling. The employee can expect to realise an exchange gain in sterling terms when the loan is repaid which represents his or her "bonus" while the employer makes an equivalent exchange loss.

The Revenue's view is that, for accounting periods beginning on or after 1 October 2002, the unallowable purpose provisions in Paragraph 13 Schedule 9 FA 1996 – which were extended in Finance Act 2002 to cover exchange gains and losses – will normally apply to deny relief for the exchange loss. For earlier accounting periods, we believe that the anti-avoidance provisions in Sections 135/136 FA 1993 apply to disallow the exchange loss.

The tax and NICs treatment of payments made in this way will depend upon the precise contractual arrangements between employer and employee. A detailed investigation of all the facts surrounding the payment will be required in every case to determine the precise contractual arrangements.



Share Options and Awards and Transfer Pricing **Waterloo Plc, Euston & Paddington v CIR (SpC 301)** (Waterloo)

This article sets out the Revenue's view on the application of transfer pricing principles to share option and share award schemes following a recent Special Commissioners' decision on this subject and the publication on 19 December 2002 of the draft legislation relating to the new statutory corporation tax deduction for employee acquisitions.

The new statutory deduction will be available to a company within the charge to corporation tax for accounting periods beginning on or after 1 January 2003, where an employee of that company acquires shares in that or another company whose shares meet the requirements for relief. The deduction will be equivalent to the difference between the market value of the shares at the time they are acquired and the amount payable by the recipient, or another, in respect of the shares. No other deduction will be allowed for corporation tax purposes in respect of the cost of providing the shares. The draft legislation and a technical commentary are available on the Inland Revenue website at <http://home.inrev.uk/bud2003/pbr/documents/2021217>.

One result of the draft legislation is to override the requirement in certain circumstances for taxpayers to consider whether schedule 28AA ICTA 1988 requires a transfer pricing adjustment. For accounting periods beginning on or after 1 January 2003, where employees of a UK company acquire shares in a non UK affiliate by reason of their employment **and** the UK company is able to obtain the statutory deduction the transfer pricing legislation is otiose because whatever amount is recharged in the accounts will be disallowed by the new legislation.

Where a statutory deduction is not available, for example, because the shares are not of a qualifying type or the accounting period begins before 1 January 2003 the relevant transfer pricing legislation will apply and any corporation tax deduction must be based on arms length principles. The transfer pricing legislation will continue to apply to all accounting periods, whether starting before, on or after 1 January 2003, in respect of the cost to UK companies of providing shares for employees of non-UK affiliates. This is because the statutory deduction only applies where shares are acquired by reason of employment with a UK company and the costs will not otherwise be incurred for the purposes of the UK company's business. Transfer pricing legislation will also apply to expenses incurred by a UK company in establishing, administering or borrowing for the purposes of an employee share scheme (which are not affected by the statutory deduction) where that scheme provides shares for employees of non UK affiliates.

Where transfer pricing legislation does apply to the costs of providing share options, as set out above, then the Revenue's approach will be based on its interpretation of a recent Special Commissioners decision concerning the application of the transfer pricing legislation to such share option schemes.

The case considered by the Special Commissioners involved a UK company, Waterloo, which allowed employees of non-UK subsidiaries to participate in its share schemes. The decision also clarifies a number of issues arising in the reverse situation – where UK subsidiaries are charged by non UK parent companies in respect of options granted to UK based employees. Prior to the Special Commissioners' decision, there was no generally prevailing practice as to how to establish the arm's length price of share options granted by a parent company to the employees of a subsidiary. In accordance with the principles set out in TB44D (generally prevailing practice) the Revenue regards the Special Commissioners decision as applying to earlier periods, subject to the statutory time limits for making assessments and opening enquiries, and the normal rules governing discovery.

There may, however, be a considerable period between the grant of an option and its exercise. Accordingly the Revenue

will not seek to apply the Waterloo decision in place of whatever approach has been used in the computations in respect of deductions claimed for options exercised in accounting periods ended before 1 January 1997 except in exceptional circumstances. These circumstances will be, for example, where there are open transfer pricing enquiries (not necessarily explicitly about share options) for the earlier periods; or where enquiries into deductions for share options had been opened (for any period) prior to publication of the Special Commissioners' decision; or where such enquiries had been closed following the provision of misleading information by the company.

Where companies have in periods starting before 1 January 2003 claimed an amount based on the spread at the date of exercise, the transitional rules will not be relevant. This is because options which have been exercised no longer exist at the commencement of the new legislation, so no statutory deduction can be due for such options. Where, on the other hand, companies have made deductions in respect of unexercised options in accounts for periods beginning before 1 January 2003 the transitional rules will apply. In such circumstances a deduction will be allowed for the arms length price in the appropriate period pre 1 January 2003. When the options are exercised (or shares acquired) by the employee, the statutory deduction will be available, reduced by the arms length amount(s) allowed in earlier periods. This might reduce the new relief to nil but does not create a charge to tax if the earlier amounts exceed the statutory deduction.

Waterloo plc etc

Facts

Waterloo established a trust in connection with its employee share option scheme and made an interest free loan to the trustees so that they could purchase shares and grant options in respect of those shares to employees of Waterloo's subsidiaries. When options were exercised the employees paid the option price to the trustees who then repaid the loan. Waterloo also undertook to issue shares to the trustees at the option price so that options could be satisfied in the event that the trustees exhausted their reserve of shares.

Point At Issue

Whether business facilities were provided within the meaning of s773(4) ICTA 88.

Decision

The Commissioners found that there was a business facility which 'was more than the grant of interest free loans by Waterloo to the trustee; what Waterloo gave was the total facility for giving benefits to employees in the form of

options'. (para 51). Waterloo devised, set up, funded and operated a facility whereby the employees of its subsidiary companies were able to receive valuable share options. The facility was not just the making of the interest free loan, nor was it just the selling of shares to employees at a price below market value. The facility was the total package and it is the total package that needs to be examined and priced. The distinction between the 'total facility' and the constituent transactions such as the loan is important and has implications beyond share options though these are not the subjects of this article. It is consistent with the Revenue's submission that 'the phrase 'business facility' is a commercial not a legal term, and ... that where a commercial term is used in legislation, the test of ordinary business might require an aggregation of transactions which transcended their juristic individuality' (para 57).

Waterloo concerned the award of shares by way of options but the principles are clearly applicable to any share based remuneration scheme. The relevant transfer pricing legislation for the years covered by the appeals was s770 ICTA 1988, which was replaced by schedule 28AA ICTA 88 for periods ending after 1 July 1999. The Revenue regards schedule 28AA as being of wider application than s770 so will be applying the decision to periods ending after 1 July 1999 as well as periods for which s770 ICTA 1988 applied

The Arms length Price

Although not asked to consider pricing, the Special Commissioners commented that 'it would be relatively simple' to price the facility by reference to the costs of the provider of the facility; and went on to enumerate the types of costs to be included (para 102). The Revenue takes the view that the Commissioners would have been extremely unlikely to endorse pricing by reference to the employee's gain on exercise (the difference between the market value at the date of exercise and the exercise price – known as 'the spread'). This is because the costs of Waterloo were related largely to interest rates not to the increase in share price over the period of the option.

Where Waterloo issued new shares there is an argument that, under accountancy standards applicable in the years of the appeals, the company did not incur a cost. Arguably no charge should be made. It might appear on such reasoning that where a non-UK company issues shares in support of options granted to employees of its UK subsidiaries then the full amount of any charge made to the subsidiaries would be disallowed. However, parties acting at arm's length are prepared to pay for something of value to them even if there is no cost to the provider. Indeed, the Special Commissioners allude to one example elsewhere in the decision when they accepted the giving of bank guarantees as the provision of a business facility (para 52).

The Revenue approach

Any enterprise which grants share options does so in the expectation that the value of the shares will rise. A prudent business would look to hedge in some way the exposure to the expected share price increases. This presumption is borne out by the difficulty in finding groups that wait till options are exercised before buying shares in the market, thereby exposing themselves to increases in the share price. It is sometimes argued that, since share price increases are linked to profit increases, there is no need for the prudent business to hedge actively – the correlation between share prices and profits supposedly providing its own natural hedge. If this proposition were valid – and the difficulty of finding groups who have acted upon it suggest otherwise – then any correlation that exists between share price and profits would be stronger at a group consolidated level than at the level of the individual operating entity. It follows that if the group as a whole adopts an active hedging strategy of some sort then so should the subsidiary, which does not have the same correlation between its stand-alone profits and the group's share price.

Using group policy in this way as a starting point for the subsidiary's policy is in line with OECD guidance on group hedging strategies for dealing with foreign exchange or interest rate exposures which states:

'When addressing the issue of the extent to which a party to a transaction bears any ...risk, it will normally be necessary to consider the extent, if any, to which the taxpayer and/or the MNE group have a business strategy which deals with the minimisation or management of such risks' (OECD 1995 1.27)

Where exceptionally the group as a whole does not have a hedging strategy, the Revenue will consider whether the same unhedged strategy is appropriate for the subsidiary, bearing in mind that individual entities may not have the same correlation between profits and the group's share price as the group as a whole has.

There are 3 hedging strategies open to a company granting options to employees over its shares:

- a. issue new shares
- b. buy shares in the market at or around the time options are granted
- c. buy an option that mirrors the terms of the options granted to the employees

Subsidiaries, whose employees are granted options over the parent company's shares, cannot use option a. Similarly, a company granting options over its own shares is unlikely to opt for c. However, option c. approximates to how a

subsidiary could hedge its exposure if it did not buy shares in the market; and one measure of the amount a party acting at arm's length would be prepared to pay is the cost of obtaining the same benefit by a different route. This article considers the application of pricing by reference to options b. and c.

Shares bought in the market (Market Purchase Price)

Where shares are bought in the market the Special Commissioners found that the facility was not simply the making of a loan. Pricing the facility is not therefore simply a matter of pricing the loan. Rather the pricing of the loan is one ingredient in establishing the price of the facility. In the Waterloo case there was not an exact match between the exercise price of the option and the price of the shares acquired for hedging. Instead shares were purchased during the year at propitious times in anticipation of the grant of options later, so the price of the shares could be more or less than the exercise price of the option. Other groups may buy some shares before the grant of options and some after. Provided the parent company does not have an ulterior motive (such as supporting its share price) the actual purchase pattern of the parent is a good starting point for determining an appropriate strategy for the subsidiary.

Table 1 sets out how a UK headed group might calculate the charge to its non UK affiliates for options granted to employees of those affiliates. For the sake of simplicity the example assumes that options are granted at the year end and the mid year point is when options are exercised and shares purchased in advance of the next tranche of options. The example also assumes that the costs of acquiring more shares than are required for hedging are costs of the parent company, and are not to be allocated to the subsidiaries. Thus the allocation of non UK costs are determined by the ratio of non- UK shares needed (C to total shares needed (and not non UK shares needed to shares held). In practice how the costs of 'excess' share purchases are allocated will depend on the precise circumstances. If the parent company routinely and persistently over purchases it may be that it is doing so for its own purposes. If, on the other hand, it is sometimes over and sometimes under it may be that this is a valid hedging strategy for the share option awards so that all costs are allocable.

Expected rate of exercise – if, historically, only say 60% of options granted were actually exercised, one would expect a prudent business to purchase 60 shares for every 100 options granted. Expected rates of exercise may vary from group to group depending on such factors as staff turnover and performance conditions attaching to the options. For new schemes documentation about expected take up may have been produced internally or by remuneration consultants involved in setting up the scheme. Such documentation could form the basis of expected rates of exercise until more reliable data is available.

Rate of interest - as with any loan the arm's length rate of interest depends upon the facts and circumstances of the case. Interest is calculated from the date the shares are purchased, not the date the options are granted.

Dividends - typically dividends are waived on shares held by share scheme trusts so that dividends payable to other shareholders are not diluted. A subsidiary acquiring shares from a hypothetical third party for its employees would not care about the interest of the other shareholders. The only concern would be with minimising the costs of its hedging strategy. So in calculating the price of an arms length hedging strategy there would be no reason to waive the dividends.

Profits and losses on disposal of shares – the example at Table 1 does not include an explicit entry for profits or losses that might arise on the disposal of shares. Such profits and losses are, however, included implicitly in the calculation since disposal proceeds on the sale of shares affect the amount of debt left in the trust, which in turn determines the amount of interest to be allocated to the subsidiaries. Share option schemes tend to be enduring structures and one might expect profits and losses to balance out sufficiently over the life of the scheme so that all debt is repaid : shares purchased to hedge a tranche of options which lapse while the options are under the water become the hedge for a second tranche of options granted when the share price recovers. In a period of steep and prolonged decline in share prices, however, it may be that the group decides to sell surplus shares to prevent further losses arising. The losses incurred on selling surplus shares may be so great that part of the loan to the trust will never be repaid. In such circumstances it may be appropriate to include as an ingredient in the price of the facility an amount for loans permanently written off. Such an apportionment might not be straightforward. The objectives and actual pattern of disposal of surplus shares of the parent company (whose shares are held in the trust) may be different to the pattern of disposal that would have been chosen by a subsidiary whose only interest in the shares is as a hedge against its employee options.

Purchase of an option mirroring terms of options granted to employees

Another way to establish an arm's length price would be to calculate how much it would cost the subsidiary to purchase an option that mirrors the terms of the options granted to the employees (though legally such a transaction with the parent may not be permitted). Economic models such as Black-Scholes are used to value options and depend on a number of variables – volatility of shares, interest rates, dividend flows, maturity of options, etc. Such variables, moreover, may change over time. The Revenue understands that generally the price will be in the region of 25-35% of the value of the

shares at time the option is granted but for nil-cost options could rise to 55-65%.

A hedging strategy priced on buying an option that mirrors the terms of the options granted to the employees should take account of the expected exercise rates. Again, if 60% of employees are expected to exercise the subsidiary employer would only require an option over a reduced number of shares. The fair value of the option would be spread over the vesting period of the employees' share options.

When applying models such as Black-Scholes, companies should bear in mind that they were not primarily designed for pricing options with the long maturity dates typical of employee share options. As such, substantial adjustments must be made to the model with the result that it is not as accurate as it might otherwise be. Therefore companies using Black-Scholes as their primary pricing method may want to check the result using a market purchase price.

For companies without in-house expertise in pricing options pricing by reference to buying the shares in the market may be simpler than using Black-Scholes. Accordingly, even where the scheme is actually hedged by the issue of shares rather than buying them in the market, the Revenue is prepared to accept a market purchase price, calculated along the lines of Tables 1; but assuming that the shares were purchased on the same day as the options were granted. However, and as indicated above, the share purchase model can become complicated where loans need to be written off and could become very difficult to apply when there are no actual loans or share disposal patterns to work from.

Treatment of Receipts by UK Parent

As indicated above, where shares are bought in the market the facility is not the making of an interest free loan and any receipt by the UK parent would be payment for a business facility, not interest. Similarly, inclusion of fair value of the options at grant in the price of the facility does not mean that the provider of the facility has actually sold an option to the trust (or subsidiary) mirroring the terms of the options granted to employees. Rather the price of such an option is merely an ingredient in pricing the facility. Where the parent, as in Waterloo, supports the scheme by a combination of market purchased and newly issued shares any payment received cannot - in light of the Commissioners finding of what the facility was – be separated out into capital and revenue. The receipt is indivisibly on revenue account and taxable as income.

When groups adopt structures that dispense with the trust and interest free loans and issue shares directly to the employees when they exercise the options then there may be no transfer pricing issue. At arms length one would still expect a third party to pay the issuing company, but provided the issuing company has not obtained a P&L deduction in

respect of the option any receipt is likely to represent an increase in capital account and would not be caught by transfer pricing.

The issues arising on the quantum and nature of receipts in respect of share option schemes are unaffected by the proposed legislation giving a CT deduction for share options.

Treatment of payments by UK subsidiaries

Accounting periods starting before 1 January 2003

Following the Waterloo decision the Revenue will accept that an intra-group recharge paid by a UK subsidiary in respect of share options granted to its employees is allowable as a deduction for the period for which the recharge is made, if it is calculated on an arm's length basis as set out in this article and relates to employees who work exclusively for UK entities.

The Commissioners' analysis of the nature of the facility provided by the parent company in the Waterloo case means that the recharge is not capital expenditure and will be wholly and exclusively for the purposes of the subsidiary's trade if it relates to employees who work exclusively for it (Section 74(1) ICTA 1988). As the recharge is not a payment of emoluments or potential emoluments, but is payment for "the total facility for giving benefits to employees in the form of share options", Section 43 FA 1989 will not apply to defer the timing of any deduction.

Accounting periods starting on or after 1 January 2003

If the shares concerned are within the scope of the proposed new statutory deduction for the costs of providing shares for employee share schemes, the new legislation will determine the timing and amount of any deductions for providing shares to employees of UK companies.

To the extent that the new legislation does not disallow ancillary costs (such as interest on loans to purchase shares in the market) Schedule 28AA may still apply to recover such costs from non UK affiliates whose employees benefit from the scheme.

Cost Plus and Cost Sharing Arrangements

Pricing share options by reference to the gain made by the employee will not give the same result as applying general transfer pricing rules. It follows that transfer pricing methods which incorporate or rely upon profit made by the employee will not result in an arm's length price. Where, for example, a company is remunerated by affiliates on a cost plus basis, and those costs include a charge for share options based on the employee profit, the mark up has been applied to a non arm's length cost base. Similarly, where companies enter into cost sharing arrangements, and the costs include a charge for share options based on the employees' profit, the

resulting sharing of costs will not be on an arm's length basis because a non arm's length cost was included in the pool. Cost Plus and Cost Sharing Arrangements must instead be based on an arm's length cost calculated according to one of the acceptable methods explained above. This will remain the case from 1 January 2003.

Summary

The Special Commissioners' decision has established that where a parent company allows the employees of its subsidiaries to participate in its share schemes, the arm's length principle requires that the subsidiaries make a contribution to the parent. The pricing of the facility is relatively straightforward for share award schemes (which are easier to value than options) and share options where the scheme is supported by purchasing shares in the market. The position is less clear cut where an option scheme is supported by the issue of new shares. Where new issue shares are used, the Revenues' view is that the fair value of the options at the date of grant, spread over the vesting period, is an appropriate arm's length price. As this could result in complex (and costly) calculations, pricing the facility as if it had been supported by market purchase of shares may also be acceptable.

Unless the group as a whole buys shares in the market at the date of exercise, charges based on the increase in market value of the shares over the vesting period are not arm's length, whether the charge is made at yearly rests or taken in full in the year of exercise.

The arms length principle will apply to the costs of all options exercised in accounting periods other than those starting on or after 1 January 2003. In addition the arms length principle will apply to the cost of options or other share awards or costs in connection with such awards when no statutory deduction is available on exercise in accounting periods starting on or after 1 January 2003.

Options		Year 1	Year 2	Year 3	Year 4	Year 5
Options b/f		0	1000	1100	850	850
Options granted		1000	600	0	0	150
price granted		1.75	2.5	0	0	3
Options exercised		0	500	250		300
options unexercised		1000	1100	850	850	700
Shares						
Non UK Options		400	550	350	350	300
Exercise Rate		75%	75%	75%	75%	75%
Shares needed non UK	(C)	300	413	263	263	225
Shares needed by trust	(D)	750	825	638	638	525
Shares held by trust		900	1100	850	700	600
Loans						
opening loan	(A)	0	1485	2010	1573	1348
Shares Acquired		900	700	0	0	200
price		1.65	2	0		2.9
New Loan		1485	1400	0	0	580
shares sold		0	500	250	150	300
price		0	1.75	1.75	1.5	2.5
loan repaid		0	875	438	225	750
loan end of year	(B)	1485	2010	1573	1348	1178
rate of interest		5%	5%	5%	5%	5%
interest (A+B)/2		37	87	90	73	63
less div income		5	5	5	5	5
net cost	(E)	32	82	85	68	58
Non UK =	E x C/D	13	41	35	28	25

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miscellaneous

Double Taxation Relief: Underlying tax: Tax consolidations falling within Section 803A of ICTA 1988

Tax Bulletin 57, published in January 2002, gave details of tax consolidations for a number of countries which brought companies within Section 803A of the Income and Corporation Taxes Act 1988. This section aggregates relevant profits and tax for the purposes of calculating the rate of underlying tax that is attributable to a dividend where a number of companies have been taxed as a single, consolidated entity in another country.

The Australian Government has recently enacted a tax consolidation regime effective from 1 January 2003 under which wholly owned groups of Australian-resident companies are able to consolidate. The holding company and each member of the group will be jointly and severally liable to pay the group tax liability except where there is a tax sharing agreement. In that case, the agreement will determine the contribution each member makes towards the group tax liability. In either case, the companies will be within Section 803A for the purposes of calculating underlying tax relief.

Under Section 803A the relevant profits for any year are the group profits arising in that year so that inter-company dividends in that year are ignored. The exception is where the foreign holding company receives a dividend paid from a subsidiary's profits arising before the tax consolidation came into effect. In that case, the dividend should be added to the group relevant profits and the associated underlying tax (calculated on the basis of the paying company's own profits and tax) should be added to the group tax. That will ensure that profits and tax do not fall out of account on the transition from a company to a group basis.

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Guidance on Property Valuations

Practitioners may wish to note the publication of a new Guidance Note, issued by the Royal Institution of Chartered Surveyors (RICS), which gives advice on valuations for the purposes of Capital Gains Tax (CGT) and Inheritance Tax (IHT). The Guidance Note (GN21) forms part of the RICS 'Appraisal and Valuation Manual', which is commonly known as 'The Red Book'. The new GN21 gives advice to members

of the RICS on the meaning of 'market value', as defined in S272 of the Taxation of Chargeable Gains Act 1992 and S160 of the Inheritance Tax Act 1984. This basis of valuation may sometimes differ from the 'open market value' basis or other bases of valuation which are used in company accounts. The contents of GN21 have been approved by the Valuation Office Agency (VOA).

In the past, difficulties have sometimes arisen when private sector surveyors have provided their clients with advice on CGT and IHT valuations "in accordance with the Red Book" but on an incorrect basis. In future, all valuations carried out by a member of the RICS for CGT or IHT purposes will normally be on the basis set out in GN21. It should be noted that it is not mandatory for members of the RICS to adopt the basis set out in GN21 if they are instructed to adopt a different basis by their clients. However, if a valuation has not been carried out in accordance with GN21 then this should normally be stated in the valuer's report to their client.

It would greatly assist us, both in terms of monitoring the adoption of GN21 and also in carrying out our risk assessment procedures, if practitioners would:

- When instructing valuers to carry out a valuation for the purposes of CGT or IHT, request them to provide a valuation on the basis set out in GN21 of the Red Book.
- Before using a valuation carried out for accounts purposes for tax purposes, request the valuer to review the valuation to consider if any adjustment is needed to take account of the different basis of valuation under GN21.
- When submitting details of valuations to us, always enclose a copy of the valuer's report.

Where a valuation is used in the computation of a chargeable gain included in a self assessment return, attaching a copy of a valuer's report to the return will in many cases avoid the need for us to open an enquiry into a return.

Further guidance on property valuations for CGT, IHT and other taxes, together with a full explanation of the 'market value' basis of valuation, can be found in the VOA's Capital Gains Tax and Inheritance Tax Manuals which can be viewed on their website www.voa.gov.uk under 'Publications'.

New form 17

Form 17 is used by married couples to elect to have income from property held jointly taxed on a basis other than 50/50. The election is under S282B ICTA 1988. The couple can make an election only where the property is held in unequal shares, and they are entitled to the income arising in proportion to those shares.

We have produced a new version of form 17. It is now 2 pages long, instead of 4. The new form makes it clear that bank and building society joint accounts are held in such a way that each owner is equally entitled to the whole account, and any income from it is paid to both parties jointly. That means normally an election under S282B cannot be made. Where, exceptionally, the parties have formally changed the legal basis on which they hold the account, for example by way of deed, they can make an election using form 17. In such a case they must submit the documentary evidence with the form when they send it to the Inland Revenue.

You can find the new form 17 on the Internet at www.inlandrevenue.gov.uk/menus/otherforms.htm.

Please Note The Following Amendments To The Tax Bulletin Index Of 2002

Accountancy principles and taxable profits delete 623, insert 636

- deferred, revenue expenditure

Avoidance insert 537 after page 90

- Sheppard & Sheppard v CIR

Bad Debt Relief delete 154

- general

Capital Allowances delete 552

- fixtures: machinery and plant

Capital Gains Tax insert 474 after page 303

- compensation payable to agricultural and business tenant

insert - meaning of "small" 397 between - machinery: meaning of & milk quota

delete - negligible value claims

- milk quota
- compensation for permanent cuts
- private residence relief
- effect of SP D4 **add**
(now ESC D49)

insert after - shotguns 726

Charities

- delete 319** - donation of trading stock to charities

Clubs, societies and voluntary

- insert 156** - associations

Customer Service Managers

delete 273

Form 64-8 (New)

insert 509 after page 3

Golf Clubs – trading receipts

insert 488 after page 156

Inland Revenue

- delete - Public Enquiry Room and insert**
- Information Centre
 - Customer Service Managers
 - Pension Schemes Office

delete 290, 342, 376, 421, 713 and insert 535 & 905 - updates

Insurance

delete 45 - insurance agents commission

Interest

delete 25 - on late returns

International Tax

- double taxation

delete all pages apart from 938 & insert 959

- contribution conventions

insert 631 after page 153 - loan interest and treaty claims

delete 153, 631 and insert 938, 959 - treaty claims and loan interest

delete 842, 861, 892 & insert 938 before 959 - update on DT conventions and Double Contribution Conventions

Limited Liability Companies

insert 440

Members' clubs, societies and voluntary associations

insert 156 before pages 488, 600

Pension Schemes Office updates

delete 290, 342, 376 & 421 insert 600 - synopsis

Schedule D Cases I and II

delete 606, 623 & 707 insert 815 859 - accountancy principles and taxable profits

delete 45 - commission received by insurance agents

Section 703 ICTA 1988

insert 537 after page 90 - Sheppard & Sheppard v CIR

Self Assessment

delete 490 and insert page 510 - cessations of businesses and S86 interest

Sheppard and Sheppard v CIR

insert 537 after page 90

Stock valuation

delete - provisions 184

Trusts

delete - capital payments by offshore trusts to UK charities 573

Inland Revenue Statements of Practice and Extra-Statutory Concessions issued between 1 December 2002 and 31 January 2003

Extra Statutory Concessions

There have been no Extra Statutory Concessions for this period

Statements of Practice

There have been no Statements of Practice for this period

You can get copies of SPs and ESCs by telephoning 020 7438 4266.

CONTENT

The content of Tax Bulletin gives the views of our technical specialists on particular issues. The information published is reported because it may be of interest to tax practitioners. Publication will be six times a year, and include a cumulative index issued on an annual basis.

- You can expect that interpretations of the law contained in the Bulletin will normally be applied in relevant cases, but this is subject to a number of qualifications.
- Particular cases may turn on their own facts, or context, and because every possible situation cannot be covered, there may be circumstances in which the interpretation given here will not apply.
- There may also be circumstances in which the Board would find it necessary to argue for a different interpretation in appeal proceedings.
- The Bulletin does not replace formal Statements of Practice.
- The Board's view of the law may change in the future. Readers will be notified of any changes in future editions.

Nothing in this Bulletin affects a taxpayer's right of appeal on any point.

Letters on any article appearing in Tax Bulletin should be sent to the Editor, Mr Shell Makwana, Room G7, New Wing, Somerset House, Strand, London, WC2R 1LB or e-mail Shell.Makwana@ir.gsi.gov.uk. We are sorry though that neither he nor our contributors will normally be able to enter into correspondence about Tax Bulletin or its contents.

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