

**Tax Law Rewrite**

**Responses to the draft  
Taxation (International and  
Other Provisions) Bill**

This document is available on the internet at: <http://www.hmrc.gov.uk/rewrite>

**28 August 2009**



## **Introduction**

### ***Purpose of this document***

1. This document's purpose is to provide details of the substantive technical points made by respondents, to set out our analysis of them and to say what changes to the drafting of clauses, if any, we will be making as a result.

### ***The draft Bill***

2. The draft Taxation (International and Other Provisions) Bill was published for consultation in March 2009.

3. The published draft Bill brought together material previously published for consultation in committee papers. The clauses in the draft Bill incorporated revisions made in the light of comments made by respondents to those consultations. The draft Bill also included clauses not previously published.

### ***Respondents***

4. We received detailed written responses from the following:

- The Chartered Institute of Taxation
- The Institute of Chartered Accountants in England and Wales
- John Jeffrey-Cook
- Colin Campbell

5. Respondents to earlier consultation on draft clauses whose contributions were taken into account in the draft Bill included, in addition to those already mentioned:

- Alma Consulting Group
- The Law Society
- The London Society of Chartered Accountants
- KPMG LLP
- PricewaterhouseCoopers LLP
- The Confederation of British Industry
- Several individuals

6. We are grateful for all the comments and contributions made, many of which were detailed, and we appreciate the time and effort taken by respondents. Their efforts have assisted us greatly in improving the clarity and accuracy of the clauses. We are sending each respondent a copy of this response document.

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***General***

7. This response document broadly follows the format of the draft Bill. It covers substantive technical points made but does not include minor points, such as suggestions to improve punctuation or to correct obvious minor errors. All such suggestions have, however, been carefully considered.

8. In the explanatory notes published with the draft Bill we asked a number of specific questions. These related to new proposed Annex 1 entries for suggested minor changes in the law and to other matters on which we were especially keen to receive views. We also invited comments generally.

9. If no mention is made of responses to particular questions, it is because correspondents either supported the proposal or made no comment. Similarly, if a particular clause is not mentioned, either we received no comments on that clause, or the comments were minor in nature.

***Provisions included subsequent to publication of the draft Bill***

10. Since the draft Bill was published, FA 2009 has been put onto the statute book. Committee Paper CC/SC (09) 16, which contains details of the provisions affected by the Act, will be presented shortly to the independent committees which oversee the work of the Tax Law Rewrite project.

11. After the publication of the draft Bill we also published a number of further papers containing clauses and amendments. These are listed in Committee Paper CC/SC (09) 16. We have added an annex to this Response Document which sets out our responses to comments received on these papers, where they were received in time for us to deal with them.

12. Work is continuing on consequential amendments to other legislation, transitionals, savings and repeals.

***Policy suggestions***

13. We received several policy suggestions for reform. Such issues are outside the remit of the Tax Law Rewrite project but we have passed them to the relevant specialists for consideration.

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***Glossary***

14. In this document, as in the explanatory notes published with the draft Bill, we have used a number of abbreviations. These are listed below.

CTA 2009	the Corporation Tax Act 2009
CTB2	the draft Corporation Tax Bill published in March 2009
DTR	double taxation relief
FA 1988	Finance Act 1988 (and similarly for other Finance Acts)
F(No 2)A	Finance (No 2) Act
HMRC	Her Majesty's Revenue and Customs
ICTA	the Income and Corporation Taxes Act 1988
ITA	the Income Tax Act 2007
ITEPA	the Income Tax (Earnings and Pensions) Act 2003
ITTOIA	the Income Tax (Trading and Other Income) Act 2005
PRT	petroleum revenue tax
TCGA	the Taxation of Chargeable Gains Act 1992
TMA	the Taxes Management Act 1970

## **Part 2: Double taxation relief**

### *Q2 We welcome comments on the structure of Chapter 1 of Part 2.*

*Respondents were in favour.*

*Respondents were not unanimous about the use of the expressions “arrangements”, “double taxation arrangements” and “unilateral relief arrangements” in this Part. One respondent commented that arrangements having effect by virtue of section 788 were in practice usually described as “agreements” rather than “arrangements”. This respondent preferred “agreements” as being more familiar and slightly shorter.*

15. It would be paradoxical to refer to a “unilateral agreement”. It is convenient to be able to refer, in this Part, to “arrangements” (generically) which are either “double taxation arrangements” or “unilateral relief arrangements”. In practice, tax professionals will be able to use the abbreviation “DTA” as standing for either “double taxation agreements” or “double taxation arrangements”, as they think fit, without any risk of confusion.

16. *We have retained the proposed structure (subject to any changes arising from the rewrite of the remainder of Part 18 of ICTA and the FA 2009 provisions on DTR). We have retained the expressions “arrangements”, “double taxation arrangements” and “unilateral relief arrangements” in this Part.*

### **Clause 3: Arrangements may include retrospective or supplementary provision**

#### *Q3 We welcome comments on the proposal to clarify in clause 3(2) the application of section 277(1) of TCGA to section 788(8) of ICTA (Change 1).*

*Respondents were in favour. One queried whether Change 1 was in reality a change in the law, given that section 1 of TCGA defined “capital gains” as being effectively identical with “chargeable gains”.*

17. Section 15(2) of TCGA provides: “Every gain shall, except as otherwise expressly provided, be a chargeable gain.” This implies that there could be “gains” which are not “chargeable gains”. There is no suggestion that such “gains” could be gains which are not “capital gains”. It therefore appears possible for there to be “capital gains” which are not “chargeable gains”. Putting it another way, gains which are not “chargeable gains”, because they are exempt, are none the less “capital gains”.

18. Sections 2(1) and 10(1) of TCGA make it clear that capital gains tax is charged on chargeable gains accruing to persons resident, or ordinarily resident, in the United Kingdom and on certain gains accruing to non-residents.

19. In relation to capital gains tax, it is therefore not clear what weight is to be given to section 1(1) of TCGA, as that provision appears to add nothing to sections 2(1), 10(1) and 15 of that Act.

20. If, as the respondent suggests, one were to put weight on section 1(1) of TCGA, one would end up with the position that, firstly, “capital gain” and

“chargeable gain” meant the same thing but, secondly, although every capital/chargeable gain was a “gain” accruing on the disposal of an asset, not every “gain” accruing on the disposal of an asset was a capital/chargeable gain. But this would be problematic because, as noted in the comment on section 15(2) of TCGA above, TCGA is not concerned with “gains” which are not “capital gains”.

21. The use of both “capital gain” and “chargeable gain” in section 277(1) of TCGA suggests that the two concepts are not meant to be synonymous, since the drafter is unlikely to have used different phrases to express the identical concept.

22. We therefore do not think that one can safely infer from section 1(1) of TCGA that “capital gain” and “chargeable gain” are synonymous.

23. We therefore think that Change 1 needs to be acknowledged as a change in the law.

24. *We have decided to make Change 1 in clause 3(2).*

**Clause 4: Meaning of “double taxation” in sections 2 and 3**

*One respondent queried whether this clause was necessary, in the light of clause 3(2).*

25. Even if this clause could be omitted without loss, omitting it would be likely to provoke doubts about the validity of the tax sparing provisions in the United Kingdom’s DTAs.

26. *We have retained clause 4.*

**Clause 6: The effect given by section 2 to double taxation arrangements**

*One respondent objected that the expression “capital gain” in (for example) rule 2(1) in clause 6 was unsatisfactory. The Bill does not define this expression. If the context requires “capital gain” to be synonymous with “chargeable gain”, using different phrases is confusing.*

27. Section 277(1) of TCGA could have required one to substitute “chargeable gains” for “income” but did not do so and instead required one to substitute “capital gains”. As explained in the comment on clause 3, we do not think it appropriate to treat “capital gains” and “chargeable gains” as synonymous.

28. If, in a particular context, there can be no question of any reference to “capital gains” which are not “chargeable gains”, then we substitute “chargeable gains” for “income”. If, in a particular context, it makes no sense to substitute “capital gains” for “income”, then we do not do so. Otherwise, we substitute “capital gains” for “income” as directed by section 277(1) of TCGA.

29. Section 277(1) of TCGA does not define “capital gains”, therefore neither does the Bill.

30. *We have not adjusted the references in this Part to “capital gains”.*

*One respondent asked us to comment on the function of clause 6(7).*

31. As the respondent surmised, clause 6(7) needs to define “UK resident person” and “non-UK resident person” in clause 6(3) because clause 6(3) is about capital gains and is therefore outside the scope of section 989 of ITA.

**Clause 8: Meaning of “unilateral relief arrangements”**

*One respondent maintained that clause 8(1)(b) was inappropriate, in that these words (a) cannot give the hypothetical arrangements any effect and (b) require one to know, in order to apply the definition, whether the hypothetical arrangements have effect.*

32. We have rewritten the remaining provisions of section 790 of ICTA and, in so doing, have revised the structure of the draft provisions on unilateral relief. The rewritten provisions no longer hypothesise that arrangements have been made. Once one has said that unilateral relief arrangements are a set of rules, the only question is what relief the rules provide for. Nothing in Chapter 2 of Part 2 of the Bill turns on the rules having the same effect as double taxation arrangements. Indeed, even in relation to double taxation arrangements, by the time one is in Chapter 2 one is interested only in the contents of the arrangements.

33. We have, however, retained the label “unilateral relief arrangements”, as explained above in the discussion of Question 2.

34. *We have omitted clause 8(1)(b).*

**Clause 9: Contents of unilateral relief arrangements**

*One respondent thought that “UK tax” in rule 1(1)(c) and 1(2)(c) needed to be defined in order to prevent an overlap.*

35. We think that rule 1(4) to (6) is sufficient for this purpose.

36. *We have not adjusted rule 1 in clause 9.*

*One respondent thought that rule 5(1) and (2) should be merged. The respondent also found it unhelpful that in rule 5(1) the “if”-clause came second whereas in rule 5(2) the “if”-clause came first.*

37. Rule 5(1) says “credit ... is not allowed ... in the case of any income or gains”; rule 5(2) says “credit is not allowed ... in respect of that tax”. Therefore, rule 5(1) and (2) need to be stated as separate propositions.

38. We have considered carefully whether we can rationalise rule 5(1) and (2). We have, however, concluded that such a rationalisation would risk changing the law in ways whose consequences would be difficult to predict.

39. *We have not adjusted rule 5 in clause 9.*

**Clause 16: Claw-back of relief under section 14(2)**

*One respondent noted that in clause 16(3) the definition of quantity B referred to the amount which would be allowable under clause 10(2) in the absence of overlap relief, whereas the source legislation referred to the amount which would have been allowed “under this Part” in the absence of that relief, which would include amounts allowable under section 804 of ICTA itself as well as the normal relief under clause 10(2). The respondent asked for confirmation that the change of wording was deliberate and was considered to have no effect.*

40. We are happy to give this confirmation. However, the respondent’s comments have led us to revisit this clause.

41. *We have sharpened the drafting of clause 16(2).*

**Clause 20: Unilateral relief for Isle of Man or Channel Islands tax**

*One respondent thought that clause 20(4) duplicated rule 1(4) and (5) in clause 9.*

42. We have reshaped the clause to refer expressly to Island tax for which credit is allowed under unilateral relief arrangements. That reference necessarily picks up the requirement in clause 9 for the Island tax to correspond to UK tax.

43. *We have omitted clause 20(4).*

**Clause 21: Unilateral relief for tax on income from employment or office**

*One respondent thought that clause 21(2)(b) duplicated rule 1(4) in clause 9.*

44. Clause 21(2)(b) is needed for the definition of “overseas tax”.

*One respondent thought that the requirement in clause 21(3)(b) complicated the clause unnecessarily, given that the possibility of the tax being charged in any other way seemed remote. The respondent also thought that clause 21(3)(b) would produce a conflict with clause 10 if the individual was UK resident, because UK residence is not a requirement for relief under clause 10.*

45. In clause 21(2), “tax that ... is charged on income and corresponds to income tax ... and is calculated by reference to income from an office or employment ...” is tax “that is paid under the law of [a territory outside the United Kingdom]”. In contrast, clause 21(3) is about UK income tax, and so “employment income” in clause 21(3)(b) has the meaning given by section 7(2) of ITEPA. It could happen that income was treated as income from an office or employment under foreign tax law but as trading income rather than employment income under UK tax law. In such a case, the benefit of relief under clause 21 would not be available (with the result that entitlement to relief would depend on being UK resident). Accordingly, omitting clause 21(3)(b) would change the law.

46. The tail words of clause 21(3) impose an additional requirement which is consistent with the requirements of clause 10. There is therefore no conflict between the two provisions.

47. *We have retained clause 21(2)(b) and (3)(b).*

**Clause 23: Unilateral relief for tax on UK branch, agency or permanent establishment**

*One respondent thought that clause 23 would be easier to understand if clause 23(2) stated expressly that the clause applied to non-UK resident persons, rather than allowing this to emerge by implication from the definition of the income or gains in clause 23(3) and (4).*

48. The commentary on this clause states that “this clause is concerned with unilateral relief for tax imposed on non-UK residents with branches, agencies or permanent establishments in the United Kingdom”. We are, however, happy to make the point with greater emphasis.

49. *Although we have not adjusted the drafting of clause 23 in this regard, we have given the clause the new title “Unilateral relief for non-UK tax on non-resident’s UK branch or agency etc”.*

*One respondent thought that the “... and corresponds to ...” wording in clause 23(3) and (4) duplicated the definitions in clause 9.*

50. *We have sharpened the drafting of clause 23(3) and (4) to meet this criticism.*

**Clause 27: Amount of limit**

*One respondent thought that the clause would be easier to follow if (like the source legislation) it started out by setting out the calculation for the simple case where credit is available in respect of only one source of income, before plunging into the more complicated formula required in other cases. The respondent also thought that it would be better if the definitions of TI, X, and C followed immediately on the formula in which they are used, and if the definition of X were expressed as “the income (if any) from sources to which subsection (2) has already been applied”.*

51. The multiple-source provisions fit naturally into a single story about credit limits against income tax. We have therefore rewritten them in a way that weaves the multiple-source and single-source strands into a single thread.

52. If there is only one source, X is nil. This will not complicate the calculations.

53. Clause 27(3) is needed in order to make sense of the definition of X in clause 27(4), and therefore precedes that subsection.

54. Since (following section 796(2) of ICTA) clause 27(2) applies to income from sources, it is correct to define X in terms of the income to which clause 27(2) has

already applied rather than in terms of income from sources to which clause 27(2) has already applied.

55. *We have not adjusted clause 27.*

**Clause 28: Credit against tax on trade income: further rules**

*One respondent thought that clause 28(5) did not deal adequately with a case in which credit was available in respect of both trading and other income.*

56. In such a case, clause 28(1) restricts the application of the clause to the trading income and clause 27(2) applies to the other income without reference to clause 28(2) to (5).

57. *We have not adjusted clause 28.*

**Clause 34: Credit against tax on trade income: further rules**

*One respondent agreed that “or expenses” in section 798A(3)(a) and (b) of ICTA was otiose, but thought that omitting the expression in clause 34(3)(a) appeared to create a contrast between “deductions” in clause 34(3)(a) and “expenses” in clause 34(3)(b). The respondent therefore suggested writing “deductions or expenses” in clause 34(3)(a) in order to emphasise that clause 34(3)(b) was referring to a subset of this.*

58. Clause 34(3)(a) deals with one company’s deductions (whether expenses or not), whereas clause 34(3)(b) deals with a different company’s expenses (and not its other deductibles). The balance of convenience favours the current drafting.

59. *We have not adjusted clause 34.*

*One respondent observed that the commentary unhelpfully passed over clause 34(8) in silence. The respondent also objected that clause 34(8) was practically unusable, in that it depended on the hypothetical application of a section which was itself far from simple and, having been repealed, would not be readily accessible to the user.*

60. Clause 34(8) is based on section 798A(5) of ICTA, which was inserted by paragraph 249 of Schedule 1 to CTA 2009. Paragraph 3450 of the explanatory notes on that Act states: “The new subsection (5) preserves the distinction between post-cessation receipts charged to tax by section 103 of ICTA (to which section 798A does not apply) and those charged to tax by section 104 of ICTA (to which section 798A does apply).”

61. Most post-cessation receipts are charged under what used to be section 103 of ICTA, leaving what used to be section 104 of ICTA to pick up the “change of basis” adjustments. See section 104(3) of ICTA (repealed), which made it clear that section 103 of ICTA (repealed) had priority.

62. Bringing charges under what used to be section 103 of ICTA within the scope of the rewritten section 798A of ICTA would change the law to the taxpayer’s disadvantage. We are not minded to propose this Annex 1 Change.

63. *We have amplified the commentary on clause 34.*

**Clause 35: Applying section 34(2): asset in hedging relationship with derivative contract**

*One respondent thought that in clause 35(4) “an asset” should be changed to “an asset or a contract”, as in the source legislation.*

64. *We are grateful for this correction.*

**Clause 36: Applying section 34 (2): royalty income**

*One respondent thought that in clause 36(2)(a) “arising from a single asset” should be changed to “arising from a single transaction, arrangement or asset” as in the source legislation. The respondent noted that clause 34(2) used the expression “income arising out of the transaction, arrangement or asset”.*

65. In clause 34(2), “income arising out of the transaction, arrangement or asset” is short for “income arising out of the transaction, or income arising out of the arrangement, or income arising out of the asset, as the case may be”.

66. Clause 36 is only concerned with the third of those possibilities. Clause 36(1)(b) refers to royalties being paid “in respect of an asset”, and clause 36(2)(a) therefore refers to royalty income “in respect of the asset” and treats such income as “income arising from a single asset”.

67. *We have not adjusted clause 36.*

**Clause 41: Earlier years’ non-trading deficits on loan relationships**

*One respondent queried why clause 41 was not subject to clause 43 in the same way as section 797(3B) of ICTA was subject to section 797A of that Act.*

68. Section 797(3B) of ICTA applies if section 797A of ICTA does not apply; section 797A(6) is to the same effect, except that it applies if section 797A *does* apply. Apart from that difference, the differences between sections 797(3B) and 797A(6) are verbal and not substantive. Putting it another way, sections 797(3B) and 797A(6) give the same rule, with the result that it does not matter for these purposes whether section 797A applies. Sections 797(3B) and 797A(6) are therefore both rewritten to clause 41.

69. *We have not adjusted clause 41.*

**Clauses 42 and 43: Current year’s non-trading deficits on loan relationships; non-trading debits on loan relationships**

*One respondent thought that adding “as mentioned in subsection (4) above” at the end of clause 42(5) and “as mentioned in subsection (3)(b) above” at the end of clause 43(4) would help to focus the important but rather confusing distinction in those clauses between “allocated to” and “set against”.*

70. On reflection, we agree with the substance of this.

71. ***We have adjusted clauses 42(5) and 43(4).***

*One respondent thought that the titles of clauses 42 and 43 did not reflect the substantive distinction between them, since clause 43 applied to some cases where there was a current-year non-trading deficit. The respondent recommended transposing the two clauses.*

72. ***We are happy to transpose the two clauses.***

*One respondent thought that the word “only” was needed in clause 43(4). One respondent wondered whether “can” in clause 43(4) should be changed to “must”, given that the tail words of section 797A(7) used the words “were required to be allocated”.*

73. On reflection, we agree with these criticisms.

74. ***We have adjusted clause 43(4) as suggested by the latter respondent.***

**Clauses 46 and 47: Duty to give notice that adjustment has rendered credit excessive; giving a counteraction notice**

*Two respondents asked about the function of the definitions of “notice” in clauses 46(6) and 47(5).*

75. Section 989 of ITA and clause 1069 of CTB2 define “notice” as notice in writing. These definitions apply to clauses 46 and 47 in their application to income tax and corporation tax but not in their application to capital gains tax. Section 288(1) of TCGA defines “notice” in TCGA as notice in writing, but this definition does not apply to other enactments relating to capital gains tax. Clauses 46(3) and 47(5) therefore need to define “notice”, but only in relation to capital gains tax.

76. ***We have not adjusted clauses 46 and 47.***

**Clause 50: Section 49 (2) and (3): schemes enabling attribution of foreign tax**

*One respondent, while noting that the singular can be construed as including the plural, wondered whether it might be prudent in an anti-avoidance provision to retain the qualification “(or to more than one such other source)”, as in the source legislation.*

77. Section 6(c) of the Interpretation Act 1978 (to which the respondent referred) provides:

In any Act, unless the contrary intention appears, words in the singular include the plural and words in the plural include the singular.

78. No such contrary intention appears in clause 50. It is therefore safe to omit the words under review for the sake of brevity.

79. ***We have not adjusted clause 50.***

**Clause 53: Section 49(2) and (3): schemes that would reduce a person’s tax liability**

*One respondent wondered whether the reference in clause 53(5) should be to “income tax, corporation tax or capital gains tax”.*

80. Paragraph 5(3) and (4) of Schedule 28AB to ICTA refers to “the amount of United Kingdom taxes ... in respect of income and chargeable gains”.

81. Also, “United Kingdom taxes” in paragraph 5 of Schedule 28AB to ICTA has the meaning given by section 792 of that Act (as extended by section 277(1) of TCGA). The definition of “United Kingdom taxes” in section 792 of ICTA uses “and” not “or”.

82. *We have not adjusted clause 53.*

**Clause 57: Counteraction notices given before tax return made**

*One respondent thought that “for the purpose of complying with the provision referred to in the notice” might be confusing in the context of clause 57(2). The respondent preferred the wording of the source legislation.*

83. Section 804ZB(1) of ICTA makes it clear that receipt of a notice under section 804ZA of that Act is one of several conditions that must be met before section 804ZB(2) has to be complied with. Furthermore, if all of the conditions are met, it is section 804ZB(2), not the notice, that has to be complied with. Although we consider that the references in section 804ZC of ICTA to complying with the notice will be read (in the taxpayer’s favour) as referring to section 804ZB(2), it seems more helpful to say what is meant. For this purpose, we have drawn on the wording of very similar provisions in section 28 of F(No 2)A 2005 (which is also rewritten in this Bill: see clauses 214 and 216).

84. *We have not adjusted clause 57.*

**Clause 58: Counteraction notices given after tax return made**

*One respondent thought that “required” in clause 58(5)(a) should be “requested”.*

85. We are grateful for this correction.

86. *We have adjusted clause 58.*

**Clause 59: Amendment, closure notices and discovery assessments in section 58 cases**

*One respondent thought that “for the purpose of complying with the provision referred to in the notice” might be confusing in the context of clause 59(2), (5) and (6). The respondent preferred the wording of the source legislation.*

87. This wording has been adopted for the reasons given in the comment on clause 57.

88. *We have not adjusted clause 59.*

**Clause 72: Foreign capital gains tax relevant only for capital gains tax purposes**

*One respondent thought that, in the phrase “capital gains tax charged under the law of a territory outside the United Kingdom”, the words “capital gains” were otiose.*

89. Clause 72 achieves the result that capital gains tax charged under the law of a territory outside the United Kingdom (see section 277(3) of TCGA) is not creditable against UK income tax or UK corporation tax. The respondent has prompted us to revisit the drafting of clause 72.

90. *We have reshaped clause 72.*

**Clause 77: Stock-lending cases in which no disregard under section 74 or 75**

*One respondent noted that in clause 77(2)(a) the word “repo” was redundant.*

91. *We are grateful for this correction. If FA 2009 had not repealed the provision under review, we would have adjusted clause 77 as the respondent requested.*

**Clause 81: Time limits for action if tax adjustment makes reduction too large or too small**

*One respondent commented that clause 45(2) was simpler and more concise than clause 81(2) and (4), and recommended conforming the latter to the former.*

92. The provisions are not to the same effect. In particular, clause 45(2) refers to the enactments relating to capital gains tax other than TCGA but clause 81(4) does not.

93. *We have not adjusted either clause 45 or clause 81.*

**Clause 82: Duty to give notice that adjustment has rendered reduction too large**

*One respondent asked about the function of clause 82(9).*

94. Section 989 of ITA and clause 1069 of CTB2 define “notice” as notice in writing. These definitions apply to clause 82 in its application to income tax and corporation tax but not in its application to capital gains tax. Section 288(1) of TCGA defines “notice” in TCGA as notice in writing, but this definition does not apply to other enactments relating to capital gains tax. Clause 82(9) therefore needs to define “notice”, but only in relation to capital gains tax.

95. *We have not adjusted clause 82.*

**Clause 83: Transfer of non-UK business etc if Mergers Directive applies**

*One respondent considered that, in the definition of “the transfer subsections” in clause 83(2), it was unhelpful to put “company” in inverted commas without indicating how the meaning of that word was extended. The respondent suggested either omitting the inverted commas (since the words under review were only being used in inoperative parenthetical descriptions) or else directing the reader to section 140L of TCGA.*

96. *We will mention section 140L of TCGA in the commentary on clause 83(2).*

**Clauses 84 and 85: Giving effect to solutions to cases and mutual agreements resolving cases; effect of, and deadline for, presenting a case**

*One respondent thought that clauses 84 and 85 should be expressly extended to cover the enactments relating to capital gains tax and to petroleum revenue tax.*

97. We agree that it will be appropriate to do this. It will change the law in the taxpayer's favour, putting generally accepted practice on a clear statutory basis.

98. *We have adjusted clauses 84 and 85.*

*One respondent thought that clause 84(4) should, like the source legislation, refer to "the period of 12 months" and that in clause 85(3) "the six years" should be similarly adjusted.*

99. *For the sake of Bill-wide consistency, we have inserted "period of" in each of clauses 84(4), 85(3) and 104(5).*

**Clause 94: Correcting assessments where relief is available**

*One respondent, while noting what was said in paragraph 243 of the explanatory notes, wondered whether the reference to a "chargeable gain" being "entrusted to ... [a person] ...for payment" could be given a meaning. The respondent surmised that the words under review might have been intended to cover a situation where the disposal proceeds of an asset, incorporating a chargeable gain on disposal, could in some way be placed in the hands of a person other than the person beneficially entitled to the disposal proceeds.*

100. Since a chargeable gain reflects allowable deductions, it is unclear how chargeable gains can be "entrusted to any person for payment".

101. It is, as the respondent says, entirely possible for disposal proceeds to be entrusted to a person for payment. And it could perhaps be said that, in such a case, what is entrusted is (a) any profit element that is a chargeable gain, (b) any profit element that is a capital gain but not a chargeable gain and (c) the non-profit element. But there are two basic steps. First, one determines what, as a matter of legal analysis, the reality of a transaction is. For example, if funds are entrusted for payment they may be analysed, in the hands of the person entitled to the payment, as partly income and partly capital. Second, one determines the fiscal consequences of (the legal reality of) the transaction. The accrual of a chargeable gain is a fiscal consequence. It does not seem possible to talk about chargeable gains being "entrusted to any person for payment" without blurring those two steps.

102. We remain of the view that it will be possible to omit without loss the reference in the tail words of section 790(11) of ICTA to chargeable gains being entrusted for payment.

103. *We have not adjusted clause 94.*

### **Part 3: Double taxation relief for special withholding tax**

#### **Clause 105: Refusal to issue certificate and appeal against refusal**

*One respondent thought that (a) “no officer” in clause 105(1) implied that one had to enquire of each and every officer whether he or she was satisfied before one concluded that no officer was satisfied, (b) the reference in clause 105(1) to “officers” did not read naturally and was inappropriate given that clause 104(2) only required the information to be given to one officer and (c) in clause 105(2) “officers’ refusal” was inappropriate because the officer was refusing on behalf of HMRC rather than on behalf of officers collectively.*

104. We have revisited clause 105.

105. We think that, in public law terms, being satisfied is a decision and is a decision of which refusal is the consequence. Accordingly, once the officer (O) allocated to decide whether to accept the application has reached the conclusion that he or she is not satisfied that an officer has received the information and documents, it is incumbent on O or another officer to issue a refusal notice. Securing that an officer issues the notice, and determining which officer should do so, are matters of internal administration.

106. *We have adjusted clause 105 accordingly.*

### **Schedule 2: Sale and lease back etc: new Part 12A of ITA 2007**

#### **Section 681AA: Transferor or associate becomes liable for payment of rent**

107. In the commentary on this section of ITA, we noted that, although respondents supported Change 9 (Sales and lease-backs: restriction of excessive lease rentals: relationship with accounting practice), one respondent had raised detailed criticisms of the way in which the Change was drafted.

108. *In the light of the respondent’s criticisms, we have sharpened the drafting of this Change.*

109. *We have also reached the conclusion that, although the Change is in principle favourable to some taxpayers, it is in principle adverse to others. As previously explained, however, the Change puts generally accepted practice on a clear statutory footing. We will therefore adjust the Change Note to conclude: “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.”*

#### **Section 681BD: Relief for rent under new lease**

110. In the commentary on this section of ITA, we noted that the source provision for section 681BD(3) referred to “the provisions of this Act [ie ICTA] providing for deductions or allowances by way of tax relief in respect of payments of rent” and that, in rewriting Schedule A for corporation tax purposes, CTA 2009 would consequentially amend ICTA. We therefore noted that we would need to check whether ICTA, as amended, still included any residual provisions about income tax relief for rent.

111. We do not consider that, following the rewrite of income tax, ICTA will include any residual provisions about income tax relief for rent.

112. *This section does not refer to ICTA.*

### **Schedule 3: Factoring of income etc: new Part 12B of ITA 2007**

#### **Section 681E: Type 1 finance arrangement defined**

113. In the commentary on this section of ITA, we noted that, in this Part, we were considering whether to use the expression “firm” to refer collectively to persons who were carrying on a business in partnership.

114. *We have decided to use the expression “partnership”.*

#### **Section 681ED: Type 2 finance arrangement defined**

115. In the commentary on this section of ITA, we noted that we were considering a respondent’s suggestion that we define “the person involved in the change” in subsection (2)(e).

116. *We have decided to provide a suitable definition.*

#### **Section 681EH: Type 3 finance arrangement defined**

117. In the commentary on this section of ITA, we noted that we were considering a respondent’s suggestion that we define “the person involved in the change” in subsection (2)(d).

118. *We have decided to provide a suitable definition.*

### **Schedule 5: Miscellaneous relocations**

#### **Part 7: Relocation of section 787 of ICTA**

#### **Section 809ZE of ITA: Tax relief schemes and arrangements**

*One respondent wondered whether the definition of “interest” in new section 809ZE(5) of ITA should refer to “profit share return”.*

119. The short answer is that new section 809ZE(5) of ITA omits the reference to “profit share return” because paragraph 664(4) of Schedule 1 to CTA 2009 omitted the references to “profit share return” in paragraph 8 of Schedule 2 to FA 2005, which brought alternative finance arrangements within the scope of section 787 of ICTA.

120. Matters have, however, now moved on. The square brackets round the definition of “interest” in new section 809ZE indicated that the rewrite of section 787 of ICTA, in its application to alternative finance arrangements, was under review. We now intend to rewrite the income tax provisions relating to alternative finance arrangements in a new Part of ITA. Alternative finance arrangements will therefore be outside the scope of new section 809ZE of ITA.

121. *We have therefore omitted the definition of “interest” in new section 809ZE(5) of ITA.*

**Part 8: Relocation of sections 130 to 132 of FA 1988**

**Section 109A of TMA: Provisions for securing payment by company of outstanding tax**

*One respondent asked whether the reference to “the officer’s decision” in new section 109A(8) of TMA should refer to “the Commissioners’ decision”.*

122. *We agree and an amendment has been made.*

**Part 10: Relocation of section 200 of FA 1996 so far as applying for income tax purposes**

**Section 835A of ITA: Domicile for income tax purposes of overseas electors**

*Q15 We would welcome comments on whether or not the capital gains tax element of this provision should be relocated.*

*We received two differing responses to this question; one respondent considered it sensible to relocate the capital gains tax element in TCGA, while the other respondent did not.*

123. *As we are not rewriting the legislation on capital gains tax or inheritance tax, section 200 of FA 1996 has been retained so far as necessary to deal with these taxes.*

**Part 16: Relocation of paragraph 13 of Schedule 13 to FA 2007**

**Section 925A of ITA: Creditor repos**

*One respondent queried whether “arrangements” in new section 925A(2)(b) of ITA should be “arrangement”.*

124. *We are grateful for this correction.*

**Section 925D of ITA: Power to modify repo sections**

*One respondent queried why the power in paragraph 15(7)(a) of Schedule 13 to FA 2007 for regulations to make different provisions for different cases was not being rewritten as a separate proposition in new section 925D of ITA.*

125. Section 927 of ITA provides: “Regulations under this Chapter [*ie Chapter 9 of Part 15 of ITA*] may make different provisions for different cases.” New section 925D of ITA will be inserted in that Chapter. There is therefore no need to rewrite paragraph 15(7)(a) of Schedule 13 to FA 2007 as a separate proposition.

126. *We have not adjusted section 925D of ITA.*

**Schedule 7: Transitionals and savings etc.**

*One respondent wondered whether paragraph 10 of Schedule 7 also needed to refer to petroleum revenue tax.*

*Draft Taxation (International and Other Provisions) Bill*  
*Response Document: Schedule 7: Transitionals and savings etc.*

127. PRT operates strictly within its half-yearly chargeable periods and nothing in PRT turns on accounting periods or periods of account which straddle chargeable periods. Accordingly, as the Bill is brought into force for PRT purposes on the first day of a *future* chargeable period, there is no need to mention PRT in paragraph 10 of Schedule 7.

128. *We have not adjusted paragraph 10 of Schedule 7.*

## **Annex to Response Document**

### **Responses to papers published after the draft Bill**

This annex sets out our responses to comments on papers published after the draft Bill, where they were received in time for us to deal with them.

## **Alternative Finance Arrangements – Committee Paper CC/SC (09) 12**

### **Schedule 1**

#### **Part 1: Amendments of ITA 2007**

#### **Section 564J: Purchase and resale arrangements where return in foreign currency**

*The new section 564J of ITA does not exactly follow the source legislation, because subsection (2) refers to “alternative finance return” where the source legislation refers to “effective return” and the two things are not identical (even if, in some cases, they are arithmetically equal). Possibly it has been done this way because the rewritten legislation does not have a defined term corresponding to “effective return” and it was not thought worthwhile to create one just for this purpose. The effect of the section is probably the same either way, but the way it has been drafted produces an awkward overlap since calculating “the appropriate amount for the purposes of section 564I(3)” [a reference to section 564I(4) would actually have been more appropriate here] is itself a step in the process of calculating “the alternative finance return for the purposes of section 564I”.*

1. We agree with this analysis. As the respondent suggests, the results should be arithmetically equal in the majority of cases, but to ensure that there is full equivalence with the source legislation we have concluded that it would be appropriate to adjust the draft.
2. *We have adjusted the section so that it more closely follows the structure and approach of the source legislation.*

#### **Section 564V: Exclusion of alternative finance return from consideration for sale of assets**

*In section 564V(4) of ITA, in paragraph 23 of Schedule 1, is it intended to refer to the ‘the Tax Acts’?*

3. Section 564V of ITA rewrites section 53 of FA 2005. The source provision in section 53(2) of FA 2005 refers to “the Tax Acts or TCGA 1992”. Although the rewritten legislation in ITA does not operate for corporation tax it is nonetheless necessary to ensure that it does not affect something that might be done by the corporation tax legislation to affect the amount of the consideration for sale or purchase for tax purposes. The rewritten provision accurately reflects the source.
4. *We have not adjusted this section.*

## **Part 2: Amendments of TCGA 1992**

### **Section 151T: Investment bond arrangements are qualifying corporate bonds**

*Is there any good reason for referring in new section 151T(4) of TCGA to ‘the entitlement’ rather than to ‘an entitlement’ in the source section 48B(4)(c) of FA 2005. The latter appears more appropriate.*

5. *We agree and have made the suggested amendment.*

## **Part 3: Amendments of other enactments**

### **Section 173A of ITEPA: Alternative finance arrangements**

*In the new section 173A of ITEPA, when reading paragraph (a) of subsection (3), and then again in paragraphs (b) and (c), one has to pause at the words “such return” and ask “what return does that mean?”. That requires one to look back to the previous subsection to confirm the answer. There is no actual ambiguity involved, but writing out the phrase “alternative finance return” in full would only increase the word count of each paragraph by one.*

6. *We agree and have made the suggested amendment.*

## **Schedule 2: Minor and consequential amendments**

### **FA 2005**

*In paragraph 18 should ‘sections 46 and 47A,’ read ‘sections 46 to 47A’ so as to also omit section 47 FA 2005? Similarly in Schedule 3 (Repeals and revocations).*

7. *We agree and have made the suggested amendment.*

### **ITA**

*In paragraph 27 should ‘In Part 2 of Schedule 4’ read ‘In Schedule 4’?*

8. *We agree and have made the suggested amendment.*

## **Schedule 3: Repeals and revocations**

*Having regard to the amendment to section 849(4) of ITA in paragraph 26 of Schedule 2 (Minor and consequential amendments), why is section 849(4) of ITA repealed in Schedule 3 (Repeals and revocations)?*

9. *The draft repealed this provision in error – we have deleted the repeal.*

**Leasing arrangements: finance leases and loans — Committee Paper CC/SC (09) 13**

**Schedule 1**

**Part 1: New Part 11A of ITA 2007**

**Section 614BV: Capital allowances deductions: films and sound recordings**

*A respondent questioned why clause 434 of CTB2 relates only to films but this section of ITA relates also to sound recordings.*

10. This section and clause 434 of CTB2 are both based on paragraph 11(9) and (10) of Schedule 12 to FA 1997.

11. Clause 434 of CTB2 rewrites those sub-paragraphs as they relate to sections 40A, 40B and 42 of F(No 2)A 1992, which apply for corporation tax purposes. Those sections are expressed only to apply to films. This section of ITA rewrites those sub-paragraphs as they relate to sections 134, 135, 138, 138A, 139 and 140 of ITTOIA, which apply for income tax purposes. Sections 134 and 135 of ITTOIA apply to sound recordings as well as films.

12. *No amendment is required to this section or clause 434 of CTB2.*