

## **Transactions in land**

### **Introduction**

1. In September 2007 we published Committee Paper CC/SC (07) 29 on the HMRC internet website [www.hmrc.gov.uk/rewrite](http://www.hmrc.gov.uk/rewrite). The closing date for responses was 14 December 2007. The draft clauses rewrite the legislation for transactions in land.

2. The purpose of this response document is to provide details of the substantive technical points made and to explain our analysis and proposals in respect of them. Minor points, such as suggestions to improve punctuation, are not covered but all comments received have been carefully considered. Some respondents made useful suggestions about the explanatory notes. We have not commented on these in every case but we will revisit the explanatory notes with them in mind.

3. Several respondents made 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.

4. A number of minor changes were proposed in the Committee Papers. Where no mention is made of these in this response document, they either received approval or were not mentioned in responses.

5. We received written responses from the following:

- The Chartered Institute of Taxation
- The Confederation of British Industry
- Francis Sandison
- The Institute of Chartered Accountants in England and Wales

6. The following abbreviations for tax legislation are used in this response document:

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

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

## **Clause 8: Person liable**

*One respondent was concerned at the statement in paragraph 23 of the draft commentary that “there is no equivalent in this clause of section 759(8) of ITA, because there is no corporation tax equivalent of section 1015 of that Act, to which section 759(8) of that Act refers.” According to the respondent, (a) section 18 of ICTA contains the corporation tax equivalent of section 1015 of ITA and (b) the territorial limits imposed on corporation tax by section 11 of ICTA need to be underpinned by the more fundamental territorial limits derived from section 18 of that Act and from case law. The respondent therefore considered that the rewritten corporation tax legislation would need to include a corporation tax equivalent of section 1015 of ITA.*

*This respondent also thought that the view on the territorial scope of the transactions in land regime expressed in CC/SC (07) 29 – in a case in which the land was partly within and partly outside the United Kingdom and the taxpayer was non-UK resident – contradicted the view previously expressed in CC/SC (05) 33. In the earlier paper, the project had said that “it could be argued” that the whole of the gain was chargeable (but that in practice HMRC did not take that view); in the later paper, the project declared that, provided the conditions in section 11 of ICTA were met the whole of the gain was chargeable to corporation tax.*

8. We do not agree that the territorial limits imposed on corporation tax by section 11 of ICTA need to be underpinned by section 18 of that Act or by case law on section 18. We consider that section 11 extends the territorial scope of corporation tax: see paragraphs 157 and 158 of the draft commentary on draft Bill 5 published on 22 February 2008. We therefore do not agree that section 18 of ICTA contains the corporation tax equivalent of section 1015 of ITA.

9. There is no contradiction between CC/SC (05) 33 and CC/SC (07) 29. CC/SC (05) 33 only addressed the territorial scope of the transactions in land legislation for the purposes of income tax. CC/SC (07) 29, on the corporation tax provisions of the transactions in land legislation, reflected further research. In particular, as noted in paragraph 27 of that paper, it took account of the analysis of the territorial scope of corporation tax on non-UK resident companies in CC/SC (07) 03.

10. ***We do not propose to include a corporation tax equivalent of section 1015 of ITA in the rewritten legislation.***

**Clause 14: Exemption: gain attributable to period before intention to develop formed**

*One respondent noted that clause 14(3) very much repeated the wording of the final part of section 776(7) of ICTA, but wondered whether it was clear what the effect of this provision was.*

11. The transactions in land legislation is notoriously complex. Clause 14(3) sticks closely to the wording of the source legislation, because of the risk that a more straightforward rendering might inadvertently change the operation of this anti-avoidance provision in ways which would be difficult to predict.

12. *We do not intend to adjust the clause.*

**Clause 16: Recovery of tax where consideration receivable by person not assessed**

*One respondent thought that clause 16(3) should say “all or any part” rather than “any part”.*

13. In clause 16(3), “any part” (rather than “all or any part”) replicates both section 777(8) of ICTA and section 768(3) of ITA.

14. *We do not intend to adjust the clause.*

**Clause 18: Clearance procedure**

*One respondent suggested that the clearance procedures could be reviewed and, in particular, that the responsibility could be transferred to head office.*

15. *We have passed on the respondent’s suggestion to our specialist colleagues.*

**Clause 19: Power to obtain information**

*One respondent queried whether the solicitor exemption in clause 19(6) was limited to the giving of professional advice or whether it extended to a situation where, for example, the solicitor was involved, purely as a professional adviser, in conveying the land. The respondent thought that the latter case should fall within the exemption.*

16. Whether a solicitor’s actions fall within the exemption in clause 19(6) (or its income tax equivalent, section 771(6) of ITA) will depend on the facts of the case.

17. *We do not intend to adjust the clause; we have passed on the respondent’s comment to our specialist colleagues.*