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**Change 1: Double taxation relief: capital gains tax relief under double taxation arrangements: clause 3**

This change clarifies the extension of section 788(8) of ICTA (double taxation relief: provision as to income which is not subject to double taxation) to capital gains tax by section 277(1) of TCGA.

Section 788(8) of ICTA ensures that DTAs can be given statutory effect even if they contain “provision as to income or chargeable gains which is or are not subject to double taxation”. These words however, are in a subsection that, taken by itself, operates only in relation to income tax, corporation tax and similar taxes in territories outside the United Kingdom. Two issues arise in rewriting those words as extended in relation to capital gains tax by section 277(1) of TCGA.

The first issue is whether to give effect to the substitution provided for by section 277(1) of TCGA and as a result refer not to income or chargeable gains but to capital gains. In this regard, it is considered that capital gains include:

- chargeable gains; and
- gains (referred to in this note as “non-chargeable gains”) that would be chargeable gains but for some provision of TCGA, or of another UK enactment, that provides that the gains are not chargeable gains.

The second issue is whether the purpose stated in section 277(1) of TCGA – namely, the purpose of giving relief from double taxation in relation to capital gains tax and tax on chargeable gains charged under the law of any territory outside the United Kingdom – means that section 277(1) does not extend to capital gains the power to include provision as to items which are not subject to double taxation. This interpretation would be on the basis that making provision about items not subject to double taxation could not be said to be giving relief from double taxation.

The cited words from section 788(8) of ICTA, as extended by section 277(1) of TCGA, are rewritten, in clause 3(2), so as to refer to:

- (a) provision as to income that is not subject to double taxation, or
- (b) provision as to chargeable gains that are not subject to double taxation.

Viewed in the light of the first issue discussed in this note, referring to chargeable gains rather than capital gains means that, if any DTAs made provision as to non-chargeable gains that are not subject to double taxation, such provision would not have statutory effect. In principle, this is a change in the law. But it has no effect in practice, since no existing arrangements rely on section 788(8) of ICTA as extended by section 277(1) of TCGA in order to make provision as to non-chargeable gains that are not subject to double taxation.

Viewed in the light of the second issue discussed in this note, extending the reference to chargeable gains so that it applies in the context of capital gains tax, and similar taxes in territories outside the United Kingdom, would give statutory effect to provision in DTAs that (a), in the context of capital gains tax and such similar taxes, is provision as to chargeable gains that are not subject to double taxation and (b) is currently inoperative. In principle, this is a change in the law. But it has no effect in practice, since no existing arrangements make such provision.

As regards possible future DTAs, changing the scope of the power given by section 788(8) of ICTA, as extended by section 277(1) of TCGA, could be adverse or favourable to taxpayers, depending on the precise details of the provision which might be made by the future arrangements.

*This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.*

**Change 2: References to “officer of Revenue and Customs”:**  
**clauses 6, 47, 55, 57, 58, 191, 194, 208, 211, 214, 215, Schedule 3 (section 681FB of ITA) and Schedule 5 (sections 77C and 77H of TMA)**

This change replaces references to “the Board” and “the Commissioners for Her Majesty’s Revenue and Customs” (“the Commissioners”) in the source legislation with references to “an officer of Revenue and Customs”.

References in the source legislation to the “Board” are treated by section 50(1) of the Commissioners for Revenue and Customs Act 2005 (CRCA) as references to the Commissioners. The rest of this note accordingly refers to the Commissioners rather than to the Board.

The provisions affected by this change will in future authorise or require things to be done by or in relation to an officer of Revenue and Customs rather than by or in relation to the Commissioners. This reflects the way in which Her Majesty’s Revenue and Customs is organised and operates in practice. Section 13 of CRCA allows nearly all functions conferred on the Commissioners to be exercised by any officer. All of the functions affected by this change, which are in the main concerned with administrative processes, are in fact exercised by officers of the Commissioners, and the Commissioners themselves are not personally involved in their exercise.

Section 788(6) of ICTA requires a claim for relief under section 788(3)(a) of that Act to be made to the Commissioners if the claim is not for an allowance by way of credit in accordance with Chapter 2 of Part 18 of that Act. Clause 6(6), which is based on section 788(6), does not expressly state to whom the claim should be made. Where a notice to deliver a tax return has been issued section 42(2) of TMA or paragraphs 57 and 58 of Schedule 18 to FA 1998 require the claim to be made in the return or by amendment of the return if possible. A return must be made to the officer who issued

it. A notice amending a return must be made to an officer. Similarly, where the claim is made outside a return or amendment, paragraph 2(1) of Schedule 1A to TMA requires the claim to be made to an officer.

***This change has no implications for the amount of tax due, who pays it or when. It affects (in principle and in practice) only administrative matters.***

**Change 3: Double taxation relief: unilateral relief for tax on profits of UK branch, agency or permanent establishment: limit: clause 23**

This change brings into line with practice the law concerning unilateral relief for overseas tax on the income or gains of UK branches, agencies and permanent establishments of non-UK residents.

In certain circumstances in which DTR under a tax treaty is not available, section 794(2)(bb) of ICTA allows credit by way of unilateral relief for overseas tax in respect of the income or gains of a branch or agency of a non-UK resident person who is not a company or of a permanent establishment of a non-UK resident company.

One of the conditions which must be met is imposed by section 794(2)(bb)(ii) of ICTA, namely:

that the amount of relief claimed does not exceed (or is by the claim expressly limited to) that which would have been available if the branch or agency had been a person resident in the United Kingdom and the income or gains in question had been income or gains of that person.

On a strict interpretation, this could be taken as meaning that if the taxpayer's claim was excessive no unilateral relief would be allowed at all. In practice, however, HMRC do not adopt this strict interpretation – which would, in any case, not sit easily with Self Assessment.

Clause 23(4), which is based on section 794(2)(bb)(ii) of ICTA, therefore rewrites the provision as a limit on the amount of relief which may be allowed, rather than as a condition which must be met if relief is to be allowed at all.

***This change is in taxpayers' favour in principle. But it is expected to have no practical effect as it is in line with generally accepted practice.***

**Change 4: Double taxation relief: income tax and capital gains tax: order in which credit relief is allowed: clauses 27 and 31**

This change puts on a clear statutory footing the practice that, where relief by way of credit is allowed against income tax in respect of income from more than one source or against capital gains tax in respect of more than one capital gain, the sources of

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income or capital gains are to be taken in the order which provides the greatest reduction in the liability to income tax or capital gains tax for the tax year.

Section 796 of ICTA ensures that a foreign tax credit is only deducted from income tax on the income to which the foreign tax credit relates, and cannot be used to shelter any other income from income tax.

Section 796(2) deals with the case where the taxpayer is to be allowed credit for foreign tax in respect of income from more than one source. It requires such income to be dealt with separately, source by source.

Section 796(2) requires income from each source to be dealt with successively. But it does not specify the order in which such items of income are to be taken. HMRC's practice, as published in the *International Manual* paragraph 165040, is to take such items of income in the order most favourable to the taxpayer's claim for DTR.

Clause 27 puts this practice on a clear statutory footing.

Section 277(1) of TCGA extends section 796 of ICTA to capital gains tax. HMRC's practice in applying section 796 of ICTA to capital gains tax, as published in the *International Manual* paragraphs 169120 and 169130, is to deal with capital gains in the order which provides the greatest reduction in the taxpayer's capital gains tax liability for the year.

Clause 31 puts this practice on a clear statutory footing.

*This change is in taxpayers' favour in principle. But it is expected to have no practical effect as it is in line with generally accepted practice.*

**Change 5: Requiring an apportionment, or a reduction, to be just and reasonable: clauses 28 and 34 and Schedule 2 (sections 681DE and 681DJ of ITA)**  
This change requires any apportionment or reduction that is not required by the source legislation to be made on a just and reasonable basis to be made on such a basis.

In some cases where there is an apportionment under legislation rewritten in this Act, the apportionment is required by the source legislation to be made on a just and reasonable basis. In other cases, it is required to be made only on a just basis or only on a reasonable basis. In new tax legislation it is now the practice to require an apportionment to be just and reasonable. For example, before it was replaced by ITEPA, section 140B(4) of ICTA (inserted by FA 1998) required a just and reasonable apportionment to be made of any consideration given partly in respect of one thing and partly in respect of another. There is no reason why an apportionment should not be on a just and reasonable basis. And it is desirable that all apportionments should be made on the same basis.

Similarly, section 784(4) of ICTA provides that “the amount to be deducted ... shall be such proportion of the capital expenditure which is still unallowed as is reasonable” (rather than such proportion as is just and reasonable).

Accordingly, where an apportionment under legislation rewritten in this Act is not required to be made on a just and reasonable basis, the rewritten provision requires the apportionment to be made on a just and reasonable basis. The changes are as follows.

- Section 783(8) of ICTA (leased assets: capital sums) requires apportionments to be just. As rewritten in new section 681DJ of ITA (inserted by Schedule 2), it requires apportionments to be not only just but also reasonable.
- Sections 798(4) and 798A(3)(b) of ICTA (double taxation relief: limitations on credit against income tax and corporation tax) require apportionments to be reasonable. As rewritten in clauses 28 and 34 respectively, they require apportionments to be not only reasonable but also just.

Similarly, new section 681DE(5)(a) of ITA (inserted by Schedule 2), which is based on section 784(4) of ICTA, requires the unallowed amount to be reduced to a proportion which is not only reasonable but also just.

The same change has been made in previous rewrite Acts to provide a uniform expression of the basis on which apportionments are to be made.

*This change makes minor amendments to a number of existing rules, but is expected to have no practical effect as it is in line with generally accepted practice.*

**Change 6: Double taxation relief: corporation tax: credit relief: royalty income: clause 36**

This change brings into line with practice the law concerning DTR on royalty income by way of credit against corporation tax.

Section 798B(3)(a) of ICTA provides that for the purposes of DTR by way of corporation tax, royalty income arising in more than one jurisdiction (other than the United Kingdom) in a year of assessment in respect of an asset is to be treated as income arising from a single transaction, arrangement or asset for the purposes of section 798A(2) of that Act.

But unlike income tax, corporation tax is not charged for years of assessment. Corporation tax is charged on profits which have been calculated for an accounting period of a company: see clause 8 of CTB1.

Clause 36 therefore refers to an accounting period rather than a year of assessment.

***This change has no implications for the amount of tax, who pays it or when. It affects (in principle but not in practice) only administrative matters.***

**Change 7: Avoidance: tax arbitrage: cases where payee not treated as not liable as a result of scheme: clause 204**

This change clarifies the exception (in section 25(8) of F(No 2)A 2005) to one of the conditions which may cause the tax arbitrage legislation to apply.

Chapter 4 of Part 2 of F(No 2)A 2005 addresses avoidance involving tax arbitrage. If the statutory conditions are met in a deduction case, the company in question must calculate (or recalculate) its income and chargeable gains for the purposes of corporation tax, or its liability to corporation tax, in accordance with rule A in section 25(3) of that Act and rule B in section 25(6) of that Act. Under section 25(6)(c) of that Act, one of the conditions for rule B to apply is that:

in respect of the payment or payments that the payee receives or is entitled to receive as a result of the transaction or series of transactions [mentioned in section 25(6)(a) of that Act], or part of such payment or payments, the payee is not liable to tax or, if liable, his liability to tax is reduced as a result of provision made or imposed by the scheme [mentioned in section 25(6)(a) of that Act]

Section 25(8) of F(No 2)A 2005 makes an exception to section 25(6)(c) of that Act. It provides:

The requirement in subsection (6)(c) is not satisfied if the payee is not liable to tax because he is not liable to tax on any income or gains received by him or for his benefit under the tax law of any territory

It is arguable that section 25(8) of F(No 2)A 2005 leaves it open for section 25(6)(c) of that Act to be satisfied if:

- the payee is in principle liable to tax in respect of the payment or payments; but
- this liability is extinguished by some form of tax relief which is not connected with the scheme.

But in practice HMRC do not interpret section 25(8) of F(No 2)A 2005 so narrowly.

In section 25(6)(c) of F(No 2)A 2005, it is not clear how far the phrase “as a result of provision made or imposed by the scheme” applies to “the payee is not liable to tax” as well as to “his liability to tax is reduced”. Clause 204(4) clarifies this by moving the phrase under review forward before the paragraphing and thus excluding the narrow interpretation.

***This change is in taxpayers’ favour in principle. But it is expected to have no practical effect as it is in line with generally accepted practice.***

**Change 8: Oil taxation: abandonment guarantees and expenditure under sections 63 and 65 of FA 1991: Schedule 1.(sections 225O, 225Q, 225R and 225T of ITTOIA)**

This change clarifies that sections 63 and 65 of FA 1991 apply for income tax as well as for corporation tax.

Sections 62 to 65 of FA 1991 contain a scheme for relieving certain costs involved with the abandonment of oil installations. Section 62 provides relief for the costs of obtaining an abandonment guarantee and is not limited to corporation tax. Section 64 provides relief where an oil field participator meets expenditure that should have been met by another participator, but where that participator has defaulted in their obligation. Again, this is not limited to corporation tax.

Section 63 of FA 1991 deals with a situation where a guarantee has been set up and the guarantor meets certain expenditure, but the participator is then required to reimburse some or all of those costs to the guarantor. Section 63(5) uses the term “accounting period” which suggests that it applies only to corporation tax. But there appears to be no indication in the remainder of section 63 that it should only apply to corporation tax. A similar point arises in connection with the wording of section 65(4) and (5).

Section 63(4) of FA 1991 provides relief for an oil field participator against their income from the oil ring fence trade for certain expenditure incurred under the terms of an abandonment guarantee. If that provision does not apply for income tax purposes then that relief might not be available to a participator that is liable to income tax. Section 65(3) of FA 1991 provides relief when a defaulter reimburses expenditure met by another participator, while section 65(4) provides for a charge to tax on the participator who is reimbursed. In this case, both the relief and the charge might not apply if the provision does not apply for income tax purposes.

Schedule 1 contains the rewritten material for income tax, and it includes full rewrites of sections 63 and 65 of FA 1991, suitably adapted for income tax to refer to a tax year rather than an accounting period.

*This change could be favourable to some taxpayers and adverse to others in principle. But it is expected to have no practical effect as it is in line with current practice.*

**Change 9: sale and lease-back etc: restriction of excessive lease rentals: relationship with accounting practice: Schedule 2 (sections 681AA, 681AB and 681CB of ITA)**

This change puts on a statutory basis HMRC’s published practice on the interaction between section 779 of ICTA (sale and lease-back: limitation on tax reliefs) and the accounting treatment for finance lease rentals.

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The Inland Revenue set out in Statement of Practice 3/91 (SP 3/91) its view on the timing of deductions for rentals payable by lessees under finance leases. The Inland Revenue also published an article supplementing SP 3/91 in the *Tax Bulletin*, February 1995 (TB15). The material in SP3/91 and TB15 is substantially reproduced in paragraphs 61105 to 61185 of HMRC's Business Income Manual (BIM 61105 to 61185).

Generally speaking, the effect of SP 3/91 is that tax relief is given for finance lease rentals in the period in which they are charged in calculating the lessee's accounting profit or loss. If a lessee makes a payment under a lease, and the economic benefit of the payment extends over several periods of account, then (broadly speaking) the accounting treatment will be to charge the payment as expenditure in the periods of account to which the payment in economic substance relates. Thus under SP 3/91 tax relief is not necessarily given in the period in which the finance lease rental payment is made; tax relief may be deferred to later periods.

Section 779 of ICTA is an anti-avoidance provision restricting tax relief for excessive rentals paid under sales and lease-backs of land. If it applies to a payment, tax relief for that payment is deferred (and may in certain circumstances be denied altogether). Section 782 of that Act (leased assets: special cases) is a similar provision applying to transactions involving assets other than land. Sections 779 and 782 of that Act apply for the purposes of both income tax and corporation tax.

HMRC's practice, as published in TB15 and BIM 61105, is to apply SP 3/91 before making any adjustments under section 779 of ICTA (see BIM 61105). Depending on the facts, this may mean that there is no need for any adjustments to be made under section 779 of ICTA.

FA 1998 introduced specific legislation which (broadly speaking) is to the same effect as SP 3/91, but goes further. Section 42 of FA 1998 has been rewritten for the purposes of income tax and corporation tax in, respectively, section 25 of ITTOIA and clause 46 of CTB1 (use of generally accepted accounting practice in calculating trade profits). Section 272 of ITTOIA and clause 210 of CTB1 apply, respectively, section 25 of ITTOIA and clause 46 of CTB1 in calculating profits of a property business.

Under section 25 of ITTOIA and clause 46 of CTB1, trade profits are calculated in accordance with GAAP, subject to adjustments required or authorised by law. These provisions operate by reference to receipts and expenses to be brought into account, not by reference to payments made. But sections 779 and 782 of ICTA do not acknowledge GAAP. And they assume that tax relief is given for payments made rather than expenses brought into account. So there is a conflict. Schedule 2, inserting new sections 681AB, 681B and 681CB of ITA, resolves this conflict in this way.

- It acknowledges that a calculation for tax purposes is made in accordance with GAAP.

- It provides that if –
  - (a) an expense is to be brought into account in accordance with GAAP; and
  - (b) the expense is constituted by a payment for which a deduction is allowed,

the deduction is reduced as required by the law currently contained in section 779 or 782 of ICTA.

*This change is in taxpayers' favour in principle. But it is expected to have no practical effect as it is in line with generally accepted practice.*

**Change 10: Sale and lease-back etc: exclusion of service charges etc to be on just and reasonable basis: Schedule 2 (section 681AF of ITA)**

This change requires that, in calculating the amount of a payment for which income tax relief is restricted under section 779 of ICTA, a just and reasonable amount must be excluded from the rent or other payment in respect of services or the use of relevant assets or rates usually borne by the tenant.

Section 779 of ICTA is an anti-avoidance provision which restricts tax relief for excessive payments of rent (and similar charges) in respect of land. Section 779(6)(d) provides that:

- in calculating the amount subject to restriction it is necessary to exclude so much of any payment as is in respect of services or the use of assets or rates usually borne by the tenant; and
- in determining the amount to be so excluded provisions in any lease or agreement fixing the payments or parts of payments which are in respect of services or the use of services may be overridden.

But section 779 of ICTA does not indicate either what considerations would justify such an override or what criterion should be used instead. In 1964, when this anti-avoidance provision was first introduced, it was natural to envisage that the decision to override the lease or agreement would be taken by the Inland Revenue. But that does not sit easily with Self Assessment.

Section 681AF of ITA, inserted by Schedule 2, therefore replaces the overriding provision of section 779(6)(d) of ICTA with a requirement to exclude so much of the payment as is just and reasonable.

***This change has no implications for the amount of tax, who pays it, or when. It affects (in principle but not in practice) only administrative matters.***

**Change 11: Trading income: omission of references to a company carrying on a profession or a vocation: Schedule 2(section 681DP of ITA)**

This change omits references to a profession and to a vocation where the source legislation refers to the carrying on by a company of a trade, profession or vocation.

The change is reflected in numerous sections in Part 3 of CTB1 (trading income). It is included in the origins of the main provisions affected, where it is acknowledged as Change 2. It is carried through into new section 681DP of ITA (inserted by Schedule 2).

There are strong grounds for believing that for the purposes of the charge to corporation tax there are no activities that should be taken to constitute the carrying on of a profession or vocation by a corporate body or unincorporated association. There is a full discussion of the issues involved in Change 2 in Annex 1 to the commentary on CTB1.

It is theoretically possible that the application of trading income rules to activities that a company could argue is a profession or a vocation could lead to a change in the measure of taxable profits.

***This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice.***

**Change 12: Transactions in land and transfer of right to distribution on shares: power to obtain information: “reasonably require”: Schedule 3 (section 681FB of ITA)**

This change expressly restricts the particulars that an officer of Revenue and Customs may require to be provided under section 730(8) of ICTA to those particulars which the officer may reasonably require.

Section 730(8) of ICTA enables the Board to require a person to give them such particulars “as [the Board] think necessary” for the purposes of section 730 of that Act (transfer of right to distribution on shares).

In section 681FB of ITA, inserted by Schedule 3, the opportunity has been taken to modernise this language and expressly impose the criterion of reasonableness. This is consistent with the way in which HMRC exercise the power in practice.

***This change has no implications for the amount of tax paid, who pays it or when. It affects (in principle but not in practice) only administrative matters.***

**Change 13: Factoring of income etc: transfer of right to distribution on shares: power to obtain information: minimum time to respond: Schedule 3 (section 681FB of ITA)**

This change provides that, if a person is required to provide information relevant to the legislation on transfers of rights to distributions on shares, the person must have at least 30 days to reply, rather than at least 28 days.

Section 730(8) of ICTA enables the Board to serve notices requiring the recipient to provide information relevant to the legislation on, respectively, transfers of rights to distributions on shares.

Section 730(8) of ICTA requires that the recipient must be given at least 28 days in which to reply. In other similar provisions, such as section 771 of ITA, the statutory minimum is 30 days.

Schedule 3 inserts section 681FB of ITA, which rewrites section 730(8) of ICTA. It harmonises the time limits by setting the statutory minimum at 30 days.

***This change has no effect for the amount of tax paid, who pays it or when. It affects (in principle but not in practice) only administrative matters.***

**Change 14: Miscellaneous relocations: relocation of section 152 of ICTA: Schedule 5.**

This change clarifies how an application to make a late objection to a notified amount of taxable benefit is handled in section 152 of ICTA.

Section 152 of ICTA deals with circumstances where an officer of the Department for Work and Pensions (DWP) notifies a benefit claimant of the amount of unemployment benefit, jobseeker's allowance or income support that is part of the claimant's income for tax purposes. The term "unemployment benefit" is retained as the wording of the legislation suggests that it has a broader scope than the statutory name for the benefit, replaced by jobseeker's allowance.

The claimant has 60 days in which to object to the notice. In addition, a claimant may make an objection after 60 days by making an "application for the purpose". An officer of DWP must then consider the circumstances, and in particular whether the claimant had a reasonable excuse for the delay and took the necessary action without further unreasonable delay. If the officer is not satisfied the matter is referred to the tribunal.

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But it is not clear if it is the application to make a late objection or the objection itself that must be made without further unreasonable delay. Section 152(5)(b) suggests that it is the objection, but that would mean that the objection would have to be made while the application to make the late objection was still under consideration.

Similar legislation can be found in section 49 of TMA concerning an application to make a late appeal. That provision is clear – it is the application that must be made without further unreasonable delay.

The rewritten provision makes it clear that it is the application to make a late objection that must be made without further unreasonable delay, and not the objection itself.

***This change could be favourable to some taxpayers and adverse to others in principle. But it is expected to have no practical effect as it is in line with current practice.***

**ANNEX 2: EXTRA-STATUTORY CONCESSIONS, CASE LAW, AND LIST OF REDUNDANT MATERIAL NOT REWRITTEN**

1. This draft Bill rewrites no ESCs or Statements of Practice nor does it include any changes in the law which involve giving statutory effect to principles derived, wholly or mainly, from case law.
2. The omission of provisions which are redundant in whole or in part is an integral part of the rewrite process. There is at the moment just one such omission recorded as follows:

<b>Redundant provision</b>	<b>Topic</b>	<b>See commentary on</b>
ICTA s.700(7)	Estates in administration	Part 6 of Schedule 5

## APPENDIX A: INDEX OF PROPOSED REWRITE CHANGES

This Appendix is in two parts:

- Table 1: a history of proposed Changes as presented to the Consultative Committee; and
- Table 2: an index of Changes proposed in the draft Bill.

**TABLE 1**

This table shows the date and other details of the Consultative Committee paper in which each Change was first proposed.

Month	Paper	Page number	Topic	Change number	See commentary on clause etc
Dec 07	(08) 01	2	References to “officer of Revenue and Customs”	2	6
Dec 07	(08) 01	7	Tax arbitrage: cases where payee not treated as not liable as a result of scheme	7	204
Jul 08	(08) 24	17	APAs: “Party” to exclude HMRC (Dropped)	n/a	n/a
Jul 08	(08) 35	8	Oil taxation: abandonment guarantees and expenditure under sections 63 and 65 of FA 1991	8	Schedule 1: section 225O of ITTOIA
Sep 08	(08) 42	10	Power to obtain information: “reasonably requires”	12	Schedule 3: section 681FB of ITA
Sep 08	(08) 42	11	Factoring of income etc: time to respond to request for information	13	Schedule 3: section 681FB of ITA
Oct 08	(08) 43	3	Sale and lease-back etc: restriction of excessive lease rentals	9	Schedule 2: section 681AA of ITA
Oct 08	(08) 43	5	Sale and lease-back: exclusion of service charges to be on just and reasonable basis	10	Schedule 2: section 681AF of ITA
Oct 08	(08) 43	16	Sale and lease-back: Apportionment or reduction to be both just and reasonable	5	Schedule 2: section 681DE of ITA

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<b>Month</b>	<b>Paper</b>	<b>Page number</b>	<b>Topic</b>	<b>Change number</b>	<b>See commentary on clause etc</b>
Oct 08	(08) 43	18	Trading income: omission of references to a company carrying on a profession or a vocation	11	Schedule 2: section 681DP of ITA

**TABLE 2**

The following proposed changes in the law are first published in the draft Bill.

<b>Clause</b>	<b>Topic</b>	<b>Change number</b>
3	Double taxation relief: capital gains tax relief under double taxation arrangements	1
23	Double taxation relief: limit on unilateral relief for tax on profits of UK branch, agency or permanent establishment	3
27	Double taxation relief: order in which credit relief is allowed	4
36	Double taxation relief: royalty income	6
Schedule 5 Part 4	Miscellaneous relocations: relocation of section 152 of ICTA	14

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**APPENDIX B: LIST OF PUBLICATIONS ISSUED**

**Table 1**

This table lists the Committee Papers under which the draft clauses were first published.

<b>Date</b>	<b>Committee Paper</b>	<b>Topic</b>
December 07	CC (08) 01	Tax arbitrage
April 08	CC (08) 12	UK representatives of non-UK residents
June 08	CC (08) 24	Transfer Pricing and Advance Pricing Agreements
October 08	CC (08) 42	Factoring of income
October 08	CC (08) 43	Sale and lease back

**Table 2**

This table lists the Response Documents published.

<b>Date</b>	<b>Response Document</b>	<b>Topic</b>
July 08	Responses to paper CC (08) 01	Tax arbitrage
October 08	Response to paper CC (08) 12	UK representatives of non-UK residents
December 08	Response to paper CC (08) 24	Transfer Pricing and Advance Pricing Agreements

## **APPENDIX C: THE CODE OF PRACTICE ON WRITTEN CONSULTATION**

### ***About the consultation process***

This consultation is being conducted in accordance with the Government's Consultation Code of Practice. If you wish to access the full version of the Code, you can obtain it online at:

<http://www.berr.gov.uk/files/file47158.pdf>

### ***The consultation criteria***

- 1 When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- 2 Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- 3 Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- 4 Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- 5 The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- 6 Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- 7 Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints about the process, please contact:

Richard Bowyer, Better Regulation Unit

020 7147 0062 or [richard.bowyer@hmrc.gsi.gov.uk](mailto:richard.bowyer@hmrc.gsi.gov.uk)

*Draft Taxation (International and Other Provisions) Bill*  
Appendix D

<b>Summary: Intervention &amp; Options</b>		
<b>Department /Agency:</b> <b>HMRC</b>	<b>Title:</b> <b>Impact Assessment of Tax Law Rewrite Bill 7</b>	
	<b>Taxation (International and Other Provisions) Bill</b>	
<b>Stage:</b> Consultation	<b>Version:</b> 1	<b>Date:</b> 27 January 2009
<b>Related Publications:</b> RIAs on previous rewritten legislation; CAA, ITEPA, ITTOIA, ITA 2007, Bill 5 (Corporation Tax) and Bill 6 (Corporation Tax)		

**Available to view or download at:**

<http://www.hmrc.gov.uk/ria/index.htm#partial>

**Contact for enquiries:** Jackie Bartlett

**Telephone:** 020 7438 7606

**What is the problem under consideration? Why is government intervention necessary?**

The existing legislation is generally perceived to be neither user friendly nor structured in a logical way. The Government made a commitment in 1996 to rewrite most direct tax legislation. Intervention is necessary because many users struggle to use existing legislation and may misinterpret it. Two strategic decisions were taken to help users: some "international" provisions (e.g. DTR and transfer pricing) should not be "split" but rather continue to apply for both corporation tax and income tax purposes and some tidying of the legislative landscape should be undertaken.

**What are the policy objectives and the intended effects?**

Rewriting existing legislation in modern language to make it clearer and more user-friendly but without changing the law other than in a minor and agreed way. There will also be a more logical structure to the legislation, shorter sentences and better use of definitions. The intended outcome/result is a coherent tax code that is accessible to users.

**What policy options have been considered? Please justify any preferred option.**

- 1) Apply rewrite style and format to the existing legislation. This is the preferred option because it fulfills the Government's commitment to rewrite most of direct tax legislation.
- 2) Do nothing
- 3) Leave the legislation as it is and provide better guidance
- 4) Consolidate the legislation rather than rewrite it

*Draft Taxation (International and Other Provisions) Bill*  
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When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The independent project Steering Committee have requested that a review of all rewritten legislation is made after April 2010.

**Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:



Date: 29 January 2009

<b>Summary: Analysis &amp; Evidence</b>			
Policy Option: Rewrite legislation	Description: Apply rewrite style and format to the selected existing legislation		
COSTS	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' One-off 'familiarisation cost' to business, tax professionals and agents. The time taken will vary considerably but using indicative figures in the way described in paragraph 36, these costs amount to £1m. In addition, there are one-off HMRC resource costs of redrafting legislation, reproducing the Bill and publishing guidance (£1m total).
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ 2m</b>	<b>1</b>	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ Negligible</b>	<b>Total Cost (PV) £ 2m</b>	
<b>Other key non-monetised costs by 'main affected groups'</b> There will be a negligible ongoing cost from minor agreed changes. Though small and hard to quantify, there will also be time losses in a transition period when new tax professionals will have to be trained to be familiar with both the old and new legislation.			
BENEFITS	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' Monetised benefits relate solely to the time saved by individuals and businesses in dealing with their tax affairs. An indicative saving of half an hour per year per user has been assumed, applying to a proportion of the one million users (£1.6m total).
	<b>One-off</b>	<b>Yr</b>	
	<b>£ 0</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 1.6</b>	<b>Total Benefit (PV) £ 7m</b>	
<b>Other key non-monetised benefits by 'main affected groups'</b> Ongoing benefits for tax professionals, and individuals, as well as HMRC, stemming from clarification of existing law and clearer future amendments. Provisions are easier to locate making the legislation more accessible to practitioners newly dealing with the topics. Valuable lessons to benefit future drafting.			

*Draft Taxation (International and Other Provisions) Bill*  
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**Key Assumptions/Sensitivities/Risks**

The above estimates of cost and benefits are purely indicative. Unintentional changes in law may have been made. A significant amount of work was involved for consultees. There should be no changes to tax yield.

Price Base Year 2009	Time Period Years 5	<b>Net Benefit Range</b> (NPV) £	<b>NET BENEFIT</b> (NPV Best estimate) £ 5m
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What is the geographic coverage of the policy/option?		UK		
On what date will the policy be implemented?		1 April 2010		
Which organisation(s) will enforce the policy?		HMRC		
What is the total annual cost of enforcement for these		£		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per		£ 0		
What is the value of changes in greenhouse gas emissions?		£ 0		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro -	Small -	Medium -	Large -
Are any of these organisations exempt?	No	No	No	No
<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)		
Increase	£	Decrease	£	<b>Net</b> £ Nil

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## **Evidence Base (for summary sheets)**

### **The problem and the reason for the legislation**

1. The source legislation lacks clarity and logical order. This leads to mistakes and wasted resources. A Government commitment was made in 1996 to rewrite all of the direct tax legislation and this continues to have full cross-party support.
2. HMRC priorities are to improve customers' experience of dealing with the Department, to increase levels of compliance and to improve its internal cost effectiveness.
3. The project has so far rewritten the Capital Allowances Act 2001 and the income tax code in three previous Acts, the Income Tax (Earnings and Pensions) Act 2003 (ITEPA), the Income Tax (Trading and Other Income) Act 2005 (ITTOIA), and the Income Tax Act 2007 (ITA). Bill 5 (Corporation Tax) was introduced into Parliament in December 2008 and Bill 6 (Corporation Tax) will be published in draft form in March 2009. The project has also rewritten the PAYE Regulations in response to requests from users and representative bodies. These Regulations (SI 2003/2682) came into force in April 2004.
4. As the Bill only rewrites existing legislation and does not change the law (except for minor identified changes at the margins intended in the main to bring clarification or consistency or to bring the law into line with well established practice); there has been only limited consultation within government.
5. The report of the last Joint Committee meeting which was held on 24 January 2007 to look at the Income Tax Bill, states that the Chairman of the Committee, the Rt Hon Kenneth Clarke QC, MP congratulated the project on putting income tax law into one body of clear legislation. He also acknowledged the project's attention to detail in order to get things right.

### **Policy objectives and intended effects**

6. The Tax Law Rewrite project (the project) aims to rewrite legislation so that it is clearer and easier to use, without changing or making less certain its general effect.
7. The project was set up in 1996. Its key objectives and characteristics are:
  - a) clearer, more user-friendly tax legislation;
  - b) a new more logical structure for rewritten legislation;
  - c) shorter sentences and harmonisation of definitions;
  - d) use of modern language, as long as this can be done without changing the law or making its effect less certain;

- e) better signposts and similar rules grouped together, to make rules easier to find;
  - f) no change in the underlying tax system (but the work of the project will not prevent any such changes);
  - g) some minor changes, where they further improve the legislation;
  - h) consultation with interested parties throughout the life of the project;
  - i) a specific streamlined Parliamentary procedure for enactment of rewrite Bills.
8. The project has rewritten the legislation covering income tax in a series of three Bills. On completing this work it turned its attention to the rewrite of corporation tax and then to the provisions covered in this Bill.
9. The risk of inadvertent changes is mitigated by the “continuity of law provisions” contained in the Bill, and also by the ability of the government to use powers in the Bill to amend legislation by regulations where the rewrite introduces an unintended change.
10. Full consultation with interested parties has been a key feature of the project. It has been conducted on a structured and published timescale agreed by the project’s Consultative and Steering Committees.
11. There are two outside Committees which are concerned with the workings of the project. They are:
- a) the Steering Committee, which provides strategic guidance to the project. Its members include MPs, the judiciary, and representatives of the legal and accountancy professions and consumer interests;
  - b) the Consultative Committee, whose role is to ensure continuous consultation on the rewritten law with all the main private sector interests. Its members include representatives of the CBI, CIOT, ICAEW, ICAS, ACCA, Law Society, the Federation of Small Businesses and other bodies.
12. The comprehensive consultation process has allowed the project to ensure, as fully as possible, that it has not changed the law in any way other than through minor identified changes (such as the incorporation of extra-statutory concessions or dropping redundant material) to improve the legislation.

### **Policy appraisal**

13. There are four possible options available:

(i) Apply rewrite style and format to the existing legislation

There is a clear Government commitment to rewrite primary direct tax legislation. The project was set up to do this and for example has so far rewritten income tax and corporation tax. This Bill along with the second corporation tax Bill will complete the work and honour the commitment made.

(ii) Do nothing

Failure to rewrite this legislation would be unwelcome to users who have pressed for the rewrite of the DTR provisions and welcomed the rewrite of other international provisions. Failure to take the opportunity to rewrite and relocate certain provisions currently in ICTA and various Finance Acts would also be unwelcome to users who have indicated a preference for action to tidy the legislative landscape where it is possible and helpful to do so.

(iii) Leave the legislation as it is and provide better guidance

An overhaul of the guidance to existing legislation would be a costly and time consuming exercise. It would be unlikely to provide satisfactory clarification where the legislation is particularly complex or confusing. If the source legislation remained unchanged, the updated guidance would have to reflect the lack of clarity in the source legislation. This is not a realistic option.

(iv) Consolidate the legislation rather than rewrite it

Consolidation would take fewer resources within HMRC, Parliamentary Counsel and from consultees. But it would not meet the needs of those users who find the existing legislation completely inaccessible or time consuming and difficult to understand and comply with. It would also be more difficult to deliver as some sections have already been rewritten and as a result there would be a risk that consolidation might confuse users.

**Review of policy**

14. The work of the project has been reviewed regularly. In 1998, prior to the first Bill which became the Capital Allowances Act 2001, the project carried out an internal stock take, sending a questionnaire to some 200 people involved in the consultative process. They were asked about the likely costs and benefits of the project. All agreed that it would be difficult to quantify most of the costs in advance, and all but impossible to arrive at any objective measure of the benefits. But most interested parties firmly believed, and still do so, that any costs will be more than outweighed by the benefits flowing from the project.
15. When the Capital Allowances Act 2001 had been in existence for some time giving tax professionals the chance to experience how it worked in practice the project's Steering Committee felt it would be appropriate to assess its effectiveness. Research showed that it was well received both outside and within HMRC.
16. Similarly, research showed the project's first and second income tax Acts known as ITEPA and ITTOIA were equally well received. For example the Institute of Chartered Accountants in England and Wales (ICAEW) described the ITEPA as 'another step forward in improving the intelligibility of United Kingdom tax legislation in areas of the law that affect a large number of taxpayers'. Of ITTOIA they said 'the draft Bill was well constructed and we commend its drafting. It covers important ground and

- as it facilitates taxpayers' easier understanding of legislation which will affect very many of them, it is a useful addition to the rewritten legislation'.
17. The benefits of the International and other provisions Bill are likely to be widespread, affecting individuals and businesses.
  18. The project has looked at the benefits and costs by reference to the main groups affected by the Bill such as:
    - a) tax professionals working in-house as tax managers within companies or as agents or other intermediaries;
    - b) advisors within the legal and accountancy professions;
    - c) individuals wishing to research provisions applying to their circumstances;
    - d) HMRC staff.
  19. The benefit to this broad group of users will come from the clarification of existing law and the clearer expression of future changes to that law. They potentially include:
    - i) less time consuming legislation and fewer errors caused by misunderstanding of the law;
    - ii) fewer issues on which time needs to be spent on obtaining specialist advice;
    - iii) less resource expended on queries about interpretation;
    - iv) fewer disputes with HMRC about the meaning of legislation; and
    - v) less time for training of new professionals.
  20. One indication of the impact of the project is that most users' representatives continue both to support the project and to contribute substantially by commenting on draft clauses and other publications.
  21. It is very difficult to quantify the actual benefits to users of a particular body of rewritten legislation until it has been in force for some time.
  22. The project has recently proposed, in consultation with its Steering Committee, that a more valuable and significant result would be obtained by evaluating all the rewritten legislation after this Bill is enacted.

## **Benefits**

### **Key monetised and non-monetised benefits**

23. Many companies and individuals make use of highly skilled and experienced external tax professionals and agents to provide advice and interpret the legislation.
24. For those businesses and individuals employing the services of external tax professionals and agents the greatest benefit will be derived from the greater ease of use for their advisors. Past market surveys have

demonstrated that previously rewritten legislation is clearer and easier to use. This should mean fewer disputes and less litigation. Nevertheless this impact assessment adopts the cautious assumption that there will be no expected reduction in the overall level of fees paid by businesses to agents.

25. Some companies and individuals will also be able to consult the legislation themselves to resolve more straightforward questions and ultimately be able to benefit from more user friendly software based on the rewritten legislation. It is not possible to quantify the number who may take this route. This impact assessment adopts the cautious assumption that there will be no switching away from using an agent as a result of the tax law rewrite.
26. HMRC are in a similar position to other tax professionals. Clearer legislation is likely to reduce the number of disputes over interpretation and the number of cases which need to be referred to a specialist for a definitive ruling. We have not attempted to monetise the value of this benefit. Training and guidance material should be easier to use and more straightforward to produce. Moreover, as the legislation becomes easier to understand, more resources can be released to concentrate on other issues, for example the provision of better guidance.
27. Those businesses and individuals which do not use external tax professionals and agents should benefit directly as a result of the legislative rewrite. The nature of these savings is likely to be similar to those outlined above, i.e. reduced time spent navigating, understanding and applying the legislation correctly as a result of its improved ease of use.
28. The legislation applies to both businesses (large and SMEs) and to individuals. In order to monetise these benefits we have used the same methodology as in other rewrite Bills and applied an average saving of half an hour per tax payer per year which is an approximation across the range giving an overall saving of 31300 hours. Using a cost of £50 per hour, this would produce a saving of £1.6m based on a proportion of the total number of income tax and corporation tax payers as shown in the following table. This aggregate estimate of benefits includes savings achieved by those using the legislation directly and by those using external professionals and agents whether or not the professionals and agents fully pass on the savings to their clients. The population figures were extracted from HMRC's own analysis of income tax and corporation tax returns. We have provided a present value figure of £7m based on a 5-year period, using a discount rate of 3.5%.

<b>Category of taxpayer</b>	<b>Number</b>
Large businesses	770
SMEs	1830
Individuals	60,000
Overall Total	62,600

29. It must be emphasised that these savings are purely indicative. They stem from industry views which were passed to HMRC during the in-depth consultations which took place with tax professionals. In some cases the savings per business and individual will be far more significant; in other cases savings may not arise or might be one-off rather than ongoing. An accurate in-depth breakdown of savings has not been possible. Nevertheless we consider that this aggregate figure provides an appropriate indication of the extent to which the benefits of this initiative justify the costs.

#### **Other non-monetised benefits**

30. International tax legislation is complex and applies to both individuals and corporations. Users have expressed a desire for the rewrite of this legislation.
31. With the globalisation of business activity and the greater international mobility of individuals, international tax provisions are having an impact on a greater number of individuals and businesses. On the experience of surveys from previously rewritten legislation which show that it is easier to understand and use, it is possible that the benefits of the rewritten international tax legislation will be more readily apparent for these users.
32. Users have also indicated that they would find it helpful if some tidying of the legislative landscape were to be undertaken as part of this Bill which will complete the main work of the Tax Law Rewrite Project on the income tax and corporation tax codes.
33. Lessons have been learned from successful rewriting and these can be developed into best practice for the production of tax legislation in the future.

#### **Costs**

##### **Key monetised and non-monetised costs**

34. This Bill has two main themes - the rewrite of international provisions, and the rewrite and relocation of some provisions that are currently not helpfully located for users. The Bill includes provisions about double taxation relief, transfer pricing and tax arbitrage. It also includes schedules which rewrite and relocate a number of unconnected provisions.
35. Although there is no major change to the underlying tax system, there will be some costs to tax professionals who need to get to grips with the new

structure, section numbers and language used in the Bill. In essence this relates to the costs to practitioners of finding their way round the new legislation. We have aimed to minimise these costs by including a number of tables in the legislation and guidance which show where various provisions have been relocated. There will also be some impact from the minor agreed changes made by the Bill. However, because the underlying legislation is not changing significantly, the impact on the administrative burden is likely to be negligible.

36. These one-off familiarisation costs are difficult to estimate, as they will vary considerably depending upon the nature of the business and the nature of the agent. We have applied these costs to the same population (around 62,600) which benefits from this reform. In order to take account of the very considerable variations between users, from no time for some to a number of hours for others, we have assumed an average illustrative familiarisation time of twenty minutes each, across the combined populations of business and corporation tax agents and applied an average hourly cost of just £50. This generates a total one-off cost of £1m.
37. As with the benefits figures, it should be emphasised that these costs are purely indicative, and that the actual costs per business and individual will vary significantly around this assumed illustrative mid-point. Nevertheless we consider that these figures portray a reasonable indication of the relativities involved, i.e. that one-off costs to users should be lower than the annual benefits.
38. We have also provided a Net Present Value calculation over a 5 year time frame, reflecting an assumption that we are not expecting any further significant legislative rewrite in this area for at least the next 5 years (and probably much longer).
39. People new to tax should need less time than at present to learn the legislation- for example trainee accountants and HMRC staff.
40. Compared to the option of doing nothing, the cost to HMRC in implementing the policy decision to produce this Bill is £1m spread over the years up to 2010. Some of these costs would have been incurred within the next few years if the alternative option of consolidation rather than rewriting had been viable and had been adopted.
41. There are some costs to HMRC in the use of policy specialists' time in reviewing the draft clauses for operational implications.
42. There will be a small cost to HMRC in updating the relevant parts of the guidance manuals and internal training material. But this is done on a regular basis in any event.
43. Policy costs represent the essential costs of meeting policy objectives. Because the rewrite of this legislation does not involve changes in the law, apart from some minor ones, policy costs arising from the rewrite will be minimal.

44. Commercial publishers and software suppliers will need to update their products. These costs are likely to be passed on to the end users but, as many of these are updated on an annual basis in any event, the level of extra costs passed on should be minimal.
45. Reproducing the Bill and detailed guidance material might cost the two major publishers up to £50,000 each. To the extent that the Bill obviates the need for consolidation of provisions in ICTA and various Finance Acts this is not all additional cost.

#### **Small Business impact test**

- The Bill will affect all businesses including those with 20 or fewer employees.
  - HMRC has well established links with organisations representing small businesses. The project has worked with specialists throughout the Department in developing the rewritten legislation and the impact on small businesses was considered at all stages.
  - More specifically, a member of the Federation of Small Businesses serves as a member of the Consultative Committee and has had the opportunity to review all the rewritten legislation in this Bill.
46. The project concluded that as the Bill does not materially change the law, the position of small businesses will remain much as before. They will have to familiarise themselves with the rewritten legislation but will benefit from legislation that is easier to use.
  47. Inevitably, some costs in terms of time expended have fallen on the tax professionals and representative bodies that have taken part in the consultation process. Again, these costs are difficult to quantify but we have estimated them to be £0.5m. Those consulted continue to urge the project to maintain the same level of consultation. Consultation costs are not normally classed as business compliance costs but the level of industry input in this exercise warrants a particular mention.

#### **Key assumptions/sensitivities/ risks**

48. The International and Other Provisions Bill extends to over 200 pages. The accelerated Parliamentary process to which Tax Law Rewrite Bills are subject relies on wide consultation on all draft clauses and agreement to any proposed minor changes.
49. Although the project has a proven and robust system of consultation on draft clauses, mistakes inevitably happen. A significant risk in rewriting legislation is that an unintended change in the law could result. Any inadvertent errors will as in previous rewrite legislation, be corrected using special powers contained within the Bill. The project has identified only a small number of such errors in previous rewrite Acts.

50. The impact on admin burdens is assessed using the 'Standard Cost Model' (SCM). The SCM provides an estimate of the costs to business of complying with HMRC obligations to disclose information to HMRC or to third parties. The SCM considers which activities a business has to do to comply with an HMRC obligation, how many businesses have to comply, and how often they need to comply. The SCM considers the burdens applying to different sizes of business. As the Bill rewrites legislation without making significant changes, there is no impact on overall tax yield or on the business admin burden as measured by the Standard Cost Model which relates to the cost to business of disclosing information to HMRC or to third parties.

### **Competition**

51. This measure has no restrictive impact on competition. If there is any effect it will be pro-competition, as it will reduce the difficulty encountered by potential new entrants to the tax agency business (by making it easier for such service providers to attain the requisite knowledge of the legislation). However, the Government has not sought to quantify any such possible effect or place reliance on it.

### **ECHR**

52. As with previous Bills we are considering human rights issues but we do not expect any problems in this area.

### **Specific impact tests**

53. We have considered other impacts and as this Bill is not intended to change the law but to express it more clearly, we do not consider that any of them will apply differently. The project has received no feedback from consultation to indicate that this will not be the case.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

### **ANNEX A**

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

## **APPENDIX E: LEGISLATION NOT REWRITTEN**

1 This Appendix updates the position shown in Appendix D to the draft Income Tax Bill, published in 2006, which identified the main provisions which were not rewritten for income tax purposes. It now identifies the main provisions not rewritten for either income tax or corporation tax purposes.

2 At the time that the draft Income Tax Bill was published it was not intended to rewrite the Accrued Income Scheme provisions (sections 710 to 728 of ICTA). The position changed after publication and they were in fact added to the Bill before enactment. Accordingly these provisions have been removed from the list.

3 Some provisions (for example, those concerning transfer pricing and DTR) could not be helpfully split between the two codes. For this reason certain provisions which applied for both income tax and corporation tax purposes were not rewritten as part of the work on ITEPA, ITTOIA and ITA. They were left to be considered further when the project turned its attention to the rewrite of corporation tax.

4 As part of the work on CTB2 and this Bill further consideration was given to some of the provisions listed in paragraph 8 of Appendix D to the draft Income Tax Bill. The decision was taken that a number of provisions with an international character would be grouped together in a Bill that would not follow the principle of rewriting separate versions for income tax and corporation tax purposes.

5 As a result, two of the provisions in Appendix D to the draft Income Tax Bill are now rewritten in this Bill. These are the provisions relating to transfer pricing and double taxation relief. They too have been removed from the list.

6 Other provisions which would also fit into the international theme of this Bill have not been included in the draft Bill because they are under review. These are provisions relating to controlled foreign companies (CFCs), offshore funds, and some aspects of double taxation relief. Once the outcome of the current reviews is known and any changes have been made, these subjects could be grouped with the international provisions already rewritten in this Bill. At the moment therefore the provisions relating to CFCs and offshore funds remain in the list.

7 The leasing provisions in sections 779 to 785 of ICTA and Schedule 12 to FA 1997 were not tackled as part of the rewrite of income tax. They have, however, been rewritten in CTB2 for corporation tax purposes and this Bill has been, or in the case of Schedule 12 to FA 1997 will be, used to rewrite and relocate appropriate income tax provisions. They have accordingly been removed from the list.

8 The position is similar as far as the provisions relating to petroleum extraction activities in Chapter 5 of Part 12 of ICTA are concerned.

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9 One of the aims in this Bill was to relocate where possible and rewrite where appropriate some provisions which would otherwise have been left unhelpfully in ICTA or one of the Finance Acts. It became clear during the course of work to review provisions which might be so dealt with in this Bill that, in some cases, the nature of the provisions took them beyond the remit of the project. These provisions are therefore included in the list below.

10 The following updated list shows the position on the main income tax and corporation tax provisions enacted before 2007 which will not be rewritten and will remain in their current location.

Section 58 of FA 1969	Disclosure of information for statistical purposes
Sections 256 to 265 of ICTA	Personal reliefs
Sections 266 to 274 of, and Schedules 14 and 15 to, ICTA	Life assurance premium relief
Section 365 of ICTA	Interest relief on life annuity loans
Section 369 to 379 of ICTA	Mortgage interest relief at source
Chapter 1 of Part 12 of ICTA	Insurance companies
Sections 459 to 466 of ICTA	Friendly societies
Sections 613 to 615, 629, 659A and 659E of ICTA	Parliamentary pension funds and certain pensions with an overseas connection
Sections 747 to 756 of, and Schedules 24 to 26 to, ICTA	CFCs
Sections 756A to 764 of, and Schedules 27 and 28 to, ICTA	Offshore funds
Sections 67 to 74 of, and Schedule 5 to, FA 1989	Employee share ownership trusts
Section 125 of FA 1990	Information for tax authorities in other member states
Chapter 3 of Part 2 of FA 1993	Lloyd's underwriters
Section 110 of FA 1997	Obtaining information from social security authorities
Section 163 of FA 1998	Adoption of single currency by other member states
Section 132 of FA 1999	Power to provide for use of electronic communications
Section 133 of FA 1999	Use of electronic communications under other provisions
Schedule 15 to FA 2000	Corporate venturing scheme
Schedule 22 to FA 2000	Tonnage tax
Section 143 of, and Schedule 38 to, FA 2000	Power to provide incentives to use electronic communications
Section 148 of FA 2000	Use of minimum wage information
Section 134 of, and Schedule 39 to, FA 2002	Recovery of taxes etc due in other member States

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Section 135 of FA 2002	Mandatory e-filing
Section 136 of FA 2002	Use of electronic communications under other provisions
Section 197 of FA 2003	Exchange of information between tax authorities of member States
Section 204 of FA 2003	Mandatory electronic payment
Section 205 of FA 2003	Use of electronic means of payment under other provisions
Chapter 3 of Part 3 of, and Schedule 11 to, FA 2004	Subcontractors
Part 4 of, and Schedules 28 to 34 to, FA 2004	Pension schemes
Schedule 15 to FA 2004	Gifts with a reservation
Chapter 4 of Part 2 of FA 2005	Trusts with vulnerable beneficiary
Part 6 of FA 2005	Civil Partnerships etc
Sections 7 to 9 of F(No 2)A 2005	Social security pension lump sums
Section 68 of F(No 2)A 2005	EU Mutual Assistance Directive: notifications