

Tax Law Rewrite.
Response to Paper
CC/SC(07)37

Miscellaneous rules

This document is available on the internet at:

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

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INTRODUCTION

1. We published Committee Paper CC/SC(07)37 in November 2007 on the HMRC internet website www.hmrc.gov.uk/rewrite. The closing date for responses was 28 February 2008. The draft clauses rewrite various miscellaneous rules provisions mostly to be found in Chapter 6 of Part 12 of ICTA.

2. The purpose of this response document is to provide details of the substantive points made and to explain our analysis and proposals in respect of them. Minor points such as suggestions to improve punctuation are not covered, but all comments received have been carefully considered.

3. We received written responses from the following:

- The Chartered Institute of Taxation
- The Institute of Chartered Accountants in England and Wales

4. We are very grateful for all the comments made, many of which were detailed and we appreciate the time and effort that went into them. We are sending each respondent a copy of this response document.

5. The following abbreviations for tax legislation are used:

- ICTA the Income and Corporation Taxes Act 1988
- ITA the Income Tax Act 2007

6. Two questions were raised in the ENs accompanying the draft clauses. They both received positive responses (apart from one minor proviso – see paragraph 35).

Clause 4: Meaning of “health service body”

Primary Care Trusts could have been established prior to the enactment of section 18 of the National Health Service Act 2006. Will such PCTs also be covered by the exemption.

7. Primary Care Trusts established prior to the National Health Service Act 2006 will be covered by the continuity of law provisions contained in the NHS (Consequential Provisions) Act 2006.

8. *We do not propose to amend the clause to meet this point.*

Clause 5: NHS Foundation trusts

The clause would be clearer if the conditions for an order (subsections (6)–(9)) were inserted before subsection (2) (the contents of such an order).

9. We agree that subsections (6) to (8) should take precedence over subsection (2). However, the provision in subsection (9) is essentially supplementary and will remain in its current position.

10. *We propose to amend the clause to meet this point.*

Clause 6 : Issue departments of the Reserve Bank of India and the State Bank of Pakistan

The Red and Yellow books refer to the RBIA as enacted in 1934 and not 1983.

11. The reference to 1983 is incorrect and should read 1934.

12. *We propose to amend the clause to meet this point.*

‘Profits or income’ in section 517 of ICTA has been rewritten as ‘income’. Does this reflect the similar approach taken in the rewriting of ‘profits and gains’ as ‘gains’ only in draft clause 1(1) in Paper CC/SC(07)18 (Bill 5: Loan relationships)?

13. The rewrite follows the form established by the rewrite for income tax purposes, section 839 of ITA. Section 271(8) of TCGA 1992 deals with the taxation of chargeable gains accruing to the Reserve Bank of India or the State Bank of Pakistan, whether those gains are subject to income tax or corporation tax. The intention in this clause is therefore to make clear that it does not apply to chargeable gains. The term “income” does not include chargeable gains.

14. The reference to “gains” in the Loan Relationships legislation has been amended, following industry representations, to “profits”.

15. ***We do not propose to amend the clause in response to this comment.***

Would it be preferable to use the term “gains/profits/income” in respect of both the Indian/Pakistani banks and agricultural societies (clause7)?

16. The source legislation for clause 6 refers to “profits or income”. This has been abridged to “income” for the reasons set out in paragraph 13. The source legislation for clause 7 refers to “profits or gains”. This has been rewritten as “profits” as we felt that this best expressed the difference between the receipts derived from the agricultural show and the expenditure incurred on staging it. The clause is consistent with the loan relationships clauses where references to “profits or gains” in the source legislation have been replaced with references to profits.

17. ***We do not propose to amend the clause in response to this comment.***

Clause 7 : Agricultural societies

Clarification would be welcome as to whether the term “any kind of animal” is intended to cover the breeding of birds, fish (and other marine creatures) and bees, butterflies etc. In particular does the expression include humans?

18. An explanation for the replacement of “any kind of livestock” in the source legislation with “any kind of animal” is to be found in the ENs.

19. We decided not to define “animal” and it thus takes its ordinary meaning of “any kind of fauna”. An agricultural society may therefore be a society or institution formed for the purposes of promoting the breeding of birds, fish, bees or butterflies. We believe that the reference to “the breeding of any kind of animal” precludes the inclusion of humans as humans are not subject to breeding programmes.

20. ***We do not propose to amend the clause to meet this point.***

‘Profits or gains’ in the source (section 510(1) of ICTA) is rewritten as ‘profits’ in clause 7(1), whereas in the rewritten loan relationships provisions the similar term ‘profits and gains’ is rewritten as ‘gains’ which appears inconsistent.

21. The point made has already been addressed as the loan relationships provisions now refer to “profits”.

22. ***There is no need to amend the clause to meet this point.***

Clause 8 : European Economic Interest Groupings

How does the proposed wording of Rule 4 affect the decision to rewrite the corporation tax rules on the basis that companies cannot carry on professions?

23. An EEIG cannot carry on a profession. See the Companies House publication, GB04 European Economic Interest Groupings (Version 7). The reference to a profession will therefore be removed.

24. ***We propose to amend the clause to meet this point.***

Should subsection (7) refer to “any part of the United Kingdom” rather than “Great Britain, Northern Ireland”?

25. The wording follows the pattern established in section 842 of ITA and replicates the wording in the source legislation.

26. ***We do not propose to amend the clause to meet this point.***

Why is the limitation to ‘in respect of income’ introduced in respect of ‘charging corporation tax’? Would be preferable to omit this, and simply refer to ‘the purposes of charging corporation tax’.

27. Section 285A of TCGA 1992 provides for the taxation of chargeable gains in relation to EEIGs. The intention behind the drafting of clause 8 is to make it clear that the clause does not apply to chargeable gains.

28. ***We do not propose to amend the clause to meet this point.***

Clause 10: Harbour reorganisation schemes: CAA 2001

Subsection (2) provides that a qualifying allowance or charge may be made. Section 518 provides that all such allowances/charges should be made.

29. We agree that the wording of the clause should be amended to cover the possibility that both allowances and charges might arise.

30. ***We propose to amend the clause to meet this point.***

Is it considered unnecessary to qualify the reference to CAA 2001 as including enactments which are to be treated as contained in that Act, as in the source (section 518(4) of ICTA)?

31. We decided that the words in parentheses, “(including enactments which under this Act are to be treated as contained in that Act)”, were superfluous. The only relevant enactment is section 532 of ICTA. That section provides that the Corporation Tax Acts have effect as if certain provisions of ICTA were contained in the Capital Allowances Act. The words in parentheses in section 518(4) of ICTA simply restate the point in relation to that particular section.

32. ***We do not propose to amend the clause in response to this comment.***

Clause 11 : Harbour reorganisation schemes: chargeable gains

In EN paragraph 23 it might be clearer if ‘loss relief against’ were inserted immediately before ‘chargeable gains’.

33. We agree.

34. *We propose to amend the EN to meet this point.*

Clause 12: Harbour reorganisation schemes: transfer of part of trade

Q2. The respondents welcomed the decision to use the uniform wording “just and reasonable” in these circumstances. However, they queried the relevance to Change 93 in ITA which deals with a different subject and also a different wording.

35. The reference to Change 93 in ITA is correct if slightly oblique. That change refers solely to section 525 which requires an apportionment of the expenses of a mixed trade to be just and reasonable. The source only required a reasonable apportionment. The last line of the change note states:

The same change was made in ITTOIA, to provide a uniform expression of the basis on which apportionments are to be made.

We agree that it might have been better for the reference in question 2 in the ENs to be to that ITTOIA change (which referenced 12 sections of that Act) as opposed to the ITA change.

36. *No action is necessary in response to this comment.*