

# **Tax Law Rewrite – Bill 6**

## **Responses to Papers CC/SC (08) 35**

### **Oil Taxation**

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<http://www.hmrc.gov.uk/rewrite>

29 January 2009

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Committee paper CC/SC (08 ) 35  
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## **INTRODUCTION**

1. In July 2008 we published Committee Paper CC/SC (08) 35 on the HMRC internet website [www.hmrc.gov.uk/rewrite](http://www.hmrc.gov.uk/rewrite). The closing date for responses was 31 October 2008. The draft clauses rewrite the legislation dealing with the special rules for corporation tax and income tax that relate to oil taxation.

2. The income tax material was included even though the relevant income tax rules will not be rewritten in Bill 6. The current plan is that they will be rewritten by Bill7 and inserted into ITTOIA 2005. However, we thought it would assist users if the income tax clauses were published alongside their corporation tax equivalents.

3. The purpose of this response document is to provide details of the substantive technical points made and to explain our analysis and proposals in respect of them. Minor points, such as suggestions to improve punctuation, are not covered but all comments received have been carefully considered. We also received useful suggestions about the explanatory notes. We have not commented on these but we will revisit the explanatory notes with them in mind.

4. Some policy suggestions for reform were also made. In particular the point was noted that some provisions apply only for corporation tax and not for income tax. Such issues are outside the remit of the Tax Law Rewrite project but we have passed them to the relevant specialists for consideration. These will be dealt with separately and discussed with our Committees.

5. Two minor changes were proposed in the Committee Papers. In the responses received they either received approval or were not mentioned.

6. We received a written response from the following:

- The UK Oil Industry Taxation Committee

7. The following abbreviations for tax legislation are used in this response document:

- CAA            Capital Allowances Act 2001
- FA             Finance Act
- ICTA          Income and Corporation Taxes Act 1988
- ITA            Income Tax Act 2007
- ITEPA        Income Tax (Earnings and Pensions) Act 2003

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- ITTOIA            Income Tax (Trading and Other Income) Act 2005

8. We are grateful for the comments made, and we appreciate the time and effort that went into them.

9. At the time of publication of the draft clauses, the rewrite of section 492(1) of ICTA was scheduled to be included in Bill 5 rather than Bill 6. This was done originally to fall in line with ITTOIA, which contains many parallel provisions to Bill 5. The view was expressed in consultation that it would be preferable for all the material on oil taxation to be gathered together in the same piece of legislation as far as possible. We agree - the rewrite of section 492(1) of ICTA for corporation tax was taken out of Bill 5 and we will include it in Bill 6. The proposed insertion of the income tax material into ITTOIA will also ensure that all the relevant income tax material is in one Act.

10. The respondent agreed with the proposal not to rewrite Schedule 19B to ICTA but asked if it should be relocated to sit with the rewritten legislation. We do not routinely include time limited legislation such as this in the rewrite Acts so that they do not become burdened with expired material.

11. We were asked if chargeable gains aspects relating to the oil ring fence legislation are to be rewritten. We have taken a decision that chargeable gains rules should stay in TCGA 1992.

**Clause 5:**

*Clause 5 defines 'ring fence income' by reference to 'oil extraction activities' and 'oil rights', which are in turn virtually the same as the components of 'oil-related activities' in the definition of a ring fence trade. Since the slight differences in wording could cause uncertainty, we wonder whether it would be clearer simply to define ring fence income as income from a ring fence trade.*

12. We agree that there would be merit in rationalising the definitions but we cannot be sure that the changes are within the scope of the project without a more detailed technical and policy analysis. This point will therefore be referred to policy colleagues for further consideration.

13. *We have referred this question to policy colleagues.*

**Clause 11:**

*An existing anomaly lies in the fact that where a sale is taken out of the non arm's length valuation rules in section 493(1) ICTA in circumstances where paragraph 6 of Schedule 3 OTA 1975 applies for PRT purposes, section*

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*493(3) appears to bring it straight back in again. To correct the anomaly in the new drafting, clause 11(4) should be rewritten to say “Condition C is that neither section 10 above nor paragraph 6 of Schedule 3 OTA 1975 applies in relation to the disposal”.*

14. Section 493(1) of ICTA applies to cases where amounts are brought into charge for Petroleum Revenue Tax (PRT). Without the proviso mentioned, this would include circumstances covered by paragraph 6 of Schedule 3 to OTA 1975, where oil won from a field is owned by someone who is not a participator in that field and is therefore outside the scope of PRT in respect of that oil. The specific rule is needed to bring in a PRT charge on the relevant field participator, to ensure that PRT is charged on oil won from a field that is within PRT.

15. The proviso to what became section 493(1) of ICTA was introduced as an amendment to the original clause because there was a concern that the clause as it then stood might impose an income tax or corporation tax charge on the relevant field participator in the type of circumstance covered by paragraph 6 of Schedule 3 to OTA 1975, whereas the liability for income tax or corporation tax should lie with the company that owns the oil.

16. Section 493(3) of ICTA is different. It applies to “a disposal of oil in a sale otherwise than at arm’s length”. This phrase needs to be interpreted from first principles, and using the interpretation given in paragraph 1 of Schedule 3 to OTA 1975. Given that it was necessary to introduce a specific rule for PRT in paragraph 6 of Schedule 3 to OTA 1975, this implies that there would not be a disposal for PRT without that rule, and that this type of circumstance does not therefore fall within the natural meaning of “disposal”, nor within the interpretation provided by paragraph 1 of Schedule 3.

17. Therefore, our conclusion is that disposals created specifically for PRT by paragraph 6 of Schedule 3 to OTA 1975 do not fall within section 493(3) of ICTA and there is no need to make the amendment suggested by the respondent. The person who owns the oil is chargeable to income tax or corporation tax on its disposal, although the disposal may fall within section 493(3) of ICTA for other reasons.

18. ***We do not propose to amend the clause.***

*We note what you say about the use of the word ‘person’ in clauses 10 and 11, at paragraph 36 of the explanatory note, but still think that in clause 11(2) the references are only applicable to a company.*

19. We do not agree that this legislation is limited solely to companies. Although clause 11 is a corporation tax provision, the transaction that it describes could involve a person other than a company. Therefore limiting the scope solely to companies could exclude some transactions from the clause.

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20. ***We do not propose to amend the clause.***

**Clause 18:**

*In clause 18(2) the word “and” in line 4 between the words “persons” and “otherwise” should be changed to “or”. This is an error that is in the existing legislation but perhaps should be corrected on a rewrite?*

21. ***We agree and will revise the wording of the clause.***

**Clause 19 :**

*It seems clause 19 can only apply if there is a Northern Ireland Regional Development Grant agreed before 1/1/2003. Since there are no taxable fields in Northern Ireland, nor ever will be, do we need clause 19?*

22. The analysis is based on current facts. Whilst the legislation may not have a practical impact at present, it is not impossible that changed circumstances could lead to its practical application in the future. We do not therefore think that its removal is within the scope of the project.

23. ***We propose to retain clause 19.***

**Clauses 19, 21, 25, 26, 27:**

*With reference to clauses 19, 21, 25, 26 and 27 the wording is similar to the existing legislation. Although a literal interpretation of the legislation effectively means the treatment applies only if the context is that of a field which is subject to PRT, custom, practice and understanding is that the treatment is relevant for all fields. This law rewrite could therefore seek to address this discrepancy.*

24. This point is a policy issue beyond the scope of the project.

25. ***We have referred this point to policy colleagues.***

**Clauses 28, 29 and 30:**

*We understand that the CT time limits are to be reduced to 4 years from the current 6 by a future Order. Clauses 28 to 30 deal with the CT position of reopened PRT assessments. At present the main time limits are the same. If CT reduces to 4 years but PRT is unaltered there could be problems with CT assessments unless these are deliberately kept open.*

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26. This is an operational issue about the practical application of the legislation and therefore beyond the scope of the project.

27. *We have referred this point to policy colleagues.*

**Clause 59:**

*We assume that the fact that Clause 59 does not repeat the starting date for the Supplementary Charge has no retrospective effect. Would you please confirm this assumption is correct.*

28. This is correct. The legislation in Bill 6 will take effect only from the date set down in that Bill. Therefore, a specific commencement date for a provision before the general commencement date has no effect unless there are particular transitional or saving elements that require special treatment (there are none for this particular aspect of the legislation).