

Tax Law Rewrite

Responses to the draft

Corporation Tax Bill

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28 August 2009

Introduction

Purpose of this document

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

The draft Bill

2. The draft Corporation Tax Bill was published for consultation on 3 March 2009. It contained provisions on:

- losses, gifts to charities and various reliefs available to companies such as group relief;
- distributions;
- particular types of companies and activities;
- avoidance;
- definitions.

3. When enacted, this Bill along with CTA 2009 will take the place of ICTA as the main corporation tax Acts.

4. The published draft Bill brought together material previously published for consultation in 35 committee papers. The clauses in the draft Bill incorporated revisions made in the light of comments made by respondents to those consultations. The draft Bill also included clauses not previously published.

Respondents

5. We received detailed written responses from the following:

- The Chartered Institute of Taxation
- The Institute of Chartered Accountants in England and Wales
- John Jeffrey-Cook
- KPMG LLP
- Bill Lewis

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- Menzies LLP
- British Property Federation
- Colin Campbell
- several individuals

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

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

7. In addition we have set up a corporation tax consultation group consisting of independent practitioners, members of the project and HMRC specialists to look primarily at provisions relating to the corporation tax charge and computation. This group has made many helpful suggestions.

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

General

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

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

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

Provisions included subsequent to publication of the draft Bill

12. Since the draft Bill was published, FA 2009 has been put onto the statute book. Committee Paper CC/SC (09) 15, which contains details of the provisions affected by the Act, will be presented shortly to the independent committees which oversee the work of the Tax Law Rewrite project.

13. After the publication of the draft Bill we also published a number of further papers containing clauses and amendments. These are listed in Paper CC/SC (09) 15. We have added an annex to this Response Document which sets out our responses to comments received on these papers, where they were received in time for us to deal with them.

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

Policy suggestions

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

Glossary

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

CAA	the Capital Allowances Act 2001
CTA 2009	the Corporation Tax Act 2009
GAAP	generally accepted accounting practice
HMRC	Her Majesty's Revenue and Customs
FA 1989	Finance Act 1989 (and similarly for other Finance Acts)
F(No 2)A	Finance (No 2) Act
ICTA	the Income and Corporation Taxes Act 1988
ITA	the Income Tax Act 2007
ITEPA	the Income Tax (Earnings and Pensions) Act 2003
ITTOIA	the Income Tax (Trading and Other Income) Act 2005
TIOPB	the Taxation (International and Other Provisions) Bill
TCGA	the Taxation of Chargeable Gains Act 1992

Part 2: Calculation of liability in respect of profits

Clause 2: Overview of Part

In view of the combined size of the Corporation Tax Act 2009 and Bill 6 it is perhaps a little surprising that it should still be necessary to refer to paragraph 8 of Schedule 18 to FA 1998 (through clause 2(5)) for guidance on the actual calculation of the corporation tax payable for an accounting period on net total profits (as determined in clause 4). Nevertheless we agree that this is appropriate in the context of corporation tax self-assessment, with the administrative aspects of which Schedule 18 to FA 1998 deals more fully.

17. The calculation in clause 4 explains how to ascertain the profits of the company on which corporation tax is chargeable, that being the starting point of the calculation in paragraph 8(1) of Schedule 18 to FA 1998 of the amount of tax payable for an accounting period. As the respondent acknowledges, the calculation in paragraph 8 is an integral part of the provisions about corporation tax self-assessment contained in that Schedule. The self-assessment provisions are not being rewritten.

Clause 4: Amount of profits to which corporation tax rates applied

The terminology of the source legislation is not very precise on the relationship between “profits” and “total profits”, so the introduction of the new defined term “net total profits” for the figure actually chargeable to corporation tax is welcome. However a consequence of this improved precision in the language is that it is really not acceptable to specify in sub-clause (2) a process which after finding the company’s total profits (in Step 1) then takes into account amounts which are “treated as reducing the company’s total profits” (in Step 2). Either the figure arrived at in Step 1 is the amount of total profits, or it is not. For consistency, any provisions which at present refer to deductions reducing total profits (for example clause 181(3), below) should be rephrased as deductions from total profits, and the separate reference to such provisions in Step 2 will then be unnecessary.

18. *We agree and Step 2 in clause 4(2) now deducts “any amounts which can be relieved against the company’s total profits of the period” which covers all forms of deduction from total profit. Other references to reducing total profits are still being reviewed.*

Some respondents queried the juxtaposition of net with total in the label “net total profits”, describing the profits of a company on which corporation tax is chargeable .

19. *We have substituted “taxable total profits” for “net total profits”.*

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20. We have made other drafting changes to this clause. In particular, clause 4(3) no longer refers specifically to the rules for the deduction of losses on disposals of certain shares. Instead Step 1 in subsection (3) refers to any reduction in the amount chargeable under the charge to corporation tax on income required to give effect to relief from tax. This covers reliefs that reduce one or more of the components of income subject to the charge, so including for example trade losses brought forward against trade profits of the subsequent accounting period, losses on disposals of certain shares and non-trading deficits in loan relationships. Similarly Step 2 caters for reliefs that operate to reduce the amount of chargeable gains that feeds into the total profits calculation: non-trading deficits in loan relationships is an example of a relief that operates in this way.

Q1 We welcome comments on the amendment to Clause 1219 of [CTA 2009].

21. Respondents were content with the amendment to what is now section 1219 of CTA 2009, recognising that the wording of s75(1) of ICTA is not completely clear and that the amended s1219 of CTA 2009 is more helpfully worded and accords with interpretation and practice.

Part 3: Companies with small profits

There is now no Overview in Part 3.

22. It is not an invariable rule that a Part of the Act should have an overview (in some cases, an introduction). One is provided if it is likely to help the reader understand the structure of what follows. But, particularly in the case of a Part with a single Chapter, there is little to say.

23. ***We propose not to amend the Bill, but to retain the overview in the explanatory notes.***

Clause 20: Section 19(3): treatment of certain non-trading companies

The company should be allowed a short time at least after the end of the accounting period in which it receives a dividend within which to pay it on.

24. This point repeats one that was made in response to the draft clauses published in February 2008. We have reconsidered the point but still believe that the “in the accounting period” condition gives enough flexibility.

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

The reference to charges on income in sub-clause (3)(f) will of course need to be changed to charitable donations relief.

26. ***We agree. We have amended the clause.***

Part 4: Loss relief

Chapter 2: Trade losses

27. There has been a minor amendment to the order of the loss relief clauses in this Chapter. All of the clauses that restrict relief are now to be found at the end of the Chapter.

28. Previously there had been an attempt to match clauses restricting relief with the clauses that granted the particular relief. This was somewhat artificial as the clauses that restricted losses against total profits also restricted losses carried forward.

Clause 42: Dealings in commodity futures

29. In this clause as initially published for consultation and as published in the draft Bill, subsection (4) was included containing a definition of “arrangements”, which was not provided in the source legislation. It was explained that this did not represent a change in substance but a change in presentation, in view of the broad reference in the source provision (section 399(2)(b) of ICTA) to the effecting of schemes or the making of arrangements (whether in the partnership agreement or otherwise).

30. It was also explained, when the clause was first published, that it was intended that, in this and other clauses, the definition of “arrangements” would adopt this same form of words and that consideration would be given to adopting a single Bill-wide definition of “arrangements”.

31. After considering the issue in the context of the rewrite of corporation tax as a whole (including CTA 2009), we have concluded that a single definition that harmonises the various wording adopted in the source provisions will not prove feasible (particularly given that the term is used mainly in a tax avoidance context), and that harmonisation within individual topic areas would not appear to be worthwhile.

32. *We have, therefore, decided to follow the source legislation more closely in relation to references to “arrangements” in clauses such as this where in earlier drafts we had sought to standardise the wording of the definition. The clauses affected, in addition to this clause, are clauses 74(4), 78(3), 149(2), 161(2), 221(3) and 910(1). In this clause we have decided to reflect the source provision in not providing an express definition but referring instead to schemes or arrangements (in the partnership agreement or otherwise) in subsection (1)(c).*

Clause 45: Registered industrial and provident societies

Whilst the definition of registered industrial and provident society has now been removed from clause 45 (it was included as clause 1(4) in Paper CC/SC(08)33), the definition in clause 83(1) does not apply to it as it is applicable to Part 4 Chapter 5 only.

33. The definition in clause 83 does not apply. However, the definition in clause 1069 applies by virtue of clause 1068.

34. ***We do not consider that an amendment is necessary.***

35. The types of overseas income to which the clause applies, previously listed in subsection (3)(a) to (e), have been reduced. In practice the ESC on which the clause is based was only ever applied to income that was either interest-like or dividend-like. The clause has been amended to reflect this practice so that overseas income which does not fall within these categories is excluded.

Clause 65: Limit on deduction if accounting period falls partly within 12 month period

The respondent referred to a comment made on Committee Paper CC/SC (08) 04 and to the reply in the response document to that paper. The comment was that in subsection (2) “the amount of the deduction under Step 2 of section 64(1) for the loss for the accounting period” would strictly be the aggregate of amounts deducted under Step 2 for all prior accounting periods, not just the amount deducted for the straddling period which is what is intended. The reply in the response document was that “The reference in subsection (2) to ‘the accounting period’ can only refer to an accounting period to which the clause applies, namely ‘an accounting period [which] falls partly within the period of 12 months ...’ mentioned in subsection(1)”.

The respondent re-iterates the previous comment in the following terms. The words “the accounting period” in subsection (2) could, in isolation, be equally well understood to refer either to the accounting period to which the clause applies or to “the accounting period in which the loss is incurred”, picking up the closing words of subsection (1). However in context, as part of the longer phrase “the loss for the accounting period”, the reference can only be to the accounting period for which there is indeed a loss, as assumed in the original comment.

36. We do not consider that there is any real ambiguity in subsection (2) of the clause. We consider that it is clear in the context that the words “for the accounting period” qualify the words “the deduction under Step 2 of section 64(1)” and that accordingly the accounting period in question is the straddling period (as a deduction under Step 2 must be a deduction for an accounting period that precedes the period in which the loss is incurred).

37. It appears, however, that the respondent considers that the words “for the loss” obscure the intended meaning of the words “for the accounting period”. The words “for the loss” are not in fact necessary and we therefore propose to omit those words. Without those words, we consider that the words “for the accounting period” can only possibly refer to the straddling accounting period for which the deduction is being made under Step 2.

38. *We will amend subsection (2).*

Chapter 7: Write-off of government investment

Clause 85: Loss relief to be reduced in case of write-off of government investment

Within the brackets of subsection (5) following ‘Section 86’ should ‘relevant’ now be deleted (the final bullet point in paragraph 16 of the 22.5.08 Response to Paper CC/SC(07)38 refers)?

39. The word “relevant” should be deleted.
40. *We will amend the clause.*

Part 5: Group relief

Clause 106: Steps to determine extent to which loss etc can be surrendered

Sub-clause (4) does not allow for the possibility that, in accordance with clause 118, there may be more than one (deemed) UK accounting period within the EEA accounting period. On the contrary its reference to “the accounting period [singular] for which the surrendering company is taken to have surrenderable amounts” is inconsistent both with the detailed procedure in sub-clause (2) and with the wording of sub-clause (4)(a), both of which assume that an “EEA amount”, and therefore a “surrenderable amount” are amounts defined for an EEA accounting period as a whole rather than for each UK accounting period within it (if more than one).

41. We have reconsidered the approach of this clause (and clause 118). The requirement in paragraph 14 of Schedule 18A to ICTA to split the “loss period” between deemed accounting periods is expressed in general terms (“it is to be assumed”) and not restricted to the purpose of recalculating the EEA amount.
42. The main rules for giving group relief rely on the surrendering company having an accounting period (see, for instance the definition of “overlapping period” in section 403A(8) of ICTA).
43. We now think that a preferable interpretation of ICTA leads to the recalculated amount remaining attached to a deemed accounting period rather than being aggregated with other recalculated amounts to produce a result for a (longer) loss period.
44. So we propose to make clear that this clause operates if necessary on the loss or other amount in a deemed accounting period. It follows that there is no need for the rule in clause 121(5) that adds together the results of deemed accounting periods.

45. *We have amended this clause and clause 121 to meet this point.*

Clause 121: Assumed accounting periods

46. *We have amended this clause (see paragraphs 41 to 45 of this document).*

Clause 141: Conditions 1 and 2: surrendering company in group of companies

One small remaining anomaly is that there is nothing in sub-clause (6) corresponding to clause 142(6)(b). The condition in question can probably be inferred, and so does not actually need to be stated explicitly, but it looks strange that it is stated in one clause but not in the other.

47. We think that subsection (6) of this clause (rewriting section 405(3) of ICTA) should be consistent with subsection (6) of clause 142 (rewriting section 405(6) of ICTA).

48. *We have amended clause 142 to remove the apparent inconsistency.*

Clause 152: Use of relevant company's assets

Is the explanation in Explanatory Notes paragraph 653 correct? Doesn't sub-clause 152(4) exclude banks from the application of clause 152 only to the extent that the normal commercial loan made in the course of banking business exceeds the cost to the relevant company of the assets mentioned in sub-clause 152(1)(b), rather than wholly excluding the bank from the application of the clause in respect of the loan?

49. *We agree and have amended the explanatory notes.*

Clause 156: Supplementary provision for the purposes of sections 153 and 154

The effect of the words in parenthesis in paragraph 1(5C)(c) of Schedule 18 appears to have been lost.

50. It is possible for some shares of a class to be listed while others of the same class are not listed. The clause is intended to cater for that possibility. But, as the respondent suggests, the clause may go too far. It is a requirement of Schedule 18 to ICTA, but not of the clause, that at least some shares of each class should be listed.

51. *We have amended the clause to meet this point.*

Clause 157: Proportion of profits available for distribution to which company is entitled

In subsection (2)(a) it would appear that, in the terminology of this Bill, the distribution should be of an amount equal to the company's net total profits.

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52. The clause is concerned with a hypothetical distribution of the company's profits. It is unnecessary for this purpose to go the extra step of first arriving at the amount of those profits that are chargeable to tax.

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

The heading of this clause is also somewhat inappropriate, considering that what is involved is a notional distribution equal to the company's taxable profits rather than its actual profits available for distribution.

54. We accept the logic of this observation but are not convinced that lengthening the clause heading is justified.

55. ***We do not propose to amend the clause heading.***

Clause 173: Assumptions to be applied if non-UK resident company involved

It is unclear whether the clause produces even approximately the same result as the source legislation, in a case where the company makes losses outside the UK such that its total profit is less than the profit of the UK trade.

56. We think that the idea in paragraph 5F(7) of Schedule 18 to ICTA of *confining* the distribution to the profits of the UK trade brings with it the need to apply the rule only if the profits of the UK trade are less than the chargeable profits. We think that it may be possible to make Assumption 2 in subsection (1) of the clause clearer.

57. We understand the respondent's related point about the case where there are also foreign profits against which losses may be set.

58. ***We have amended the clause to meet these points.***

The omission of the £100 references from Assumption 2 seems to be a sensible simplification, though some of the comments in the Change Note seem to be open to question.

59. The respondent points out that the Change note is misleading where it suggests that the profits or assets cannot be less than £100. This is intended as a reference to the assumption in paragraph 5F(7)(c) of Schedule 18 to ICTA.

60. Furthermore, the respondent sets out an example involving small profits (or assets) of the UK trade. In such an (admittedly unlikely) case, the proposed change in the law may result in a fundamental change to the percentage attributable to the equity holder.

61. ***We propose to proceed with the Change but have improved the explanation of it.***

Part 6: Charges on income

Clause 181: Charges on income allowed

*This is now “Relief for qualifying charitable donations”. With the new terminology in clause 4, the limit in sub-clause (3) should logically be the amount that reduces the company’s **net** total profits for the period to nil.*

62. This is a matter which is currently under consideration as part of a wider review across the Bill.

63. *We are considering what changes, if any, are necessary.*

Part 7: Community investment tax relief

Clause 247: Meaning of “loan” and “interest”

64. In the commentary on this clause we stated that in subsection (2) we would in due course add references to the rewritten income tax provisions corresponding to sections 503, 505, 506, 511 and 513 of CTA 2009. The draft clauses rewriting for income tax purposes the sections of Chapter 5 of Part 2 of FA 2005 on which those sections of CTA 2009 are based were published in Committee Paper CC (09) 12 in May 2009 (see also the revised draft of TIOPB). On further consideration, we have concluded that it is unnecessary to refer to the rewritten income tax provisions.

Part 9: Leasing plant or machinery

Clause 336: Plant or machinery held as trading stock

A respondent stated that subsection (1) is ambiguous because it is unclear whether clauses 326 to 335 would be disapplied in relation to ALL long funding leases in respect of which a company was the lessor if the condition in subsection (2) was met in relation to any item of plant or machinery or those clauses would be disapplied only in relation to the item in respect of which the condition was satisfied.

65. *We have amended subsection (1) to remove any ambiguity and make clear that the disapplication applies only to the lease in question.*

Clause 339: Other avoidance

A respondent stated that subsection (1) is ambiguous because it is unclear whether clauses 326 to 335 would be disapplied in relation to ALL long funding leases in respect of which a company was the lessor if conditions A to C were met in relation to any item of plant or machinery or those clauses would be disapplied only in relation to the item in respect of which the conditions were satisfied.

66. ***We have amended subsection (1) to remove any ambiguity and make clear that the disapplication applies only to the lease in question.***

A respondent considered that guidance on what “substantial” in subsection (3) means in this context would be helpful.

67. ***We have referred this request to our policy colleagues.***

Clause 346: Interpretation of Chapter

A respondent was not clear why this clause draws a distinction between the definitions set out in subsection (2) and those set out in subsection (3), since they are all included in Chapter 6A of Part 2 of CAA.

68. Section 502L of ICTA provides that the definitions in Chapter 6A of Part 2 of CAA apply but provides no indication of where individual definitions are to be found in that Chapter. Subsections (2) and (3) have been included to assist the reader of Chapter 2 in searching for the defined terms.

69. No distinction is intended to be drawn by reason of the definitions being set out in two subsections. Those in subsection (2) have been given prominence as being of most immediate significance to the reader of Chapter 2.

70. ***We have added a reference to Chapter 6A of Part 2 of CAA in subsection (3) but do not propose to amend the structure of this clause.***

Clause 377: Determining the percentage share in the profits or loss of business

A respondent noted that clause 34(2)(a), published under Committee Paper CC/SC (08) 41 and relating to a company’s share in any capital allowances and charges under CAA, is not now rewritten in clause 377(2). The respondent assumes that this is because capital allowances and charges are respectively already taken into account as expenses and income in arriving at the profits or loss of the business referred to in clause 377(2).

71. After the publication of Committee Paper CC/SC (08) 41, paragraph 28(2) of Schedule 12 to FA 1997 was amended by paragraph 695(4) of Schedule 1 to CTA 2009. Clause 377(2) rewrites the sub-paragraph as amended.

72. The Explanatory Notes to CTA 2009 state in relation to that amendment:

The reference in sub-paragraph (2)(b) to a share in capital allowances and balancing charges has no effect because such allowances and charges are taken into account in calculating the profits or losses of the business. So paragraph (b) is not reproduced in the amendment.

73. ***The respondent’s assumption is correct.***

Chapter 6: Tax avoidance

74. In the revised draft Bill, the clauses in Chapter 6, on which no comments were received, now stand apart and form Part 20 (tax avoidance involving leasing plant or machinery).

Part 10: Leasing arrangements: finance leases and loans

Clause 406: Overview of Part

It is not clear what is meant by “such arrangements” in subsection (3). It appears in fact to pick up the whole of the phrase “arrangements involving the lease of assets where the conditions in section 413 are or have been met” from subsection (2), but this cannot be the intention.

75. *We agree and have amended subsection (3).*

Clause 410: Arrangements to which this Chapter applies

Paragraph 1(1)(c) of Schedule 12 FA 1997 is expressed, presumably deliberately, in terms which relate to the way in which arrangements of the kind in question are, in principle, treated under the rules of GAAP. It does not depend on the way in which the particular company treats the actual arrangements in its accounts, or even on whether it prepares GAAP accounts at all. Clause 410(2) in contrast, by omitting the words “... are of such a kind as ...”, does appear to be applying the criterion of how the arrangements in question are actually treated in the company’s GAAP accounts (which it assumes to exist). The difference could be significant, particularly as there appears to be no equivalent for this purpose of for example section 309 CTA 2009. (Even clause 447, which is presumably intended to cover similar ground to section 309 in relation to group accounts, seems to be ineffective since saying that the company in question is treated as if it were required to prepare GAAP accounts falls short of deeming it actually to have done so.)

76. We agree with the respondent that paragraph 1(1)(c) of Schedule 12 to FA 1997 is concerned with the way in which arrangements of the kind in question are, in principle, treated under the rules of GAAP. But we do not think that omitting the words “are of such a kind as” alters this.

77. Paragraph 1(1)(c) of Schedule 12 to FA 1997 as originally enacted read:

which are of such a kind as, in the case of companies incorporated in any part of the United Kingdom, falls for the purposes of the accounts of such companies to be treated in accordance with normal accountancy practice as finance leases or loans;

78. The words “in the case of companies incorporated in any part of the United Kingdom” were omitted by FA 2002. The context in which the words “are of such a kind as” were apposite no longer exists.

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The same issue arises in clause 438(1) and a similar one in clauses 413(2), 413(5) and 420(1), though in all of those cases the source legislation is rather less unambiguously concentrated on the general principles of GAAP rather than their actual application in a particular set of accounts (the omitted words being “are such as” rather than “are of such a kind as”).

79. ***We do not consider that any amendment is necessary in any of these clauses.***

The reference in clause 410(3) to “the finance lease or loan” seems inappropriate, even though it follows the source legislation. A “finance lease or loan” is how the arrangement is said to be treated in accordance with GAAP, which may depart to a greater or lesser extent from the true legal nature of the arrangement. Subsection (3), and particularly paragraph (a), is concerned with actual facts rather than with the accounting treatment. Since the arrangement is in fact necessarily a lease, it should simply be referred to as such: c.f. clause 413(6) where, in a similar context, reference is correctly made to “the lease” rather than “the finance lease or loan”. (If subsection (3)(a) were concerned with accounting treatment rather than reality any lease which is treated under GAAP as a loan would automatically satisfy the test, since the return on such a lease would presumably be regarded for accounting purposes as interest, or simply as a financial return of unspecified nature, rather than as rent.)

80. As the respondent notes the words “the finance lease or loan” follow the source legislation. The whole phrase “the return on investment in respect of the finance lease or loan” is used in order to reflect the accounting concept.

81. Subsection (3) is concerned with the question whether any amounts which GAAP treats as “return on investment in respect of a finance lease or loan” are in fact something other than rent.

82. ***We do not consider that any amendment is necessary.***

Clause 411: Purposes of this Chapter

Subsections (2) and (3) both refer to (different) “amounts”. This raises the question of which “amounts” subsection (4) is meant to refer back to. As currently drafted it must be referring back to the amounts in subsection (3), since those are the only ones which are in any sense “so treated”. However in order to capture the sense of the source legislation it would appear that the reference should be to the amounts in subsection (2), i.e. those which are actually brought into charge to tax. The amounts in subsection (3) are conclusively determined by GAAP; it is only those in subsection (2) which allow for the taking of a broader view as required by subsection (4).

83. ***We agree that the reference should be to the amounts in subsection (2) and have amended subsection (4) accordingly.***

Clause 412: Application of this Chapter

Subsection (5)(c)(ii) is so worded that the connection in question would have to exist at the time when the arrangements are made, but not necessarily at the prior time mentioned in sub-paragraph (i). In the source legislation the opposite is true. Clause 445 may make the difference immaterial in some cases, but not in all.

84. We do not accept that the respondent's interpretation of the source legislation is necessarily correct. The drafting of this clause reflects HMRC's Business Leasing manual which states at BLM70685:

Assignments breaking Part I treatment must be to a person who is not connected with any of the following:

- the assignor;
- any person who was the assignor at some time before the assignment; or
- any person who becomes the lessor after the assignment if they do so pursuant to arrangements made by an earlier lessor or a connected person (FA97/Sch12/para2(2) and (3)).

85. ***We have redrafted this subsection to reflect the source legislation more closely.***

Clause 413: The conditions referred to in section 412(1)

86. ***See the reply to the comments on clause 410(2).***

Clause 415: The arrangements and circumstances referred to in section 413(8)

In clause 415(2), where the source legislation defines a "qualifying lump sum" as one at least part of which would fall to be treated for accounting purposes in the specified way, the rewritten version says that at least part falls to be so treated. (The condition implied by the word "would" in the source legislation must be "if it were actually received".) The source legislation reads more naturally in this respect, and the rewritten version may actually have a different meaning.

The source legislation seems to be applying a test of how a payment received by the actual lessor under the actual arrangements would be treated in its accounts. The rewritten version, in contrast, appears to be referring to the way in which payments of that kind are generally treated under GAAP, since it would not be appropriate to use the definite "falls to be treated" wording in relation to a specific payment which has not yet arisen and may never do so.

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The distinction between the rules of GAAP considered generally and the way in which those rules would be applied by a particular company to a particular payment may be significant if GAAP allows for alternative treatments in the circumstances in question.

87. Paragraph 4(5) of Schedule 12 to FA 1997 as originally enacted read:

In this paragraph, “qualifying lump sum” means any sum which is not rent but at least part of which would, if the recipient were a company incorporated in the United Kingdom, fall for accounting purposes to be treated in accordance with normal accountancy practice as a return on investment in respect of a finance lease or loan.

88. The words “if the recipient were a company incorporated in the United Kingdom” were omitted by FA 2002. So far as the conditional tense reflected the omitted words, it is no longer required.

89. We consider that the provision has the same meaning whether “falls” or “would fall” is used. Neither phrase sits entirely comfortably in the context of the clause as a whole. “Would fall” is more appropriate in a case within subsection (1)(b) given the conditionality of the receipt, but “falls” is more appropriate in a case within subsection (4)(b) for which there must be an actual receipt. The choice is one principally of taste.

90. *We have reverted to the wording of the source legislation.*

Clause 417: Reduction of taxable rent by cumulative rental excesses: introduction

Having “the reduction sections” as a defined term is an unnecessary complication, when it is only used twice.

91. *We agree and have removed the defined term.*

Clause 420: Meaning of “normal rental excess” and “cumulative normal rental excess”

92. *See the reply to the comments on clause 410(2).*

Clause 427: Chargeable gains on disposals of leases

Subsection (2) is a very strange way of expressing the familiar idea of a period ending and (as a necessary consequence of that) a new one beginning at the same instant. There is no gain in terms of clarity in splitting what is in reality a single deemed event into two; rather the reverse.

There is also a conflict, at least in form, between clause 427(2), under which this Part has effect as if L’s period of account ends “immediately before the disposal”, and clause 426(2) where that period is treated for the same

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purposes as ending “with the assignment”. (The assignment referred to is a disposal such as is mentioned in clause 427(1), even though treated as made at no gain/no loss.)

It is questionable in any case whether the provision in subsection (2) properly belongs in this clause at all, since it applies for the all purposes of this Part and so appears to be concerned mainly if not entirely with the computation of taxable income rather than chargeable gains.

93. In the revised draft Bill, clauses 427 to 429 have been replaced by a clause corresponding to the new section 614BP of ITA published in Committee Paper CC (09) 13 in June 2009. Section 614BP of ITA and the new clause in this Bill are based on paragraph 12(5) to (7) of Schedule 12 to FA 1997. The remaining sub-paragraphs of paragraph 12 of Schedule 12 to FA 1997 are rewritten in section 37A of TCGA to be inserted by TIOPB. See the commentary on that section in Committee Paper CC (09) 13.

94. Subsection (2) of the new clause continues to follow the source legislation and refer, for the sake of clarity, to a new period of account beginning.

95. We do not agree that there is a conflict between paragraph 12(5) of Schedule 12 to FA 1997 (rewritten in clause 427(2)) and paragraph 7(2) (rewritten in clause 426(2)). Paragraph 12(5) determines the period of account in which the disposal takes place. Paragraph 7(2) closes that period of the assignor and starts a new period of the assignee.

96. But the period of the assignor in which the no gain/no loss disposal takes place is infinitesimally small and so no accountancy rental excess or normal rental excess can arise in that period. This renders the aggregation in paragraph 7(3) unnecessary and we have, therefore, dispensed with it.

97. ***We have replaced clauses 427 to 429 with a new clause in this Bill. We have also simplified clause 426 of this Bill and section 614BQ of ITA.***

Clause 434: Capital allowances deductions: films

A respondent to committee paper CC/SC (09) 13 (Bill 7: Leasing arrangements; finance leases and loans) questioned why this clause relates only to films but section 614BV of ITA relates also to sound recordings.

98. This clause and section 614BV of ITA are both based on paragraph 11(9) and (10) of Schedule 12 to FA 1997.

99. This clause rewrites those sub-paragraphs as they relate to sections 40A, 40B and 42 of F(No 2)A 1992, which apply for corporation tax purposes. Those sections are expressed only to apply to films. Section 614BV of ITA rewrites those sub-paragraphs as they relate to sections 134, 135, 138, 138A, 139 and 140 of ITTOIA,

which apply for income tax purposes. Sections 134 and 135 of ITTOIA apply to sound recordings as well as films.

100. *No amendment is required to this clause or section 614BV of ITA.*

Clause 436: Pre-26 November 1996 schemes where this Chapter does not at first apply

The phrase “become met” in this clause and in clause 437 is, at the least, inelegant. The perceived incongruity probably arises because, in most contexts, something can only be met at a particular point in time, not continuously as implied by saying it “becomes met”. Be that as it may, the proposed wording is certainly no improvement as compared with “are satisfied” in the source legislation.

101. The source legislation in fact uses “become satisfied” rather than “are satisfied”. We do not agree that “become satisfied” or “become met” necessarily implies that the conditions are met continuously. We want to retain the phraseology of the source legislation.

102. *We do not consider that any amendment is necessary.*

Clause 438: Introduction to Chapter

103. *See the reply to the comments on clause 410(2).*

Clause 440: Leases to which this Chapter applies

Subsection (6)(c)(ii) is so worded that the connection in question would have to exist at the time when the arrangements are made, but not necessarily at the prior time mentioned in sub-paragraph (i). In the source legislation the opposite is true. Clause 445 may make the difference immaterial in some cases, but not in all.

104. See the reply to the comments on clause 412.

105. *We have redrafted this subsection to reflect the source legislation more closely.*

Clause 441: Application of provisions of Chapter 2 for purposes of this Chapter

Given that the rewrite has usually been at pains to specify precisely and explicitly who is the person charged and on how much, it is rather unsatisfactory that the only charging provision for this Chapter is in the form of the cross-reference in this clause to clause 416. The clause is in a form usually used only to avoid unnecessary repetition of relatively minor definitions (and the rewrite has tended to avoid legislating by cross-reference

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even for that purpose). It is certainly not the first place where a user would look for the main charging provision of the Chapter.

106. *In the revised draft Bill, we have included an additional clause restating in full the provisions of clause 416 for the purposes of Chapter 3. This corresponds to section 614CD of ITA (see Committee Paper CC (09) 13 and the revised draft of TIOPB).*

Part 11: Close companies

Clause 452: “Majority winding up rights” and “relevant winding up rights”

107. In the draft commentary on this clause, we undertook to look again at the rewrite of section 414(2A) to (2D) of ICTA.

108. *We have decided to revert to the structure of the source legislation.*

Clause 467: Charge to tax in case of loan to participator

109. In the draft commentary on this clause, we noted that one respondent had misgivings about the move from “shall be due” to “is to be due” in subsection (2). We undertook to consider this drafting point in the context of the Bill as a whole when work on it was further advanced.

110. *We have written “is due” in subsection (2).*

Clause 469: Section 468: meaning of “material interest in a company”

As noted in the draft commentary, the source legislation for clause 469(2) and (3) includes the words “A person shall be treated as having a material interest in a company if he, either on his own or with one or more associates, or if any associate of his with or without such other associates – ...”. Clause 469(2) and (3) compress the closing words to “any associate of that person (with or without one or more such associates)” – ie omitting the word “other”. One respondent argued that the word which had been omitted was necessary for the sense.

According to the respondent, without the word “other” it is unclear whether the reference is to associates of the person in question or to associates of his associates.

111. *We have adjusted the clause as the respondent requests. And we will, in consequence, make the corresponding adjustment in section 68 of ITEPA.*

Clause 472: Loan treated as made by close company

112. In the draft commentary, we noted that one respondent had queried the use of tenses in this clause and we undertook to consider the matter.

113. *We have adjusted this clause to meet the respondent's concerns.*

Clause 475: Taxation of debtor on release of loan to trustees of settlement which has ended

114. In the draft commentary on this clause, we noted that one respondent had queried the expression “is or has been assessed or is liable to be assessed under section 467” in subsection (2).

115. *We have adjusted this clause to meet the respondent's concerns, and will make the corresponding adjustment in section 415(1)(a) of ITTOIA.*

Clause 477: Power to obtain information

116. In the draft commentary on this clause, we noted that, as Schedule 12 to FA 1989 was relevant to other provisions of this Bill besides the “close companies” Part, we were keeping the definition of “relevant provisions” under review.

117. *We have confined this clause to the close company provisions, and have in consequence omitted the references to “relevant provisions”.*

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Clause 527: Introduction to Part

The definitions of “group of companies”, “entry” and “cessation” should be key concepts and appear in Chapter 1.

118. We think that there is a worthwhile distinction between:

- key concepts which are necessary to an understanding of what the Part is about; and
- “other definitions” which are needed to interpret the rules but which should not interrupt the flow of the main legislation.

119. This distinction is not rigid and there is naturally some overlap between the ideas.

120. *We do not propose to amend the clause.*

Clause 528: “Property rental business”

Subsection (3) should be incorporated into subsection (1) to provide a single definition of “property rental business”.

121. We think that the clause is clear and accurate as drafted.

122. *We do not propose to amend the clause.*

Clause 529: “UK property rental business” of non-UK companies

This clause should expressly state that “profits” in this context refers to income profits only and does not bring gains of a non-resident into charge to UK corporation tax.

123. We think that it is misleading to concentrate on the meaning of “profits”. The expression to be interpreted here is “profits of the UK property rental business”. The profits are arrived at by applying the rules in Part 4 of CTA 2009. Those rules exclude capital receipts (see section 93 of CTA 2009, applied by section 210 of that Act). So the profits of a property rental business cannot include chargeable gains.

124. *We do not propose to amend the clause.*

Clause 532: Notice for a group of companies to become a UK REIT

The interaction between clauses 532/533/534 and the conditions in clauses 537 to 540 should be made clearer. Entry into the REIT regime is stated to be met by notice; however a company/group cannot be a REIT unless the conditions are met.

125. A new subsection (6) in this clause (and in the next clause) makes clear that a notice is not enough: the conditions must be met.

126. *We have amended the clause.*

A company should not be treated as breaching the conditions under clause 537 in respect of an event which is disregarded by clauses 534, 568 or 569 for the purposes of giving a clause 532 notice.

127. We regret that the Response to Committee Paper CC/SC (08) 15 published in October was wrong to suggest that there is still a breach if the relaxations in clause 534 apply. The point is covered by clause 587(7)(b). The relaxations in clauses 568 and 569 are now covered by clause 587(7)(c).

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

A cross-reference to the definitions of “group of companies” and “principal company” would be helpful here.

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129. We think that the definitions in clause 615 (with the entries in the table in Schedule 4 to the Bill) are enough.

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

Clause 534: Notice under section 532 or 533: supplementary

A cross-reference to the definition of “accounting period 1” would be helpful here.

131. A new subsection (9) is a signpost to the definition.

132. *We have amended the clause.*

In subsection (4)(c) “throughout the remainder of accounting period 1 after the first day of that period” should replace “throughout all of accounting period 1 apart from the first day”.

133. We think that the difference in wording between paragraphs (b) and (c) reflect the different concepts that they describe.

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

This clause needs to reflect the changes in section 109 [of 2006] contemplated by paragraph 5 of Schedule 34 to Finance Bill 2009.

135. The clause now rewrites section 109(2A) to (2C) of FA 2006.

136. *We have amended the clause.*

Clause 536: Being a UK REIT in relation to an accounting period

There should be a cross-reference to the rules in Chapter 8.

Subsection (2)(a) should recognise that, on the first day of accounting period 1, the shares may not be listed and/or the company may not be close.

137. A new subsection (4) makes clear that some relaxations of the rules apply for the purpose of this clause.

138. *We have amended the clause.*

Clauses 532 and 533 state that a group or company respectively becomes a group UK REIT or a company UK REIT if a notice is given. Clause 536 states that a group/company is a UK REIT if the conditions are met. These statements are not consistent.

139. The conditions in clauses 532 and 533 are for becoming a UK REIT. The condition in this clause is for being a UK REIT in relation to an accounting period. The new subsections (6) in those clauses clarify this point (see the remarks on clause 532 in paragraphs 125 and 126 of this document).

140. *We do not propose to amend this clause.*

Clause 537: Conditions for company

The term “ordinary share” which is used at subsection (6)(b) is not defined for tax purposes. “Ordinary share capital” should be used.

141. We do not think that we would be justified in applying the definition of “ordinary share capital” in this clause.

142. *We do not propose to amend the clause.*

Clause 538: Conditions as to property rental business

It would be helpful if subsection (4)(a) used the phrase “involved in the property rental business” (in line with subsections (1) and (2)). In addition, it would be helpful if clause 617(3) was made consistent with subsection (4)(a) by replacing the words “involved in the business” with the words “involved in the property rental business”.

143. We do not agree. The idea of an asset being “involved” in a business does not apply exclusively to property rental business. See, in particular, clause 540(6)(b). So the definition has to refer simply to a business. We do not think that in this clause there is any difficulty. In the context of conditions A and B in the clause it is clear that the business concerned is property rental business.

144. On the other hand, we think that the definition in clause 617(3) should be changed to refer to a “business”.

145. *We have amended clause 617 but not clause 538.*

In a case to which subsection (5) applies it is not clear whether a property held by a group company which has a minority shareholder can count as a property for the purposes of Condition A.

146. As Change 41 makes clear, it is not intended that the number of properties involved in property rental business should be affected by subsection (5). The clause now makes clear that subsection (5) applies only for the purpose of subsection (2).

147. *We have amended the clause.*

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Q5 We welcome comments on the proposal to exclude the percentage of properties attributable to non-members of the group.

148. Most respondents welcomed this proposal but one did not support it, suggesting that (unless a de minimis threshold is included – see clause 542) it is likely to impose a disproportionate administrative burden in relation to Condition B.

149. We think that a de minimis threshold is outside the remit of the project. If none is introduced we do not think that this proposed change in the law introduces an *additional* administrative burden – the work has to be done anyway for clause 542. So we propose to proceed with the change, as originally suggested by the same respondent.

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

Clause 540: Conditions as to balance of business

Why does subsection (4) apply only to single companies and not to groups?

151. The clause follows the structure of FA 2006. The profits of a group are the sum of the profits of the “members of the group”. Those members are, of course, companies. So their profits are arrived at in accordance with subsection (4).

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

The references to “profits” (in terms of calculation) in clauses 540(2) and 542(1) are not consistent.

153. We think that the references do not need to be consistent. The financial statements in clause 542 set out the results of the company’s business. For the restricted purpose of the balance of business test in this clause one has to make the exclusions set out in subsection (4).

154. For other reasons, the clause now refers to “aggregate profits”.

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

Clause 542: Financial statements: supplementary

The words “by reference to” in subsection (4) might be read as suggesting that beneficial entitlement is a guide only. It would be helpful to have clarification of what “beneficial entitlement” means.

156. We do not agree. “By reference to” introduces a comprehensive description of how the interests are to be determined. It is implicit that no other considerations are to be taken into account. And “beneficial entitlement” is a sufficiently understood term

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of law to be used without explanation – see, for instance, paragraph 2(1) of Schedule 18 to ICTA, rewritten in clause 157(1) of the Bill.

157. ***We do not propose to amend the clause.***

Is it intended that the test be by reference to direct beneficial entitlement through ownership of an interest in the subsidiary in question?

158. If the profits etc of a subsidiary are reduced to take account of minority interests, only those reduced profits etc are included in the aggregate arrived at in clause 540(2). So it would be illogical to try to make a further reduction to take account of indirect interests in those same profits etc. The approach of the legislation is to introduce indirect holdings explicitly where needed (for instance, paragraph 6 of Schedule 18 to ICTA – see clause 159(2) of the Bill), leaving “beneficially entitled” to have its natural, unextended meaning in other places.

159. ***We do not propose to amend the clause.***

What happens if there is a change in the quantum of minority rights during an accounting period?

160. There seems to be a gap in the legislation here as regards income, profits and expenses. But filling the gap would be outside the remit of the project.

161. ***This suggestion is outside the remit of this project but will be passed to our policy colleagues for consideration.***

If “equity holders” is intended to bear the Schedule 18 to ICTA definition could this be clarified?

162. The expression is not defined in FA 2006 so as to include loan creditors or to exclude fixed-rate preference shares. We think that it would be wrong to introduce a special meaning for the expression.

163. ***We do not propose to amend the clause.***

We would welcome a materiality threshold in respect of minority non-REIT group shareholders falling within subsection (4) given the associated administrative burden.

164. ***This suggestion is outside the remit of this project but will be passed to our policy colleagues for consideration.***

In relation to the requirements being re-written in clause 542(1), HMRC guidance makes it clear that it is not necessary in practice for financial statements to be provided by “each member of the group”, with consolidated

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financial statements for the group REIT being sufficient. It would be helpful if that position could be reflected in the legislation.

165. We think that it would be difficult to legislate the application to consolidated accounts of a rule such as that about the calculation of the profits of a property business in Part 4 of CTA 2009 (see clause 609(2) of the Bill).

166. ***We do not propose to amend the clause.***

Clause 543: Profits

It would be helpful if subsection (2) could cross-refer to clause 529(3) to clarify the context in which a non-UK member's profits are prima facie treated as subject to corporation tax.

167. We think that the extent of the (notional) charge is clear. It is (according to clause 529(3)) on profits of the “UK property rental business”. Those profits are then in the same position as profits of a UK company, to which the exemption in this clause may apply. The point is dealt with in paragraph 1818 of the explanatory notes on clause 529.

168. ***We do not propose to amend the clause.***

The Response Paper indicates that subsection (3) is not a charging section but rather a section that determines the rate of corporation tax applied to profits of a residual business. It might be helpful if the reference to the “rate” appeared at the beginning of this sub-clause to make its purpose clearer; that is, “the rate at which profits which arise from ... shall be determined ...”.

169. We think that subsection (3)(b) is clearly a condition to be met if the rest of the subsection is to apply (“are to be so charged”).

170. ***We do not propose to amend the clause.***

Subsection (4) should make it clear that profits of residual business are chargeable to corporation tax.

171. We do not agree. “Residual business” is defined only for the purpose of this Part of this Bill and there is no reason why there should be special treatment under any other tax law. The profits of residual business are taken outside the scope of this Part of the Bill, except for the rule about small profits relief not being available (see subsection (3) of this clause). The profits remain those of a property business. So they are chargeable to income tax (under Part 3 of ITTOIA) or corporation tax (under Part 4 of CTA 2009).

172. ***We do not propose to amend the clause.***

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Should the reference to “for the purposes of corporation tax” instead be “for the purposes of this Part” (to tie in with clause 531)?

173. We do not agree. The main effects of treating profits as profits of residual business are that they are not within the exemptions set out in this Part of the Bill and that they are not eligible for small profits relief. That second effect is a corporation tax effect, outside this Part.

174. ***We do not propose to amend the clause.***

Clause 544: Gains

If there is a charge under section 179(3) of TCGA, condition A in this clause should be treated as met if the property in question has been used for the purposes of property rental business carried on by any member of the group.

175. ***This suggestion is outside the remit of this project but will be passed to our policy colleagues for consideration.***

In subsection (5)(a), for consistency (with subsection (4)(b)) and clarity, we would suggest replacing the words “different purposes” in subsection (5)(a) with the words “purposes of the residual business”.

176. We do not agree. Both in the clause and in the source legislation, the “different purposes” are those of property rental business and residual business. The attribution in subsection (5) must have regard to both purposes, not just the use in residual business.

177. ***We do not propose to amend the clause.***

In sub-clause (7) the concept of there being “gains of the residual business” does not seem quite correct: by reference back to the exemption conferred in sub-clause (1), would it be more appropriate to state that the gains are to be treated as “gains on assets used wholly for the purposes of the residual business”?

178. The gains excluded by clause 542(3) are commercial gains shown by financial statements. These are the gains referred to in clause 542(1)(c); they are not chargeable gains. So treating them as gains of the residual business leaves them to be dealt with in accordance with the usual rules for such gains. It would not be right to consider whether a commercial gain is a gain on the disposal of an asset (in this context, a purely tax concept).

179. ***We do not propose to amend the clause.***

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In subsection (9), we would reiterate our suggestion that the words “as if it were contained in” should be replaced with the words “construed as one with”.

180. We are sorry that the original Response Document did not mention this point because we treated it as a minor drafting point. We think the words of the clause are plainer than those suggested.

181. ***We do not propose to amend the clause.***

Clause 545: Effects of entry: corporation tax

It is not clear how a share in an asset excluded by clause 545(6) is dealt with by TCGA.

182. The respondent recognises that section 21 of TCGA is relevant here. We confirm that that section applies to an asset that is “split” by clause 545(6). The same principle applies when clause 589 applies on exit from the REIT regime.

183. ***We do not propose to amend the clause.***

Clauses 545 and 548 apply only to new groups and the tax treatment for such groups will be different from that for existing groups.

184. The exclusion from the special treatments on entry and exit for assets attributable to minority interests follows from paragraph 31(5) of Schedule 17 to FA 2006. So rewriting the legislation does not change the position.

185. If this comment is directed at an existing company REIT that becomes part of a group REIT, again the rewritten legislation does not change the position. Special treatment for companies in this position would be outside the remit of this project.

186. ***We will pass the suggestion to our policy colleagues for consideration.***

A cross-reference to the meaning of “entry” would be helpful in subsection (1).

187. The new subsection (9) is a signpost to the definition.

188. ***We have amended the clause.***

The replacement of “pre-entry” with “incoming” in clause 543(2) would provide consistency with the defined term used in subsection (1).

189. We do not agree. The “incoming company” is identified in subsection (1) as the company whose status changes. The treatment of the assets in subsection (2) is designed to fit in with the capacity in which the company sells the assets, as explained

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in clause 616(3). These are slightly different ideas and we think that they are best expressed in different words.

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

We would suggest putting a line break after the word “company” in subsection (2)(b) to make it clearer that the deemed sale and reacquisition are interdependent.

191. ***We will consider amending the clause to meet this point.***

To improve the clarity of subsection (5), we would recommend replacing the word “one” with the words “the current”.

192. We think the words of the clause are plainer than those suggested.

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

It is a little unclear how this provision should work in practice.

194. This response is related to the point made in connection with clause 544. Please see paragraph 182 of this document.

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

In subsection (7), it would be helpful to include a signpost to the takeover and demerger provisions which would apply in the circumstances described in this subsection.

196. The new subsection (8) is a signpost to the rules

197. ***We have amended the clause.***

The position of a company demerger from a UK REIT group has still not been addressed.

198. This point refers to the one dealt with in paragraph 85 of the Response Document published in October 2008.

199. We still think that the respondent’s point is met by clauses 568(4) and 569(8). Those clauses disapply clauses 545, 546 and 547 in the case of a demerger (as defined in clause 568(1) or 569(2) to (4)).

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

Clause 546: Effects of entry: CAA 2001

We would suggest that subsection (4) be amended to read “Anything done by or to a company which becomes a UK REIT, or becomes a member of a group UK REIT, in relation to an asset ...”.

201. Having regard to the definition of “UK REIT” in clause 527(4) we think that the clause is right.

202. *We do not propose to amend the clause.*

Clause 547: Entry charge

To improve the clarity of subsection (1), we would suggest replacing the words “at entry” with the words “immediately after entry”.

203. “Entry” is defined in clause 616(1) in the case of a group as the time when the company becomes a member of a UK REIT. That is the date specified in the notice under clause 532. It is also the date on which the notional income is treated as arising. So it would be wrong to suggest that the income arises any later.

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

In subsection (6), it would be helpful to include a signpost to the takeover and demerger provisions which would apply in the circumstances described in this subsection.

205. The new subsection (7) is a signpost to the rules

206. *We have amended the clause.*

Clause 548: Calculation of the notional amount

It is not possible to exclude a percentage of physical assets. The clause should refer to the percentage instead of the assets.

207. *We have amended the clause to meet this point.*

Clause 549: Election to treat notional income as arising in instalments

The clause suggests that each company within a group can choose whether or not to pay in instalments. Instead the principal company of a group REIT could be responsible for determining the approach for all members of the group.

208. This suggestion seems to take away some flexibility in the source legislation and it would be outside the remit of this project to adopt it.

209. *We will pass the suggestion to our policy colleagues for consideration.*

Clause 550: Ring-fencing of property rental business

We would suggest changing subsection (1)(a) so as to read: “in the case of a group UK REIT, to the principal member of the group and to each member of the group”.

210. The rules apply to “property rental business of the group”. So it would be wrong to exclude the reference to the group. And the principal company is a member of the group and does not have to be identified separately.

211. *We do not propose to amend the clause.*

Clause 553: Meaning of “property profits” and “property financing costs”

In subsection (2)(c) the cross-reference should be to section 609(3). In addition, this cross-reference should refer to ‘amounts included within profits as a result of the application of section 609(3)’.

212. We have corrected the cross-reference and changed the description.

213. *We have amended the clause.*

Clause 556: Funds awaiting reinvestment

Q7 We welcome comments on the proposal to aggregate the periods of mixed use.

214. This question is overtaken by paragraph 7 of Schedule 34 to FA 2009, which enacts the proposal in Change 43.

215. *We do not propose to amend the clause.*

Clause 557: Distributions: liability to tax

It would be helpful if the terms “Property Income Distribution” and “PID” could be defined.

216. This suggestion has a number of implications, as pointed out by the respondent. We think that it would be dangerous to try to implement this suggestion at this late stage in the development of the Bill.

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

The connector between subsection (1)(a) and (b) should be “or”.

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218. ***We have amended the clause.***

The cross-reference to “amounts shown in the financial statements under clause 541(2)(a)” should be removed because financial statements do not show any gains.

219. We disagree. The statements are prepared in accordance with GAAP and include gains. That is why some gains are excluded by clauses 542(1)(c) and 544(7).

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

Clause 558: Distributions: supplementary

The points made in relation to clauses 557(1)(a) and (b) above also apply in relation to clause 558(3)(a)(i) and (ii).

221. ***We have amended the clause.***

Clause 560: Attribution of distributions

The signposting in subsection (2)(c) could be improved by adding the words “other than those already attributed in (a)” after the words “(calculated in accordance with section 609)”.

222. We think that the order of attribution brings with it the implication that distributions already attributed are not available for a later attribution. To exclude an earlier attribution in one case would cast doubt on the other cases.

223. ***We do not propose to amend the clause.***

Clause 565: Movement of assets out of ring fence

This clause could be split up into separate clauses.

224. We have amended the structure of clauses 565 and 566 to meet this point.

225. ***We have amended the clause.***

Additional clarity is required on the treatment of appropriations to and from trading stock in intercompany situations as this is not an area covered in the existing legislation.

226. ***This suggestion is outside the remit of this project but will be passed to our policy colleagues for consideration.***

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Subsection (4) should be amended to reflect the fact that subsection (5) will not apply in the context of transfers between related parties (see HMRC guidance at GREIT04050).

227. The guidance refers to “simply transferring”. The point is that a disposal within subsection (4) has to be “in the course of trade”. In this context, the disposal referred to in subsection (6) also has to be in the course of the trade. Most transfers to a fellow group member are not such a disposal. But it would be wrong to legislate an exclusion for all intra-group transfers.

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

It is surely wrong that the non-REIT owned proportion of a deemed gain should be chargeable as a gain of the residual business. No actual disposal has occurred.

229. We think that the comment is directed at a deemed disposal within subsection (2). A closely related point arises on clause 567. To the extent that the assets in question are regarded as held by a non-member of the group they are not within the ring fence and there may be no need to impose a charge when they move out of the ring fence.

230. ***This suggestion is outside the remit of this project. But we will pass it to our policy colleagues for consideration.***

Clause 567: Movement of assets into ring fence

This clause could be split up into separate clauses.

231. We do not think that this clause is over-long.

232. ***We do not propose to amend the clause.***

It is surely wrong that the non-REIT owned proportion of a deemed gain should be chargeable as a gain of the residual business. No actual disposal has occurred.

233. We think that the comment is directed at a deemed disposal within subsection (2). A closely related point arises on clause 565. To the extent that the assets in question are regarded as held by a non-member of the group they are not within the ring fence and there may be no need to impose a charge when they move out of the ring fence.

234. ***This suggestion is outside the remit of this project. But we will pass it to our policy colleagues for consideration.***

Clause 572: Breach of conditions C and D in section 537 (conditions for company)

In the case of a takeover of a REIT by a non REIT, either clause 572(4) or clause 572(5) could apply.

235. We do not agree. Subsection (5) applies only if “the case is not one within subsection (2) or (3)”. Subsection (4) applies only “in a case within subsection (3)”. It is clear that subsection (3) (and so subsection (4)) takes precedence.

236. *We do not propose to amend the clause.*

Clause 576: Breach of condition B in section 540 in accounting period 1

It may be helpful to include an explicit definition of the term “accounting period 1” as the Company’s first accounting period as a UK REIT.

237. The definition is in clause 618 and we do not think it is necessary to include anything in this clause.

238. *We do not propose to amend the clause.*

Clause 577: Meaning of “the notional amount”

The “catch up” entry charge for entrants to the regime that breach the asset test in the first accounting period includes not only new assets but also any increase in the value of assets owned on entry. This seems inequitable and a potential disincentive for new entrants to apply for REIT status.

239. *This suggestion is outside the remit of this project but will be passed to our policy colleagues for consideration.*

Clause 580: Overview of Chapter

Clause 580 should signpost clauses 589, 590 and 591(6) and (7) for the commonest form of exit, being where a subsidiary leaves a REIT group.

240. We do not think that this is right. The provisions quoted apply to any case in which a group or company leaves the regime. Subsection (4) accurately records that the Chapter contains the rules relevant to all exits.

241. *We do not propose to amend the clause.*

The correct treatment of a subsidiary that leaves a REIT group is not currently clear.

242. We are not sure what is unclear. But we are asking policy colleagues to consider whether the guidance can be expanded.

243. ***We do not propose to amend the clause.***

Clause 591: Early exit by notice

There should be a refund of the entry charge when a subsidiary leaves the regime and clause 591(7) applies to rebase the asset to original cost.

244. There is a difference between the removal of an asset from the regime (when clause 565(7) may produce a refund) and a company leaving the regime. The change suggested is outside the remit of this project.

245. ***We will pass the suggestion to our policy colleagues for consideration.***

Clause 594: Meaning of “joint venture company” and “joint venture group”

We suggest that it may be better to draft on the basis of a group REIT acquiring: (a) a JV Company; or (b) JV group, with a single company REIT being a subset of each of these categories.

246. We think that setting out each circumstance is preferable, at the expense of some repetition. Respondents have generally welcomed the approach of Part 13 of the Bill where it sets out separately (but usually close to each other) the rules for a group and a company. So we will keep the current structure of this Chapter.

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

There are also certain concerns with aspects of the existing legislation, which we recognise have policy implications.

In some circumstances the entry charge works unfairly. For instance, an entry charge catch-up payment may be based on a market value increase of an interest already held. And there may be a double charge when a REIT sells an interest in a group company.

248. ***We will pass these suggestions to our policy colleagues for consideration.***

To clarify that JV companies will not automatically attain JV REIT status, we would suggest adding to subsection (1) the words “and a notice has been served and accepted in accordance with section 595.”

Similarly, we would suggest adding to subsection (2) the words “and a notice has been served and accepted in accordance with section 596.”

249. This point is superficially similar to that made in connection with clause 532 (see paragraphs 125 and 126 of this document). But, in the case of a joint venture company, the company giving the notice must already be a UK REIT and the clause makes clear that the notice may be given only if the additional (“40%”) test is met.

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

It would be preferable to incorporate the definitions of “venturing company” and “venturing group” (which currently appear in clause 597) in this clause.

251. ***We have moved the definitions so that they immediately follow this clause.***

Clause 598: Effect of notice under section 595

We suggest replacing the words at the end of subsection (1) “as if the company were a member of the venturing group” with the words “as if that company were a member of the venturing group”.

252. The style of the rewritten legislation is not generally to use “that” in a case where there is only one company in view.

253. ***We do not propose to amend the clause.***

This clause seems overly complex, in seeking to include the results of a JV company in REIT results.

254. We do not see any clear alternative. The objective is to give REIT treatment to the venturing company and its interest in the joint venture. This seems to be a case where deeming the company and the joint venture to be a group REIT is justified.

255. ***We do not propose to amend the clause.***

Clause 599: Effect of notice under section 596

256. The second comment on the previous clause applies also to this clause.

Clause 602: Joint venture groups: financial statements

We suggest adding, at the end of sub clause (6), the words “for the venturing group”.

257. We think that this would be wrong. The financial statements are those required under clause 541 because this Part applies to the venturing group as expanded by clause 599. The suggested words could be read as restricting the statements to members of the original, unexpanded group.

258. ***We do not propose to amend the clause.***

Clause 603: Financial statements under section 541: joint venture groups

We think the clause heading would be clearer if it were changed to “Modifications to section 541: joint venture groups”.

259. We think that the heading is clear.

260. *We do not propose to amend the clause.*

Clause 605: Joint venture company liable for additional charge

In some circumstances the additional entry charge works unfairly.

261. The points made by the respondent (which apply also to clause 606) are similar to those made in relation to clauses 577, 591 and 594 – see paragraphs 239, 245 and 248 of this document.

262. *We will pass these suggestions to our policy colleagues for consideration.*

Clause 606: Member of joint venture group liable for additional charge

Q12 We welcome comments on the proposal to rewrite regulation 24(1) of SI 2007/3425 so that it applies to a venturing group, rather than to a member of a venturing group.

263. Most respondents welcomed this proposal but one wanted a fuller explanation of the change. We regret that paragraphs 2114 and 2115 of the explanatory notes confused matters by referring to the wrong subsections of the clause.

264. The point at issue here is the degree of ownership of the joint venture by the venturing group.

265. Regulation 14(6) of SI 2006/2866 refers to the case where “a venturing group ... increases its shareholding ... to 75% or more” in a joint venture company. These words include the possibility that the 75% comprises smaller shareholdings by members of the venturing group.

266. Regulation 24(1) of SI 2007/3425 refers to the case where “a member of a venturing group ... increases its shareholding ... to 75% or more” in a member of a joint venture group. These words seem to require that the 75% holding must be by a single member of the venturing group.

267. The result in each case is that the joint venture company (or member of the joint venture group) becomes a member of a group UK REIT. Section 838(1) of ICTA provides that indirect shareholdings are to be taken into account in determining whether a company is a member of a group. So the SI 2006/2866 approach is more logical than that of SI 2007/3425 and is the one adopted by the clause in both cases.

268. *We will expand the explanatory notes to include this explanation.*

Clause 608: Interpretation etc

Subsection (1) appears to be superfluous, as the term “deemed UK REIT” is not used outside clauses 598 and 599, where it is defined in each case in any event.

269. We agree.

270. ***We have amended the clause.***

We suggest that the order of subsections (2) and (3) be reversed as it would make more sense to deal with the definition of beneficial ownership before the definition of equity holders.

271. We think that the current order is satisfactory.

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

The concepts of beneficial interest and equity holder are used elsewhere (e.g. Chapter 2 clause 542). However, the definitions in clause 608 only apply to their usage in Chapter 10. It would make sense to define their usage for the whole of Part 13.

273. We disagree. We think that the rule for the interpretation of “beneficial interest” in clause 542(4) is more conveniently included in that clause, leaving the rule in this clause to apply only to clauses 595 and 596.

274. Furthermore, the rule for the interpretation of “equity holder” covers loan creditors. They are relevant only to a distribution of assets and so are not relevant to clause 542.

275. ***We do not propose to amend the clauses to meet this point.***

Clause 609: Calculation of profits

It is unclear what the purpose of the words “(of any kind)” is in subsection (2).

276. We have removed the words.

277. ***We have amended the clause.***

In subsections (3)(a), (b) and (c), it is not clear what the words “so far as it relates” mean and clarification, either in legislation or guidance, would be helpful.

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278. The words restrict the application of the rules to those loan relationships etc that would otherwise be taken into account in calculating the profits of property rental business.

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

Clause 611: Effect of deemed disposal and reacquisition

In this clause, the meaning of the words “has effect for” is not at all clear. We would suggest rewording the clause.

280. We have changed the words to “is to be taken into account for”.

281. *We have amended the clause.*

Clause 613: Property rental business: excluded business

The reference to section 681EK(2) of ITA does not appear to be correct.

282. The section is inserted by paragraph 5 of Schedule 3 to TIOPB.

283. *We do not propose to amend the clause.*

Clause 615: Groups

Subsection (4) should disapply subsection (3) in the case of a joint venture group as well as in that of a joint venture company.

284. The disapplication of subsection (3) in the case of a joint venture company is needed to ensure that clause 598 produces a group containing the appropriate proportion of the business of the joint venture company. That process may occur more than once, for each venturing company or group. It would frustrate the intention of the legislation if the rule in subsection (3) of this clause prevented the joint venture company being treated as a member of a group with each of two different venturing companies or group.

285. The position for a joint venturing group is different. As with a joint venture company the intention is that the treatment in clause 598 should not be frustrated. But the rule that a company cannot be a member of more than one group should still apply in determining the make up of the joint venturing group. We will consider how to make this clear.

286. *We will consider amending the clause.*

Clause 617: References to assets

There is a difficulty with deemed gains accruing by virtue of section 179 of TCGA.

287. This comment is closely related to that about clause 544.

288. *This suggestion is outside the remit of this project but will be passed to our policy colleagues for consideration.*

The words “involved in the business” should be replaced with the words “involved in the property rental business”.

289. Please see paragraphs 143 to 145 of this document about clause 538.

290. *We have amended this clause.*

Clause 618: Definitions

This clause should be expanded to include all relevant defined terms used in the Part.

291. *We will keep the positioning of the definitions under review.*

Part 14: Other special types of company etc

Clause 629: Court investment funds

292. Paragraph 2182 of the explanatory notes referred to there being no reference to Scotland in clause 629(4) and our intention to look into this further. The reason why the provision does not cater for Scotland is that there is no equivalent provision for funds held in Scottish courts to be placed in this form of unit trust.

Clause 632: Meaning of “securitisation company”

The fact that section 83 of FA 2005 has a limited life, expiring in January 2017 does not seem to be a particularly good reason not to rewrite it (even if the “rewriting” amounted only to relocating it with the other rewritten provisions on securitisation companies). On that timescale any part of the tax code could be regarded as potentially temporary.

293. Section 83(1)(b) states that it applies to periods of account ending before 1 January 2008. That period has been extended by virtue of the powers in subsection (7A) to periods of account ending before 1 January 2017. However, the extension in SI 2007/3338 is not universal in that it only applies to a subset of securitisation companies.

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294. Regulation 2(1)(a) of SI 2007/3338 provides that the regulation only applies where section 83(1) applies to a company in relation to a period of account ending before 1 January 2008. Section 83 cannot therefore apply to any securitisation companies incorporated after 1 January 2008.

295. Regulation 2(1)(b)(i) of SI 2007/3338 provides that the regulation applies if the securitisation company was party to a capital transfer arrangement or a related transaction before 1 January 2008 and continues to be party to that arrangement or related transaction. If that original capital transfer arrangement ceases sometime after 1 January 2008 then section 83, as extended, will no longer apply.

296. Regulation 2(1)(b)(ii) of SI 2007/3338 provides that the regulation applies to a warehouse company if any of its relevant financial assets were acquired before 1 January 2008. If the company disposes of all of the assets acquired before 1 January 2008 sometime after 1 January 2008 then section 83, as extended, will no longer apply.

297. Regulation 2(3) of SI 2007/3338 provides that the regulation shall not apply if a company elects that it shall not do so. If a company so elects section 83 applies only to periods of account ending before 1 January 2008.

298. Section 83 has a limited life and it does not apply to all securitisation companies. Furthermore section 83 as amended by SI 2007/3338 does not necessarily apply to all securitisation companies to which section 83 originally applied. For these latter companies it is entirely possible that section 83 will cease to have any effect before Bill 6 is enacted. Because section 83 has such a limited application we do not intend to rewrite it.

299. *We do not propose amending the clauses to meet the point.*

Clause 643: Overview

300. The clause originally applied for the purposes of both corporation tax and income tax. We have decided to deal with the income tax aspects in ITA. The clause has been amended so that it now applies for corporation tax purposes only. A signpost to the corresponding section of ITA is provided in *subsection (2)*.

Part 16: Change in company ownership

Clause 677: Disallowance of trading losses: calculation of balancing charges

301. In the draft commentary on this clause, we noted that we were considering the use of the expression “profits or gains” generally in this Bill, and had not yet decided whether it needed to be retained in the provisions which were based on section 768(6) and (7) of ICTA.

302. *This matter is still under consideration.*

Clause 700: Restriction on relief for non-trading loss on intangible fixed assets

One respondent commented that the drafting of clause 700(4) was defective, in that it did not confine the restriction of relief to losses arising before the change of ownership as required by the opening words of section 768E(5) of ICTA.

303. *On reflection, we agree. We have adjusted clause 700 accordingly.*

Part 18: Factoring of income etc

Clause 755: Type 1 finance arrangement defined

304. In the draft commentary on this clause, we noted that, in this Part, we were considering whether to use the expression “firm” to refer collectively to persons who were carrying on a business in partnership, perhaps by applying the meaning given by Part 17 of CTA 2009 (which contains special provisions about partnerships).

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

Clause 759: Type 2 finance arrangement defined

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

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

Clause 763: Type 3 finance arrangement defined

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

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

Part 20: Transactions in land

Clause 818: Company chargeable

One respondent on the draft Bill noted that the draft commentary on clause 818 referred to “HMRC’s interpretation of the territorial scope of section 776 of ICTA, as amended by ITA to apply solely for the purposes of corporation tax”. The respondent took this as implying that HMRC tacitly acknowledged that another interpretation – more favourable to the taxpayer –

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was tenable. The respondent considered that excluding that interpretation was outside the project's remit.

310. No such implication was intended. We have adjusted the commentary accordingly.

311. This Bill does not include a corporation tax equivalent of section 1015 of ITA (territorial scope of charges under certain provisions to which section 1016 of that Act applies). This implies that the territorial scope of the charges under what used to be Schedule D Case VI is different for income tax and corporation tax. A respondent on CC (07) 29 had argued that a corporation tax equivalent of section 1015 of ITA was needed. We summarised the respondent's arguments, and gave our reasons for rejecting them, in the commentary on clause 8 in the response document on CC (07) 29.

312. The response document on CC (07) 29 explained why the rewritten corporation tax legislation does not need a corporation tax equivalent of section 1015 of ITA. Since then, CTA 2009 has expressly defined the territorial scope of the charge to corporation tax: see in particular section 5 of CTA 2009 (territorial scope of charge) and Chapter 4 of Part 1 of CTA 2009 (non-UK resident companies: chargeable profits). The approach taken in the Bill to the territorial scope of corporation tax is the same as that in CTA 2009. No other interpretation of the territorial scope of corporation tax is tenable. Accordingly, the approach taken in the Bill to the territorial scope of the transactions in land legislation does not change the law.

313. *We have not included a corporation tax equivalent of section 1015 of ITA in the Bill.*

Part 21: Sale and lease-back etc

Clause 832: Transferor or associate becomes liable for payment of rent

314. In the draft commentary on this clause, we noted that, although respondents supported Change 53{j603} (Sales and lease-backs: restriction of excessive lease rentals: relationship with accounting practice), one respondent had raised detailed criticisms of the way in which the Change was drafted.

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

316. *We have also reached the conclusion that, although the Change is in principle favourable to some taxpayers, it is in principle adverse to others. As previously explained, however, the Change puts generally accepted practice on a clear statutory footing. We will therefore adjust the Change Note to conclude: "This change is in principle adverse to some taxpayers and favourable to others. But it is expected to have no practical effect as it is in line with generally accepted practice."*

Clause 849: Relief for rent under new lease

317. In the draft commentary on this clause, we noted that the source provision for clause 849(3) referred to “the provisions of this Act [ie ICTA] providing for deductions or allowances by way of tax relief in respect of payments of rent” and that, in rewriting Schedule A for corporation tax purposes, CTA 2009 would consequentially amend ICTA. We therefore noted that we would need to check whether ICTA, as amended, still included any residual provisions about tax relief for rent.

318. We have decided that the reference to ICTA is needed in order to catch section 76 (expenses of insurance companies) and any other provisions of that Act which, by implication, give corporation tax relief for rent.

319. *The clause refers to both ICTA and CTA 2009.*

Part 22: Miscellaneous provisions

Clause 897: Dual resident investing companies

One respondent observed that, unlike clause 897, the source legislation did not expressly refer to the transfer accounting period. As the respondent acknowledged, this is a drafting clarification which does not change the law. The respondent thought, however, that this clarification deserved to be mentioned in the commentary.

320. *We are happy to do so.*

Clause 907: Arrangements for transfer of relief

‘Arrangements’ for the purposes of Chapter 3 of Part 22 is defined in s 907(1) not 908(1).

321. *We agree and will amend the entry in the table in Schedule 4 to the Bill.*

Clause 908: Restrictions on use of reliefs

The references to charges on income will need to be changed in view of the proposed move to “charitable donations relief”.

322. *We agree and have amended the clause.*

Clause 911: Power to surrender tax refund

One respondent pointed out that the commentary on this Chapter did not include the signpost to regulation 9 of the Corporation Tax (Instalment

Payments) 1998¹ which had been promised in the response document on CC (08) 19.

323. *We apologise for this oversight and have corrected it.*

Part 23: Company distributions

Clause 943: Overview of Part

There is no signpost in clause 943 to Chapter 8 (Interpretation of Part).

324. We agree this may be helpful.

325. *We have added a signpost to Chapter 8.*

Part 24: Corporation Tax Acts definitions etc

Clause 1069: The definitions

Q20 We welcome comments on the proposal to refer to “Northern Ireland legislation” in the definition of “Act”.

Q20 With reference to the analysis in Change 6 in Annex 1, it is clearly simpler to now refer to “Northern Ireland legislation” in the definition of “Act” in clause 1069 (The definitions). This term will in consequence now include Acts of the Parliament of Ireland and Orders in Council under section 85 of the Northern Ireland Act 1998, which have hitherto been excluded from the definition of “Act”. Was there any policy reason for this exclusion? If not, we have no objection in principle to the definition of “Act” now being extended through inclusion of the wider coverage within “Northern Ireland legislation”.

326. Two respondents who commented on this question supported the change.

327. Neither of the two categories of statute previously omitted from the references in the definition of “Act” in section 832(1) of ICTA (including the matters added by Schedule 12 to the Northern Ireland Act 1998) had any tax application.

328. “Acts of the Parliament of Ireland” refers to the Parliament which ceased to exist in 1801, prior to the reintroduction of income tax in 1842. Orders in Council under section 85 of the Northern Ireland Act 1998 may only deal with matters mentioned in paragraphs 9 to 17 of Schedule 3 to that Act. That Schedule does not

¹ SI 1998/3175.

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include “excepted” matters, as referred to in section 4(1) of, and dealt with in Schedule 2 to, that Act. Taxation is such an excepted matter.

329. It was therefore unnecessary to include either of these categories in a definition which listed the appropriate categories. Although reliance on the definition of “Northern Ireland legislation” in section 24(5) of the Interpretation Act 1978 adds in theory to the categories of statute relevant to the definition of “Act”, it does not in practice extend the meaning of the definition.

330. *We have retained reference to “Northern Ireland legislation” in the definition of “Act”.*

In the definitions of “retail prices index” should the reference in (a) to ‘the Office for National Statistics’ be to ‘the Statistics Board’ and the reference in (b) to ‘that Office’ be to ‘the Board’ as in the s 989 ITA definition, or has there been a name change?

331. The references used were incorrect; the clause should have mirrored the references in section 989 of ITA.

332. *We have amended the clause to match the references in section 989 of ITA.*

Clause 1104: Scotland

Is it intended to amend s 1008 of ITA (Scotland) to include a reference to the meaning of “mortgage”?

333. The drafters of ITA took a conscious decision not to move the definition of “mortgage” in section 879(1) of ITTOIA into ITA. They considered that it was not clear-cut that the definition was applicable in each place in ITA to which it would have applied if moved. As such, and without new or compelling arguments to the contrary, it would be inappropriate for this Bill to re-open that decision.

334. *We have not provided an amendment of section 1008 of ITA.*

Clause 1105: Sources of income within the charge to corporation tax and income tax

335. This clause was discussed with the corporation tax consultation group. In the light of this and of further research, we have decided that the interpretation of a source of income within the charge to corporation tax in section 834(1) of ICTA is still relevant to corporation tax in this form and so the clause has been retained.

336. *We do not propose to amend the clause.*

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Part 25: Definitions for purposes of Act and final provisions

Part 25: Definitions for purposes of Act and final provisions

Clause 1123: Short title

One respondent thought that there could be confusion between the Corporation Tax Act 2009 (CTA 2009) and the Corporation Tax Act 2010 (CTA 2010), and therefore recommended changing the words in the short title of the Bill.

337. The protocols of Parliamentary drafting will not permit this, because the date is an integral part of the short title and is considered sufficient to distinguish the two Acts. Tax professionals are used to the short titles of Finance Acts being distinguished only by their dates. We have alerted the commercial publishers to the matter.

338. *We have not changed the short title of the Bill.*

Annex

Responses to papers published after the draft Bill

This annex sets out our responses to comments on paper CC/SC (09) 07 which was published after the draft Bill. Though we have not taken on board most of the suggestions made, we are grateful for the comments made as they have resulted in further careful consideration of the clauses concerned.

Charitable donations relief: Paper CC/SC (09) 07

General

Section 403(3) ICTA 1988 provides that excess “charges on income” can be group relieved. Therefore if section 403(3) is not amended/updated to allow group relief in relation to excess “qualifying charitable donations” then group relief will not be available in this respect.

1. This is one of a number of consequential amendments, both in and outside the two Bills, required by the change from “charges on income” to “qualifying charitable donations”. These amendments will all appear in the Bills presented to Parliament.

Clause 1: Charges on income allowed

Subsection (4) of clause 1 is a sweeping-up provision. There is a possible overlap with subsection (5). We also do not need the opening words of subsection (4) “except as otherwise provided” given the application of subsection (5) generally to all the provisions in clause 1.

2. Clause 1(4) is not a sweeping-up provision. It relates specifically to clause 10 in which a gift can be attributable to an earlier accounting period. We therefore need to retain the opening words “except as otherwise provided”. Clause 1(5), on the contrary, is intended to deal with the possibility of exceptions in the whole of the Corporation Tax Acts.

3. ***We do not propose to make the changes suggested.***

There is a contradiction with clauses 1(1) and 2(2). I think what is intended here is that no payment that is otherwise tax deductible for CT purposes can be a qualifying charitable donation. I suggest that this is clarified.

4. This matter is presently under consideration with other interrelated parts of the draft Bill.

5. ***We will be considering what changes, if any are necessary.***

Clause 2: Charges on income: meaning

Subsection (2) of clause 2 might be used as a general introductory statement about where deductions for charitable donations fit in the overall scheme of things.

6. Subsection (2) of clause 2 cannot be used as a general introductory statement. It excludes from deduction as a charitable donation payments which can be classed as deductible for calculating profits for corporation tax purposes. This is to indicate that the payment cannot be deducted twice and that there cannot be a choice as to which deduction is used.

7. ***We do not propose to make the change suggested.***

Clause 3: Qualifying donations

I suggest the legislation defines what is a “payment” here in the interests of clarity and to avoid confusion. For example, I am aware that HMRC have regarded this as meaning a physical transfer of cash from the donor’s bank account to the donee’s bank account, however case law (Coren v Keighley and Lowry v Consolidated African Selection Trust) indicate that the set-off of pre-existing demands are also “payments”.

8. It is not considered necessary or advisable to define the meaning of “payment”. Any case law which concerns the meaning of “payment” will still apply.

9. ***We do not propose to make the change suggested.***

Money is often given to a charity with the restriction of it being spent on a particular activity, and the charity is told that if it spends the money elsewhere then it will have to repay the donation to the donor. This is done to handcuff the charity to ensure the donation is spent in line with the donor’s wishes, and not with any intention of returning value to the donor. I therefore think that the clause is excessively restrictive. I therefore suggest the clause should be amended.

10. ***This suggestion is outside the remit of this project but will be passed to our policy colleagues for consideration.***

Clause 4: Associated acquisition etc

When the changes were introduced in FA 2006 to extend the provisions of section 339(3E) of ICTA 1988 to non-close companies, a payment would not be disqualified as a qualifying payment where taxable profits arise on a disposal of property to a charity, and gift aid payments are made to the charity equal to the company’s taxable profits. We would like the rewrite to be an opportunity to make this explicit.

11. We do not think it necessary to make this point explicit within statute. The rewritten clauses do not, of course, change the law.

12. *We do not propose to make the change suggested.*

Clause 8: Restrictions on associated benefits

In subsection (2) a table would be of use to show the variable limits.

13. A table would be useful if the list of values of benefits were more extensive than three entries. The list concerns gifts of amounts of less than £100, between £100 and £1000 and over £1000. However the benefit is not consistent since it is 25%, £25 or 5%. There seems to be no simpler way of setting out this varying information than in the current clauses.

14. *We do not propose to make the change suggested.*

Clause 9: Gifts and benefits linked to periods of less than 12 months

Could the method statement (Step2) be simplified in some way?

15. This clause mirrors section 419 of ITA 2007 (gifts and benefits linked to periods of less than 12 months). Its purpose is to prevent periods of less than 12 months being used to exploit the cash limits. In the source legislation some of the conditions could overlap so that more than one condition could apply to the gift(s) and associated benefits concerned. This subsection removes doubt about which might take priority by providing a priority rule. It would seem appropriate to retain the same wording as section 419 of ITA 2007 for a similar provision.

16. *We do not propose to make the change suggested.*

Given the very low level of benefits allowed it seems highly unlikely that periods of less than 12 months will be used to exploit cash limits. In the interests of simplification I ask that HMRC consider whether this is really necessary. I am aware of the similar restriction re non-taxable charity fundraising events that allows for up to 15 events of the same type in the same location; but where the accounting period of the charity concerned is less than 12 months the number of non-taxable events is reduced pro-rata.

17. *This suggestion is outside the remit of this project but will be passed to our policy colleagues for their consideration.*

Clause 12: Associated persons

There should be a cross reference here to the meaning of “connected person” elsewhere in the tax legislation.

18. The preferred method of dealing with terms found frequently in statute such as this is to put them in a definitions section, which indicates where the definition is found. This is seen as less cumbersome than directing the reader to the definition every time the term arises.

19. ***We do not propose to make the change suggested.***

Clause 13: Charity

Is it possible to “harmonise” the definition of charity in this clause with that of clause 28?

20. This clause includes Scientific Research Associations (SRAs) whereas clause 28 does not include them. Clause 28, based on section 587(B)(9) of ICTA, has purposefully been left without SRAs qualifying for relief. The separate treatment is deliberate and is to be retained.

21. ***This suggestion is outside the remit of this project but will be passed to our policy colleagues for consideration.***

Can we include here any body registered with the Charity Commission for England and Wales along with the corresponding bodies for Scotland and Northern Ireland? Unifying the meaning of a tax charity with charities regulated by these bodies will help with joined up government and legislation.

22. ***This suggestion is outside the remit of this project but will be passed to our policy colleagues for consideration.***

It would be helpful if this clause specified whether a non-UK charity qualified.

23. We see no reason to change the definition of charity.

24. ***We do not propose to make the change suggested.***

Clause 25: Qualifying interests in land held jointly

There should be an amendment of subsection (7) to read “section 16(2) to (4)” instead of “subsections (2) to (4) of section 16”.

25. ***We agree and an amendment will be made.***

Clause 26: Amount of relief where joint disposal of interest in land

It would be helpful if subsection (5) of clause 26 could be inserted after subsection (2) in order to bring subsections (2) and (5) together to point the way.

26. We appreciate the point that is being made but consider that the present layout will be more helpful to users.

27. ***We do not propose to make the change suggested.***

Clause 27: Disqualifying events

These provisions simply replicate the legislation currently found at section 587C ICTA 1988 and do not amend the existing wording. However the provisions in section 587C(8) to section 587C(8A) (and now found at clause 27(4) to (5)) have restricted us from seeking relief for gifts of real property in group situations due to the “connected person” point. The commentary on the draft legislation indicates that these anti-avoidance provisions may be intended to be narrower than currently drafted, i.e. to prevent a donor obtaining tax relief for a gift of land which is subsequently bought back from the charity at an undervalue, and were not intended to restrict relief in group situations. If this is the case the rewrite may be an opportunity to amend the legislation.

28. The law has not been changed by the rewrite. The example given in the explanatory notes is an example only and is not intended to show comprehensively how the law applies.

29. ***We do not propose to make any amendments.***

Clause 28: Charity

Is it possible to harmonise the definition of charity with that of clause 13?

30. Please see the comments on clause 13.

31. ***This suggestion is outside the remit of this project but will be passed to our policy colleagues for consideration.***