

**Bill 7: Transfer Pricing and Advance Pricing Agreements**

***Summary***

1. This paper presents draft clauses which rewrite Schedule 28AA to ICTA, Sections 110 and 111 of FA 1998 and sections 85 to 87 of FA 1999.

2. The provisions on advance pricing agreements (APAs), determinations with the sanction of the Board, and notices to potential claimants, in FA 1999 and FA 1998 respectively have now been brought together with the transfer pricing provisions, in ICTA, in two Parts, for the convenience of users.

3. Part 1 provides the rules on transfer pricing. The transfer pricing provisions apply where “provision” is made between two persons by means of a transaction and, broadly one of the persons controls the other or both are controlled by the same person or persons. The actual provision is compared to the arm’s length provision (that is to say the provision that would have been made between independent enterprises) and, if the actual provision confers a potential UK tax advantage, the taxable profits of the person receiving that tax advantage are adjusted to what they would have been if the persons had been at arm’s length.

4. Part 2 provides the rules on APAs. These are written agreements between an enterprise and the Commissioners for Her Majesty’s Revenue and Customs which determine a method for resolving pricing issues in advance of a return being made. When the terms of the agreement are complied with they provide assurance that the treatment of those pricing issues will be accepted by both HMRC and the enterprise for the period covered by the agreement.

5. The paper contains:

- the draft clauses with origins;
- draft explanatory notes; and
- a draft note outlining a proposed change in the law.

***Questions for the committee***

6. We would be grateful for any comments you may have on these draft clauses.

7. There is a new Change Note which is intended for inclusion in Annex 1 to the explanatory on the Bill. We would welcome any comments you may have on this.

***Closing date for comments***

8. We would welcome any comments by 19 September 2008. If possible they should be sent by e-mail to:

[jackie.bartlett@hmrc.gsi.gov.uk](mailto:jackie.bartlett@hmrc.gsi.gov.uk)

Written comments should be sent to:

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9. Please note that the names of respondents may be published unless they ask for their comments to be treated in confidence.