

Tax Law Rewrite

**Responses to the draft
Income Tax (Trading and Other
Income) Bill**

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23 September 2004

Draft Income Tax (Trading and Other Income) Bill
Response document

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Draft Income Tax (Trading and Other Income) Bill
Response document: introduction

Introduction

1. The draft Income Tax (Trading and Other Income) Bill was published on 4 March 2004.

2. The draft Bill rewrites income tax legislation relating to trading, property and investment income. The Bill will repeal, for income tax purposes, the remaining income tax Schedules A, D and F.

3. The published draft brought together material previously published in six exposure drafts and ten Committee Papers, revised in the light of comments from respondents. It also contained a small amount of previously unpublished material.

4. We issued 826 copies of the draft Bill to individuals and bodies outside the project. We also made the draft available on the internet, where it received just over 3000 visits.

5. We received 11 written responses to the draft Bill as well as a number of other observations. These included responses from the following representative and professional bodies:

- The Chartered Institute of Taxation;
- The Confederation of British Industry;
- The Building Societies Association;
- The Institute of Chartered Accountants in England and Wales;
- The Institute of Chartered Accountants of Scotland;
- London Society of Chartered Accountants; and
- The Low Incomes Tax Reform Group.

6. In view of the fact that the majority of the clauses in the draft Bill had been published previously respondents tailored their comments accordingly. Respondents tended to examine particular aspects of the draft Bill and explanatory notes. For example, one considered all the Annex 1 changes, while another answered all the new Questions in the commentary (although both commented on much more besides). The differences in approach mean we received a fairly comprehensive response despite the volume of the material issued.

7. We are very grateful for all the comments made and input to the consultation process by whatever means.

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8. In Volume 1 of the draft Bill we asked a number of specific questions. These related to the proposed rewrite changes (“PRCs”) and to other matters on which we were especially keen to receive views. We also invited comments generally. We were pleased not only to receive replies to the questions but also comments on both the detail of the clauses and the Bill as a whole.

9. The purpose of this Response Document is to summarise the comments made and, where applicable, to indicate how we are following them up. Time and space do not allow us to deal with every individual comment, especially the numerous minor drafting suggestions for the clauses or explanatory notes. But they have all been recorded and considered carefully. It is not practical to reply individually to all those who responded to the draft Bill, but each respondent has been sent a copy of this Response Document.

10. This Response Document broadly follows the format of the draft Bill. If a particular clause is not mentioned, it is because we either received no comments on that clause, or the comments we received were minor drafting suggestions for the clause or the supporting explanatory notes.

11. Annex 1 in Volume 2 of the draft Bill contains details of 161 proposed minor changes to the statute. These proposed changes were overwhelmingly accepted by respondents. Accordingly, this document refers to proposed changes only where one or more respondents have questioned the change or comment is needed for some other reason.

12. Along with this Response Document we are publishing on the internet a revised draft of the Bill. We hope the value of the comments made by respondents is apparent in this draft.

13. Unless we indicate otherwise, the clause numbers in this document are those of the clauses as they appeared in the draft Bill, published in March 2004. At the end of this document there is a table of destinations, showing where the draft Bill clauses appear in today’s print of the Bill.

14. The material on “accrued income profits” and transfers of trading stock has been removed and the chapter charging annual payments (which have not been charged by a specific provision) has been moved to just before the charge on “other income” within Part 5. More detail on these changes is provided in the relevant sections of this document.

15. In this document we have used a number of abbreviations. These are listed below.

CAA the Capital Allowances Act 2001

ESC Extra-statutory concession

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FA 1971	Finance Act 1971 (and similarly FA 1985 and so on)
F(No 2)A	Finance (No 2) Act
ICTA	the Income and Corporation Taxes Act 1988
ICTA 1970	the Income and Corporation Taxes Act 1970
ITA 1918	the Income Tax Act 1918 (and similarly ITA 1945)
ITEPA	the Income Tax (Earnings and Pensions) Act 2003
TCGA	the Taxation of Chargeable Gains Act 1992
TMA	the Taxes Management Act 1970
VAT	value added tax

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General issues

Comments on the whole Bill

16. We are grateful for the positive feedback on the Bill as a whole. As well as agreeing that the vast majority of the proposed changes would improve the legislation respondents commented:

we welcome the simplification and greater clarity this project is bringing to tax legislation.

Bill 3 is 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. There are, nevertheless, parts of the draft Bill which taxpayers will still struggle to understand, but this reflects the complexity of the underlying legislation and not any failing on the part of the tax law rewrite draftsmen.

Again we recognise and commend the huge amount of detailed work that has gone into this Bill.

17. As regards the presentation of the work and the proposed changes one respondent commented:

We also welcome the very useful innovation that the explanatory notes include a table showing what has happened to all the various rewrite changes proposed in the earlier exposure drafts and Committee papers. This has made it a good deal easier to trace the progress of the consultations.

Policy suggestions

18. Responses to the draft Bill and to the earlier exposure drafts and papers included suggestions for a number of policy changes which respondents recognised might well be outside the scope of the Rewrite Project.

19. It is not within our remit to make any policy alterations other than the minor changes permissible within a rewrite Bill. But our Steering and Consultative Committees have asked us to draw attention to areas of the tax code where respondents think that it would be desirable to make more fundamental changes. The Appendix to this Response Document sets out briefly these wider policy issues raised by respondents.

Consequential amendments of other legislation

20. In Volume 1 of the draft Bill we explained that our work on consequential amendments, transitionals, savings and repeals was well advanced but incomplete. Respondents to the draft Bill commented on the importance of getting these right. The revised draft published today contains Schedules 1, 2 and 3 that are nearing completion although the process of checking and revising continues.

Parenthetical notes

21. One respondent asked for a consistent approach to the use of parenthetical notes after the citation of statutory references. The respondent suggested that notes should always be used except after definitions or where the context makes the subject matter obvious. The respondent also asked that parenthetical notes be used after the clauses that refer to the loss provisions in sections 380 to 385 of ICTA.

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22. We agree that a consistent approach to parenthetical notes is desirable and our approach is very similar to that suggested by the respondent. In the absence of an absolute rule some inconsistency is always possible but we do not want to adopt an absolute rule because its inflexibility could produce unwanted results. We will continue to check this as we fine tune the Bill.

23. We have not adopted the respondent's suggestion in relation to sections 380 to 385 of ICTA. We have looked at the clauses affected and consider that the context makes it quite clear what the provisions are about.

Extra-statutory concessions

24. One respondent suggested that in Annex 2 to the Explanatory Notes (Destination of rewritten extra-statutory concessions) we should indicate if only a part of a concession has been rewritten. We have adopted this suggestion.

Consistency of drafting

25. Respondents raised a number of points aimed at making the approach more consistent throughout the Bill and the language simpler. For example, should all calculations be “made”, “done” or “carried out”? Are all formulas set out consistently?

26. Consistency is an issue we are looking at ever more closely as work on the Bill progresses. The comments received are very helpful.

Part 1: Overview

Clause 1: Overview of Act

27. Two respondents commented on the drafting of this clause. We have considered their suggestions carefully but are not convinced we should make changes as things stand at present.

28. In particular, we prefer not to split subsection (3) into two subsections. That would give too much prominence to a minor thought and unbalance the clause.

Clause 2: Overview of priority rules

29. Three respondents commented on the drafting of this clause.

30. One respondent suggested that the linking words “see” and “but” should be dropped.

31. “See” is an important convention used throughout the Bill to highlight sign-post provisions (sign-posting signposts). And we like “But” here because subsection (3) contains a warning about subsection (2).

32. Another respondent suggested that if clause 2 identifies all the priority rules in the Bill then the words ‘some’ in clause 2(1) and ‘in particular’ in clause 2(2) are not appropriate.

33. We think that “in particular” is correct because subsection (2) does not list all the priority provisions.

34. “Some” emphasises the fact that we do not have all the rules here. There are priority rules in the descriptions of charged income and in other specific provisions. It is an important qualification.

35. One respondent suggested that subsection (2) should provide more detail about the content of the clauses listed and commented that ITEPA was very good in this respect. A contrast was drawn between clauses 2 and 3.

36. We believe we are being consistent as between clauses 2 and 3. In clause 2, there are, of course, different ways of describing clauses but probably not of describing in a few words the content of the priority clauses. Even if this were possible it would not be as helpful as describing the clause by reference to their inter-relationship with the other Parts and Chapters of the Bill. This helps to orientate the reader. We have to start at the very general level and then move to the specific – which we do in the introductions to the Parts.

37. One respondent was “at first wary of clause 2(3)” but “came round in the end to accepting it”. That respondent also approved of the positive wording of the clause.

Part 2: Trading income

Chapter 1: Introduction

Clause 3: Overview of Part 2

38. Two respondents commented on this clause.

39. One respondent suggested it might be more useful if the distinction between “trade”, “profession” and “vocation” was mentioned at the outset rather than later throughout the Part. It might at the outset be clearly stated that all subsequent provisions, except where specifically stated otherwise, apply to professions and vocations as well as trades, wherever the term “trade” is used.

40. This is the approach we initially adopted. But it does not work well for the clauses in Chapter 2, some of which apply to trades, professions and vocations but others of which apply only to trades. We have concluded that, if the short-cut (“trade” includes professions and vocations) is retained, it can be applied at best on a chapter by chapter basis.

41. The other respondent commented that it is difficult to understand why there are so many subdivisions and separate cross-headings before sections in the trading income Part. The respondent suggested that the cross-headings are applied sporadically and that fewer cross-headings would increase the ease with which the sections can be understood.

42. The number of cross-headings is governed by the diverse nature of the subject matter in the Chapters - if cross-headings are used they need to change as the subject matter changes. They are not applied sporadically and we are continuing to work to achieve as consistent a style as possible across the Bill.

Chapter 2: Income taxed as trading profits

Clause 5: Charge to tax on trade profits

43. One respondent commented on the omission from the draft Bill of the definition of “trade” in clause 3.1.5. of Exposure Draft No 10. This respondent asked whether relying instead on the definition in section 832(1) of ICTA means that references to “trade” in the draft Bill include any venture in the nature of a profession or vocation.

44. Clause 3.1.5(1) of Exposure Draft No 10 defined “trade” to include “any venture in the nature of trade”. Clause 3.1.5(2) excluded professions and vocations from the definition in subsection (1).

45. Clause 3.1.2 of Exposure Draft No 10 applied the provisions of the trading income rules in Part 3 of Exposure Draft No 10 to professions and vocations “unless otherwise indicated”. So without the exclusion in clause 3.1.5(2) the trading income

rules would apply to isolated professional or vocational acts in the same way as to an isolated transaction in the nature of trade.

46. Clause 3.1.2 of Exposure Draft No 10 has been dropped from the draft Bill in favour of clauses dealing with the application of the trade rules to professions or vocations in specific Chapters or clauses. And because the definition of trade in section 832(1) of ICTA applies *only* to trades, it is not necessary to say that it does not apply to professions and vocations.

Clause 9: Commercial occupation of land

47. Two respondents commented on this clause. Both suggested that clause 9(2)(a) gives the impression that farming is not a trade and that it is not until clause 11 that this impression is corrected.

48. One respondent suggested deleting clause 9(2)(a). We are reluctant to do that as we do not think the clause would then accurately reflect section 53(3) of ICTA.

49. The other respondent suggested either adding a signpost to clause 11 in clause 9(2)(a) or reversing clauses 10 and 11. We have added the signpost. We have also changed the order of the clauses so they read farming and market gardening, commercial occupation of land other than woodlands, commercial occupation of woodlands (a new clause) and profits of mines, quarries and other concerns. We hope that this order more accurately reflects the comparative importance of the clauses.

Clause 10: Profits of mines, quarries and other concerns

50. Two respondents commented on this clause.

51. One respondent commented that it is not helpful to say the profits "are treated as falling within section 6" as clause 6 does not refer to profits falling within anything.

52. The respondent suggested it would be simpler to treat the concerns as trades and not repeat the fiction that the profits are taxed as trade profits. We agree this would be a simplification. But it would allow the taxpayer to claim capital gains tax roll-over relief through the definition of trade in section 158(2) of TCGA. It could also create uncertainty about the Class IV national insurance contribution position. For these reasons we think that the suggestion goes beyond a minor change but we have brought it to the attention of our policy colleagues.

53. The respondent made an alternative suggestion for improving the drafting of this clause. We have adopted the spirit of the respondent's suggestion and set out what the implications are of taxing the profits as trade profits.

54. The second respondent suggested that the minor word changes to the list of concerns in clause 10(2) should be identified as a change in the law. The respondent suggested that although limited in application the differences between the list in

clause 10(2) and the list section 55(2) of ICTA could potentially bring more cases within the scope of the clause.

55. The most significant difference is the replacement of "fishings" with "rights of fishing". We believe this is a modernisation of the language and not a change in the law. We explain this in the commentary to the Bill.

Clause 11: Farming and market gardening

56. Two respondents commented on this clause.

57. One respondent corrected an inaccurate cross-reference in the commentary.

58. The second respondent asked for clarification of the interaction between this clause and clause 154 (purchase or sale of woodlands). We have changed the commentary to make it clear that there is no interaction. Clause 11 applies to profits earned from the occupation of land by farming the land. The clause has no application to the ownership of the land. Clause 154 applies to profits earned from the ownership of land by selling it as part of a trade of dealing in land.

Clause 12: Visiting performers

59. One respondent commented on this clause and suggested that the rules on valuation and grossing up in section 558(1) to (3) of ICTA should be rewritten in the Bill.

60. The clauses in the Chapter are concerned with what is treated as a trade for the purposes of the Bill. It is true that the amount of the payment to the visiting performer is treated as a receipt of the trade but the rules in sections 556 and 557 of ICTA are primarily concerned with how that payment is assessed rather than with its amount. The amount of the payment is established earlier, when the payer deducts tax in accordance with section 555 of ICTA. So we propose to rewrite the rules on valuation and grossing up with the rules about deduction of tax in a later Bill.

Clause 14: Divers and diving supervisors

61. Three respondents commented on the proposal in Question 3 to exclude from the clause diving supervisors who do not dive as part of their duties. All were in favour of the proposed change.

62. The proposal in Question 3 and Change 5 of the draft Bill was based on the understanding that the regulations in force when section 314 of ICTA was first enacted as section 29 of FA 1978 (The Offshore Installations (Diving Operations) Regulations 1974) considered diving supervisors to be an integral part of the diving team. Further research has established that the 1978 regulations envisaged that supervisors would not routinely be required to dive although they might have to dive in cases of emergency.

63. Our attention has also been drawn to the rules on the appointment of diving supervisors in regulations 6 and 9 of the Diving at Work Regulations 1997 (SI 1997/2776). It is clear from these rules that the role of the diving supervisor is primarily to do with health and safety issues and with the observance of certain statutory requirements and that diving supervisors are in fact precluded from diving other than in certain specified circumstances.

64. In practice, section 314 of ICTA has been operated on the basis that it is not necessary for a diving supervisor to dive in any particular period to take advantage of the treatment the section provides.

65. We think the reference in clause 14(3) of the draft Bill to acting as a diving supervisor in relation to “diving operations concerned with the exploration or exploitation of the seabed...” is, of itself, sufficient to distinguish persons who supervise diving activities from persons acting in other supervisory capacities – for example supervisors of catering facilities on off-shore installations - who fall outside the scope of clause 14. So we have omitted subsection (4) of the draft Bill – which excludes diving supervisors “who do not dive as part of their duties” – from this clause.

Clause 17: Effect of company starting or ceasing to be within charge to income tax

66. One respondent commented on this clause. The respondent approved our proposal to include this clause for income tax purposes.

Clause 20: Surplus business accommodation

67. Two respondents commented on this clause.

68. The first thought that it is unhelpful to specify both that the accommodation be temporarily surplus to requirements *and* that it should not be held as trading stock in a single subsection. So we have divided subsection (1)(a) of the draft Bill to show these as two separate conditions.

69. The second respondent suggested that for greater clarity we should define the words “relatively small” in subsection (1)(c).

70. We received mixed views from respondents when we asked if we should try to define “relatively small” when this clause was first published as clause 3.1.9 of Exposure Draft No 1. Taking those views into account, we do not think we should define “relatively small” because to link rent for the surplus accommodation to a proportion of turnover, floor space or some other variable would be less flexible than the current practice as set out in Inland Revenue Decision 9.

71. We are not aware that any problems interpreting Inland Revenue Decision 9 have arisen in practice. So we do not think the greater certainty to be gained by defining “relatively small” would compensate for this loss of flexibility.

Clause 21: Payments for UK electric-line and other wayleaves

72. One respondent commented on this clause. The respondent welcomed the changes made to the clause since Exposure Draft No 10 but suggested there is still room for improvement. The respondent made two suggestions.

73. First, the respondent suggested the title could mislead the reader into believing the clause has no application to non-UK wayleaves. We agree and have changed the title to "payments for wayleaves".

74. Second, the respondent said it would be helpful to refer the reader to the primary definition of "wayleave" in clause 338 and apply that definition to clause 21. We agree and have re-drafted the clause to include the definition.

Clause 23: Distributions made by UK companies

75. Two respondents commented on this clause.

76. The first respondent thought that the words "representative of a UK distribution" lack clarity. We have retained the words used in section 95 of ICTA for consistency with the manufactured dividend legislation.

77. The second respondent suggested the definition of "distribution" in subsection (4) should follow more closely the definition in section 832 of ICTA. The index of defined expressions in Part 2, Schedule 4 to the Bill gives "distribution" - wherever used in the Bill - the same meaning as section 832(1) of ICTA. So we have dropped the definition of "distribution" in this clause.

78. But we are considering alternative ways of rewriting section 95 of ICTA.

Chapter 3: Trade profits: basic rules

Clause 27: Items treated under CAA 2001 as receipts and expenses

79. One respondent commented on this clause and suggested it should be moved so that it follows clause 98. That would deal with the receipts rule but would take the clause a long way from the deductions rule in clause 32. We think the clause is in the right place but we will keep this suggestion in mind as our work on refining the draft Bill continues. The clause is itself a signpost (to the CAA 2001) so we doubt if further signposting is the answer.

Clause 28: Interest

80. One respondent commented on this clause. This respondent suggested the clause does not deal adequately with capitalised interest.

81. When expenditure is capitalised, the expenditure is recognised in a particular way and charged to profit and loss over an appropriate period. Revenue expenditure is

not converted into capital expenditure for tax purposes by being capitalised in the accounts. So we do not think there is a difficulty here.

Chapter 4: Trade profits: rules restricting deductions

Clause 32: Capital expenditure

82. One respondent commented on this clause. This respondent suggested that the clause be explicitly made subject to clauses 59 (incidental costs of borrowing) and 68 (replacement and alteration of trade tools) of the draft Bill.

83. Clause 30 of the draft Bill provides that clauses which allow a deduction – such as clauses 59 and 68 – have priority over clauses which prohibit or restrict a deduction such as clause 32. So we do not think it necessary to specify in this clause that it is subject to the clauses dealing with the incidental costs of obtaining finance and with the replacement and alteration of trade tools. But we have revised those clauses to make it more clear that they allow deductions to be made in the appropriate circumstances.

Clause 33: Expenses not wholly and exclusively for trade and unconnected losses

84. One respondent commented on this clause. This respondent suggested that the clause could be written in the positive without loss of meaning by allowing a deduction only for expenses incurred wholly and exclusively for the purposes of the trade and losses connected with or arising out of the trade (instead of prohibiting a deduction for expenses *not* so incurred and losses *not* connected with or arising out of the trade).

85. Rewriting the prohibition in this clause as a permissive rule would allow us to dispense with the two double negatives in subsection (1). But because the starting point for calculating the trader's profits is the commercial profit we think the position is clearer if the clause identifies and focuses on expenditure for which a deduction is not allowed.

Clause 34: Bad and doubtful debts

86. One respondent suggested that the commentary in the explanatory notes on this clause should refer to Change 11. We agree and will remedy this in the Bill commentary.

Clause 35: Expenses relating to provision of benefits

87. One respondent commented on this clause. The respondent was content with the change in the law set out in Change 12 in Annex 1.

88. This clause, together with clauses 36 and 37, rewrites section 76 of FA 1989. That section deals with the deduction allowed to an employer for contributions made to a non-approved pension scheme. It has been repealed by FA 2004 with effect from 6 April 2006 as part of the new regime for the taxation of pension schemes.

89. We do not think that the Bill should include material that will become obsolete so soon. So we have decided not to rewrite section 76 of FA 1989. The source legislation will be consequentially amended so that it is compatible with the Bill for the year before it is repealed by FA 2004.

90. The source legislation for clauses 70 and 71 is also repealed by FA 2004 as part of the new regime for the taxation of pension schemes. We will not rewrite that legislation. See the commentary on those clauses.

Clause 36: Exceptions for non-UK cases

91. One respondent commented on this clause. As explained in the note on clause 35 we do not intend to rewrite section 76 of FA 1989.

Clause 38: Unpaid remuneration

92. One respondent commented to approve the current drafting of this clause.

Clause 39: Restriction of deductions

93. One respondent commented on this clause. The respondent asked why the arrangements listed in sub-paragraphs (e) to (g) of paragraph 8 of Schedule 24 to FA 2003 are not included in clause 36(5). It is because those sub-paragraphs apply only to employers liable to corporation tax.

Clause 47: Business entertainment and gifts: general rule

94. One respondent commented on this clause. This respondent suggested that the clause should deal explicitly with entertainment allowances paid to employees.

95. In the draft Bill, an allowance paid to an employee exclusively for meeting expenses incurred in providing entertainment or gifts falls within the general prohibition in clause 47(1). Clause 48(2) (entertainment) and clause 49(2) (gifts) then disapply the prohibition in the case of a allowance paid to an employee for meeting expenses including - but not restricted to - expenses incurred in the providing of entertainment or gifts.

96. We agree it is more helpful to deal specifically with employees' allowances. So subsection (2) of this clause now says that the general prohibition in subsection (1) applies to sums paid to or on behalf of, or put at the disposal of, an employee only if the those sums are *exclusively* for meeting expenses in providing business entertainment or gifts.

Clause 48: Business entertainment: exceptions

97. Two respondents commented on this clause.

98. The first respondent suggested it was not altogether clear what subsection (2) of this clause in the draft Bill is intended to cover. The revised treatment of employee allowances in subsection (2) of clause 47 has allowed us to dispense with subsection (2) of this clause entirely.

99. The second respondent suggested we replace references to “the first case”, “the second case” etc in this clause and the next clause with “A”, “B” etc as used elsewhere in the draft Bill.

100. We agree and have revised those two clauses accordingly.

Clause 50: Car hire

101. One respondent commented on this clause. This respondent suggested some of the terms used in the clause are confusing.

102. We have used the terms “qualifying hire car” and “hire purchase agreement” for consistency with the rules on qualifying hire cars in section 82 of CAA 2001 and on leased assets subject to hire purchase agreements in section 784 of ICTA. Both terms are defined in clause 51.

Clause 51: Car hire: supplementary

103. One respondent commented on this clause. This respondent thought reproducing the terms of section 784(6) of ICTA in subsections (2) and (3) of this clause is an improvement on earlier drafts of this clause.

Clause 55: Exclusion of double relief

104. Four respondents commented on this clause and the related Question 5.

105. Question 5 asked for comments on the proposal not to include section 368(6) of ICTA in the rewrite of section 368(4) of ICTA. Section 368 of ICTA prevents the taxpayer obtaining a double allowance for interest paid both as a relief under section 353 of ICTA and as a deduction in calculating the trade profits. Section 368(6) of ICTA provides that references to a relief given or an amount allowed are references to relief given or an amount allowed in a claim or assessment which has been finally determined. The proposal not to rewrite section 368(6) of ICTA was based largely on the view that the need for the subsection has been overtaken by the current year basis of assessment and Self Assessment.

106. Three of the respondents agreed with the proposal. The fourth objected on two grounds.

107. First, the respondent challenged the statement in the commentary that the scope for a mismatch between the different forms of allowance is limited. We accept that depending on the taxpayer's accounting date there is scope for interest to be allowed as a relief in a different tax year from that in which the interest would be allowed as a deduction in calculating the trade profits.

108. Second, the respondent suggested that section 368(6) of ICTA is needed to determine which of the two methods of allowance is given first. We doubt that section 368(6) of ICTA does perform that role. But we accept that it is possible to make a claim for relief under section 353 of ICTA after the time for amending the

return for the tax year has passed. In this case section 368(6) of ICTA does have a role to play and we have included it in the rewrite of section 368(4) of ICTA.

109. The respondent asked that the language of section 368(6) of ICTA be updated to reflect Self Assessment procedures. We have included a definition of "finally determined" based on section 43C(4) of TMA.

110. The respondent also commented that it is not desirable to rewrite section 368(4) of ICTA and make no mention of the parallel rule in section 368(3) of ICTA. We agree and have included a signpost to section 368(3) of ICTA. Our current intention is that section 368(3) of ICTA will be rewritten in the next income tax rewrite Bill. It is a provision that prevents the taxpayer claiming a personal relief. As such it is not proper to the current Bill.

Chapter 5: Trade profits: rules permitting deductions **Clauses 60 to 67: Tenants under taxed leases**

111. Two respondents commented in general terms on clauses 60 to 67. These respondents suggested that the rules giving relief to tenants under taxed leases in these clauses are difficult for a lay reader to understand.

112. We agree clauses 60 to 67 are difficult. We think this reflects both the complex nature of the source legislation and the need for the wording of these clauses to follow the clauses in Chapter 4 of Part 3, which provide for lease premium receipts. But in the light of respondents' comments on Chapter 4, we have made changes to the drafting of some of the clauses of that Chapter. And the improvements to those clauses - such as replacing the term "receipt under calculation" in clauses 289, 290 and 293 with "lease premium receipt" - are now reflected in clauses 60 to 67.

113. One respondent commented that the headings to clauses 60 to 67 are particularly unhelpful. So, where possible, we have revised those headings to reflect more closely the content of the individual clauses.

114. The same respondent also suggested that where the same term is employed in formulas in different clauses, the terms should be explained on each occasion. We agree it is more helpful to explain a term in each clause in which it appears than to refer the reader to another clause. So we have revised clause 64 to define the terms used in the first formula in subsection (2) instead of directing the reader to the meaning of those terms as defined in clause 61(4).

Clause 60: Tenants under taxed leases: introduction.

115. One respondent commented on this clause. This respondent thought that subsection (3) does not work because it applies clause 33 (expenses not wholly and exclusively for the purposes of the trade) to a deemed expense. The respondent

suggested that the “wholly and exclusively” rule be incorporated instead in clause 61(4) and (5).

116. Section 87(2) of ICTA treats a tenant under a lease by reference to which an amount falls to be treated as a receipt of a Schedule A business as paying rent. The deemed rent does not exist in fact but is calculated by reference to the amount chargeable on the landlord. The respondent did not suggest that section 74(1)(a) of ICTA (which is rewritten in clause 33) does not apply to the deemed rent under section 87(2) of ICTA.

117. We think that clause 60(3) reproduces the current legislation. And we are not aware of any problems having arisen in applying the wholly and exclusively rule in section 74(1)(a) of ICTA to rent which the tenant is deemed to pay under section 87(2) of ICTA.

118. The respondent commented in similar terms on the corresponding provision for deductions for expenses incurred by a tenant under a taxed lease in calculating the profits of a property business in clause 287(3) of the draft Bill. See the commentary on clause 287.

Clause 63: Land treated as occupied by tenant for purposes of trade

119. One respondent commented on this clause.

120. This respondent pointed out that subsection (3) goes further than section 87(6) of ICTA in that it prevents the tenant obtaining any relief under clause 61 if the tenant obtains relief in respect of any part of the premises under clause 288.

121. We agree. Clause 63(3) is intended only to prevent the tenant obtaining a double deduction for the same premises. So we have amended subsection (3) to follow section 87(6) of ICTA in denying relief under clause 61 *in so far as* the tenant is treated as incurring an expense under clause 288 of the draft Bill.

Clause 64: Section 61 expenses and the additional calculation rule

122. Two respondents commented on this clause.

123. The first respondent suggested subsections (4) and (5) of this clause might read better if the material in subsections (4)(b) and (5)(b) were dealt with in separate subsections. We have revised this clause to present the material more clearly and with less repetition.

124. The second respondent commented that because this clause and clause 65 deal explicitly with cases where there is more than one chargeable receipt by reference to which relief may be claimed and/or more than one receipt in respect of the sublease, they are longer and more complicated than the source legislation. But the respondent thought the approach taken by clauses 64 and 65 in rewriting section 87(5) of ICTA is reasonable.

Clause 69: Payments for restrictive undertakings

125. One respondent commented on this clause and questioned whether the source legislation contains a timing rule. The respondent commented in similar terms on clauses 79, 81 and 90.

126. This matter was raised in response to Exposure Draft No 10 and we set out our views in the subsequent response document. Our view remains that section 73 of FA 1988 does impose a timing rule. We believe this is the generally accepted view.

127. Unlike most deductions provisions, section 73(2) of FA 1988 refers explicitly to the making of payments and not (for example) to the incurring of expenditure. It therefore seems to us that payment is a stated pre-requisite for the deduction to be allowed. If that is not the case why is “payment” mentioned?

128. There is good reason to link the deduction to payment. When an amount deducted in an employer’s accounts is assessable on an employee as income there is a general “matching” principle. The timing of the deduction in the payer’s accounts should coincide approximately with the time of assessment (or, if the receipt is exempt, potential assessment) in the recipient’s hands. That is demonstrated in section 43 of FA 1989 (rewritten as clause 38).

129. That is present in this clause. Section 73(2) of FA 1988 refers to payments “paid or treated as paid” and allows a deduction for such payments treated as earnings by section 225 of ITEPA. But section 225 of ITEPA applies to tax sums only when they are paid. So the conclusion must be that section 73 of FA 1988 can apply only in respect of sums paid.

130. So if payment is a pre-requisite, when should the deduction take place? The respondent suggested that the normal accruals basis should apply to the deduction under this clause and that this would accord better with the policy of basing taxable profits so far as possible on the accounts. But that would run counter to the “matching” principle mentioned above.

131. And it would be a highly impractical approach if the deduction had to be given on the condition that payment would eventually be made. Accounts and tax liabilities would have to remain open until that condition was eventually satisfied. In theory, that could be for years.

132. And finally if, as we believe, deduction is conditional on prior payment, saying nothing about the timing of the deduction is scarcely helpful. Taxpayers would doubtless appreciate certainty on this point and want to take the deduction as early as possible on payment. So tying it to the period of account in which payment is made seems the sensible course and gives, overall, a consistent approach.

Clause 70: Contributions by employers

133. Two respondents commented on this clause. The first respondent agreed with the change in the law described in Change 20 in Annex 1.

134. The second respondent asked whether this clause and clause 71 will be amended to deal with the new rules for the taxation of pension schemes included in FA 2004.

135. The Finance Act repeals the source legislation for these clauses, section 592(2) to (6A) of ICTA, with effect from 6 April 2006. We do not think that the Bill should include legislation that will become obsolete so soon. So we have decided not to rewrite section 592(2) to (6A) of ICTA. These provisions will be consequentially amended to make them compatible with the Bill for the year before they are repealed by FA 2004.

136. As a separate matter we have decided not to rewrite the provisions of FA 2004 which deal with the new regime for the relief of employers' contributions to pension schemes. That is a departure from our normal approach of including all the rules that apply to the calculation of trade (and property business) profits. But we think this is the appropriate course for two reasons.

137. The first is that the pension reform is a significant and wide-ranging Government initiative and it is desirable to keep the new material in one place at this time of transition when the industry is having to absorb the changes.

138. The second is that the start date for the new legislation is a year after the start date for the Bill. To rewrite the new employers' deduction rules in the Bill a year before they come into effect may be confusing. And there is the possibility that the rules will be amended before they come into force.

139. This approach has been agreed with our Consultative and Steering Committees (see Committee paper CC(04)13 and the minutes of the Consultative Committee meeting held on 13 July 2004).

Clause 74: Contributions to agents' expenses

140. One respondent commented on this clause. The respondent suggested that the words "payroll deduction scheme" appear in the title of the clause. We agree this would be helpful and have changed the title to "Payroll deduction schemes: contributions to agents' expenses".

141. When an earlier version of the clause was exposed as clause 3.2a.9 in Exposure Draft No 4 what is called an "approved scheme" both in section 86A of ICTA and in clause 74 was called a "payroll deduction scheme". A respondent objected to this on the grounds that it could be confused with the PAYE scheme itself. A PAYE scheme is, after all, a scheme for making deductions from the payroll. Respondents to Exposure Draft No 10 asked that we reinstate the term both in the

clause and in the clause title. We said that we would consider this but nothing was done for the draft Bill.

142. We think that it would go too far to include the term in the clause as it is not used in the core provisions on the relief in Part 12 of ITEPA. But we think that the term payroll giving is now well enough established to avoid the potential for confusion that concerned the respondent to Exposure Draft No 4.

Clause 75: Counselling and other outplacement services

143. One respondent commented on this clause to agree to the proposal to cross-refer to the relevant definitions in ITEPA rather than repeat the same lengthy text in two Acts.

Clause 76: Retraining courses

144. Three respondents commented on this clause. One agreed to the proposal to cross-refer to the relevant definitions in ITEPA rather than repeat the same lengthy text in two Acts.

145. Two approved our proposal in Question 6 (not to rewrite the condition that makes allowance of the trader's deduction conditional on the employee's exemption under section 311 of ITEPA).

146. The third agreed the rewrite is clearer than the source legislation but questioned whether the proposal in Question 6 is a substantive change. We think it is. In the source legislation the deduction is conditional on the employee's exemption (section 588(3)(b) of ICTA). That condition is removed entirely in the rewritten clause which cross-refers to the ITEPA section only in respect of the other qualifying conditions.

Clause 79: Payments in respect of employment wholly in employer's trade

147. Two respondents commented on this clause. One suggested that the clause introduces a timing rule that is not in section 579 of ICTA. The respondent commented in similar terms on clauses 69, 81 and 90.

148. Our view is that the use of the word "payment" in section 579 of ICTA means that the deduction cannot be allowed unless there has been a payment. The clause operates only if the accounts are not being followed for tax. So there is no reason to follow the accountancy timing.

149. The other respondent was concerned that it is not clear that the accruals basis applies if the deduction is "otherwise allowable". The special timing rule in subsection (6) applies only if there is a deduction "under subsection (2)". We think it is clear that if the deduction is allowed under normal rules the special timing rule does not apply. But we have made the "not otherwise allowable" condition a new paragraph (b) of subsection (1) to make quite sure.

Clause 81: Additional payments.

150. One respondent commented on this clause, making the point about timing that is discussed in paragraphs 147 and 148.

Clause 83: Personal security expenses

151. One respondent commented on this clause. The respondent thought the deduction should be stated to be positively allowed, rather than allowed simply by disapplying clause 33 (the “wholly and exclusively” rule). Otherwise, the respondent thought, clause 24 (which rewrites section 42 of FA 1998) might continue to disallow the personal security expenses as expenditure of an essentially personal nature. If that is correct the suggestion would involve a change in the law.

152. But we do not agree that clause 24 would prevent the deduction. That clause, like the source legislation it rewrites, is about the application of generally accepted accounting practice, not tax adjustment rules. It would be usual under generally accepted accounting practice for expenditure related in any way to the trade to be deducted in the profit and loss account even if some personal benefit results from it. Personal security expenses of the kind covered by clause 83 are an example.

153. There is however a wider point. That is whether it is helpful to cast a rule whose purpose is to give a deduction as one that modifies the effect of another rule. That is the approach of clause 83(2) in the draft Bill which disapplies the wholly and exclusively rule in clause 33 when the relevant conditions are met. On reflection we think that is unnecessarily complicated and that it is preferable to cast it directly as a rule that permits a deduction if certain conditions are met. Those conditions would include the condition that the deduction would not otherwise be allowable only on account of the wholly and exclusively rule. The effect of the rule would be unchanged.

154. We have expressed the rule more simply in line with the other rules in this Chapter. We have also adopted the same approach for clause 94 (expenses connected with foreign trades) which the respondent mentioned and which raises similar issues.

Clause 84: Contributions to local enterprise organisations or urban regeneration companies

155. Two respondents commented on this clause.

156. One respondent reminded us of the need to amend the social security legislation so that the charge in subsection (5) on a benefit as a post-cessation receipt does not produce a charge to Class 4 National Insurance contributions. This is now included in the consequential amendments in Schedule 1.

157. The other respondent suggested that the charge in subsection (5) should not be based on the condition “after a deduction has been made”. But we do not think that the alternative “after a contribution has been made” produces the right result. We have

amended the clause so that the test is simply whether a deduction has been made, without any implication as to timing.

158. The same respondent pointed out that the rule in subsection (4) is still “all or nothing”: if a disqualifying benefit of any value is received, no relief is available. We have revised the clause so that the relief is restricted only by the value of the benefit. This is a new change which will appear in Annex 1 of the explanatory notes.

Clause 88: Meaning of “urban regeneration company”

159. One respondent commented on this clause and suggested that the omission of “seek to” from the criterion in subsection (3)(b) changes its meaning. We have reinstated the words.

Clause 89: Expenses of research and development

160. One respondent commented on this clause. This respondent suggested the clause include a definition of “research and development” instead of directing the reader to the meaning in section 837A of ICTA.

161. We have not rewritten the section 837A definition of research and development in this clause because we do not think it helpful to have more than one definition of research and development in effect for tax purposes at the same time. The same approach has been followed in clause 15 which defines “oil extraction activities” and “oil rights” by reference to section 502(1) of ICTA.

162. The definition of “research and development” in section 837A of ICTA will be rewritten in a later rewrite Bill. We are considering where definitions that apply for both income tax and corporation tax purposes should be placed.

Clause 90: Payments to research associations, universities etc

163. One respondent commented on this clause. This respondent questioned whether the source legislation contains a timing rule. The respondent commented in similar terms on clauses 69, 79 and 81.

164. Section 82B(1) of ICTA says that where a person “pays any sum” to a scientific research association or a similar institution, “the sum paid” may be deducted as an expense in computing the profits of that person’s trade. We think the references to “pays any sum” and “the sum paid” in section 82B(1) mean that a deduction cannot be allowed unless and until a payment has been made. This contrasts with section 82A(1) of ICTA which allows a deduction for “expenditure incurred” on research and development undertaken directly by, or on behalf of, a person carrying on a trade.

165. Payments to a research association or similar institution - other than payments incurred for research and development undertaken on behalf of the trader - are not generally made under a contractual obligation. So such payments are not “incurred” in the same way as payments falling within section 82A of ICTA.

Clause 91: Expenses connected with patents

166. One respondent commented on this clause and suggested that the relief in this clause and clause 92 should be extended to professions and vocations. In view of the clear words of section 83 of ICTA such an extension is likely to be outside the remit of the Project. We have passed this suggestion to our colleagues with policy responsibility for this topic.

Clause 93: Payments to Export Credits Guarantee Department

167. Two respondents commented on Change 28. Both respondents approved the move to the accruals basis for sums paid to the Export Credits Export Credits Guarantee Department.

168. Change 28 reflects a general policy of following the accounting treatment unless there is good reason not to do so (see section 42(1) of FA 1998, rewritten as clause 24 in the draft Bill). Payments to the Export Credits Guarantee Department in clause 93 are made under an agreement entered into as a result of arrangements under section 2 of the Export and Investment Guarantees Act 1991. There is no reason here to tie relief to “sums paid”. This is not the case for clauses 69, 79, 81 and 90 for the reasons set out in the commentary on those clauses.

Clause 94: Expenses connected with foreign trades

169. Three respondents commented on this clause. Two merely welcomed the change to the treatment of the expenses of Irish trades.

170. The third respondent questioned whether disapplying the “wholly and exclusively” test is the right approach. We have expressed the rule more simply in line with the other rules in this Chapter – see the discussion on clause 83 (personal security expenses).

171. The same respondent pointed out that the trade referred to in the first line of subsection (2) is the foreign trade. We have amended the clause to make this clear.

Chapter 6: Trade profits: receipts

Clause 99: Debts incurred and later released

172. Two respondents commented on this clause.

173. One respondent suggested that the use of the word “debt” in the clause is inaccurate and unhelpful. We do not agree. “Debt” means the relationship between a creditor and a debtor, looked at from either end of the relationship. We do not think it would be more helpful to use “liability”, which is no less forbidding to the general reader.

174. The other respondent suggested a signpost to clause 245 (debts released after cessation). It is true that the two clauses deal with related topics. But a reader looking

at this Chapter is concerned only with the calculation of the profits of a trade. What happens after a person ceases to carry on a trade is a separate matter. So we do not propose to insert a signpost (although the point is mentioned in the explanatory notes).

Clause 100: Acquisition of trade: receipts from transferor's trade

175. One respondent commented on this clause and suggested that “of the transferor” should be inserted after “receipts” in subsection (3). We think it would be unhelpful to do this. A reader may be left with the impression that sums received may be post-cessation receipts of the transferee, or another person. It is an important feature of the clause that the sums are not post-cessation receipts of any person.

Clause 101: Reverse premiums

176. One respondent commented on this clause and was concerned about the use of “the person” in subsection (3), because more than one person enters into a transaction. We have re-drafted the subsection to remove the ambiguity.

Clause 102: Excluded cases

177. One respondent commented on this clause and suggested that the definition of “transfer” should be imported from section 779(3) of ICTA. We think this is unnecessary. Any arrangement within section 779(1) or (2) of ICTA must be a transfer as defined for those subsections. So there is no need to go further than a reference to those subsections.

Chapter 7: Trade profits: transfers of trading stock

178. Four respondents commented on this Chapter. Three raised objections to the enactment of the principles set out in clauses 109 to 113.

179. We see no reason to doubt that the principles explained in Sharkey v Wernher continue to apply to the calculation of business profits. But it would be wrong to enact those principles while others doubt the position. The only way to preserve the law is to continue to rely on case law in this area.

180. So we have removed the disputed clauses from the Bill.

181. As a consequence, we have also removed clause 114(3).

Clause 114: Gifts of trading stock to charities, etc.

182. One of the respondents who commented on this Chapter raised the issue of the application of the rules to professions and vocations. A new clause at the start of the Chapter makes it clear that, as in sections 83A and 84 of ICTA, the relief applies to professions and vocations as it applies to trades.

Chapter 8: Trade profits: herd basis rules

Clause 129: Preventing abuse of the herd basis rules

183. One respondent commented on this clause. The respondent asked what had happened to the rule where the transfer is not a sale. We believe it is not necessary to deal specifically with this case as it is included in the generality of the words in subsection (1)(a). But we agree it is more helpful to have a specific rule to deal with transfers that are not sales and have reinstated it.

Chapter 9: Trade profits: films and sound recordings

Clause 137: Films and sound recordings: production or acquisition expenditure

184. One respondent commented on the absence in this clause and in clauses 139 to 141 of an express provision allowing the amount allocated to the relevant period to be deducted in calculating the profits of the trade.

185. Section 40A(1) of F(No 2)A 1992 treats expenditure incurred on the production or acquisition of a master version of a film as expenditure of a revenue nature for the purposes of the Tax Acts unless an election has been made under section 40D of F(No 2)A 1992. Section 40A(4)(a) of F(No 2)A 1992 defines “expenditure of a revenue nature” as “expenditure which, if it were incurred in the course of a trade the profits of which are chargeable under Case I of Schedule D, would be taken into account for the purpose of computing the profits or losses of the trade”.

186. We think it is implicit in section 40A of F(No 2)A 1992 that expenditure treated as expenditure of a revenue nature is taken into account in calculating the trade profits of the relevant period to which it is allocated. And sections 41(1) and 42(1) of F(No 2)A 1992 provide explicitly for such expenditure to be deducted in computing the profits or gains accruing in a relevant period from a trade consisting of, or including, the exploitation of films.

187. So we have revised clauses 137 and 139 to 141 of the draft Bill to include an express provision allowing the amount allocated to a relevant period to be deducted in calculating the profits of that period.

188. Section 40A(2) of F(No 2)A 1992 provides that where expenditure on the master version of a film is treated under section 40A(1) of F(No 2)A 1992 as expenditure of a revenue nature, sums received from the disposal of that master version are to be regarded as receipts of a revenue nature. Section 40A(4)(b) of F(No 2)A 1992 defines “receipts of a revenue nature” as receipts which, if they were receipts of a trade the profits of which are chargeable under Case I of Schedule D, would be taken into account for the purposes of computing the profits or losses of the trade.

189. We think it is implicit in section 40A of F(No 2)A 1992 that receipts treated as receipts of a revenue nature are taken into account in calculating the trade profits of the relevant period in which they are received. So we have revised clause 136 of the draft Bill to include an express provision to that effect.

Clause 140: Certified master versions: production or acquisition expenditure

190. One respondent commented that subsection (2)(b)(ii) is ambiguous in that it is not clear if it refers to expenditure remaining to be allocated under clause 141 or to expenditure which qualifies for allocation under clause 141 at any time.

191. We agree. We have revised the clause to make clear that the amount to be deducted from total production expenditure in clause 140 is the maximum expenditure capable of being allocated under clause 141.

192. The same respondent suggested that it should be made explicit that expenditure falling within both “expenditure already allocated as a result of section 139” at subsection (2)(b)(i) and “expenditure which may be allocated under section 141” at subsection (2)(b)(ii) is not to be deducted twice.

193. But expenditure already allocated as a result of clause 139 is not capable of being allocated under clause 141 because clause 141(4)(b) says that expenditure must not be allocated to a relevant period under clause 141 if it is allocated under clause 139 to that relevant period or any other relevant period. So there is no need to say that expenditure within both paragraph (i) and (ii) of subsection (2)(b) is not to be deducted twice.

Clause 141: Certified master versions: expenditure on limited-budget films

194. One respondent suggested the drafting of this clause, and in particular the way in which the rule on acquisition expenditure in subsection (2) is expressed, could be improved.

195. We think clause 141 of the draft Bill may be difficult to follow because it deals with too many aspects of the rules on limited budget films in section 42 of F(No 2)A 1992, section 48 of F(No 2)A 1997 and section 101 of FA 2002. So we have moved the material dealing with acquisition expenditure on limited budget films to a new clause.

Clause 142: When expenditure is incurred

196. One respondent suggested that subsection (5) of this clause cannot sensibly be applied for the purpose of determining whether expenditure falls before 2 July 2005 for the purposes of clause 141(1)(b) unless 1 July falls exactly at the end of a relevant period.

197. We do not agree. Subsection (5) operates in the same way irrespective of the date on which the return period ends. But the *effect* of the rule will be different in the

case of relevant periods ending after 1 July 2005. This reproduces the effect of the current legislation.

Chapter 10: Trade profits: certain telecommunication rights

Clause 146: Expenditure and receipts treated as revenue in nature

198. Four respondents commented on this clause. All four agreed with the proposal in Question 8 not to rewrite paragraph 4 of Schedule 23 to FA 2000.

199. One respondent questioned the value of rewriting Schedule 23 to FA 2000 in an income tax Bill as it is so clearly drafted to apply primarily to companies.

200. We agree that the Schedule is drafted from the perspective of a company and that this gives rise to some of the problems raised in other responses to this clause and clause 147. But since Schedule 29 to FA 2002 introduced the regime for dealing with a company's intangible fixed assets Schedule 23 to FA 2000 is an income tax only provision. Because the Schedule applies for the purposes of calculating trade profits it has to be rewritten in this Bill.

201. One respondent suggested "for accounting purposes" and "in accordance with generally accepted accounting practice" effectively mean the same thing. Therefore it is not necessary to use both phrases in clauses 146(1) and 147(1).

202. We agree with the respondent's suggestion and have redrafted clauses 146 and 147.

Clause 147: Credits or debits arising from revaluation

203. Two respondents commented on this clause.

204. One respondent suggested clause 147(3) could make it clearer that the clause applies also to amounts that are included in the accounts but are not reflected in the profit and loss account. We hope that the redraft referred to in the comments on clause 146 deal with this concern.

205. The second respondent queried the use of the terms "credit or debit" in clause 147(4). The respondent suggested these are accounting concepts and add nothing to the sense of the sentence in which they occur. We agree and have deleted them.

Chapter 11: Trade profits: other specific trades

Clause 148: Conversion etc. of securities

206. Two respondents commented on the proposal in Question 9 and Change 48 to dispense with the requirement that the securities must be beneficially owned by the trader.

207. The first respondent did not object to the proposed change.

208. The second respondent objected to the proposed change but withdrew the objection in the light of the fuller explanation of the position in Committee paper CC(04)13 (presented to the Consultative Committee on 13 July).

209. A third respondent, who did not comment on the proposal in Question 9, suggested that instead of referring to section 137(1) of TCGA, subsection (7) could state that the clause does not apply to a transaction which forms part of a scheme or arrangement the purpose of which is the avoidance of liability to income tax.

210. Incorporating the test in section 137(1) of TCGA in subsection (7) would not make the clause self-contained because the criteria for determining whether a transaction falls within this clause in subsection (2) rely on sections 126 to 136 of TCGA. The definition of securities in subsection (8)(c),(e) and (f) also relies on TCGA.

211. We have not rewritten the relevant sections of TCGA in this clause. We consider the criteria for treating the exchange or conversion of securities as part of a company reorganisation, merger or takeover as if the disposal of the original shares had not taken place should be expressed in precisely the same terms for income tax, for corporation tax in section 473(7) of ICTA and for capital gains tax in TCGA.

Clause 149: Exchanges of gilts for gilts strips

212. One respondent commented on this clause and suggested that “trader” is not a suitable label for a person who may be carrying on a trade, a profession or a vocation. There is no obvious alternative word and we doubt if the label can be improved.

Clause 156: Ministers of religion

213. Four respondents commented on this clause. All welcomed the change proposed (Question 10).

214. One respondent thought that the method statement was an unnecessarily complicated way to arrive at a simple result. We have looked at this again. The clause now follows section 351 of ITEPA more closely.

Clause 158: Mineral exploration and access

215. One respondent commented on this clause, objecting (again) to the triple negative in the clause. When we reported on the responses to Exposure Draft No 10 we doubted if it was worth doing much further work to make the clause more

accessible (see paragraph 166 of the response document for Exposure Draft No 10). But we have looked at this again. The clause has been slightly re-drafted.

Clause 159: Payments by persons liable to pool betting duty

216. One respondent commented on this clause and suggested a minor drafting change to the end of subsection (3)(b). We have re-drafted the clause in a way which removes any difficulty.

Clause 161: Special rules for partnerships

217. One respondent commented on this clause.

218. There is some doubt whether relief under section 380 or 381 of ICTA can be said to be given “by reference” to a particular item of expenditure. Rather, a loss is calculated using several components to produce a single amount. Relief is given by reference to that single amount. We have reverted to the approach of Schedule 12 to FA 2000 and limited the amount of the deduction so that no loss is created.

219. The revised approach removes the difficulty with subsection (1) which describes the application of the clause too narrowly to include the current subsection (2).

Chapter 12: Trade profits: valuation of stock and work in progress

Clause 183: Basis of valuation of work in progress

220. One respondent commented on this clause and suggested that we should bring the clause into line with paragraph 797 of the commentary by restricting it to transfers to unconnected persons. Unfortunately, the commentary is wrong. There is nothing in section 101 of ICTA to restrict the application of the general rule to unconnected persons. We have corrected the commentary.

Chapter 13: Deductions from profits: unremittable amounts

Clause 186: Unremittable amounts: introduction

221. One respondent commented on this clause. The respondent asked why paragraph 813 of the commentary refers to Change 145 in Annex 1. The cross-reference should have been to part (B) of Change 90 in Annex 1.

Clause 188: Restrictions for relief

222. One respondent commented on this clause. The respondent suggested the title would be clearer if it read “restrictions on relief”. We agree and have changed it.

Clause 189: Withdrawal of relief

223. One respondent commented on this clause. The respondent asked why clause 3.11.4(5) in Exposure Draft No 10 has been dropped. This subsection dealt

with the case in which the relief would have been withdrawn but the triggering event occurs after the taxpayer has ceased trading. This charge is not present in ESC B38 and it is not within the remit of the rewrite to introduce one.

Chapter 14: Disposal and acquisition of know-how

Clause 190: Disposal of know-how

224. Four respondents commented on this clause.

225. Two drew attention to the inadvertent use of “disclosure” in subsection (5). We have corrected this error.

226. Another respondent pointed out that the logic of subsections (2), (3) and (4) is wrong. If know-how is disposed of as part of the disposal of a trade subsection (3) applies. But subsection (4) allows an election that subsection (3) does not apply. The problem is that subsection (2) (“otherwise than as part of the disposal of ... the trade”) does not apply either. We have re-drafted the Chapter to correct the fault. There are now separate clauses to deal with the case where the trade continues and where the trade (or part of it) is disposed of with the know-how.

227. The clause does not rewrite the words “and continues to carry on the trade after the disposal” in section 531(1) of ICTA. One respondent suggested this changes the law. No change is intended. So we have included those words in the clause that deals with the case of the trade continuing.

228. There are two elections, in clauses 190(4) and 191(2), rewriting the single election in section 531(3) of ICTA. One election should not be made without the other. In the re-drafted Chapter there is only one election. We have made it clear (in case one of the persons involved in the disposal is liable to corporation tax) that an election under this Chapter is treated as one under section 531(3) of ICTA. Conversely, the consequential amendment to section 531 of ICTA ensures that an election under that section is treated as one under this Chapter.

Clause 191: Acquisition of know-how

229. Two respondents commented on this clause. They were both concerned about the reference to CAA in subsection (5)(b).

230. In most cases to which subsection (5) applies the result is that the purchaser of the know-how may claim capital allowances. But, as the commentary points out, in some cases the purchaser may get a trading deduction instead. So we have removed this reference to CAA.

231. The position remains that the purchaser may claim capital allowances under section 454(1)(d) of CAA. But, as one respondent pointed out, there is no reason to reproduce paragraph (d) of section 454(1) of CAA but not to do the same for

paragraph (c), which applies if an election is made under subsection (2) of the clause. Following the amendments to the Chapter the CAA rules stand on their own.

Chapter 15: Basis periods

Clause 196: Second tax year

232. One respondent commented on this clause and an apparent overlap between clause 196(4) and clause 197(1) to suggest a need for a rule giving clause 196 priority over clause 197.

233. We have added a priority rule in clause 197 to make the position clear.

Clause 197: Tax year in which there is no accounting date

234. One respondent commented on this clause to ask whether clause 197(2) should be expressed as subject to clause 211 (change of accounting date in third tax year).

235. We have added a priority rule to this clause to make the position clear.

Clause 199: Apportionment etc. of profits to basis periods

236. One respondent commented on this clause to suggest stating explicitly that the option to choose an alternative basis of apportionment allowed under clause 199(4) is exercisable only by the taxpayer, not the Inland Revenue.

237. This is the way the practice this clause legislates is operated. So we have revised the clause to reflect this.

Clause 203: Treatment of business start-up payments received in an overlap period

238. Two respondents commented on this clause.

239. Both were concerned with the need for consistency in the way rule is expressed in subsection (2) (and one drew attention to the missing “be” in paragraph (b)). We agree and have re-drafted the clause.

240. One respondent reminded us of the need to amend the Social Security Contributions and Benefits Act 1992. The amendments are now in Part 2 of Schedule 1.

Clause 204: When the late accounting date rules apply

241. Two respondents commented on this clause. One wondered whether the benefit of the clause justified its difficulty. The other thought the clause was helpful and offered some drafting suggestions.

242. On the first point, we recognise that legislating this practice has resulted in a fairly complex provision. The majority view throughout past consultation has

nevertheless been that it is worthwhile. Legislating non-statutory practices wherever possible remains our preferred approach so we are happy to reflect the majority preference.

243. One of the respondents also suggested a switch to a 31 March tax year while recognising that is outside our remit. We have passed this suggestion to our colleagues with policy responsibility for this issue.

Clause 207: Treating middle date as accounting date

244. One respondent commented on this clause to query whether the benefit of the clause justified its difficulty.

245. Just as for clause 204, the majority view throughout past consultation has been that it is worthwhile. Legislating non-statutory practices wherever possible remains our preferred approach so we are happy to reflect the majority preference.

Clause 213: Conditions for basis period to end with new accounting date

246. Three respondents commented on this clause.

247. One noted a misquoted statutory reference in subsection (5)(b).

248. The second thought subsection (6) is obscure.

249. The third commented as part of a general suggestion to eradicate use of “the first”, “the second” etc.

250. We have re-drafted this clause to meet all these points.

Clause 216: Deduction for overlap profit on change of accounting date

251. Two respondents commented on this clause. The first respondent thought that Step 3 (in subsection (3)) is now clearer. And the same respondent commented that the practice recorded in Change 63 (allowing the taxpayer to disregard 29 February on a change of accounting date to a date later in the tax year) is probably now so well established that legislating it is the only sensible way forward, despite the complexity of the clause.

252. The first respondent also suggested stating explicitly that the option to choose an alternative basis of apportionment allowed under clause 216(4) is exercisable only by the taxpayer, not the Inland Revenue.

253. This is the way the practice this clause legislates is operated. So we have revised the clause to reflect this.

254. The second respondent also approved Change 63 and made the general comment that ignoring 29 February for tax purposes is common sense and to be encouraged.

Chapter 16: Averaging profits of farmers and creative artists

Clause 218: Circumstances in which claim may be made

255. Two respondents commented on this clause.

256. In the course of a comment directed primarily at clause 213(6), one respondent suggested that subsection (4) of this clause lacks clarity. We doubt it can be significantly improved.

257. The other respondent drew attention to the reference to the Inland Revenue in subsection (5)(a). In the light of the matters discussed in Change 21 in Annex 1, there is no need for such a reference. We have removed it.

Chapter 17: Adjustment income

Clause 224: Adjustment income and expense

258. The two respondents who commented on this clause reminded us of the need to amend the social security legislation. The amendments are now in Part 2 of Schedule 1.

Clause 228: Treatment of adjustment income

259. One respondent commented on this clause and noted that subsection (3) treats adjustment income as profits of the trade for the purposes of loss relief. It follows that there is no need to include adjustment income in the table in the new section 833A of ICTA (see paragraph 265 of Schedule 1 to the Bill). We have removed the reference to Chapter 17 of Part 2 from the table.

Clause 232: No adjustment for certain expenses previously brought into account

260. One respondent commented on this clause, questioning whether it belongs in the part of the Chapter that deals with the “treatment of adjustment deduction”. We have changed the order of the clauses so this clause appears later in the Chapter.

Clause 234: Spreading on ending of exemption for barristers and advocates

261. One respondent commented on this clause, to point out an error in the explanatory notes. It is not true that the whole of any adjustment income is charged to tax when the person ceases to carry on the profession; the spreading continues. We have corrected the explanatory notes.

Clause 235: Election to accelerate charge under section 234

262. Two respondents commented on this clause, to offer suggestions about the formula in subsection (4). We have changed it, to make it clear that “A” is the excess of the amount charged as a result of the election over the amount that would otherwise have been charged.

Chapter 18: Post-cessation receipts

Clause 244: Debts paid after cessation

263. One respondent commented on this clause, to point out an error in the explanatory notes. They should refer to the recovery, rather than the writing off, of a debt. We have corrected them.

Clause 245: Debts released after cessation

264. One respondent commented on this clause to suggest that there should not be a reference to a “cessation” in subsection (1)(b). That word is not defined in the Part. We have changed the clause so that we consistently adopt a person-based approach to the trading income rules.

Clause 247: Transfer of rights where transferee does not carry on trade

265. One respondent commented on this clause and suggested that “by the transferee” should be inserted after “received” in subsection (4)(b). We think it would be unhelpful to do this. A reader may be left with the impression that sums received may be post-cessation receipts of the transferor, or another person. It is an important feature of the clause that the sums are not post-cessation receipts of any person.

Part 3: Property income

Chapter 1: Introduction

266. One respondent made a general comment that the redrafting of the clauses in Part 3, Chapters 1 and 2 is an improvement and that these Chapters are now more logically structured.

Clause 257: Overview of Part 3

267. One respondent commented on this clause to suggest we make it clear that Chapter 3 applies to both UK and overseas property businesses. To achieve this we have amended clause 257(1)(a) to read "(the profits of a UK property business or an overseas property business)".

Clause 258: Provisions which must be given priority over Part 3

268. One respondent commented on this clause. The respondent thought the positive wording makes it easier to read.

Chapter 2: Property businesses

Clause 262: Who can carry on property businesses

269. Two respondents commented on this clause. One suggested that subsection (2) seemed to go much further than intended. We have re-drafted the clause so that it concentrates on the extent of the charge to tax instead of who can carry on an overseas property business. There are consequential changes to clauses 259 and 351.

270. One consequence of the revised approach is that the reason for the special treatment of Irish income is a little clearer.

271. The clause is now in Chapter 3 of Part 3. This follows more closely the structure of Part 2 (Trading income).

Chapter 3: Profits of property businesses: basic rules

Clause 267: Person liable

272. One respondent commented on this clause and suggested the wording is more restrictive than the earlier version in clause 237 of Exposure Draft No 13.

273. The earlier version reflected our intention to adapt the wording of the charging clauses more directly to the context in which it was used. But we subsequently concluded that, in doing that, we ran the risk of changing the law.

274. The current version follows directly the source legislation in sections 21(1) and 59(1) of ICTA. It also follows the approach in ITEPA which adopted the wording of section 59(1) of ICTA for former Schedule D income without alteration (see, for

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example, section 576 of ITEPA) and applied the same wording for former Schedule E income (see Change 135 in ITEPA).

275. The statement in paragraph 1109 of the explanatory notes to the draft Bill (to which the respondent referred) was appropriate only to the earlier wording and will be deleted from the Bill version.

Clause 269: Amounts not taken into account as part of a property business

276. One respondent commented on this clause and suggested there is some uncertainty as to whether clause 269(3) applies only with respect to UK property businesses.

277. In clause 269 the first two subsections apply to all property businesses and the second two only to UK property businesses. That replicates the effect of the source legislation. But we have redrafted these provisions.

Clause 271: Apportionment of profits to tax year

278. One respondent commented on this clause to suggest stating explicitly that the option to choose an alternative basis of apportionment allowed under clause 271(4) is exercisable only by the taxpayer, not the Inland Revenue.

279. This is the way the practice this clause legislates is operated. So we have revised the clause to reflect this.

Chapter 4: Profits of property businesses: lease premiums etc.

Clause 273: Lease premiums

280. Two respondents commented on this clause.

281. The first respondent suggested that it would be difficult for a reader not familiar with Chapter 2 of this Part to follow subsection (3). This respondent suggested that the connection between subsections (2) and (3) could be brought out more strongly. The respondent commented in similar terms on the corresponding provisions in clauses 275(2) and (3), 276(2) and (3), 277(2) and (3), 278(2) and (3), 280(2) and (3) and 281(3) and (4) and on the comparable provisions in clause 307(2) and (3).

282. Subsection (2) treats the person to whom the premium in subsection (1) is due as entering into a transaction for generating income from land. Subsection (3) provides that (4) applies if, as a result of Chapter 2, the person to whom the premium is due carries on a property business that consists of or includes the transaction. Subsection (4) then brings an amount calculated under subsections (5) and (6) into account in calculating the profits of that property business.

283. The question of whether a person is carrying on a property business and, if so, whether the business is a UK property business (as defined in clause 260) or an

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overseas property business (as defined in clause 261) depends on a number of factors such as where the property is located, whether the person is a UK resident and whether the remittance basis applies. So the question of whether the person to whom the premium is due is carrying on a property business can be determined only by reference to the tests in Chapter 2.

284. We do not think it would be appropriate to incorporate the Chapter 2 tests in this clause and in clauses 275 to 278, 280 and 281. But we will revise the explanatory notes to bring out the interaction between subsections (2) and (3) of this clause, and the corresponding subsections in clauses 275 to 278, 280 and 281, more clearly.

285. The second respondent commented that the rule in subsection (4), which brings the amount calculated in respect of the premium into account in the tax year in which the lease is granted, is inconsistent with generally accepted accounting practice. This requires that only that part of the premium relating to the first year of the lease be recognised as revenue in the year in which the lease is granted. The respondent commented in similar terms on the corresponding rule in clauses 275(4), 276(4) and 277(4).

286. Generally accepted accounting practice is not relevant here because section 34(7A) of ICTA provides that an amount treated as rent under section 34 of ICTA is to be taken into account in computing the profits of the Schedule A business “for the chargeable period in which it is treated as received”.

Clause 275: Sums payable instead of rent

287. Two respondents commented on this clause.

288. The first respondent suggested that it would be difficult for a reader not familiar with Chapter 2 of this Part to follow subsection (3). See the commentary on clause 273.

289. The second respondent commented that the rule in subsection (4), bringing the amount calculated in respect of the sum payable instead of rent into account in the tax year in which the sum becomes payable, is inconsistent with generally accepted accounting practice. See the commentary on clause 273.

Clause 276: Sums payable for surrender of lease

290. Two respondents commented on this clause.

291. The first respondent suggested that it would be difficult for a reader not familiar with Chapter 2 of this Part to follow subsection (3). See the commentary on clause 273.

292. The second respondent commented that the rule in subsection (4), bringing the amount calculated in respect of the sum payable as consideration for the surrender of the lease into account in the tax year in which the sum becomes payable, is

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inconsistent with generally accepted accounting practice. See the commentary on clause 273.

Clause 277: Sums payable for variation or waiver of term of lease

293. Two respondents commented on this clause.

294. The first respondent suggested that it would be difficult for a reader not familiar with Chapter 2 of this Part 3 to follow subsection (3). See the commentary on clause 273.

295. The second respondent commented that the rule in subsection (4), bringing the amount calculated in respect of the sum payable into account in the tax year in which the contract providing for the variation or waiver is entered into, is inconsistent with generally accepted accounting practice. See the commentary on clause 273.

Clause 278: Assignments for profit of lease granted at undervalue

296. One respondent commented on this clause.

297. This respondent suggested that it would be difficult for a reader not familiar with Chapter 2 of this Part 3 to follow subsection (3). See the commentary on clause 273.

Clause 280: Sales with right to reconveyance

298. Two respondents commented on this clause.

299. The first respondent suggested that it would be difficult for a reader not familiar with Chapter 2 of this Part to follow subsection (3). See the commentary on clause 273.

300. The second respondent suggested that the reference in subsection (1) to a period “which does not exceed 50 years” might be better expressed as a period of “50 years or less”.

301. We agree that as a general rule it is better to draft in positive rather than negative terms. So we have revised this clause - and the corresponding references to periods “not exceeding 50 years” in clauses 275, 277 and 281 - to read “50 years or less”.

Clause 281: Sale and leaseback transactions

302. One respondent commented on this clause.

303. The respondent suggested that it would be difficult for a reader not familiar with Chapter 2 of this Part 3 to follow subsection (4). See the commentary on clause 273.

Clause 283: Circumstances in which additional calculation rule applies

304. One respondent commented on this clause.

305. The respondent suggested it would be better to refer in subsection (3)(c) to the assignment of a lease granted out of a taxed lease, not to the assignment of the taxed lease itself. But the respondent accepted that subsection (3)(c) reproduces the effect of the source legislation.

Clause 284: The additional calculation rule

306. One respondent commented on this clause. The respondent thought that this clause and clauses 285 to 291 - which together rewrite section 37 of ICTA - are simpler than the clauses published in Exposure Draft No 13 and now accurately reproduce the effect of the source legislation.

307. The respondent commented that where more than one source of relief is available the normal rule is that in the absence of a prescribed order of precedence it falls to the taxpayer to decide the order of set off. The respondent suggested we confirm in the explanatory notes that where relief is available by reference to more than one receipt, or there is more than one receipt to be reduced, the taxpayer is entitled to choose the order in which relief is taken.

308. We agree that where more than one taxed receipt has an unused amount, or where there is more than one receipt under calculation, it is for the taxpayer to decide the order in which relief is taken by reference to those receipts. We will revise the explanatory notes for this clause accordingly.

Clause 285: The additional calculation rule: special cases

309. One respondent commented on this clause. This respondent questioned whether subsection (4) and the associated definition of “unused amount” in clause 286(1) and (4) are necessary given that clause 291 imposes a limit on the total relief which may be given by reference to a tax receipt.

310. Clause 283(5) introduces the concept of the “unused amount” of a taxed receipt as a condition of obtaining a reduction under clause 284 by reference to that receipt. We think this is helpful because it alerts the reader to the possibility that the scope for relief by reference to a particular receipt may already have been exhausted *before* the reader enters into any calculation.

311. Where the unused amount of a taxed receipt is less than the amount calculated under clause 284(4) by reference to that receipt, clause 285(4) restricts the reduction under clause 284(4) to the unused amount of the tax receipt. This removes any doubt as to how the overall limit in clause 291 operates.

Clause 286: Meaning of “unused amount” and “unreduced amount”

312. Two respondents commented on this clause.

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313. The first respondent commented that the rule on work giving rise to qualifying expenditure under CAA 2001 in subsection (3) might be easier to follow if divided into separate subsections or paragraphs. We agree and have revised this clause, and the corresponding rule in clause 292(5), accordingly.

314. The second respondent suggested that it would be more accurate to refer in subsection (4)(a) to “any previous reductions” under clause 284 and in subsection (4)(b) and (c) to “any deductions allowed” under clauses 61 and 288.

315. We do not think it is necessary to refer to “previous” reductions in subsection (4)(a) because until a deduction has been calculated it is not a reduction at all. And *any* amount deducted under clause 284 is taken into account in calculating the unused amount of the taxed receipt.

316. And while we agree that in some cases there will be no reductions or deductions under clauses 284, 61 and 288 to be taken into account in calculating the unused amount of a taxed receipt, we do not think the reader will have any difficulty understanding references to the reductions under clause 284 and the deductions under clauses 61 and 288 as the reductions and deductions under those clauses *if any*.

317. The same respondent pointed out that it is not clear exactly when the reductions and deductions in subsection (4) are to be measured for the purpose of calculating the unused amount of the tax receipt.

318. We agree in principle that it would be helpful to the reader to say when reductions and deductions by reference to a tax receipt are to be measured. But there is nothing in section 37 of ICTA to say when the amount “which has been otherwise allowed as a deduction in computing the income of any person for tax purposes” is determined. And in the absence of a timing rule in the source legislation we do not think it would be appropriate to introduce one.

Clauses 287: Deductions for expenses under section 288

319. Two respondents commented on this clause.

320. The first respondent thought that even with the help of the explanatory notes a lay reader would still find it difficult to understand this clause and the following three clauses. But the respondent agreed that clauses 287 to 290 correctly rewrite the source legislation - which the respondent acknowledged is complex - and commented that there is no immediately apparent way in which the drafting of these clauses might be further improved.

321. The second respondent thought that subsection (3) does not work because it applies clause 33 (expenses not wholly and exclusively for the purposes of the trade) to a deemed expense. The respondent suggested we revert instead to the approach used in clause 251(5) of Committee paper CC/SC(03)08 (and in Exposure Draft No 13) which allowed the deemed expense to be deducted in the same proportion as payments of actual rent would be deductible, taking account of the wholly and

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exclusively rule. The respondent did not suggest that section 74(1)(a) of ICTA (which is rewritten in clause 33) does not apply to the deemed rent under section 37(4) of ICTA.

322. Where a tenant under a lease by reference to which an amount falls to be treated as a receipt of the landlord's Schedule A business uses the premises subject to the lease for the purposes of his or her own Schedule A business, section 37(4) of ICTA treats the tenant as paying rent for the premises subject to the lease "for the purpose ...of making deductions in respect of the disbursements and expenses of that business". The deemed rent does not exist in fact but is calculated by reference to the amount chargeable on the landlord.

323. The wording of section 37(4) of ICTA mirrors the wording of section 74(1)(a) of ICTA which prohibits deductions in respect of "any disbursements or expenses, not being money wholly and exclusively laid out or expended for the purposes of the trade, profession or vocation". We think it follows that clause 33 - as applied to the profits of a property business by clause 268 of the draft Bill - should restrict deductions for expenses in respect of the premises which the tenant is treated as incurring under clause 288 in the same way as section 74(1)(a) restricts deductions for rent which the tenant is deemed to pay under section 37(4) of ICTA.

324. We think that clause 287(3) reproduces the current legislation. And we are not aware of any problems having arisen in applying the wholly and exclusively rule in section 74(1)(a) to rent which the tenant is deemed to pay under section 37(4) of ICTA.

325. The respondent commented in similar terms on the corresponding provision for expenses incurred by a tenant under a taxed lease in calculating the profits of a trade in clause 60 of the draft Bill. See the commentary on clause 60.

326. The same respondent also suggested that subsection (3) might not allow for the deduction of part of the notional expense where only part of the property is used for qualifying purposes. We do not think there is a problem here as it is explicitly provided in subsection (2) of clause 33 that in the case of dual purpose expenditure a deduction may be allowed for any identifiable part of an expense which is incurred wholly and exclusively for the purposes of the property business.

Clause 289: Section 288 expenses and the additional calculation rule

327. One respondent commented on this clause. This respondent thought references to "the receipt under calculation" in this clause and in clauses 290 and 293 are unhelpful in that these clauses calculate the amount of the expense which the tenant is treated as incurring under clause 288, not the receipt in respect of the sublease.

328. We agree "receipt under calculation" is potentially misleading. So we have replaced it in this clause and in clauses 290 and 293 with the more informative "lease premium receipt".

Clause 292: Corporation tax receipts treated as taxed receipts

329. One respondent commented on this clause.

330. The respondent suggested the explanatory notes for this clause and the next two clauses are not easy to follow. We will look at these notes again to see if the comments on the way in which the draft Bill interacts with the corresponding clauses in ICTA can be made more clear.

331. This respondent also suggested that it should be explicitly provided that the Schedule A business in subsection (1)(a) is carried on by a company.

332. We do not think it is necessary to specify that the Schedule A business in subsection (1)(a) is carried on by a company because, once the Bill is enacted, Schedule A businesses will be carried on *only* by companies. And the label “corporation tax receipt” attached to the receipt in subsection (1)(a) makes clear that the receipt in question is one taken into account for corporation tax purposes.

Clause 297: Claim for repayment of tax payable by virtue of section 280

333. One respondent commented on this clause. This respondent suggested the time limit in this clause and the following clause should be revised to five years and ten months after the end of the tax year.

334. This matter was raised in response to Exposure Draft No 13 and we set out our views in the subsequent Response Document. Our view remains that the six year time limit in section 36(2) of ICTA should be retained. The change proposed by the respondent would reduce the time during which taxpayers can claim a repayment when an estate or interest is reconveyed, or a lease granted, in the last two months of any tax year.

Chapter 5: Profits of property businesses: other rules about receipts and deductions

Clause 307: Reverse premiums

335. Two respondents commented on this clause. One repeated comments made in connection with clause 273. We deal with those comments there.

336. The other respondent suggested that subsection (1)(a) of the clause should refer (in the alternative) to a person connected with the recipient. We think that would be wrong. The person charged on a reverse premium is always the recipient. It may be that a connected person enters into the relevant transaction (see clause 101(2)) but that does not affect the person charged.

Clause 311: Relief in respect of mineral royalties

337. One respondent commented on this clause. The respondent suggested the mineral royalties to which section 122 of ICTA applies can also be taxed under

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Schedule D Case I if the receipt of the royalties is incidental to a trade or section 55(2) concern. Therefore the relief also needs to be rewritten in Part 2 of the Bill.

338. We agree and have extended the relief so it applies to income taxed in Part 2, although the circumstances in which this will apply will be limited.

339. The definitions of "mineral royalties" and "mineral lease or agreement" in section 122(6) of ICTA limit the relief to rent received in respect of minerals in the United Kingdom. That is, to rent that would be taxed under Schedule A. The boundary rule in section 18(3) of ICTA is that if there is an overlap between Schedule A and Case I of Schedule D the profits are taxed under Schedule A.

340. But section 119 of ICTA complicates the issue. It deems rent received in respect of a concern within section 55(2) of ICTA to be taxed under Schedule D. So section 119 of ICTA has the capacity to override the normal priority between Schedule A and Schedule D Case I. Much of this rent will fall within the definition of mineral royalties for the purposes of clause 311.

341. Section 119 of ICTA does not specify under what Case of Schedule D the rent is to be taxed but unless it is received in respect of a trade it can be taxed only under Case VI. Just because the rent is received in respect of land on which the landlord carries on a trade does not mean the rent is received in respect of that trade. For section 119 of ICTA there is no equivalent to the practice under which rent within section 120 of ICTA is added to the trade profits if the landlord trades on the land in respect of which the rent is received.

342. We think that the only case in which the mineral rent could be taxed under Schedule D Case I is if the rent is received by a property developer in respect of land held as trading stock. In this case we agree it is necessary to rewrite section 122 of ICTA in Part 2 to deal with the concern within section 55(2) of ICTA case only. We do not agree that section 122 of ICTA is relevant if the receipt of the mineral rent is merely incidental to a trade. This is because the rule in section 18(3) of ICTA, rewritten as clause 4, gives priority to Schedule A.

343. The full out words of section 122(2) of ICTA mean that it is not necessary to identify and halve the trade expenses that relate to the letting.

Chapter 6: Commercial letting of furnished holiday accommodation
Clause 317: Meaning of "qualifying holiday accommodation"

344. Four respondents commented on this clause, two specifically recognising the difficulty of the source legislation.

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345. Three respondents agreed with Question 13 and proposed Change 77 (which alters the permitted longer-term occupation rule). The fourth thought the 70-day test is clearer, but not the 155-day test.

346. We wonder if the commentary in paragraph 1418 and the part of Change 77 which that reflects that might have confused readers. One respondent, while agreeing the change, queried the accuracy of the second bullet in that paragraph where we say that the period during which any occupation of the accommodation must be on a short term basis is never extended beyond 155 days. That respondent noted that the new 155 day rule relates to the 'longer-term occupation' periods, rather than to the 'short-term basis' occupation periods. And those could total 210/211 days or more if the periods of longer-term occupation fall short of 155 days in total.

347. Change 77 alters the mechanics and (slightly) the effect of the short-term occupation test in section 504(3)(c) of ICTA. The change is described in Change 77 in Annex 1 in Volume 2 of the draft Bill. This has included recasting the test in section 504(3)(c) of ICTA so that the "disqualifier" (in clause 317(5)) operates by reference to a clearly defined maximum number of days of non-qualifying occupation rather than (as in section 504(3)(c) of ICTA) a loosely defined period of qualifying occupation.

348. Paragraph 1418 summarises part of the effect of the change. The second bullet point reflects the converse of clause 317(5), describing the effect of the provision in terms of a minimum qualifying period rather than a maximum disqualifying period. That has no implications for the maximum time during the relevant period that accommodation might be let on a short-term basis. In particular it is not limited, as the respondent wondered, to 155 days.

349. We will make this clear in both the change note and the commentary.

350. On the detail of the clause, one respondent wondered if it might be clearer to put clause 317(6) before clause 317(5). We do not favour this as it would mean separating the conditions. But we have added to clause 317(4) a signpost to the definition in clause 317(6) to make the link more prominent.

Clause 318: Under-used holiday accommodation: averaging elections

351. Three respondents commented on this clause.

352. Two noted their agreement with Question 14 and proposed Change 78 (which alters the period over which lettings are averaged) one adding their view that the change will be beneficial to taxpayers.

353. The third thought that, taken in conjunction with Change 77, the effect of Change 78 is not easy to determine and wondered if a formula approach might simplify the rules. We recognise that these rules are not always easy to apply. But that stems from the nature of the tests that determine eligibility for the special treatment.

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The complexity of the source legislation has been generally recognised from the outset and we think our approach has helped clarify it. The use of a formula can be very effective in certain cases but here the number of variables does not lend itself to a formula approach.

Clause 319: Capital allowances and loss relief

354. One respondent commented on this clause to agree the clause is necessary to give effect to the tax advantages of qualifying holiday lettings where there are both furnished holiday lettings and other lettings within a UK property business.

Clause 320: Relevant earnings for pension purposes and earned income

355. One respondent commented on this clause to agree the clause is necessary to give effect to the tax advantages of qualifying holiday lettings where there are both furnished holiday lettings and other lettings within a UK property business.

Chapter 7: Adjustment income

Clause 321: Application of Chapter

356. One respondent commented on this clause and suggested that the Chapter number (7) should be included in the title of the clause. We are reviewing the Bill's introductory clauses to see if they can be made more consistent.

Clause 325: Treatment of adjustment income

357. Two respondents commented on this clause. One pointed out that the rule in subsection (2) should refer to the time when the asset is *realised or* written off. We have corrected the clause.

358. The other respondent noted that subsection (3) treats adjustment income as profits of a UK property business for the purposes of loss relief. It follows that there is no need to include adjustment income in the table in the new section 833A of ICTA (see paragraph 265 of Schedule 1 to the Bill). We have removed the reference to Chapter 7 of Part 3 from the table.

Chapter 8: Rent receivable in connection with a section 10(2) concern

Clause 333: Relief in respect of mineral royalties

359. One respondent commented on this clause. The respondent noted that relief under clause 333 is given on the same profits as that charged under clause 329. Clause 329 refers to the profits arising and clause 333 to the profits the taxpayer is entitled to receive. The respondent suggested adding the word "arising" after "royalties" in clause 333(1)(a) to bring the clauses into line.

360. We have not adopted this suggestion. This is because it is clear that the relief is given on the amount charged under clause 329 and we do not want to add to the complexity of the drafting.

Chapter 9: Rent receivable for UK electric line wayleaves

Clause 338: Meaning of "rent receivable for a UK electric-line wayleave"

361. One respondent commented on this clause. The respondent was concerned that applying the clause to rent receivable "in respect of an interest or right in or over land" may extend the scope of the clause beyond the current section 120 of ICTA. This would have the effect that income taxed under Schedule A in the source legislation would be taxed as miscellaneous income in the Bill. We agree and have amended the definition in this clause and clause 21.

Clause 339: Extent of charge to tax

362. One respondent commented on this clause. The respondent suggested it is not clear that clause 339(1)(b) does not apply if the other rent is received from another wayleave over the same land. The respondent did not accept our view that it is clear the rule is applied on a wayleave by wayleave basis and asked that we reinstate something similar to clause 3.1.15(3)(b) in Exposure Draft No 10. We have done that.

Chapter 12: Supplementary

Clause 357: Meaning of "lease" and "premises"

363. One respondent commented on this clause to query why the reference to a sublease proposed in Exposure Draft No 13 was omitted from clause 357(1).

364. We have reverted to a definition of "lease" that is much closer to that in the source legislation. In law, a "sublease" is a lease and it is obvious that subleases are included in Part 3. Otherwise (for example) the definition of "premium" in clause 303(1) would make no sense. On the other hand, defining leases to include subleases could raise more questions than it answers. Consistency would require a comparable reference to "sub-tenancies" if the implication that the latter were excluded from "tenancies" is to be avoided. And, in CAA 2001, "lease" is defined in a number of places without reference to "subleases". A differing treatment in the Bill might wrongly suggest that subleases are not intended to be covered in CAA 2001.

Part 4: Savings and investment income

Chapter 1: Introduction

365. There was agreement to the structure of this Part and it was thought appropriate to have a separate chapter for each category of income arranged in the order in which the legislation is most likely to be used. Although it was noted that the order was a subjective judgement no suggestions were made for an alternative arrangement.

Clause 358: Overview of Part 4

366. One respondent commented on this clause supporting the signpost from the charge to tax provisions to relevant exemptions.

Clause 359 Provisions which must be given priority over Part 4

367. Two respondents commented on this clause. One thought the positive wording makes it easier to read.

368. The other acknowledged that subsection (1) codifies the Revenue's practice of exercising the Crown Option so as to give priority to Part 2 (Trading income) where income is potentially within that Part or Chapter 2 of Part 4 (interest). And that subsection (2) enacts the effect of the decision in Salisbury House Estate Ltd v Fry so that Part 3 (Property income) takes priority over the interest Chapter.

369. But concern was expressed that there is still no defined order of priority where interest income (whether arising in the UK or overseas) is potentially within Part 4 as investment income and Part 3 as part of the profits of an overseas property business. It was acknowledged that the situation is probably rare, and the respondent was not aware of any established practice. It was thought that under the present law foreign-source interest would usually be chargeable under Case V, so the only question was whether there is one source or two.

370. We agree that the current legislation is silent on this point and we have not attempted to introduce a rule.

Clause 360 Priority between Chapters within Part 4

371. One respondent commented on this clause. The respondent had no objection to Chapter 9 (profits from deep gain securities) taking priority over Chapter 2 (interest) as it was agreed that it is sensible that deep gains should be dealt with in accordance with the specific Chapter 9 provisions. But the respondent did not readily see the authority for this in the source legislation pointing out that paragraph 1(1) Schedule 13 FA 1996 simply establishes a Schedule D Case III charge under which head 'all discounts' now within Chapter 2 (interest) are also charged in section 18(3) of ICTA.

372. We have replicated and not extended the source legislation as this priority rule applies only where "income" falls within both Chapter 9 (profits from deep gain securities) and Chapter 2 (interest). It therefore ensures that any "discount" which

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would fall within both Chapters is dealt with by Chapter 9. A pure interest receipt would not “fall within” that Chapter because the Chapter 9 rules would not be applicable and it would in the normal way fall within Chapter 2 and be dealt with by that Chapter.

Clause 361: Territorial scope of Part 4 charges

373. The comments below refer to this clause and to clause 621 (territorial scope of Part 5 charges) since respondents commented on both clauses together.

374. Five respondents commented on these two clauses, one offered drafting suggestions. The responses were positive. There was acknowledgement that it was helpful to have a territoriality test and agreement with the principle expressed, while at the same time recognition of the very considerable difficulties involved in bringing within the test income without a source.

375. One respondent was unsure whether the “comparable connection” test in subsection (3) gave sufficient certainty to the taxpayer and suggested a test based on linkages to the United Kingdom.

376. It is difficult to be precise when formulating a rule for income without a source. In the case of income which is agreed to have a source, such as interest, a number of factors must be taken into account in ascertaining whether the source is within or outside the United Kingdom, see Westminster Bank Executor and Trustee Co. (Channel Islands) Ltd v National Bank of Greece S.A. There is no simple test to borrow and adapt for income without a source. Even if we were to identify linkages with the United Kingdom the problem would remain as to what weight to give each separate linkage.

377. The factors considered in the National Bank of Greece case do, to a degree, lend themselves to a consideration of income without a source, such as the debt and its location, i.e. a “comparable connection” to the United Kingdom.

378. Work on this clause and clause 621 is continuing.

Chapter 2: Interest

Clause 365: Building society dividends

379. There were four responses to this clause.

380. Two respondents queried clause 365(2) which allows building society dividends to be treated as distributions for the purposes of Chapter 3 (dividends etc from UK resident companies etc.). While not disputing the principle they do not consider that Chapter 3 is relevant to the deduction of tax. We agree and clause 365(2) has been removed.

Clause 374: Discounts

381. There were two responses to this clause. One agreed with the clause. The other asked for a definition of “discount”.

382. The term is not defined in the source legislation but derives its meaning from case law. The meaning was considered in Lomax v Peter Dixon & Son where it was held that a number of factors should be considered in deciding whether there is a discount. Even in the clearest case, where no interest is paid on the associated loan, the court considered that only ‘normally’ will a return be a discount. It would be difficult to bring this within a statutory definition. We therefore consider it preferable to rely on case law.

Open-ended Investment Companies

Clause 366: Open-ended investment company interest distributions

383. Three respondents commented on this clause. One asked for an explanation of this legislation as it was not clear to the reader whether clause 366 (with clauses 367 and 368) deals with actual or notional distributions. We will set this out clearly in the explanatory notes.

384. Another respondent mentioned that according to subsection (4), subsection (3) (which provides for the deemed payments of interest by an OIEC) is "subject to the qualifications in section 468L(4) of ICTA". Section 468L(4) deals with deduction of tax, and the only apparent qualification is a reference to section 468M of ICTA which lifts that obligation in certain circumstances. The respondent could not see how any of this had any relevance to subsection (3); and mentioned that it did not appear to have any counterpart in the source legislation.

385. The counterpart is section 468L(2) of ICTA which provides that “the Taxes Acts shall have effect (subject to what follows) as if the total amount were payments of yearly interest”. The “yearly interest” is the peg for the deduction of tax at source rules which are not applied if section 468M of ICTA is in point. So we think it is correct that clause 366 is subject to section 468L(4).

386. One respondent suggested that in subsection (5) we should insert ‘treated as made’ after ‘payment’ to be consistent with the drafting in clause 369(5) (authorised unit trust interest distributions). And in subsection (6) that ‘throughout the distribution period’ (as in section 468L(1A) of ICTA) should be added after the final word ‘met’. We agree with both suggestions and have amended the clause. We have also amended clause 369(6) (authorised unit trust distributions) to be consistent.

Authorised Unit Trusts

Clause 369: Authorised unit trust interest distributions

387. One respondent commented on this clause. The point made in respect of clause 366(3) and (4) (open-ended investment company interest distributions) was also made on this clause. The reason for qualification is the same as that explained above.

Clause 371: Interpretation of sections 369 and 370

388. One respondent commented on this clause. It was asked whether the drafting of the definition of ‘approved personal pension scheme’, for the purposes of sections 369 and 370, needs to differ from that in clause 368(1). We agree that this does not need to differ and we have aligned these provisions.

Chapter 3: Dividends from UK resident companies etc.

Clause 375: Charge to tax on dividends etc.

389. Two respondents commented on this clause. The first respondent acknowledged that the clause was satisfactory.

390. The second respondent noted the inability to apply the integrated approach to dividends of an income nature from non-UK resident companies, and the necessity to deal with those under a separate charge in Chapter 4 of Part 4 (dividends from non-UK resident companies).

391. The respondent also agreed that the charge in clause 393(1) on the full amount of the dividends arising, correctly rewrites section 65(1) of ICTA. The respondent noted that the ‘arising’ basis contrasts with the ‘paid’ basis applied to dividends from UK resident companies in clause 376(1).

392. The respondent suggested that although the explanatory notes in paragraph 1747 correctly explain why the term ‘arising’ has been used, the explanation does not help the reader distinguish “arising” from ‘paid’. We accept this point. We will add an explanation of when a dividend is paid to the explanatory notes on the following lines:

Section 834(3) of ICTA provides “For all the purposes of the Corporation Tax Acts dividends shall be treated as paid on the date when they become due and payable, except in so far as Chapter III of Part XII makes other provision for dividends treated as paid by virtue of that Chapter.”

The Corporation Tax Acts means the enactments relating to the taxation of the income and chargeable gains of companies and company distributions (including provisions relating to income tax) (see section 831(1) of ICTA).

Chapter III of Part XII specifies the date on which dividends which an authorised unit trust is treated as paying are paid. So in all other cases the date on which a dividend is paid is the date on which the dividend becomes due and payable.

The date when a final dividend becomes due and payable is usually established by a resolution of the directors or the members. The dividend becomes due when the date on which it is expressed to be payable arrives. Only then is payment enforceable. In the case of a final dividend where a date for payment is not specified, an immediately enforceable debt is created so that the date of declaration is the due and payable date.

An interim dividend can be varied and rescinded at any time before payment and can therefore only be regarded as “due and payable” when the date for payment arrives.

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The main case law authority is Potel v CIR (1970) 46 TC 658 which indicates that the declaration of a dividend by a company and its payment are two separate matters.

So a dividend is paid for income tax purposes on the date on which payment may be enforced.

393. An explanation of “arising” is in paragraph 1613 of the explanatory notes.

Clause 377: Person liable

394. One respondent commented on this clause.

395. The respondent acknowledged that the source legislation does not state explicitly who is the person chargeable on dividends and other distributions. The respondent noted that the commentary contains a very careful analysis of the legislation, from which it can be inferred who that person is in various situations, leading to the three alternatives set out in the clause. However, the respondent argued that if there are three possibilities, one needs to have the priorities between them defined, since they may not all indicate the same person (and indeed would not need to be spelled out separately if they did).

396. We have considered whether it would be appropriate to include a rule setting out an order of priority for Chapter 3 of Part 4 but have concluded, for a number of reasons, that it is not.

397. First, by expressing in a single provision what is clear from a number of scattered provisions in the source legislation, we have not changed the underlying law. The only difference between clause 377 and the other person liable clauses which indicate that more than one person may be liable, is that clause 377 derives from a number of provisions whereas the other clauses typically derive from one (ie section 59 of ICTA). We do not therefore see any justification for treating Chapter 3 of Part 4 differently from the rest of the Bill. As we do not have a priority rule elsewhere in the Bill (and nor has it been suggested that such a rule would be appropriate) we feel it inappropriate to have a special rule for Chapter 3 of Part 4. Indeed, inserting a special rule in Chapter 3 of Part 4 could give rise to the presumption that the order of priority for dividends and other distributions of UK resident companies is different from that of other income.

398. Any order of priority that can currently be discerned from the source legislation is not dependent on income type. For example, section 660A of ICTA treats “income” as that of the settlor and “not as the income of any other person” for all income tax purposes. Thus, the settlor is the person liable whether the income arising to the settlement comprises dividends, interest or whatever.

399. Second, a priority rule could only be of an indicative nature.

400. Except in the case of certain anti-avoidance provisions which set out precisely (and to the exclusion of all others) the person liable, there is no general priority rule in the source legislation. Therefore, to introduce such a rule would be a change in the

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law. So, to ensure that any change was neutral, the Inland Revenue's current ability to seek tax from, for example, the recipient or the person entitled, would have to be preserved.

401. Further, any general rule of priority would be subject to exceptions. For example, if it were provided that a person beneficially entitled to income is taxed in priority to a person receiving that income, that rule would have to be reversed in the case of:

- trustees acting on behalf of incapacitated persons; and
- trustees of income in possession trusts.

402. We doubt the usefulness of such a non-conclusive rule of priority in the legislation.

Clause 379: Date when dividends paid under section 378 and clause 382: Date when dividends paid under section 381

403. One respondent commented on these clauses. It was pointed out that subsection (1) in each clause referred to the making of a dividend, while subsection (2) used "paid". We have amended subsection (1) to "paid" to be consistent.

Clause 386: Distribution when dividend shares cease to be subject to SIP

404. One respondent commented on this clause.

405. The respondent said that section 251C of ICTA has effect subject to section 498 of ITEPA (no charge on shares ceasing to be subject to plan in certain circumstances) (see section 251C(6)) but the qualification does not appear to be rewritten in clause 386.

406. We agree that in ICTA section 251C has effect subject to section 498 of ITEPA and we agree the qualification has not been rewritten in clause 386.

407. Clause 386 deems a distribution to have been made and modifies the income charged and person liable clauses. Clause 386 does not, however, charge the distribution to income tax. Income tax is charged on this deemed distribution under clause 375(1) (charge to tax on dividends etc.). This is consistent with our approach elsewhere in the Bill. So, for example, the deemed distribution of an open ended investment company is also charged to income tax under clause 375(1). So it is clause 375(1) that is subject to section 498 of ITEPA (see clause 375(5)).

408. We have considered inserting a signpost at the end of clause 386 saying "and see also section 498 of ITEPA" or revising clause 386(3) so that it reads "Tax charged under clause 375(1) as a result of subsection (2) ..." but these approaches are inconsistent with the rest of the Bill. We are considering this further.

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Clause 387: Reduction from amount charged in cases within section 386

409. One respondent commented on this clause.

410. The respondent said that the statement in clause 387(1) that "the tax due is to be reduced" is unduly positive, considering that there will actually only be a reduction in the relatively unusual situation where there has been a charge under section 501 of ITEPA. It would be better to say "... may be reduced", or " ... is to be reduced if the following circumstances apply".

411. We agree with this comment and have revised the clause.

Clause 388: Tax credits for qualifying distributions: UK residents and eligible non-UK residents

412. There were six responses to this clause.

413. Four agreed with the changes.

414. The fifth response was about clause 388(4). The respondent said that clause 388(4) is wrong. The respondent explained that if a distribution is not wholly brought into charge, due to a deduction eg for personal allowances, the available tax credit is reduced to the extent that it is attributable to the non-taxable part of the dividend. In other words the tax credit is reduced by one-ninth of the amount of the deduction, not by the whole amount (contrast the way in which clauses 404 and 411 deal with the same issue).

415. We agree with this comment and clause 388(4) has been amended accordingly.

416. The final response concerned a small drafting suggestion.

Chapter 4: Dividends from non-UK resident companies

Clause 393: Income charged

417. There was one response to this clause. Please see comment on the second response to clause 375.

Clause 398: Reduction from amount charged in cases within 397

418. There was one response to this clause. Please see the response to clause 387 (reduction from amount charged in cases within section 386).

Chapter 6: Release of loan to participator in close company

Clause 408: Borrowers liable as settlors

419. One respondent commented on this clause.

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420. The respondent suggested that the references in clause 408(4) to sums included in a person's income, or charged, "earlier in the same year" are strange, considering that income tax is charged on the person's income for the year as a whole, not incrementally at various dates through the year.

421. We agree with this comment and the clause has been amended.

Chapter 7: Accrued Income Profits

422. In view of the consultation now in progress regarding the possibility of changes to the Accrued Income Scheme, and with no support for what could be a short term rewrite of the current legislation, we have withdrawn Chapter 7 of Part 4 and clauses 791 to 795 from the Bill.

Chapter 9: Profits from deep gain securities

Clause 478: Charge to tax on profits from deep gain securities

423. The two respondents who commented on this clause were unhappy with the use of the term "deep gain securities" because confusion could arise – either with securities of the same name previously dealt with under Schedule 11 of ICTA or simply because of the change of terminology. We prefer not to retain the word 'relevant', a term without any specific meaning. We have instead changed to "deeply discounted securities", which distinguishes these particular securities from the older "deep gain securities" and retains part at least of the current name.

Clause 482: Excluded occasions of redemption

424. There was one response to this clause. The respondent queried the use of the phrase "on the occasion" in clause 482(3)(a) and (b). It was considered the words added nothing and made the sentence less clear. Under clause 481(1) the test of a deeply discounted security depends on the amount payable on maturity or on any other occasion of redemption. Occasions of redemption are ignored if certain conditions are met. The mention of "on the occasion" makes a clear link with the "occasion of redemption" in clause 482(1). There may be several occasions on which the security may be redeemed so it is important to keep the occasion in question in mind.

Clause 484: Meaning of "excluded indexed security"

425. The one comment on this clause looked for a change in the definition of "index". The definition should refer to "index of the value of chargeable assets". We agree and the clause now reflects this point.

Chapter 10: Gains from contracts for life insurance etc.

Overview

426. Five respondents commented on at least some part of this Chapter. One respondent referred to a previously expressed view of the “fundamentally unacceptable complexity of this legislation”. The respondent added: “Whilst no fault of the TLR team, legislation of this density is quite unacceptable in a self-assessment context”. It is outside the remit of the project to simplify the legislation. We have therefore passed these comments to our colleagues with policy responsibility for this topic.

Clause 506: Charge to tax under Chapter 10

427. The one respondent who commented on this clause suggested that there should be a general signpost to Part 6 (Exempt income), as the location of exemptions generally, in addition to any specific exemption mentioned. That general signpost is already provided by clause 1(3) (overview of Act).

Clause 536: Calculating gains: general rules

428. The one respondent who commented on this clause approved the drafting layout used in subsection (1) and suggested that it be used in a number of other clauses. We have adopted this suggestion in clauses 543(2), 552(1), 555(2), 556(1), 560(3), 567(1) and in Chapter 7 of Part 5 (now renumbered Chapter 6 of that Part) for clause 712(2) (beneficiaries’ income from estates in administration: successive interests: assumed income entitlement of holder of absolute interest following limited interest).

Clause 541: Modification of section 539: qualifying endowment policies held as security for company debts

429. The one respondent who commented on this clause suggested that “accounting period” in subsection (2)(b) be replaced. Although a replacement term was not offered, “period of account” may have been in mind. However, the clause uses exactly the term used in the source legislation. And “accounting period” has a defined meaning (see Schedule 4), which may give a different terminal date for a claim compared to that which would flow from “period of account” if, for any reason, the period of account (a period for which accounts are drawn up) and the accounting period (determined by section 12 of ICTA) are not coterminous.

Clause 543: Requirement for periodic calculations in part surrender or assignment cases

430. The one respondent who commented on this clause suggested that, here and throughout the Chapter, calculations should be “made” rather than “done”. We have adopted this suggestion throughout the Chapter and in Chapter 7 (now Chapter 6) of Part 5 (beneficiaries’ income from estates in administration) where the same issue arises.

Clause 552: Method for making periodic calculations under section 543

431. The one respondent who commented on this clause suggested that, here and throughout the Chapter, “aggregate” be replaced with “total”. Again we have adopted this suggestion throughout the Chapter, except where “aggregate” occurs in the phrase “aggregate income of the estate”, in a reference to Chapter 7 (now Chapter 6) of Part 5 (beneficiaries’ income from estates in administration). See clause 511 (persons liable: personal representatives).

Clause 588: Issue time of qualifying policy replacing foreign policy

432. The one respondent who commented on this clause asked that the words “which the insurance was made in respect of” in subsection (2) be deleted. That would mean the replacement policy (the “new policy”) is treated as issued on the date the replaced policy (the “old policy”) was issued, rather than on the date on which the insurance was made in respect of which the replaced policy was issued. It is commonly the case that the policy itself is issued days or weeks later than the making of the insurance. Adoption of this suggestion would therefore represent an unintended change in the law.

Clause 589: Minor definitions

433. Three respondents commented on this clause.

434. Varied views were offered on the definition of “disability” in subsection (2), including a suggestion that the definition should be based on related definitions in the Disability Discrimination Act 1995 (“DDA”). We have considered whether we can adopt the DDA definition without changing both the law and the Inland Revenue’s practice. We have concluded that the DDA definition may be narrower. Our concern is that not all serious illness or injury will result in disability, at least at the beginning. And that the use of “substantial and long-term” and “normal day to day activities” in the DDA definition may cut down the ordinary meaning of “disability” as we have understood it in relation to this legislation. In the absence of a consensus on the need for a bespoke definition of “disability” in this Chapter, and taking into account more general continuing consideration of the subject, we have decided to withdraw the definition from the clause.

435. A respondent on clause 733 (special requirements for certain foreign managers) in Chapter 3 of Part 6 (income from individual investment plans) suggested the definitions of “insurance company” in these clauses be brought into line. We have amended the definition in this clause accordingly.

Chapter 12: Transactions in deposits

Clause 596: Meaning of “deposit rights”

436. The one respondent who commented on this Chapter asked that this clause and/or the explanatory notes should reflect the modifications made to the meaning of “certificate of deposit” and of the “amount stated in” in such a certificate, in sections 56 and 56A of ICTA, by regulation 15 of, and paragraph 6 of Schedule 2 to,

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the Uncertificated Securities (Amendment) (Eligible Debt Securities) Regulations 2003 (SI 2003/1633).

437. Those modifications extend the scope of sections 56 and 56A to cover “uncertificated units of an eligible debt security”. Such securities are now the main category of deposit to which sections 56 and 56A apply. The categories expressly mentioned in those sections (and in this clause) are obsolescent.

438. We have amended the clause to reflect the modifications made by SI 2003/1633.

Chapter 13: Disposals of futures and options involving guaranteed returns

Clause 599: Charge to tax under Chapter 13

439. Five respondents commented on this clause. Three mentioned Change 109 under which only trading profits currently chargeable under Case V of Schedule D and not any other possible Case V income are excluded from the operations of this Chapter. While two of the respondents were in agreement one was not, objecting to what was seen as the extension of an anti-avoidance provision. But we consider the chances of a Case V income tax charge arising in connection with futures or options within the constraints of the rules in this Chapter to be very slim. We consider that we should proceed with this change as it has the balance of support.

440. Another respondent commented that neither Schedule 5AA to ICTA nor clause 613 (anti-avoidance: transfer of assets abroad) clarified the territorial reach or location of the transactions involved. It was suggested that this needed to be clarified before clause 361 (territorial scope of Part 4 charges) could be applied. We do not consider that it is feasible to lay down a set of rules as to when income within this Chapter arises within or outside of the United Kingdom. This is ultimately a matter for the courts to decide although in practice, as mentioned already, we consider it unlikely that profits within this Chapter will arise abroad.

Clause 600: Income charged

441. The only respondent on this clause would like to see a provision explaining how the profits or gains are calculated and wondered whether we could not simply state that the income charged is the amount of the guaranteed return. In most cases the amount chargeable will be the guaranteed return (a net amount after taking into account both profits and losses on disposals) but one cannot be certain that this will always be the case as the arrangements could fail in some way with the taxpayer not receiving the guaranteed return. We do not consider that there is anything straightforward that can be done and that it is better to retain the flexibility afforded by the source legislation. In practice the computation, which is on a realisation basis, has not caused problems.

Clause 605: The return from one or more disposals

442. Four respondents commented on this clause. Three replied to Question 26 on the omission of the references to “associated companies”. Two agreed but one considered that a problem might arise where the chargeable person was a non-resident company liable to income tax – ignoring an associated company could result in its profit or loss not being attributed through this clause to another liable person. If the reference were retained it would be solely for these companies. The only person who could be liable would be another non-resident associated company. The chance of a non-resident company being liable to income tax on these transactions is extremely unlikely. We consider it would be wrong to reproduce a mistake in the law in these circumstances.

443. The fourth respondent commented on the circularity in the definition of “scheme or arrangements”. This has been redrafted.

Chapter 14: Sales of foreign dividend coupons

Clause 615: Meaning of “foreign holdings” etc.

444. The only respondent to this clause objected to the rewrite of “purporting to be drawn” in section 18(3E)(b) of ICTA as “that appear to be drawn”, the latter being a subjective judgement of the observer rather than a statement about the document in question. We agree and this has now been changed back to “purport”.

445. The respondent also considered that there seemed no reason for the definition of “income” in clause 615(4). We agree in part and the clause has been reworded to reflect this.

Part 5: Miscellaneous income

Chapter 1: Introduction

Clause 619: Provisions which must be given priority over Part 5

446. Two respondents commented on this clause. One confirmed agreement with the order of priority between Part 5 and other Parts of the Bill and ITEPA as set out in this clause and in the explanatory notes. The other thought the positive wording made it easier to read.

Clause 620: Priority between Chapters within Part 5

447. One respondent commented on this clause. The respondent agreed with the order of priority between Chapters within Part 5 as set out in this clause and in the explanatory notes.

Clause 621: Territorial scope of Part 5 charges

448. There were five responses to this clause. Please see comments on the responses to clause 361.

Chapter 2: Annual payments

Clause 622: Charge to tax on annual payments

449. Three respondents commented on this clause. Two respondents agreed with our approach. The third respondent considered the “retention of the expression “annual payment” archaic, and as a central criterion of taxability, fundamentally unsatisfactory”.

450. We discussed the third respondent’s comments at meetings of the Project’s Consultative and Steering Committees. We explained the reasons for our approach (these are set out below). Both Committees agreed that we should continue with our approach and that we should take forward our suggestions outlined below.

451. In summary we have retained the expression “annual payments”. The expression is not defined in the source legislation. Rather it derives its meaning from an extensive body of case law. The case law illustrates that the phrase has a meaning for tax purposes far different from its natural one. We must ensure that the charge to tax on annual payments in the Bill accurately represents the charge to tax in section 18(1)(b) and (3)(Case III) of ICTA. We must also ensure that the exemptions from income tax for annual payments in the Bill accurately represent the existing exemptions in the source legislation. We believe replacing the expression “annual payments” with an alternative phrase risks breaking the link with the body of case law, so potentially losing one or more of the propositions derived from it and consequently changing the law. Further, we can see no attraction in replacing a known term of art with an unknown one.

452. The third respondent suggested using the alternative expression, “payments of pure income”. We have not adopted this suggestion because the natural meaning of

that phrase does not suggest that the payments must, for example, be capable of continuing beyond a year or that the payments must be made under some binding legal obligation. Without somehow conveying that the missing case law propositions continue to apply, this would amount to a change in the law.

453. So, we believe the existing problem will not be resolved by a change of expression. Such a change would require (as we are not suggesting a change of meaning) a very clear provision to the effect that the change of expression is merely one of words and not meaning.

454. Further, it would not be satisfactory to change the expression so far as the recipient of the payment is concerned without changing the expression so far as the payer is concerned. We also feel it would be unsatisfactory to change the expression in an income tax context without making the change in a corporation tax context. And, we cannot make such a change in this income tax Bill.

455. The third respondent also thought that it was wholly inconsistent with the Project's approach to making tax law clearer to use, in a position of such importance, a phrase which has a technical meaning quite different from the natural meaning of the words and which is not defined. The third respondent argued that although it had been said that the phrase could not be changed because its meaning is to be found only in an extensive body of case law, that that was exactly the reason it should be changed. The third respondent suggested the absurdity of the phrase was demonstrated by clause 622(2): "the frequency with which payments are made is disregarded in determining whether they are annual". And queried what that would convey to the intelligent but uninitiated reader.

456. We accept that there are difficulties with the expression "annual payment" but we believe that changing the expression risks making the law less clear than it currently is.

457. We have, however, made a number of changes which we believe will make the taxation of annual payments clearer. For example, we have provided separate charges for the most common annual payments (purchased life annuities, distributions from unauthorised unit trusts, and royalties from intellectual property) and we have set out in the charging clause the main exemptions from that charge.

458. In addition, we have moved the annual payments Chapter to Chapter 7 of Part 5 and changed the Chapter title to "Annual payments not otherwise charged" to illustrate the residual nature of the charge. We will also explain what is meant by "annual payment" by reference to the case law in the explanatory notes.

459. We also accept that clause 622(2) could be better expressed. We have therefore amended the clause to make it clearer that we are making a comment about the expression annual payment as a term of art rather than as an expression with a natural lay meaning.

460. The third respondent accepted that finding an alternative way of expressing the idea of annual payments in terms which would be more meaningful to the modern reader is not easy. But the respondent argued that the basic features of an annual payment are very well known to tax professionals, and quoted in every textbook on the subject. The respondent therefore suggested that it would not be unduly difficult to codify the propositions.

461. The Project has previously considered whether to codify the case law propositions. In the response document for Exposure Draft No 2 we recorded:

We had already considered whether it would be possible to set out the criteria in the legislation or otherwise to codify the case law. We had concluded, however, that as there is a great deal of case law, and the meaning of it is often disputed, there was probably no prospect of coming up with any provisions that would satisfy all interested parties. We remain of that view.

462. We agree that certain propositions are often quoted and therefore seem well established. But equally there is doubt about others. For example, whether the payment in question must be “ejusdem generis” with interest and annuities.

463. Also, we do not believe that merely stating a general proposition is helpful to the reader. For example, stating that the payment must constitute “pure income profit” without explaining what is meant by that phrase is not helpful. And there are difficulties in defining this expression.

464. The third respondent also suggested omitting the charge on annual payments altogether, since it now only contains a small rump of the original Schedule D Case III, and allowing these payments to fall through into the residual category of “income not otherwise charged”.

465. We believe omitting the charge on annual payments would make the law more complex because additional provisions would be required to reflect:

- the fact that deductions may be available against ex-Case VI receipts but not against ex-Case III income;
- the way the exemptions work; and
- the application of the deduction of tax at source and charges on income regimes.

Chapter 3: Receipts from intellectual property

Clause 627: Charge to tax on royalties and other income from intellectual property

466. One respondent commented on this clause. It was suggested that the reference to “any information or technique” in clause 627(2)(d) was, perhaps, not wide enough

to sweep up all possible forms of what would usually be regarded as intellectual property.

467. Because intellectual property is an area of rapid change, it is not possible to devise a clear comprehensive form of words covering all types of intellectual property. Clause 627(2)(d) provides the flexibility to bring within the scope of the clause income derived from new types of intellectual property as changes occur in this field. However, as a result of the comments made, we have amended clause 627(2)(d) to include “idea”. If, exceptionally, any income from intellectual property is not caught by this clause, we are content for it to fall into, what is now, Chapter 7 of Part 5 (annual payments) or Chapter 8 of Part 5 (income not otherwise charged) of this Bill. But we are continuing to consider this clause to see whether further improvements can be made.

468. The respondent also suggested that the scope of this Chapter should be altered so that all receipts from intangible assets (see Schedule 29 to FA 2002) are included. This suggestion has not been accepted for the following reasons:

- using “intangible assets” would bring within the scope of the clause only a few minor categories of assets (not already included in the definition of intellectual property);
- it is preferable in the context of an income tax Bill not to refer to “normal accountancy practice” as it applies “to companies incorporated in a part of the United Kingdom” if we can avoid it; and
- any income not within the scope of this clause will be caught by, what is now, Chapter 7 of Part 5 (annual payments) or Chapter 8 of Part 5 (income not otherwise charged) of this Bill.

Clause 630: Calculation of income charged under clause 627: annual payments

469. One respondent commented on this clause. It was suggested that the clause was superfluous. We have given further consideration to this clause to see whether the position can be simplified. The clause has now been deleted and minor changes made to clause 628 to reflect this.

Clause 633: Exceptions to charge under clause 632

470. Two respondents commented on this clause. The first respondent said that there was no definition of “control” which for the purposes of this clause, ought to be the definition in section 574 of CAA (see section 532 of ICTA). However, the definition of “control” actually applying here is that contained in section 840 of ICTA (through clause 898(7) of the Bill). The respondent said that if it is intended that the section 840 of ICTA definition should now apply, an Annex 1 entry would appear to be necessary together with an appropriate explanation in the explanatory notes.

471. The two definitions of “control” (in CAA and ICTA) are virtually identical. The explanatory notes have been amended to say that as the ICTA definition of “control” is identical in effect to that in section 574 of ICTA, the ICTA definition has been used here since the relevance of “control” in this Bill goes wider than this Chapter. This does not merit an Annex 1 entry.

472. The second respondent said that as amounts charged under section 531(1) of ICTA are not trading income on general principles, a signpost is needed in this clause to clause 619 of the Bill (which provides that any income, so far as it falls within both Part 5 and Chapter 2 of Part 2 (trade receipts), is to be dealt with under Part 2). A signpost to Chapter 2 of Part 2 has been inserted in clause 633 as requested.

Clause 645: Adjustments where tax has been deducted

473. One respondent commented on this clause. It was noted that clause 645(3) uses the word “paid” three times. It was suggested that it would be clearer if the third “paid” were replaced by “treated as paid”.

474. In this clause, a comparison is being made between tax treated as paid (by virtue of clause 645(2)) and tax actually paid. The clause has been revised to make the position clearer.

Clause 647: Options to acquire future patent rights

475. One respondent commented on this clause. It was suggested that the reference in clause 647(3) to “an option to acquire future patent rights” could be misleading since some transactions may be primarily about the simple acquisition of future patent rights (ie a purchase which is not conditional on any future exercise of an option by the purchaser but just on the patent being granted).

476. The clause title has been revised to “Rights to acquire future patent rights” to reflect the comments made. Minor amendments have also been made to the clause itself in this connection.

Clause 649: Relief from tax on patent income

477. Two respondents commented on this clause. The first respondent said that as this clause deals with relief for expenses, the description “relief from tax” is not ideal. However, section 526 of ICTA describes itself as “relief for expenses”. In view of the comments made, the clause title has been changed to “Relief for expenses: patent income”.

478. The second respondent pointed out that clause 649(2) refers to “net expenses” without giving any indication as to what deductions may be given to arrive at this “net” figure. Having regard to clause 652 (contributions to expenditure) of the Bill, the word “net”, in this context, is regarded as superfluous and has now been dropped.

Clause 655: Apportionment where property sold together

479. One respondent commented on this clause. It was suggested that a rule is also required here for the just and reasonable apportionment of incidental expenses. We are looking at this again to see whether the position could be made clearer in this clause.

Chapter 4: Films and sound recordings: non-trade businesses

Clause 661: Calculation of income

480. One respondent commented on this clause. It was suggested that, as the computational rules of Schedule D Cases I and II are to be adopted, it would be preferable to refer in the clause to expenses incurred wholly and exclusively for the purposes of the business (rather than expenses incurred in generating the income).

481. Very few activities in this area are likely to amount to a business falling short of a trade. But where this does happen, we feel that there will be a clear link between the transaction by which the income is generated and the expenditure incurred in generating that income. The clause has now been amended to refer to expenses incurred wholly and exclusively for the purpose of generating the income.

Chapter 6: Settlements: amounts treated as income of settlor

482. The shorter clauses in the draft Bill were favoured over the version published on the Inland Revenue Internet in October 2003. The clauses have been further revised in this direction since the draft Bill.

483. We have again considered whether ESC A93 should be rewritten into this Chapter but have decided against this. This ESC allows settlors a credit for UK tax paid where they are charged on payments to unmarried minor children from non-resident discretionary trusts. This is, we consider, a question of double taxation relief and is a matter for a later rewrite Bill.

Clause 671: Income arising under a settlement where settlor retains an interest

484. One respondent drew attention to the Inland Revenue's application of section 660A of ICTA 1988. This is not a matter for the Project but we have passed the comment to our colleagues with policy responsibility for this topic.

485. Subsection (3) was considered by one respondent to be an unsuitable style of drafting for the Project since it involved extensive cross-referencing. It is difficult to see quite what the alternative is here, but the technical necessity for all income listed in this subsection is under consideration.

Clause 673: Income to which section 671 does not apply

486. There were two responses to this clause.

487. There were no disagreements to the suggestion in Question 29 that the rewrite of section 660A(11)(g) should refer to the Welfare Reform and Pensions Act 1999.

488. One respondent pointed out that paragraph 3013 of the explanatory notes was incorrect in saying that *bona fide* had been replaced by “genuine”. The policy is to replace, where appropriate, the words “*bona fide* commercial reason” with “commercial reason” where “*bona fide*” adds nothing. The paragraph will be changed to reflect this.

Clause 675: Provisions supplementary to section 674

489. The one respondent to this clause commented adversely on the use of “defray” in subsection (2)(d). This has been changed to “meeting expenses”.

Clause 677: Capital sum paid to settlor by trustees of settlement

490. Paragraph 3041 of the explanatory notes will be changed to explain clauses 677(5) and (6), as requested by the one respondent to this clause.

Clause 678: Application of section 677 to capital sums paid by way of loan or repayment of loan

491. The title of this clause has been shortened as requested by the one respondent to this clause.

Clause 682: Application to settlements by two or more settlors

492. The rewriting of “just and reasonable apportionment” as “just apportionment” was approved.

Chapter 7: Beneficiaries’ income from estates in administration

Clause 692: Meaning of “the administration period” and “the final tax year”

493. One respondent commented on this clause. It was suggested that clause 692(1) ought to be amended to make it clear that the actual time of death may be significant in determining whether certain income arose before or after death. In general, however, the actual time of death will not be important because most types of income do not arise at a particular time of day. So amending the clause in the way suggested would not be particularly helpful for the significant majority of instances where the actual time of death will have no relevance whatsoever.

494. We think that the guidance provided in paragraphs 3113 and 3114 of the explanatory notes is adequate to deal with the point raised by the respondent.

Clause 703: The applicable rate for determining the assumed income entitlement (UK estates)

495. One respondent commented on this clause. It was suggested that the clause title should be changed to “The applicable rate of income tax deductible (UK estates)”. After careful consideration, we have decided not to implement this

suggestion. The clause is specifically linked with the calculation of the assumed income entitlement in clause 702 so we consider that it is preferable to leave the clause title as it is in order to maintain the clear link between the two clauses.

Clause 712: Successive interests: assumed income entitlement of holder of absolute interest following limited interest

496. One respondent commented on this clause. It was suggested that the clause title should be changed to “Limited interest followed by absolute interest: assumed income entitlement”. We have decided not to implement this suggestion since we do not consider that the suggested change adds clarity.

Clause 713: Successive interests: payments in respect of limited interests followed by absolute interests

497. One respondent commented on this clause. It was suggested that the clause title should be changed to “Limited interest followed by absolute interest: payments”. We have decided not to implement this suggestion since we do not consider that the suggested change adds clarity.

Clause 717: Relief where foreign estate has borne UK tax: absolute interests

498. One respondent commented on this clause. It was suggested that the fractions in clause 717(2) and those in clause 718(3) (relief for UK income tax borne by foreign estate: limited and discretionary interests) should correspond. The rules in these two clauses are based, respectively, on sections 696(7) and 695(5) of ICTA. Those rules are different and we do not consider that a policy change should be made to bring them into line. Both clauses reproduce the effect of the relevant source legislation.

Chapter 8: Income not otherwise charged

Overview

499. Two respondents commented on the question of whether there is any overlap between the scope of this charge and any other charge that applies to income “not otherwise charged”.

500. Neither identified any such overlap, but one respondent suggested clause 723 should explicitly cede priority to any such other charge. We will keep this suggestion in mind as work on this Chapter is finalised.

Clause 723: Charge to tax on income not otherwise charged

501. Three respondents commented on this clause. All approved the use of the term “income” rather than “annual profits or gains”, subject (in one case) to the replacement term not being found to add to the scope of the charge.

502. One respondent asked that it be made clear that any expenditure attributable to earning the income is deductible. We will similarly keep this suggestion in mind.

Part 6: Exempt income

Chapter 1: Introduction

Clause 726: Overview of Part 6

503. Two respondents commented on this clause. There was support for grouping all of the exemptions in one Part of the Bill and for use of the expression “no liability” to tax.

Chapter 2: National savings income

Clause 727: National Savings Bank ordinary account interest

504. One respondent commented on this clause. It has not been possible to open a National Savings Bank ordinary account since 28 January 2004 and the need for this clause was questioned.

505. Since 31 July 2004, existing ordinary account customers will not be able to transact on their accounts, unless it is to close the account or transfer the balance into an Easy Access savings account. Even though the ordinary account has closed, any money which is left dormant in these accounts will continue to earn interest. The first £70 of interest for each tax year will still be tax free and customers will be able to come forward at any time to claim their money. So the tax exemption contained in the clause will be needed for the foreseeable future.

Clause 729: Income from Ulster Savings Certificates

506. Two respondents commented on this clause. The first respondent queried whether it was necessary to refer in the clause to “the Treasury”. Having regard to paragraph 103 of Schedule 2 (Transitional and savings) we agree that the reference to “the Treasury” in subsection (5) is superfluous and it has been removed.

507. The second respondent mentioned subsection (4) and pointed out that, although this subsection is meant to give statutory effect to ESC A34, it is expressed in different terms. The subsection makes the exemption condition conditional on the holder being resident in Northern Ireland immediately before death, rather than at the time of purchase of the certificates (as in ESC A34). We do not think that we ought to change or extend the extra-statutory concession in any way, so this subsection has been amended to accurately reflect ESC A34.

Chapter 3: Income from individual investment plans

Clause 731: Investment plans

508. The one respondent to this clause commented on the retention of “the Board” in this clause. The term is retained because the power to make regulations is conferred on the Board by section 4A of the Inland Revenue Regulation Act 1890 and not on the Inland Revenue or its officers. The explanatory notes will be amended to clarify this point.

Clause 733: Special requirements for certain foreign managers

509. The one respondent to this clause looked for alignment between the definition of insurance in this clause and clause 589. This change has been made.

Clause 735: Non-entitlement to exemption

510. There were two responses to this clause. One queried the reference to Chapter 2 of Part 13 of ICTA in subsection (4) but this seems to be correct. The second considered that subsections (7) and (8) had not properly captured the meaning of section 333(4)(cd) of ICTA. We agree and this clause has been redrafted.

Chapter 4: SAYE interest

Clause 741: Certification of arrangements

511. Two respondents commented on this clause. The first withdrew a suggestion made in response to Exposure Draft No 2 that the clause should refer to the Treasury model scheme for certifiable arrangements.

512. The second questioned the additional discretion apparently given to the Treasury by subsection (1), in the matter of certification of arrangements that meet all applicable terms and requirements, by saying “may certify” rather than “must certify” (as in an earlier draft). We now consider that “must certify” creates a duty for the Treasury to certify where the scope of that duty is not clear.

513. However, we have amended the clause to avoid the suggestion that the power to certify an arrangement that meets all applicable terms and requirements may be exercised at the discretion of the Treasury.

Clause 742: Withdrawal and variation of certifications and connected requirements

514. The one respondent who commented on this clause suggested the requirement in subsection (2)(b) (and in clause 744(2)(b)) to give notice by post should be updated to include electronic notification. We have passed this suggestion to our colleagues with policy responsibility for this topic.

Chapter 5: Venture capital trust dividends

Clause 745: Venture capital trust dividends

515. One respondent commented on this clause and made four points.

516. The first concerned the use of “reasons” in clause 745(6) when the source legislation uses “purposes”. There was a concern that the courts may draw fine distinctions between “purpose”, “intention”, “motive”, and the like.

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517. We have retained “reasons” to ensure consistency within the Bill and consistency with related legislation (for example, the Corporate Venturing Scheme legislation refers to bona fide commercial reasons in paragraph 14 of Schedule 15 to FA 2000). In the context of the VCT legislation and subscribing for shares, we do not see any distinction between commercial reasons and commercial purposes.

518. The respondent’s second point concerned the placement of the “bona fide commercial” condition (for shares acquired on or after 9 March 1999) in paragraph 90 of Schedule 2 to the Bill. The respondent argued that the limitation on the application of the condition is not a transitional matter, and should be stated within clause 745(6). The respondent also felt that stating the condition in clause 745(6) would give meaning to the words “if it [ie the condition] applied to the old shares” in clause 748(1)(b), which the respondent felt was currently incomprehensible unless one is already familiar with the transitional provision.

519. We agree with this comment and have redrafted clause 745(1). We have also omitted the limitation from paragraph 90 of Schedule 2.

520. The respondent’s third point concerned clause 745(4) and the fact that the clause does not reproduce the limitation in paragraph 8(2)(c) of Schedule 15B of ICTA, which is consequential on the “bona fide commercial” condition in clause 745(6). The respondent noted that the point of paragraph 8(2)(c) is that shares not acquired for bona fide commercial purposes are not to be treated as using up part of the £100,000 limit, when it comes to considering whether subsequent, bona fide commercial, acquisitions within the same year fall within the limit. The respondent concluded that the Project’s approach is sensible, since the non-bona fide commercial shares cannot themselves qualify in any case, and setting them against the £100,000 limit as well would be a form of double counting.

521. We agree with the respondent’s analysis but on reflection consider that clause 745(4) was a little ambiguous. So we have inserted a new subsection which makes the point expressly.

522. The respondent’s final point concerned the second limb of paragraph 90 of Schedule 2. The respondent said that it looked as though we were trying to rewrite paragraph 8(2)(c), but if so misconstrued it. In the last line, “such shares” can only be read as meaning “shares acquired before 9 March 1999”, whereas to reproduce the effect of paragraph 8(2)(c) it would have to say “acquired either not for bona fide commercial purposes or as part of a scheme or arrangement etc”. This point is in any case not a transitional one, even to the extent that the first limb could be said to be so.

523. We accept this and have amended clause 745.

Clause 747: Identification of shares after disposals

524. There was one response to this clause.

525. The respondent said that in determining whether a disposal relates to shares which were acquired within the £100,000 acquisition limit, or to "excess shares", one must first assume that shares acquired when the company was not a Venture Capital Trust (VCT) are disposed of first. Otherwise, one would be making different assumptions as to which shares had been disposed of in any particular disposal for different but related purposes, in particular for the purposes of sub-clauses (2) and (4) respectively of clause 745. The respondent suggested this would produce absurd results. The respondent accepted that the source legislation is not particularly well drafted in this respect, but argued that the words "(subject to subsection (5) below)" in section 151A(4) of TCGA make it reasonably clear that subsection (5) – which corresponds to clause 747(1) – is intended to apply for this purpose even though only expressed as applying "for the purposes of subsection (1)".

526. Notwithstanding that paragraph 8(6)(c) specifically applies section 151A(5) of TCGA for the purposes of identifying shares acquired in excess of the permitted maximum, we do not believe that the assumption in clause 747(1) can apply for the purposes of subsections (2) to (4).

527. Section 151A(5) applies an order of priority where an individual ("A") has acquired shares in a company before that company acquired VCT status and subsequently disposes of some of them. Section 151A(5) deems the "non-VCT status" shares disposed of first.

528. But section 151A(5) is not relevant in determining whether A's annual acquisition limit is exceeded because shares are only "relevant acquisitions", and therefore fall to be counted in the permitted maximum, if the company issuing those shares is a VCT at the time the shares are acquired (paragraph 8(2)(b)). So, if the company is not a VCT when A acquired the shares, those shares cannot be relevant acquisitions, do not give rise to the dividend exemption and should not be counted as part of the permitted maximum.

529. This is reflected in clause 745. So "the shares" in clause 745(4) do not include shares acquired before the company acquired its VCT status because "the shares" are the shares described in clause 745(2). We have brought this point out in clause 747(2) by inserting the words "which were acquired when it was a venture capital trust".

Clause 748: Identification of shares after reorganisations etc.

530. There was one response to this clause.

531. The respondent suggested there were too many "if" statements in subsection (1). We agree with this comment and the clause has been amended.

Chapter 7: Purchased life annuity payments

Clause 753: Exemption for part of purchased life annuity payments

532. There was one response to this clause welcoming the change represented by clause 753(3) but suggesting that no change note accompanied the change. The change note is Change 127.

Chapter 8: Other annual payments

Clause 761: Certain annual payments by individuals

533. There was one response to this clause. The respondent objected to the use of the expression “annual payment”. For our view on this please see comments on clause 622 (charge to tax on annual payments).

Clause 763: Payments for non-taxable consideration

534. There was one response to this clause.

535. The respondent suggested that subsection (1) is wrong in that it is drafted as though all of conditions A to C have to be satisfied whereas the respondent thought that condition A and condition B *or* condition C must be satisfied. Similarly in the transitional provision in paragraph 91 of Schedule 2 to the Bill, condition D is a further alternative, not cumulative with conditions B and C.

536. We disagree. Subsections (3) and (4) are drafted in the negative and so all of conditions A to C have to be satisfied. However, the comment illustrates that the clause is not clear and we have therefore amended the clause so that if condition A is met then exemption is available only if either condition B or condition C is met. Conditions B and C have been drafted positively. We have amended the transitional provision similarly.

537. The respondent also suggested that the words "or corporation tax" are needed at the end of clause 763(2)(b), as in the source legislation. The respondent explained that although the Bill is an income tax Bill, the income tax position of the recipient of the annual payments is, in this case, potentially affected by whether the payer, if a company, is chargeable to corporation tax on the consideration received by it.

538. We disagree. The “payment” in clause 763(2)(a) refers to the payment made by an individual (as we are concerned here with the exemption element of section 347A of ICTA). The individual must make that payment because of a liability incurred for consideration and that consideration is not required to be brought into account in calculating the payer’s income. As the clause is limited to individuals and personal representatives, corporation tax is not relevant. Section 125 of ICTA is not being rewritten in the Bill and will continue to apply for income tax and corporation tax purposes.

Clause 769: Health and employment insurance payments

539. There were two responses on this clause. One respondent objected to the use of “annual payment”. For our view on this please see comments on clause 622 (charge to tax on annual payments).

540. The second respondent queried the exemption from tax under Chapter 2 of Part 5 which, they believed, became an Act-wide exemption under clause 810. Clause 810 is a disregard for other tax purposes (eg section 349 of ICTA) rather than an exemption but we have nonetheless changed the exemption in subsection (1) from a Chapter 2 of Part 5 to an Act-wide exemption.

Clause 770: Health and employment risks and benefits

541. There were four responses to this clause. Two were agreements to Question 34, whether health employment policies should include loss of office. A third suggested a minor drafting point to subsection (3).

542. The fourth respondent wanted us to define “disability” by reference to the definition in the Disabled Discrimination Act 1995 (“DDA 1995”). In rewriting the material in sections 580A and 580B of ICTA we decided that it would not be helpful to introduce definitions for any of the listed health risks.

543. We believe that in practice the scope of the terms in this instance will be dictated by the small print of the insurance policy. In this respect beneficiaries of these policies will receive consistent treatment. A claim to exemption is only likely to be challenged where the terms of the policy are unclear or where there is some concern with the activities of the insurance company writing the business. Again either way policyholders are likely to receive the same treatment.

544. If these provisions were changed to adopt the DDA 1995 definition of disability there is a clear risk that we would introduce a limitation on exemption.

Clause 782: Payments by persons liable to pool betting duty

545. There was one response to this clause. The respondent objected to the use of the expression “annual payment”. For our view on this please see comments on clause 622 (charge to tax on annual payments).

Chapter 9: Other income

Overview

546. One respondent commented on paragraph 3527 of the explanatory notes. It was pointed out that the bulleted list in that paragraph did not include approved share incentive plan distributions. The explanatory notes have now been amended in this respect.

Clause 785: Interest on damages for personal injury

547. Three respondents commented on this clause. The first respondent agreed with Change 135 in Annex 1.

548. The second respondent queried whether it is necessary to limit the exemption in respect of overseas awards to cases where the award is exempt overseas. The respondent argued that this would mean that injured persons who are identically injured and awarded the same sums in different countries could be subject to different UK tax treatment. The respondent suggested it would make more sense as a matter of policy for all personal injury awards to be tax free wherever in the world they are made. The second respondent also queried, on the assumption that the restriction is to be retained, whether the overseas award has to be **exempt** from tax in the other jurisdiction or whether it would suffice for tax not to be charged (eg due to surplus allowances).

549. Clause 785 is concerned with the exemption for interest on damages rather than the exemption for periodical payments. The exemption for periodical payments made under an order of a court outside the UK is in clause 765. We have therefore understood this comment to be concerned with the exemption for interest.

550. We have passed this suggestion to our colleagues with policy responsibility for the interest on personal injury damages exemption.

551. The third respondent suggested that clause 785(1)(b) is new.

552. The clause is not new (either in the sense that it has not been previously exposed or in the sense that it is a change).

553. Judgement debts carry interest from the date of judgement until the date the debt is satisfied (see section 17 of the Judgements Act 1838). Section 329(1) of ICTA provides that interest is exempt from income tax if

... it is included in any sum for which judgement is given by virtue of a provision to which this paragraph applies.

554. The provisions do not include the Judgements Act 1838.

555. Since we have not rewritten the provisions set out in section 329(2), it is necessary specifically to exclude interest relating to the period between the making and satisfaction of an award.

556. We have therefore inserted a further paragraph in Change 132 in Annex 1 to make this clear.

Clause 786: Interest under employees' share schemes

557. Two respondents commented on this clause. The first respondent agreed with the clause but wondered whether Change 136 in Annex 1 represented a clarification rather than a change in the law. However, in practice, we only apply the exemption in section 688 of ICTA where the interest is received by trustees from employees or directors of the company. The clause makes it clear that the exemption will apply where interest is paid to trustees from any participant in the scheme. We feel that it is preferable to identify this as an Annex 1 change.

558. The second respondent was in agreement with the clause.

Clause 787: Interest on repayment of student loan

559. There was one response on this clause. The respondent objected to the words "who has had a student loan". It was felt that this suggested that the loan was no longer in existence rather than that a loan had been awarded at some past time. The wording in this clause has been changed to take account of this concern.

Clause 788: Redemption of funding bonds

560. The one respondent to this clause considered that the words "on them" in subsection (1) were misleading. We agree and the words have been changed to refer clearly to interest on the debt.

Clause 790: Which securities and loans are foreign currency ones: section 789

561. One respondent commented on this clause. It was suggested that the wording of subsections (5) and (6) introduced the question of doubt. We have looked at this again and have changed the wording of these subsections to make the position clearer.

Clause 791: Interest on securities within the accrued income scheme: preliminary

562. In view of the consultation now in progress regarding the possibility of changes to the Accrued Income Scheme, and with no support for what could be a short term rewrite of the current legislation, we have withdrawn clauses 791 to 795 (and Chapter 7 of Part 4) from the Bill.

Clause 796: Income from occupation of commercial woodlands

563. One respondent commented on this clause. The respondent suggested that the reader may not appreciate the need to refer to the definition of "woodlands" in clause 895(3) to realise that a short rotation coppice is not "woodlands".

564. The term "woodlands" is used in clauses 9, 154 and 254 in Part 2 of the Bill and clause 796 in Part 6 of the Bill. If a defined expression is used in more than one Part our approach is to put the definition in Part 10 and include the definition in the glossary of defined expressions in Schedule 4 to the Bill. We would not want to make an exception in this case but will expand the commentary to cover the exclusion of a short rotation coppice.

Clause 798: Amounts applied by SIP trustees acquiring dividend shares or retained for reinvestment

565. Four respondents commented on this clause.

566. The first respondent agreed it was logical to bring the SIP dividend exemptions within the miscellaneous exemptions in Chapter 9. The first respondent said that while it is superficially unusual to retain the main SIP legislation in ITEPA, but to move the dividend exemptions (in sections 493(1) and 496(1) of ITEPA) into ITTOIA, the consequential amendments to section 493 and section 496 of ITEPA clearly signpost clause 798 so that they will be readily traceable. Nevertheless this does oblige the reader to refer to two separate Acts.

567. The second respondent said that clause 798 was difficult to read as it is full of cross-references to other areas of this and other Acts and recommended that definitions should be signposted to Schedule 2 of ITEPA (so that trustees are defined in paragraph 2, the participants in paragraph 5(4) and dividend shares are in paragraph 62(3)(b)).

568. We agree with this recommendation and have amended the clause.

569. The third and fourth respondents also agreed with the relocation of the exemption.

Clause 801: Income from Inter-American Development Bank securities

570. One respondent commented on this clause. It was suggested that paragraph 3597 of the explanatory notes is misleading in that clause 801(2) to 801(4) does not set out conditions, all of which must be met, for the exemption to apply. Instead, the subsections set out circumstances in which a liability would arise but for the exemption. The explanatory notes have been amended to reflect this comment.

Clause 802: Income from securities issued by designated international organisations

571. One respondent commented on this clause. It was suggested that paragraph 3600 of the explanatory notes is misleading in that clause 802(2) to 802(4) does not set out conditions, all of which must be met, for the exemption to apply. Instead, the subsections set out circumstances in which a liability would arise but for the exemption. The explanatory notes have been amended to reflect this comment.

Clause 804: Scholarship income

572. One respondent commented on this clause. The respondent expressed concern that there is a circularity to subsection (2) and queried whether it would be better to redraft subsection (2) to exclude 'scholarships paid to a parent and so taxed as a benefit on the parent'.

573. We do not believe subsection (2) is circular and, as the scholarship would not be paid to the parent, the amendment suggested would not be appropriate.

Chapter 10: General

Clause 810: General disregard of exempt income for income tax purposes

574. Three respondents commented on this clause. There was general agreement to the proposal (in Question 40 in the commentary to the draft Bill) to state explicitly what is meant by “no liability to tax”.

575. One respondent wondered whether the fact that it has not been possible to open an National Savings Bank ordinary account since 28 January 2004 would affect subsection (2) of this clause. Even although the ordinary account has closed, any money which is left dormant in the account as from 31 July 2004 will continue to earn interest, the first £70 of interest still being tax free, and customers will be able to come forward at any time to claim their money. So the National Savings Bank ordinary account income tax exemption (in clause 727 of the Draft Bill) is still needed as is the exception in this clause.

576. One respondent wondered whether an exemption similar to that in clause 810(2) for National Savings Bank interest might become necessary because clause 798(3) provides that the clause forms part of the SIP code and that this might entail the provision of information regarding the clause 798 exempt amounts. We take the view that where there are specific rules, for example concerning provision of information for specific tax regimes, these are not displaced by this clause. But we will revisit the wording to ensure that this is clear.

577. There was also a view that this clause converted any exemptions limited to a particular charge to tax (set out in earlier Chapters of Part 6) to Act-wide exemptions. See comments on clause 769 (health and employment insurance payments). This is not the purpose of this clause. It spells out that “amounts which are exempt as a result of this Part are accordingly disregarded for all other income tax purposes” so that for example these exempt amounts will not be subject to deduction of tax at source under section 349 of ICTA. But we will reconsider the expression of this clause to ensure that there is no misunderstanding of its purpose.

Part 7: Income charged under this Act: rent-a-room and foster-care relief

Chapter 1: Rent-a-room relief

Overview

578. One respondent commented generally on Chapter 1 to note that it is a great deal clearer than the source legislation.

Clause 811: Overview of Chapter 1

579. One respondent commented on this clause to suggest inclusion of a reference to the rent-a-room limit of £4,250 by redrafting subsection (2).

580. This clause is merely an overview and we do not think that the suggested reference would be as helpful to the user as it at first appears. The limit reduces if there is letting by another person. So the most that could be said in this clause is that it is “normally” that amount.

Clause 813: Meaning of “rent-a-room receipts”

581. One respondent commented on this clause to suggest making it clear that rent-a-room relief is available only for residential accommodation.

582. We agree that this would improve clarity and help with the interpretation of the section but responses to Exposure Draft No 13 showed that our proposal to do this is not universally supported. We concluded that we should not proceed with the proposal: see paragraphs 291-293 of our Response Document for Exposure Draft No 13.

Clause 829: Minor definitions

583. One respondent commented on this clause to ask why clause 611(2) of Exposure Draft No 13 has been dropped. That subsection was intended to ensure that rent-a-room relief is not given against amounts taken into account as profits following a change of basis (“adjustment income”), thereby preserving the effect of the source legislation.

584. But that subsection is not necessary to preserve the effect of the source legislation. Adjustment income (whether for trades or UK property businesses) is not taken into account in calculating the profits of a trade or a UK property business but is charged separately: see, respectively, clauses 3(1) and 257(1). So that income is not relevant. As for adjustment deductions, although they are subsumed in the calculation of the profits of a trade or a UK property business, they can never be relevant: they cannot be “rent-a-room receipts” because they are not receipts.

Chapter 2: Foster-care relief

Overview

585. One respondent made a general comment in respect of Chapter 2 to note the extent to which Finance Bill draftsmen are adopting the Tax Law Rewrite approach.

The respondent thought it encouraging and commendable to see the contents of Schedule 36 to FA 2003 rewritten with only relatively minor changes needed to the drafting of its contents and to its structure.

Clause 838: The amount per child

586. One respondent commented on this clause to suggest combining the reference to the Treasury powers in clause 835(3) with that in clause 838(3).

587. On balance we do not think that this would be helpful. The amounts dealt with by the two clauses are different in nature: clause 835 is about the individual's limit and clause 838 about the amount per child. Burying the reference to one in a clause dealing with the other would diminish clarity rather than increase it.

Clause 841: Full foster-care relief: income charged under Chapter 8 of Part 5.

588. One respondent commented on this clause to suggest that the title should be amended slightly to refer to a specific clause (clause 723) rather than a Chapter.

589. Our approach throughout the Bill is to impose charges at the Chapter level. We need to remain consistent here with the rest of the Bill.

Clause 844: Alternative calculation of profits: income charged under Chapter 8 of Part 5

590. One respondent commented on this clause to suggest that the title should be amended slightly to refer to a specific clause (clause 723) rather than a Chapter.

591. Our approach throughout the Bill is to impose charges at the Chapter level. We need to remain consistent here with the rest of the Bill.

Clause 845: Election for alternative method of calculating profits

592. Two respondents commented on Question 41, our proposal to provide for the withdrawal of an election for the alternative method of calculating profits.

593. One agreed the proposal without qualification. But the other queried whether the provisions of section 43A(2) of TMA that provide for variation or revocation of elections are sufficient.

594. We do not think that section 43A(2) of TMA is relevant here. That provision applies only if section 43A(1) of TMA applies. And section 43A(1) of TMA is about assessments made under section 29 of TMA (assessment where loss of tax discovered). In other words, section 43A(2) is not a general proposition about varying or revoking elections and is not directly relevant to Chapter 2 of Part 7 of the Bill.

Clause 846: Adjustment of assessment

595. Two respondents commented on Question 42, our proposal to provide for the withdrawal of an election for the alternative method of calculating profits made after an adjustment to an assessment.

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596. One agreed the proposal but wondered if clause 846(1)(a) prevents withdrawal of an in-time election under clause 845 which had become undesirable following an adjustment of assessment. The other queried whether the provisions of section 43A(2) of TMA that provide for variation or revocation of elections are sufficient.

597. On the first point we think the clause works as it should. It is intended to deal only with elections under clause 846: that is elections that become desirable only as a consequence of an adjustment to an assessment but which would then be out of time under section 845. To cater for the case envisaged by the first respondent would be a significant elaboration of the source legislation.

598. On the second point, we do not think that section 43A(2) of TMA is relevant here. That provision applies only if section 43A(1) of TMA applies. And section 43A(1) of TMA is about assessments made under section 29 of TMA (assessment where loss of tax discovered). In other words, section 43A(2) is not a general proposition about varying or revoking elections and is not directly relevant to Chapter 2 of Part 7 of the Bill.

Part 8: Foreign income: special rules

Chapter 1: Introduction

Clause 856: Meaning of “relevant foreign income”

599. The one respondent who commented on the use of the term “relevant foreign income” approved its use, both within this Part and as a means of linking other provisions to this Part.

Chapter 2: Relevant foreign income charged on remittance basis

Clause 857: Claim for relevant foreign income to be charged on the remittance basis

600. Three respondents commented on this clause.

601. The first and second respondents expressed opposing opinions on the need to specify to whom a claim under this clause should be made. This issue arises in respect of a number of clauses in the draft Bill. Taking all responses into account, we have omitted any such specification throughout the Bill. Clause 898(3) and (4) provides further guidance and refers to the relevant provisions in TMA.

602. The third respondent suggested this clause should include a cross-reference to clause 862 (claims for relief on delayed remittances). We have added such a cross-reference but placed it in clause 858 (relevant foreign income charged on the remittance basis) as more pertinent to the operation of that clause (subsection (5) in the revised clause).

Clause 858: Relevant foreign income charged on the remittance basis

603. Three respondents commented on this clause.

604. The first respondent noted the minor changes to the law in this clause but did not comment further.

605. The second respondent approved the use of the Schedule D Case IV basis for calculating the amount charged on the remittance basis, whether the income would have fallen previously into that Case or into Schedule D Case V.

606. The third respondent requested clarification in the clause or explanatory notes of exactly what deductions were available under subsections (3) and (4). The legislation on which these subsections are based derives ultimately from the Income Tax Act of 1842. At that time all income within Cases IV and V was taxed on the remittance basis, regardless of the personal status of the taxpayer. But it is clear that deductions equivalent to those permitted in calculating the profits of a trade were to be set against equivalent foreign income. Historically, the most common type of deduction in this context was for the costs of realising the remittance, say where the remittance took the form of goods sold on arrival in the United Kingdom. That type of expenditure (or any other equivalent deduction) may be rare nowadays but the

possibility cannot be discounted. (Such a deduction would in all likelihood have been allowed under the rules of Schedule D Case I, by virtue of section 65(3) of ICTA. By virtue of Change 147 (which we will revise), such expenditure is now allowed, to the extent that it was formerly prohibited, as a deduction in computing trade income – which is relevant foreign income – charged on the amount of income arising in the year. See clause 863 in Chapter 3 of this Part.)

Clause 859: Income treated as remitted: repayment of UK-linked debts

607. Two respondents commented on this clause. The first respondent corrected an error in explanatory notes.

608. The second questioned the usefulness of the references in the notes to Commonwealth and Irish citizens, on the basis that this might mislead the reader as to the scope of the clause. The explanatory notes will be amended to make the position clear.

Clause 861: Relief for delayed remittances

609. Two respondents commented on this clause.

610. The first respondent welcomed amendments to the minor changes to the law made by this clause since the changes were previously exposed for consultation.

611. The second respondent made two points. The first was that it was unclear from subsection (3)(c) that the inability to transfer currency included the currency of the country or territory in question. And the explanatory notes compounded the uncertainty. We have amended the clause, omitting the words “other than the currency of that country or territory”, to make it clear that the inability to transfer currency applies to any currency. The same amendment has been made in clause 865(3)(c) (unremittable income: introduction). The explanatory notes will be amended.

612. The second point was that the draft Bill omitted a clause rewriting section 585(2) of ICTA. Such a draft clause had appeared in Exposure Draft No 13. Although section 585(2) is relevant to income charged under ITEPA, that Act did not rewrite it. We have reinstated an amended version of the clause previously exposed, in conjunction with a number of consequential amendments to ITEPA, as part of the rewrite of section 585. The new clause has been placed immediately after this clause.

Chapter 3: Deductions from relevant foreign income charged on arising basis

Clause 863: Expenses attributable to collection or payment of relevant foreign income

613. The one respondent who commented on this clause mentioned the minor changes in the law. The respondent repeated a concern expressed in response to Exposure Draft No 13 that the clause, incorporating Change 147, may restrict the allowable deductions more than the source legislation. For the reasons given in the

Annex note for that change, we do not think this is the case. And respondents generally have welcomed drafting which uses concrete terms and examples rather than vague indications.

Clause 864: Annual payments payable out of relevant foreign income

614. The one respondent who commented on this clause referred again to the use of the term “annual payments”. For our view on this see the commentary on clause 622 (charge to tax on annual payments).

Chapter 4: Unremittable income

Clause 867: Withdrawal of relief

615. The one respondent who commented on this clause repeated a suggestion made in response to Exposure Draft No 13 that the clause title be amended to “withdrawal of relief: continuing sources”. The respondent felt this would help contrast the scope of the clause with that of the next (clause 868: income chargeable on withdrawal of relief after source ceases).

616. We do not think there is sufficient advantage in this suggestion to outweigh the possible disadvantages. Clause 867 deals with everyday circumstances in which relief is withdrawn. It therefore merits the simplest heading. Clause 868 deals with a rarer position and the heading is deliberately more specific. Further, the contrast between the clauses is not, in strictness, between continuing and ceased sources. Clause 868 deals with the circumstance where the claimant of relief ceases to own the source; if that source has been sold or assigned, it continues as a source in new ownership. If “continuing sources” was added to the heading in clause 867, it might obscure the fact that withdrawal of relief applies to the claimant rather than any successor.

Part 9: Partnerships

Clause 870: Overview of Part 9

617. One respondent commented on this clause and considered that subsection (2) is vague and unhelpful. The purpose of the clause is an overview of the Part and this is self-evident from its title. As such, it fits into the overall structure of the Bill. We do not think that it would be appropriate to try to spell out in this clause which of the rules have a wider application and what that wider application is.

Clause 871: General provisions

618. One respondent commented on this clause and was concerned that the clause allows each firm to carry on only one trade. As a matter of fact a firm may carry on more than one trade. And, as the respondent pointed out, this may have particularly important tax consequences if at least one of the trades is carried on wholly abroad.

619. We do not agree that the clause allows for only one trade.

620. The expression “persons carrying on a trade in partnership” does not restrict the number of trades that those persons are carrying on. It is a condition for the treatment in the clause that they are carrying on a trade. That condition is met if any trade is carried on.

621. This conclusion is reinforced by rules later in the Chapter. For instance, clause 872 refers to the calculation of “a partner’s share of the profits of a trade carried on by a firm”. If it was intended that each firm was allowed only one trade, it would be easy to say so (as we do for farming and property businesses). And then it would be more natural for clause 872 to refer to the profits of “*the* trade”.

Clause 873: Allocation of firm’s profits between partners

622. One respondent commented on this clause, to make the same point as was made in response to the informal consultation on the partnership clauses in June 2003. The suggestion is that the clause should set out what happens if the commercial arrangements for sharing profits differ from that for sharing losses.

623. There is still room for doubt about how one allocates the tax adjustments to the commercial loss. This is a novel point and we do not think the law is settled enough for us to try to enact what we think is the answer.

Clause 877: Basis periods for partners’ notional businesses

624. One respondent commented on this clause to point out that the definition of “untaxed income” needs to be applied for the purpose of clause 876. In fact, the definition is in the wrong clause. We have moved it to clause 876.

Clause 879: Resident partners and double taxation agreements

625. One respondent commented on this clause and objected to the expression “dividends ... made” in subsection (3). We have revised the clause, going back to the use of “qualifying distributions”, as defined in section 832(1) of ICTA.

Clause 882: Partnerships: sale of patent rights

626. One respondent commented on this clause and was concerned that the clause refers to a trader as a firm (subsection (2)) or not a firm (subsection (3)).

627. The Interpretation Act tells us that “a person (“the trader”)” may be read as “persons (“the traders”)”. It is clear that that is how the clause works. And it is convenient to refer to the firm as a trader.

628. In the Bill there is a similar approach in clauses 79(5) (“employer”), 81(2) (“employer”) and 126 (“farmer”). And section 100(1F) of ICTA (“one of them is a partnership”) shows how such a rule can operate alongside a general rule such as that in section 111(1) of ICTA.

629. In most of the trading income rules the person concerned is introduced in the singular. But the Interpretation Act tells us that the rule may equally apply to persons. That is why the rules work for trades carried on in partnership. If, unusually, it is necessary to distinguish between persons carrying on a trade in partnership from other traders we think the approach of this clause is the clearest way of expressing the idea.

Part 10: General provisions

Chapter 2: General calculation rules etc.

Clause 885: Interest, penalties and VAT surcharges

630. One respondent commented on this clause, making the point that in several ways the clause seems to go wider than the source legislation. We have re-drafted the clause to meet these objections. We have also provided separate versions of the clause for the purposes of Parts 2 and 3 (located in Part 2) and for the purposes of other charging rules (located in this Part).

Clause 887: Employee benefit contributions: non-trades and non-property businesses

631. One respondent compared this clause unfavourably with clauses 889 and 890. The respondent preferred the way the respective subsections (5) and (4) of those clauses identify where to find their trade and property business equivalents. For employee benefit contributions the draft Bill put this signpost in a separate clause, clause 888.

632. We have redrafted these provisions, merging clauses 887 and 888. The new clause 887 now deals with the signpost in a similar way to clauses 889 and 890.

Clause 889: Business entertainment and gifts: non-trades and non-property businesses

633. The two respondents who commented on this clause approved the minor changes to the law.

634. One respondent disliked the need introduced by subsection (4) to refer to Part 2 for part of the detail applying to this rule. The respondent suggested that it would have been preferable either to rewrite the source legislation only once, in Part 10, making appropriate cross-references from Parts 2 and 3 to apply the rule to income charged in those Parts, or to rewrite the rule in full in this Part and in Part 2.

635. While rewrite Bills do not shy away from rewriting a single piece of source legislation in two or more locations where the same (or virtually the same) rule applies in more than one context – see the commentary on clause 885 – it is not our practice to make lengthy repetition. For example, see clause 268 (profits of a property business: application of trading income rules), which uses cross-reference to apply numerous trading income rules to property income.

636. The clause has been re-drafted to follow more closely the model in the equivalent Part 2 clause, but still uses cross-reference to deal with some of the exceptions to the general rule.

Clause 890: Crime-related payments: non-trades and non-property businesses

637. Three respondents commented on this clause.

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638. The first suggested that “amounts to” in subsection (2) and (3) substitutes a different meaning compared to “constitutes” in the source legislation. We do not think that is right. But we have reverted to “constitutes” in this clause and in clause 56 (crime-related payments). We had hoped to simplify the language but any small gain here is not worth the risk of altering the law.

639. The second respondent considered that the application of the clause to the calculation of any income in Parts 4 and 5 of the Bill, which thereby includes income which is not charged under Schedule D in the source legislation, is a change in the law despite the fact that the rule has no relevance to such income.

640. As we do not think that the rule will have any effect on such income, we do not consider there is actually a change in the law. It is essentially a question of presentation, and avoids having to list in much greater detail the income to which the rule does (or alternatively does not) apply. We will expand the explanatory notes to cover this point.

641. The third respondent made the same point, in relation to this clause, as that discussed above in relation to clause 889(4). While the commentary there would hold good here, this clause differs from clause 889 in that it does not require the user to refer to clauses in Part 2. Rather, it merely includes informative references in subsection (4) to clauses in Part 2 (in the same way as clause 889(5)).

Clause 891: Apportionment etc. of profits to tax year

642. Three respondents commented on this clause.

643. The first respondent raised three points. The first was a suggestion that subsection (5)(b) should refer to “the source of the profits”, rather than “the profits” themselves, to achieve greater consistency with equivalent provisions in clauses 199, 216 and 271, which refer to the trade or business. We think it is more accurate to use “the profits” here, as it is the profits that are charged to tax. In the context of the other clauses we think it is acceptable to use “trade” and “business” as a shorthand for “the profits of the trade [business]”.

644. The next point was that it should be made explicit the option provided by subsection (5) is exercisable only by the taxpayer, not the Inland Revenue. The clause has been amended to put it beyond doubt.

645. The third point was that it would aid consistency to say “just and reasonable” in subsection (5)(a) rather than “reasonable”. We use “just and reasonable” where the method by which some form of calculation is made is in point. That is not the case here, the question being whether there is good reason to adopt an alternative basis of measurement.

Chapter 3: Supplementary provisions

Clause 894: Meaning of “caravan”

646. Two respondents commented on Question 52 and our proposal to introduce a uniform definition of “caravan” with Bill-wide application. Both supported the proposal.

Clause 895: Meaning of “farming” and related expressions

647. One respondent commented on this clause. The respondent thought that the definition in clause 895(2)(c) was too restrictive and that a reference to stud farming is all that is required.

648. Certainly we want to make clear that stud farming is farming but we also want to make clear what activities fall within the description "stud farming".

649. The model for the definition of stud farming is section 115(4) of IHTA 1984. This refers to “the breeding and rearing of horses on a stud farm and the grazing of horses in connection with that activity”. The difficulty with importing that phrase into definition of farming is that it appears to require the sole activity to be stud farming. This may exclude a mixed farm on which stud farming is but one activity. Or at least cast doubt on whether it is included. For this reason the draft Bill omits the words “on a stud farm”.

Clause 897: Meaning of “the Inland Revenue” etc.

650. One respondent commented on this clause. The respondent asked if it is appropriate to use the abbreviation "etc" in the clause title (to cover the reference in the clause to the Board of Inland Revenue).

651. The respondent also questioned the value of the signposts in subsections (3) and (4). The respondent thought that subsection (3) was included by way of justifying the approach in subsection (1), which focuses on any officer of the Board. But if such an approach is correct the respondent did not think that it needs to be justified. And the respondent thought that subsection (4) is too vague.

652. We agree with the respondent's comments on subsections (3) and (4) and have dropped them. Two straightforward definitions do not require a separate clause so they have been moved to the "other definitions" clause. This deals with respondent's other concern.

Clause 898: Other definitions

653. Two respondents commented on Question 53 and our proposal to introduce a uniform definition of “houseboat” with Bill-wide application. Both supported the proposal.

654. One respondent asked that we repeat the Interpretation Act 1978 definition of United Kingdom. This defines the United Kingdom as Great Britain and Northern Ireland. The reader still needs to know that for income tax purposes section 830(1) of

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ICTA extends this to include the territorial sea. As there is no reason to suppose that the Interpretation Act 1978 definition does not apply to this Bill we have not adopted this suggestion.

Schedule 1: Consequential amendments

Part 1: Income and Corporation Taxes Act 1988

Section 74 of ICTA

655. One respondent commented on this paragraph. The respondent suggested that sections 74(1)(h), (k) and (m) of ICTA be repealed as well as section 74(1)(o) of ICTA. We cannot do this because sections 74(1)(h), (k) and (m) of ICTA apply also for corporation tax purposes. Section 74(1)(o) of ICTA applies only for income tax purposes and can be repealed in this income tax Bill.

Paragraph 5 of Schedule 30 to ICTA

656. One respondent objected to Question 61 and the proposal to repeal paragraph 5 of Schedule 30 to ICTA for income tax purposes. The respondent suggested that the repeal should be made both for income tax and corporation tax purposes through a Finance Act.

657. Our concern with this suggestion is that it is most unlikely to happen in practice. Unless the provision is repealed for income tax purposes through the rewrite process it may remain on the statute for many years to come. A repeal for income tax would pave the way for a repeal for corporation tax at some later date.

658. We have discussed the respondent's objection with the Consultative and Steering Committees. They agree that the legislation is now defunct and supported the proposal to repeal this provision for income tax purposes. We shall proceed with this proposal.

Schedule 2: Transitionals and savings

Part 1: Continuity of the law

659. One respondent commented on the reference in paragraph 2(2) of Schedule 2 to the draft Bill to the explanatory notes. This respondent viewed the reference as a “major improvement” on the continuity of the law provisions in CAA and ITEPA (which contained no reference to explanatory notes) and suggested these Acts be brought into line by means of consequential amendments.

660. We do not think that amending CAA and ITEPA is desirable. These Acts have already been in force for some time. Any attempt to assist at this stage in the interpretation of their continuity of the law provisions would be more likely to confuse than help. In particular, it would raise the question of what the position had been before our amendments.

661. We are continuing to think about the reference to explanatory notes in the draft Bill. The question is whether we can retain it in the light of Pepper v Hart and the developing law on the judicial use of extra-statutory material. But we hope we can retain a sign-post along these lines because we do agree that it is helpful to the reader to give a context to the continuity of the law statement if at all possible.

Part 7: Savings and investment income: gains from contracts for life insurance etc. (personal portfolio bonds)

Paragraph 78: pre-17th March 1998 contract or policy: modification of second selection condition: policy holders becoming UK resident after 17th March 1998

662. The one respondent who commented on this paragraph considered that it represented an “unnecessarily harsh practice” for those policyholders who had a very brief period in which to vary their policy or contract so that it would not be treated as a personal portfolio bond for the purposes of Chapter 10 of Part 4 (now renumbered Chapter 9 of that Part). It is outside the remit of the project to change the practice in this matter. We have passed these comments to our colleagues with policy responsibility for this topic.

Part 9: Exempt income

Paragraph 89: Ulster savings certificates

663. One respondent wondered whether a reference to “the Treasury” was needed in this paragraph since clause 729(5) also includes a reference to “the Treasury”. The reference to “the Treasury” in clause 729(5) has now been deleted, so paragraph 89 of Schedule 2 is now correct.

Schedule 3: Repeals and revocations

664. One respondent noted the references to sections 382, 384 to 386, 388, 390 and 399 of ICTA in the repeals Schedule and wondered why sections 379A and 379B are not mentioned (insofar as they refer to Schedule A).

665. Those two sections are consequentially amended in Schedule 1: see paragraphs 122 and 123 of Schedule 1.

Appendix

Suggested issues for policy review

The Steering Committee and Consultative Committee have asked us to draw attention to areas of the tax code where respondents have suggested that it would be desirable to make more fundamental changes. The suggestions are summarised below.

The clause numbers quoted are those in the draft Bill, published in March 2004. Each suggestion is followed by an indication (in brackets) of where we first dealt with the suggestion – in an earlier response document (RD), at a meeting of the Consultative Committee (CC) or in this document (Draft Bill).

These suggestions go beyond the remit of the project, but have all been passed to the relevant specialists in Revenue Policy, to consider alongside Budget, Finance Bill and other representations that they receive. The appearance of an entry in this list does not suggest any endorsement or otherwise on the part of the project.

Part 1

1. Regulations: too many substantive rules which ought to appear in primary legislation are put into secondary legislation. **(RD 8)**

Part 2: Chapter 1

2. Are the specialised and complicated rules in Part 2 (Trading Income) necessary? Some rules relate to very limited areas, such as farming. Others, such as those about retraining and counselling expenses and films and sound recordings, could be replaced by a more “broad brush” approach. **(RD 10)**

Part 2: Chapter 2

3. Meaning of trade: the rewritten legislation should no longer preserve the distinction between trades on the one hand and professions and vocations on the other. In particular it was suggested the profit from an isolated professional act should no longer be assessed under Case VI (or its rewritten equivalent). **(RD 1)**

4. The various circumstances under which certain income from offices is treated as incidental income of a profession should be set out in a single statement of practice. **(Draft Bill)**

Clause 10

5. Profits of “concerns”: the concerns themselves should be taxed as trades. Under the current law the profits of the trade are taxed as trade profits. The activity of the concern is not itself treated as a trade. This means that those provisions that apply only to trades such as section 15(1)(a) of the Social Security Contributions and Benefits Act 1992 do not apply. This would be a simplification but is adverse to the taxpayer. **(Draft Bill)**

Part 2: Chapter 3

6. Surplus business accommodation: the scope of the rule should be extended so that the letting of part of a unit of property will be included, rather than just the letting of part of a building. **(RD 10)**

Part 2: Chapter 4: Clause 34

7. Bad debts: define what “bad” means, in similar terms to those used in VAT legislation. **(RD 1)**

Part 2: Chapter 4: Clause 35

8. Deductions for expenses relating to the provision of benefits under a non-approved retirement benefits system: the deduction should be allowed for an accounting period if the expense is paid within nine months after the end of that period. **(RD 10)**

9. Deductions for expenses relating to the provision of benefits under a non-approved retirement benefits system: the timing of the deduction should follow accountancy principles. **(RD 10)**

Part 2: Chapter 4: Clause 49

10. Business entertainment and gifts: the £10 limit on business gifts should be increased. **(RD 10)**

Part 2: Chapter 5: Clause 69

11. Restrictive undertakings: deduction should be linked with section 43 of FA 1989, which deals with the deduction of unpaid remuneration. **(RD 4)**

Part 2: Chapter 5: Clause 84

12. Contributions to local enterprise organisations: the rule should be relaxed further so that a contribution is disallowed only to the extent of any benefit received. **(RD 4)**

Part 2: Chapter 5: Clauses 91 and 92

13. The deductions for expenses connected with patents etc should be extended to apply to professions and vocations. **(Draft Bill)**

Part 2: Chapter 6: Clause 97

14. Employment income incidental to profession: the non-statutory material should be extended to cover employment benefits. **(RD 10)**

Part 2: Chapter 9: Clause 140

15. Define “production expenditure” by reference to normal principles of commercial accountancy. Paragraph 11 of Statement of Practice 1/98 makes it clear that what is accepted by the Revenue as being production expenditure may differ from the accounting treatment. **(RD 4)**

Part 2: Chapter 11: Clause 168

16. Cemeteries and crematoria: the references to the 1954-55 basis period should be “rebased” to a more recent year. **(RD 10)**

Part 2: Chapter 12: Clause 186

17. Unremittable amounts: the rules should be extended so that the definition of “foreign exchange restrictions” includes cases where a second currency can be obtained but that currency also cannot be converted into sterling. **(RD 10)**

Part 2: Chapter 15

18. Basis periods: change the fiscal year end to 31 December or 31 March. **(RD 4)**

Part 2: Chapter 16

19. Averaging profits of farming and market gardening: the underlying policy behind law concerning claims made by members of a partnership should be reviewed. **(RD 4)**

Part 3: Chapter 1

20. Businesses carried on in partnership: treat an individual partner and a corporate partner the same in giving relief for interest on a loan to acquire an interest in a property partnership. **(RD 13)**

Part 3: Chapter 1: Clause 258

21. Boundary between trading and property income: change the treatment of United Kingdom businesses so as to give priority to the charge as trading profits. **(RD 13)**

Part 3: Chapter 2

22. Land held under the Settled Land Act 1925 and the trustees' management powers delegated to the income beneficiary under section 29 of the Law of Property Act 1925: abolish the practice under which the beneficiary rather than the trustee is taxed at the basic rate. **(RD 13)**

Part 3: Chapter 3

23. Property income: calculating profits: review the tax treatment of sinking funds. **(RD 13)**

Part 3: Chapter 4: clause 274

24. Property income: lease premiums etc.: where the cost of the work is met by the landlord, review treatment of landlord as receiving a premium in respect of work which the tenant is obliged to carry out under the terms of a lease. **(RD 13)**

Part 3: Chapter 5

25. Tenants' repairs etc: where there is a notional receipt, provide for a notional outgoing if the expense would have been deductible had the landlord incurred it. **(RD 13)**

26. Tenants' repairs etc: consider the practicality of the notional rent rule in a Self Assessment regime when the landlord may be unaware of the tenant's payment. **(RD 13)**

27. Obligation on tenant to carry out work on the premises: consider introducing a relief where the landlord meets the cost of work which is required to be carried out by the tenant under the terms of the lease. **(RD 13)**

Part 3: Chapter 5: Clause 308

28. Seawalls provisions: consider extending this relief to cover defence against flooding by inland rivers. **(RD 13)**

Part 3: Chapter 6

29. Furnished holiday lettings: consider relaxing the qualifying conditions in the event of circumstances outside the taxpayer's control affecting lettings. **(RD 13)**

Part 4: Chapters 2 and 3

30. Open-ended investment companies and authorised unit trusts: there should be a single set of combined provisions, in primary legislation, covering all taxation aspects of both open-ended investment companies and authorised unit trusts. **(RD 8)**

Part 4: Chapters 2 and 3

31. Statements about deduction of tax: "as a matter of principle" all payers of interest and dividends should be obliged to provide the recipients with statements automatically so as to help them fulfil their self-assessment obligations. **(RD 8)**

Part 4: Chapter 7

32. The accrued income scheme: the scheme should be abolished or at least simplified. It was also suggested that the de minimis limit should be substantially increased. **(RD 8)**

Part 4: Chapter 10

33. Gains from contracts for life insurance etc.: the regime requires radical simplification or even abolition. The personal portfolio bond regulations should be incorporated into primary legislation. **(RD 8)**

34. Gains from contracts for life insurance etc.: given the context of Self Assessment, there should be a review to see if there is scope to simplify the fundamentally unacceptable complexity of this legislation. **(Draft Bill)**

35. Gains from contracts for life insurance etc. (clause 589): the definition of disability in this Chapter should be standardised, together with other uses of this term in the Bill, in line with definitions in the Disability Discrimination Act 1995. **(Draft Bill)**

Part 5: Chapter 2

36. Review the treatment of annual payments as charges on income and the system of deduction of tax. **(RD 2)**

Part 5: Chapter 3

37. Non-trading income from intellectual property: review the tax treatment with a view to extending the limited loss relief provisions to all such income. **(RD 2)**

Part 5: Chapter 7

38. Beneficiaries' income from estates: abolish the distinction between the taxation of income arising from an absolute interest and income from a limited interest in the residue of a deceased person's estate. **(Paper SC/CC (03)(06))**

39. Beneficiaries' income from estates: abolish the distinction between the rules for relief where foreign estates have borne United Kingdom income tax for (a) a beneficiary with an absolute interest in the residue of an estate and (b) a beneficiary with a limited or discretionary interest in the residue of an estate (see clauses 717 and 718. **(Draft Bill)**

Part 6: Chapter 3

40. Individual investment plans: the ISAs and PEPs regulations should be incorporated into primary legislation. **(RD 8)**

Part 6: Chapter 4

41. SAYE interest: Clauses 742 and 744: there should be the option of electronic communication of a notice by the Treasury under these clauses, in addition to delivery by post. **(Draft Bill)**

Part 6: Chapter 9

42. Interest on damages for personal injury: remove the limitation that the interest must be exempt from tax in the country in which the award is made. **(Draft Bill)**

Part 8: Chapter 2

43. Foreign dividends: consider aligning the rates of tax on foreign dividends and United Kingdom dividends when the remittance basis applies. **(RD 13)**

44. Irish income: remove the historical anomaly of the special treatment for income from Ireland. **(RD 13)**

Part 10

45. Clause 891 (apportionment etc. of profits to tax year): the requirement to make apportionments by reference to the number of days in each period should be dropped in favour of a universal "just and reasonable" basis. **(Draft Bill)**

Schedule 1 (Consequential amendments)

46. Amendment of section 392 of ICTA: relax the Case VI income tax loss regime so that losses could be allowed against other income. **(44th CC meeting)**

Schedule 2 (Transitionals and savings)

47. Part 7 (Savings and investment income): Gains from contracts for life insurance etc. (personal portfolio bonds) paragraph 78 (paragraph 92 of the current print): the time limit applying to temporarily UK resident persons (to ensure their policy or contract is not subject to the special charge on personal portfolio bonds) is unduly harsh. **(Draft Bill)**

This table shows the draft Bill clause number in **Bold**. The current clause number is in the next column to the right.

1	1	46	45	91	90	136	134	181	182	226	230
2	2	47	46	92	91	137	135	182	183	227	231
3	3	48	47	93	92	138	136	183	184	228	232
4	4	49	48	94	93	139	137	184	185	229	235
5	5	50	49	95	94	140	138	185	186	230	236
6	6	51	50	96	95	141	139	186	188	231	233
7	7	52	51	97	96	142	142	187	189	232	234
8	8	53	52	98	97	143	143	188	190	233	237
9	10	54	-	99	98	144	144	189	191	234	238
10	12	55	53	100	99	145	146	190	193	235	239
11	9	56	56	101	100	146	147	191	-	236	240
12	13	57	57	102	101	147	148	192	196	237	241
13	14	58	58	103	102	148	150	193	197	238	242
14	15	59	59	104	103	149	151	194	198	239	243
15	16	60	61	105	104	150	152	195	199	240	244
16	17	61	62	106	105	151	153	196	200	241	245
17	18	62	63	107	106	152	154	197	201	242	246
18	19	63	64	108	107	153	155	198	202	243	247
19	20	64	65	109	-	154	156	199	203	244	248
20	21	65	66	110	-	155	158	200	204	245	249
21	22	66	67	111	-	156	159	201	205	246	250
22	23	67	68	112	-	157	160	202	206	247	251
23	24	68	69	113	-	158	161	203	207	248	252
24	26	69	70	114	109	159	162	204	208	249	253
25	27	70	-	115	110	160	163	205	209	250	254
26	28	71	-	116	111	161	164	206	210	251	255
27	29	72	71	117	112	162	165	207	211	252	256
28	30	73	72	118	113	163	166	208	212	253	257
29	31	74	73	119	114	164	167	209	213	254	-
30	32	75	74	120	115	165	168	210	214	255	258
31	33	76	75	121	116	166	169	211	215	256	259
32	34	77	76	122	118	167	170	212	216	257	260
33	35	78	77	123	119	168	171	213	217	258	261
34	36	79	78	124	120	169	172	214	218	259	263
35	-	80	79	125	122	170	173	215	219	260	264
36	-	81	80	126	124	171	174	216	220	261	265
37	-	82	81	127	125	172	175	217	221	262	269
38	37	83	82	128	126	173	176	218	222	263	266
39	39	84	83	129	127	174	177	219	223	264	267
40	40	85	84	130	128	175	178	220	224	265	268
41	41	86	85	131	129	176	179	221	225	266	270
42	42	87	86	132	130	177	-	222	226	267	271
43	43	88	87	133	131	178	-	223	227	268	272
44	44	89	88	134	132	179	180	224	228	269	273
45	-	90	89	135	133	180	181	225	229	270	274

This table shows the draft Bill clause number in **Bold**. The current clause number is in the next column to the right.

271	275	316	323	361	367	406	413	451	-	496	443
272	276	317	324	362	368	407	414	452	-	497	449
273	277	318	325	363	369	408	415	453	-	498	450
274	278	319	326	364	370	409	416	454	-	499	451
275	279	320	327	365	371	410	417	455	-	500	452
276	280	321	328	366	372	411	418	456	-	501	453
277	281	322	329	367	373	412	-	457	-	502	454
278	282	323	330	368	374	413	-	458	-	503	455
279	283	324	331	369	375	414	-	459	-	504	456
280	284	325	332	370	376	415	-	460	-	505	457
281	285	326	333	371	377	416	-	461	-	506	458
282	286	327	334	372	378	417	-	462	-	507	459
283	287	328	335	373	379	418	-	463	-	508	460
284	288	329	336	374	380	419	-	464	-	509	461
285	289	330	337	375	381	420	-	465	-	510	462
286	290	331	262	376	382	421	-	466	-	511	463
287	291	332	338	377	383	422	-	467	-	512	464
288	292	333	339	378	384	423	-	468	-	513	465
289	293	334	340	379	385	424	-	469	-	514	466
290	294	335	341	380	386	425	-	470	-	515	467
291	295	336	342	381	387	426	-	471	-	516	468
292	296	337	343	382	388	427	-	472	-	517	469
293	297	338	344	383	389	428	-	473	419	518	470
294	298	339	345	384	390	429	-	474	420	519	471
295	299	340	346	385	391	430	-	475	421	520	472
296	300	341	347	386	392	431	-	476	422	521	473
297	301	342	-	387	393	432	-	477	423	522	474
298	302	343	348	388	395	433	-	478	424	523	475
299	303	344	349	389	396	434	-	479	425	524	476
300	304	345	350	390	397	435	-	480	426	525	477
301	305	346	351	391	398	436	-	481	427	526	478
302	306	347	352	392	399	437	-	482	428	527	479
303	307	348	353	393	400	438	-	483	429	528	480
304	308	349	354	394	401	439	-	484	430	529	481
305	309	350	356	395	402	440	-	485	431	530	482
306	310	351	357	396	403	441	-	486	432	531	483
307	311	352	358	397	404	442	-	487	433	532	484
308	315	353	359	398	405	443	-	488	434	533	485
309	316	354	360	399	406	444	-	489	435	534	486
310	317	355	361	400	407	445	-	490	436	535	487
311	318	356	362	401	408	446	-	491	437	536	488
312	319	357	363	402	409	447	-	492	438	537	489
313	320	358	364	403	410	448	-	493	439	538	490
314	321	359	365	404	411	449	-	494	440	539	491
315	322	360	366	405	412	450	-	495	442	540	492

This table shows the draft Bill clause number in **Bold**. The current clause number is in the next column to the right.

541	493	586	538	631	578	676	624	721	677	766	728
542	494	587	539	632	579	677	629	722	678	767	729
543	495	588	540	633	580	678	634	723	683	768	730
544	496	589	541	634	581	679	630	724	684	769	731
545	497	590	542	635	582	680	637	725	685	770	732
546	498	591	543	636	583	681	639	726	686	771	733
547	499	592	544	637	584	682	640	727	687	772	734
548	500	593	545	638	585	683	642	728	688	773	735
549	501	594	546	639	586	684	643	729	689	774	736
550	502	595	547	640	587	685	644	730	690	775	737
551	503	596	548	641	588	686	632	731	691	776	738
552	504	597	549	642	589	687	633	732	692	777	739
553	505	598	550	643	590	688	645	733	693	778	740
554	506	599	551	644	591	689	-	734	694	779	741
555	507	600	552	645	592	690	646	735	695	780	742
556	508	601	553	646	593	691	647	736	696	781	743
557	509	602	554	647	594	692	649	737	697	782	744
558	510	603	555	648	595	693	652	738	698	783	745
559	511	604	556	649	596	694	653	739	699	784	746
560	512	605	557	650	597	695	654	740	700	785	747
561	513	606	558	651	598	696	659	741	701	786	748
562	514	607	559	652	599	697	660	742	702	787	749
563	515	608	560	653	600	698	655	743	703	788	750
564	516	609	561	654	601	699	663	744	704	789	751
565	517	610	562	655	602	700	662	745	705	790	752
566	518	611	563	656	603	701	648	746	706	791	-
567	519	612	564	657	604	702	661	747	707	792	-
568	520	613	565	658	605	703	666	748	708	793	-
569	521	614	566	659	606	704	656	749	709	794	-
570	522	615	567	660	607	705	664	750	710	795	-
571	523	616	568	661	608	706	665	751	711	796	764
572	524	617	569	662	609	707	650	752	712	797	765
573	525	618	570	663	610	708	657	753	713	798	766
574	526	619	571	664	611	709	651	754	714	799	767
575	527	620	572	665	612	710	658	755	715	800	768
576	528	621	573	666	615	711	667	756	716	801	769
577	529	622	679	667	616	712	668	757	717	802	770
578	530	623	680	668	617	713	669	758	718	803	771
579	531	624	681	669	618	714	670	759	719	804	772
580	532	625	682	670	619	715	671	760	720	805	774
581	533	626	574	671	620	716	672	761	723	806	775
582	534	627	575	672	622	717	673	762	724	807	776
583	535	628	576	673	623	718	674	763	725	808	777
584	536	629	577	674	625	719	675	764	726	809	778
585	537	630	-	675	627	720	676	765	727	810	779

This table shows the draft Bill clause number in **Bold**. The current clause number is in the next column to the right.

811	780
812	781
813	782
814	783
815	784
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832	801
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838	807
839	808
840	809
841	810
842	811
843	812
844	813
845	814
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847	816
848	817
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863	833
864	834
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866	837
867	838
868	839
869	840
870	841
871	842
872	843
873	844
874	846
875	847
876	848
877	849
878	851
879	852
880	853
881	854
882	855
883	856
884	857
885	862
886	773
887	859
888	-
889	860
890	863
891	864
892	865
893	866
894	867
895	868
896	869
897	-
898	870
899	871
900	872

901	873
902	874
903	875