TREASURY

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PART E

1987 FINANCE BILL

FOR DISPOSAL ADVICE SEE INSIDE COVER

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PO -CH /NL/0006
PART E

293.032

a PPS
PMP

CONFIDENTIAL

From : F Cassell
Date : 12 June 1987

SIR PETER MIDDLETON

cc Mr Scholar (without attachment)

FINANCE BILL

I gather that the business managers are pressing hard for deferring much of the Finance Bill to the autumn. You might like to see the attached letter to me from John Isaac - which points out the great difficulties this would cause.

2. You may like this as ammunition if the Chancellor raises this with you.

F CASSELL

CONFIDENTIAL

A J G Isaac CB
Deputy Chairman

THE BOARD ROOM
INLAND REVENUE
SOMERSET HOUSE
LONDON WC2R 1LB

Telephone 01- 438 6604

10 June 1987

Frank Cassell Esq
HM Treasury

Dear Frank,

CONSERVATIVE BRIEFING: FINANCE BILL

I thought that it might be helpful to send you this further note about the prospects for an early Finance Bill, if the present Government is returned to power, in the light of the latest suggestions from the Whips' Office.

As you know, the Chancellor's intention is that all the clauses dropped from the first Finance Bill, plus a few new ones, some 100 in all, should be put in a second Finance Bill to receive the Royal Assent before Parliament rises for the summer recess. However, the Whips have expressed strong doubt whether it would be possible to get a 100-Clause Bill through both Houses of Parliament before the summer recess and have suggested a slower timetable, with at least the initial stages taking place before the recess, but the subsequent stages during the Autumn.

I think we are all well aware of the difficulties which the Whips have identified, and I imagine that the size of the Government's majority could also be relevant. Certainly, none of us is surprised by the Whips' negative reaction. However, we need to be very clear about the consequences of the solution which they propose - under which we might not look for Royal Assent before (perhaps) the second half of November.

First, a number of proposals in the Finance Bill have more or less important timetables of their own. In particular:

i. Personal pensions: the Social Security legislation provides for these to start on 4 January. It is difficult to see how the detailed requirements could be in place by then - guidance notes and forms drafted and printed, instructions drafted for people in the Superannuation Funds Office and people trained accordingly and so forth. Experience demonstrates that there is a limit to the amount of work that can be profitably done on these things before the legislation takes its final shape. Equally importantly, the pensions industry would be unable to gear itself up and

5/161

offer these pensions in that timescale. Postponing the start could be highly embarrassing. The January start is earlier than originally proposed, and was announced in the Budget Speech; another change, this time involving a delay, could be represented as incompetent.

ii. Additional voluntary contributions (AVCs): the present proposal is for these to start from October. That date would have to be postponed. However, by contrast with (i) above, that date is a matter for policy decision, not fixed by legislation.

iii. Profit related pay (PRP): the present proposal is to open for business from August, and this would be in good time for schemes to be registered by businesses taking the calendar year 1988 as their "profit period". (As you know, a scheme has to be registered before the start of the profit period.) For much the same reason as in (i) above - but perhaps a fortiori- this looks unrealistic in practice under an Autumn Finance Bill timetable. The scheme could be operational in time for business which take (say) a March or April accounting date. But the large number of companies with a calendar year accounting date would seem likely to have to wait until 1989.

iv. There is a range of anti-avoidance provisions, which it is proposed should take effect from Budget Day 1987. It may not be essential that these should all be legislated in 1987. However, it is on general principles desirable to minimise the period between the announcement (and effective date) of proposals of this kind and their subsequent legislation; and there would be clear risks of forestalling if they were not made retrospective. Moreover, in relation to the pensions reform measures the justification for the AVC proposals (see item (ii)) was closely tied to the introduction of anti-avoidance measures. It is clearly desirable that this link be kept.

v. By the same token, it is desirable in principle not to leave the provisions for charging capital gains of companies in the air for longer than absolutely necessary.

More generally, there is the pressure of work during the Autumn, which we touched on at Peter Middleton's meeting. As we all know from experience, those involved in the Finance Bill have to give overriding priority to its demands whilst it is passing through the House of Commons. This involves, in particular, Policy and Technical officials in Somerset House, and also the people in Statistics Division here - and, above all, Ministers. I have to say that in my judgment it would be a significant risk for the Chancellor to embark on major tax reforms for the 1988

Budget, at a time when all his supporting Ministers and many of his senior official advisers were inevitably committed elsewhere through much of the Autumn period, when the options need to be evaluated, policy formulated and strategic decisions taken.

I would not want to exaggerate the problem here. Not everyone with the largest work burden in an Autumn Bill would also have the heaviest burden in a 1988 Finance Bill. But for many senior officials - and (as I say) above all for Ministers - the competition for time would be severe, and could be damaging.

There is also the question of public expenditure work for Ministers in the Autumn; but that is for you to judge, not for me.

To sum up, for all the reasons discussed at Peter Middleton's meeting, much the best solution is to push through in a Summer Finance Bill the 100-Clause "rump" of the 1987 legislation - recognising that this would be a period of intense pressure for all concerned.

Very much a second best solution might be to legislate in a Summer Finance Bill the "priority" legislation, to receive Royal Assent before the recess. (To set this in proportion, the PRP and pensions clauses add up to a little over 50, by themselves.) Anything left over would then have to be added to the 1988 Finance Bill, heavy though that may be.

The Whips' preferred solution (with a 100-Clause Finance Bill being tabled in the Summer but dragging through into the Autumn) looks to me like our least preferred approach.

I am sending a copy of this letter to Michael Scholar.

Yours ever

Alan

A J G ISAAC

7

SECRET AND PERSONAL

From: SIR PETER MIDDLETON

Date: 12 June 1987

CHANCELLOR

Papers attached. cc PS/EST
AA 16/6.

THE ERM

... I attach four short notes. One summarises the arguments - you need not spend much time on this. The second deals with the rate and the third with timetable questions. Finally, there is a note on the legal point we discussed before the Election. There is now an overwhelming case for joining quickly at something very close to the present DM rate if we are going to join at all. I hope therefore that it will be at the very top of your agenda for the new Parliament and that we can discuss tactics at the earliest opportunity.

P E MIDDLETON

293.032

cc PPS

CONFIDENTIAL

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cc Mr Scholar (without attachment)

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5/161

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I am sending a copy of this letter to Michael Scholar.

Yours ever

A J G ISAAC

CONFIDENTIAL

A16

TIMETABLE FOR FUTURE FINANCE BILLS

Note by Fiscal Policy Group

1. The Government is committed to re-introducing as soon as possible, with the same effective dates, all the measures which were included in the original 1987 Finance Bill, but which it was not possible to include in the shorter Finance Act passed before the election. About 100 Clauses and 8 Schedules are involved.

2. The scope for including all the measures in a Summer Finance Bill is discussed below. There are strong reasons for legislating on profit-related pay, and on personal pensions, in 1987. Both were singled out in the Manifesto. Together, these two proposals account for about 50 clauses.

3. Delay in the legislation on profit-related pay (PRP) would leave employers hanging in limbo (more than 17,000 have already expressed interest) and could hold up the implementation of PRP.

4. The tax provisions for personal pensions need to be in place for January 1988, when the Social Security legislation providing for personal pensions comes into effect.

5. A 100 Clause Bill would be considerably longer than the post-election Finance Bill in 1983. The timing will be extremely tight if the Bill is to be completed before the Summer Recess. The Chancellor will need to have a very early discussion with the Prime Minister and the Business Managers to establish how the Finance Bill timetable can best be fitted in with other objectives.

6. A Bill incorporating all the measures which had to be left out of the truncated Finance Act, plus clauses on fees and charges, and Klondykers, is well in hand. But there are about half a dozen policy issues on which early Ministerial decisions are needed in order to complete drafting. Submissions on these will be coming forward in the next few days.

7. Subject to the views of the Business Managers, a possible scenario is as follows:

25 June	-	Queen's Speech.
25 June	-	Founding Resolutions for the new Finance Bill tabled.
26 June	-	Founding Resolutions appear on the Order Paper.
2 July	-	Conclusion of Debate on Queen's Speech.
6 July	-	Resolutions taken (without Budget Debate).
7 July	-	Finance Bill published.
13 July	-	Second Reading.
15-23 July	-	Committee Stage.
28 July	-	Report and Third Reading.
29 July	-	House of Lords.

The above timetable does not allow for the normal convention of allowing two week-ends to elapse between the introduction of a Bill and Second Reading.

8. This timetable is very tight indeed. It depends on maximum co-operation, from Government backbenchers as much as from the Opposition. It involves taking the whole Bill in Committee of the Whole House (since a Standing Committee which met only three times scarcely seems a runner), at about 15-20 clauses a day. And it will mean persuading the Prime Minister and the Business Managers to keep both the Commons and Lords in session after all other urgent business has been completed.

9. The Chief Whip's Private Secretary and Parliamentary Counsel very much doubt if the scenario in paragraph 7 is feasible, given the points in paragraph 8. It seems likely that the Business Managers will be pressing for a timetable which would provide for about 3 days of Committee of the Whole House before the Recess, the process being completed when the House reassembles on or about 21 October. This would probably suit the Business Managers, who do not expect to have any pressing business before the major bills are introduced. But it would not be convenient for Treasury Ministers, or for officials, whose autumn will be taken up with the public expenditure round and with work on tax reform proposals for the 1988 Budget.

5 June 1987

1. Alex
2. Ch

EMS

See the attached note by Sir D Hannay of your conversation with Balladur. Any comments before I get this typed up?

OK to copy to PEM, Sir GL, Frank Cassell & Robert Culpin?

OK 15/6

(We will, of course, follow up 'x')

PS/Chancellor of the Exchequer (Confidential to consult the Chancellor about distribution)

E.M.S.

1. M. Balladur approached the Chancellor just before the ECOFIN began and asked whether, now the election was over, the U.K. intended to join the Exchange rate mechanism. The Chancellor replied that there would be an early review of policy in this respect. He would not wish to predict the outcome of the review.

2. M. Balladur said he assumed the U.K., if it did decide to join would be likely to want some changes in the way the EMS worked. The Chancellor nodded. M. Balladur said such changes might be attractive to France; or they might not. He would like to have an opportunity to discuss the matter bilaterally and informally with the Chancellor. The Chancellor said this would be useful. It was agreed that the two Private Offices would be in touch about dates.

3. M Balladur concluded by saying that he was very worried about the prospects for the June European Council. It looked as if both budgetary and agricultural issues were going to be dumped in its lap in an unresolved state.

18/6

RA3.74

CONFIDENTIAL

FROM: A C S ALLAN
DATE: 15 June 1987

SIR P MIDDLETON

cc Mr Cassell
Mr Scholar

FINANCE BILL

You passed the Chancellor a copy of Mr Cassell's minute of 12 June, and the letter from John Isaac.

2. The Chancellor feels it is essential that we get the No.2 Finance Bill on the statute book by the Summer recess. Given the Government's very large majority, and the demoralized state of the Opposition, he feels that the timetable suggested in paragraph 7 of Mr Scholar's brief (A16: Timetable for future Finance Bills) seems perfectly feasible.

ACSA

A C S ALLAN

Suggest
margins of
Ecofin,
à deux.

Ch

At ECOFIN, Balladur suggested a bilateral with you, to discuss EMS. His office have not yet been in touch. Before I chase them, can you confirm you want this before the holidays?

Any preference as to venue? The options are

— in London
— in Paris (and it is in a sense Balladur's turn, since you gave him lunch here in 1986)
— in the margins of the July ECOFIN if you

both go (this has the advantage of not requiring an extra journey; but Sir G Littler wd not normally be at ECOFIN, and it might be hard to keep Sir D Hannay out).

26/6

1. Tony (see ideas)
2. Back to me.

(AT 4.00 PM)

Ch

(I don't see any problems about going ahead a limited consultation).

David Norgrove says PM's view is that any review should be delayed until the Autumn (not clear why, except delaying tactics). David V keen that you should discuss bilaterally with PM soon: I imagine he's worried about you lobbying other Ministers

AA

EMS

ps3/49K

SECRET

b/f 29/6 pl ('phone Paris)

FROM: A W KUCZYS
DATE: 16 June 1987

SIR G LITTLER

cc Sir P Middleton
Mr Cassell
Mr Culpin

EMS

... I attach a note by Sir D Hannay of a conversation between the Chancellor and M. Balladur at yesterday's ECOFIN.

A W KUCZYS

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FINANCE BILL TIMETABLE

BNM7

CONFIDENTIAL

FROM: MISS C E C SINCLAIR
DATE: 16 JUNE 1987

CHANCELLOR OF THE EXCHEQUER

cc PS/Chief Secretary
PS/Financial Secretary
Mr Scholar
Mr Dyer
Miss Evans
Mr C Jenkins - Parliamentary Counsel
Mr Johns - IR
Mr Wilmott - C&E

FINANCE BILL TIMETABLE

You will be discussing this with the Prime Minister tomorrow.

2. Attached at Annex A is a possible timetable for a Bill including all the clauses left over from the original 1987 Finance Bill. It would be essential to take Committee Stage on the floor of the House because of the time needed to set up a Standing Committee.

3. Depending on the views of the Business Managers, Mr Dyer and I think that up to six days might be shaved off this timetable, so that the Bill completed its Parliamentary Stages by 23 July. This would involve bringing forward Second Reading to 9 July, justifying the two day gap between publication of the Bill and Second Reading (the normal convention is two weekends) on the grounds that the Bill had, in essence, been published last April. Driving through 25 clauses a day, Committee Stage might be completed on 16 July, Report and Third Reading on 22 July and the House of Lords on 23 July.

4. Such a timetable would avoid Committee sitting on Fridays, which would be unpopular with your own backbenchers, and would leave Fridays free for amendments to be tabled. But it would require a very smooth passage for all the clauses some of which - for example, CGT on policyholders' gains of life companies, and tax credit relief for banks - will be controversial with your own supporters.

5. The following are arguments for getting all the clauses left over from the last Budget out of the way before the Summer Recess:

(i) First is your tax strategy: you and your Ministerial colleagues will want to be free to concentrate on this during the autumn. If the left-over issues are not

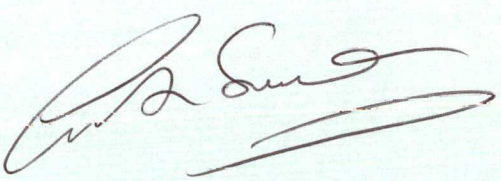
disposed of by the Summer Recess, Treasury Ministers would either have to pilot Finance Bill legislation through the House at the same time as planning tax reform; or the 1988 Bill would be enormous and the impact of your reform proposals would be blunted.

(ii) There would be delay to important initiatives if the necessary Finance Bill legislation were not in place by August. Personal pensions are due to start on 1 January and free-standing AVCs are due to start in October. In the case of personal pensions the industry might not be able to gear itself to 1 January start if the final details of the legislation were not known until, say, October/November. The effective take-up of profit-related pay in 1988 might be halved.

(iii) Taxpayers would be left in uncertainty. The Government has already announced that all the Budget measures will be reintroduced with the same effective dates: it will look indecisive if months elapse before legislation is in place.

(iv) There is a particular problem with the proposed change in the taxation of companies' capital gains. These are charged to corporation tax, which is an annual tax. Because of this, if there is no legislation, the legal basis for the Revenue to make assessments will be in doubt. Companies will not know where they stand.

5. I attach at Annex B a note on what happened in 1979 and 1983.



MISS C E C SINCLAIR

ANNEX A

25 June	-	Queen's Speech.
25 June	-	Founding Resolutions for the new Finance Bill tabled.
26 June	-	Founding Resolutions appear on the Order Paper.
2 July	-	Conclusion of Debate on Queen's Speech.
6 July	-	Resolutions taken (with maximum 3 hour debate encompassing all Resolutions).
7 July	-	Finance Bill published.
13 July	-	Second Reading.
15-23 July	-	Committee Stage.
28 July	-	Report and Third Reading.
29 July	-	House of Lords.

Recent precedents

In 1979 the election was on 3 May. Parliament was dissolved on 7 April. The first Finance Act 1979 was only 2 pages long, and completed its passage through the Commons in two days (3 and 4 April). The Finance (No 2) Act 1979 was 22 pages only. It followed a Budget Statement by the new incoming government on 12 June, and had completed its Commons stage by 18 July.

2. In 1983 the election was on 9 June. Parliament was dissolved on 13 May. The first Finance Act was 79 pages long and completed its Commons stages by 11 May. (The Commons stages following the announcement of the Election took two days.) The Finance (No 2) Act 1983 was no more than 15 pages; most of the further material which might have been included was held over until 1984 and there was no second Budget Statement. The second Finance Act got through its Commons stages by 14 July.

Ch

When you spoke to Alex last night, you were sceptical about the ~~the~~ slow timetable for introduction of the Finance Bill. Para. 2 of Michael Scholar's note immediately below briefly explains the reasoning behind this — which is based on advice from the Whips' Office.

We will have CST's views, as requested, on whether a tighter timetable is possible, in time for Cabinet.

DWK
17/6

5-15

CONFIDENTIAL

FROM: M C SCHOLAR
DATE: 17 JUNE 1987

CHANCELLOR OF THE EXCHEQUER

cc Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Sir Peter Middleton
Sir Terence Burns
Mr Cassell
Mr Monck
Mr Culpin
Miss O'Mara
Mr Dyer
Miss Evans
Mr C Jenkins - Parliamentary Counsel

PS/IR
Mr Johns - IR
PS/C&E
Mr Wilmott - C&E

FINANCE BILL

Miss Sinclair's note of yesterday (with you) set out a timetable for getting all the changes left over from the 1987 Finance Bill through by 23 July. This note discusses, as you have requested, the fall back options if the Prime Minister is set upon ending the sitting by 17 July. There are 3 options:

John Isaac's "2nd best" solution

(i) completing by 17 July all stages of a minimum second Finance Bill comprising the most essential clauses, and holding over the rest to the 1988 Finance Bill;

(ii) retaining all the clauses of the second Finance Bill, taking them as far as possible by 17 July and completing the remaining stages in October/November;

for you Mr Chancellor

(iii) no second Finance Bill at all, holding all clauses until later. This option - included only for the sake of completeness - will, I imagine, have no supporters and is not further discussed.

MINIMUM BILL TO BE COMPLETED BY 17 JULY

2. The timetable would have to be very tight (see Annex A). We are assuming that the Founding Resolutions could not be taken before Monday 6 July (because to take them straight after the conclusion of the Queen's Speech, or on a Friday, would not be viable in Parliamentary terms), so that the earliest date for publication of the Bill would be Tuesday 7 July. Given that there have been some changes to the Bill, it seems necessary to give the House some time to digest it before Second Reading; and there has to be a day or so between Second Reading and Committee to avoid starring all the amendments (including any Government amendments). Committee of the Whole House could scarcely therefore begin before Monday 13 July, and would need to be completed, with Report (if there were any amendments) and Third Reading by close on Wednesday 15 July, to give time for the Lords and Royal Assent in that week.

3. I attach (Annex B) a list of the clauses which we recommend should be included in a shortened Bill. We are suggesting that the Bill would comprise only the clauses on profit-related pay (at present 16 clauses and 1 Schedule, ie 14 pages) and personal pensions (37 clauses and one Schedule, ie 18 pages); together, possibly, with the clause on AVCs (two lines and one Schedule, ie 5 pages) and probably also on companies' capital gains (three clauses and one Schedule, ie 6-7 pages). Our reasons for suggesting these clauses are as follows.

4. The PRP clauses are an irreducible group. If the legislation is not in place by July most employers with a calendar year accounting period will not be able to get schemes up and running for 1988. The Revenue estimate that take up in 1988-89 might be roughly halved. This would be disappointing, and embarrassing. These clauses should be relatively uncontroversial but we cannot rule out that some new Opposition members might decide to attack the whole scheme, and there may be more general protest at the exclusion of the public sector from the scheme.

5. On personal pensions we recommend including the clauses needed to enable pensions funds to set up the new personal pension schemes

by the beginning of January. The Government has already taken credit for advancing the start date and it would be embarrassing now to defer it. Within the kind of timetable we are facing we imagine you would decide to postpone all the anti-exploitation measures on pensions to the 1988 Finance Bill thus splitting the balanced package which we presented in the Budget. Without these anti-exploitation measures we think that the pensions clauses would be fairly uncontroversial although there could well be demands from both sides of the House to improve the scheme. We imagine that you would think it worth getting the AVCs clause through in order to meet the October start date.

6. The third element of a minimum Bill might be Clauses 70-73 plus Schedule 5 ((6-7 pages) providing the general rules on companies' chargeable capital gains (with, presumably, the concession for Life Companies recommended by the Financial Secretary). Without this clause the Revenue would have no basis this year for making assessments of gains of companies with year-ends after 31 March 1987. To postpone this clause would create uncertainty for companies, who have been told that the new regime runs from Budget Day; and it would be poor administration all round.

7. All other elements in the original Bill - eg tax credit-relief for banks, dual resident companies, Lloyd's, pensions anti-exploitation, pay and file, miscellaneous stamp duty reserve tax, IHT and oil measures - would have to be postponed. This would be messy, and, again, poor administration, given that we have said that most of these measures run from Budget Day. It would leave getting on for 50 pages (about 45 clauses) to be added, perhaps unmanageably, to what is likely to be a very large 1988 Bill. Because we would have to postpone the more controversial measures most of those in the shortened Bill would tend to be reliefs of one kind or another: so the measures held over would tend to be unpopular and would unbalance the 1988 Bill.

8. In the case of Lloyd's, omission from the Bill could take the pressure off Lloyd's to reach a sensible compromise; on the other hand, inclusion in the Bill would introduce much controversy unless Lloyd's settled quickly.

RETAIN COMPLETE BILL: DELAY PASSAGE TO OCTOBER/NOVEMBER 1988

9. The argument in favour of the second option is that the whole Bill would be out of the way before the 1988 Finance Bill. The arguments against are:

(i) the start dates for PRP and personal pensions would almost certainly have to be delayed;

(ii) it may prove difficult to get through the Committee Stage quickly in October/November - there will be no urgent deadline so much more scope for pressure groups and so on;

(iii) Ministers and officials would be heavily distracted from work on the 1988 Budget. We think that this would put the 1988 Budget preparations dangerously at risk.

RECOMMENDATION

10. If we are forced to a 17 July deadline we recommend that you go for a shortened Bill, as in Annex B, postponing the rest until 1988.

D. Gra

pp M C SCHOLAR

ANNEX A

TIMETABLE FOR MINIMUM FINANCE BILL TO BE COMPLETED BY 17 JULY

Thursday 25 June	-	Queen's Speech
Monday 29 June	-	Founding resolutions for the new Finance Bill table
Tuesday 30 June	-	Founding Resolutions appear on Order Paper
Thursday 2 July	-	Conclusion of debate on Queen's Speech
Monday 6 July	-	Resolutions taken (with maximum 3 hour debate encompassing all Resolutions)
Tuesday 7 July	-	Finance Bill published
Thursday 9 July	-	Second Reading
Monday 13 July) Tuesday 14 July) Wednesay 15 July)	-	Committee Stage, Report and Third Reading
Thursday 16 July	-	House of Lords

ANNEX B

COMPONENTS OF A MINIMUM FINANCE BILL TO COMPLETE ITS PASSAGE BY 17 JULY

		Length: 40-45 pages	Clauses
	i.	Profit-related pay	: Clauses 1-16 + Schedule 1
	ii.	Personal pensions	: Clauses 17-54 + Schedule 2
	iii.	Freestanding AVCs	: Clause 55 plus part of Schedule 3
if possible	iv.	Companies' capital gains	: Clauses 70-73 plus Schedule 5

001/3291

CONFIDENTIAL

FROM: CHIEF SECRETARY
DATE: 18 June 1987

CHANCELLOR

FINANCE BILL

I have looked carefully at the timetable for:

(a) the full Finance Bill;

(b) the shortened version proposed by Mr Scholar.

2 I am afraid that I agree with Mr Scholar that the 'minimum' Bill could not be completed before 15 July (assuming the Lords approved it on the evening Third Reading is passed) or, more probably, on 16 July. Even this timetable depends on Opposition co-operation (or collapse!) and the presumption that our backbenchers are helpful.

3 A'full' Bill could take 2, perhaps 3, more Committee days -say Thursday, 16 July, Monday, 20 July, Tuesday, 21 July - with Royal Assent on Tuesday, 21 July or Wednesday, 22 July. This is one week quicker than Miss Sinclair's original proposal.

4 These timetables are very swift and open to risk. The Business Manager would need to either:

(a) negotiate a deal or;

(b) threaten to keep the House sitting until Royal Assent is obtained.

JOHN MAJOR

Ch

Do you still want a meeting this week, or is this overtaken by the agreement now reached to re-introduce the whole Bill?

22/6

RT4.57 UNCLASSIFIED

FROM: A W KUCZYS
DATE: 22 June 1987

MISS C EVANS

cc PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Cassell
Mr Scholar
Mr Dyer
Mr Jenkins -Parly. Counsel
Mr Johns - IR
Mr Wilmott - C&E

FINANCE BILL

The Chancellor would be grateful for a note setting out the new Finance Bill timetable, assuming Resolutions on 2 July, Bill published on 3 July, and Second Reading on 6 July.

A W KUCZYS

Inland Revenue

Policy Division
Somerset House

FROM: J H REED
DATE: 22 JUNE 1987

1. MR McGIVERN Approved in draft JHR 22/6

2. FINANCIAL SECRETARY

LETTER FROM THE INSTITUTE OF TAXATION
CLAUSE 40 OF THE FINANCE BILL

Clause 40 of the Spring Finance Bill would have overturned the decision in the Lansing Bagnall case by making close company apportionments obligatory, instead of being dependent upon the unfettered discretion of the tax Inspector. The Institute of Taxation wrote to the former Chief Secretary on 21 April expressing their concern over the possible implications for close companies should Clause 40 be enacted in its present form. Ministers subsequently decided to drop the clause from the Bill and authorised us to speak to the Institute about the problems and possible solutions. We have now done this.

Effect of Clause 40

2. As Mr MacGregor explained in his letter of 12 May to the Institute, we did not expect Clause 40 to cause the apportionment legislation to be applied differently from the way it had been applied before the Lansing Bagnall decision. And we were not aware that it had then given rise to significant difficulties. But it is now clear that the Institute think that there are some problem areas in the

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cc PPS
Chief Secretary
Economic Secretary
Minister of State
Miss Sinclair
Mr Cropper
Mr Tyrie
Mr Ross Goobey
Mr Graham (OPC)
Mr Painter
Mr McGivern
Mr Beighton
Mr Cleave
Mr Johnston
Mr Campbell
Mr Whitear
Mr Bates
Mr Gordon
Mr Reed
Mr Huffer
PS/IR

legislation. They fear that the Lansing Bagnall case, and the enactment of Clause 40, might increase Inspectors' awareness of the apportionment legislation, leading to it being applied more often and thereby increasing the practical difficulties. There may be something in this but if there is we think that this increase in awareness will already have happened as a result of the Lansing Bagnall case and the issue of the Board's guidelines. We would not expect the enactment of clause to make any difference in this respect.

THE INSTITUTE'S CONCERNS

3. Most of their concerns relate to one aspect of apportionment. This provides for the apportionment to the "participators" (broadly speaking, the shareholders) of a close company of any interest paid by the company, subject to certain exceptions. The amount of this apportioned interest is then taxed as income in the hands of the participator. The purpose of this is to prevent an investor getting tax relief for interest paid to finance investments (which is not generally eligible for tax relief) by borrowing and investing through a close company (which does generally get tax relief for the interest it pays).

4. Of course, an individual can get interest relief if the borrowings are to finance trading activities, or property investment in the UK, and so there are some exclusions to prevent apportionment applying where the company is carrying on this sort of activity. The main ones are that apportionment does not apply to a company if -

a. it is a trading company, or

b. it is a member of a trading group, or

c. if more than 75 per cent of its income comes from

i. a trade, or

ii. property (if the income is taxable in the UK), or

iii. UK resident subsidiary companies which themselves fall within a., b. or c..

"A member of a trading group"

5. The Institute think that the definition of "a member of a trading group" (b. above) is too narrow. They say that a company does not fall within it if it has a single dormant subsidiary or a single property investment subsidiary, even though it exists mainly to co-ordinate the trading activities of the group. We accept that the meaning of the legislation is not entirely clear on this point and that the Institute's interpretation is tenable. But it has long been our practice to interpret the definition in a different way, so that a company will pass the test if it exists mainly for the purpose of co-ordinating the trading activities of the group, irrespective of how many non-trading subsidiaries it has. Our Solicitor's office has confirmed that this interpretation is also tenable. We have now explained this to the Institute. They are satisfied with this practice but would like it to become more widely known. We therefore propose to issue a Statement of Practice setting out our interpretation - we shall send you a draft for your approval in due course.

6. The Institute have told us that knowledge of this practice weakens some of their concerns about apportionment but that some problems remain - we draw attention below to the ones they have emphasised.

Income from overseas subsidiaries

7. The Institute say that income from overseas subsidiaries should not be treated as non-qualifying income in applying the test in paragraph 4.c. above - it should either be treated as qualifying income or disregarded. They say that

the existing rule discriminates against overseas subsidiaries. This is one of the problem areas which they have emphasised.

8. If the overseas subsidiaries trade, this discrimination will not usually matter in practice because the company or companies paying the interest are likely to be excluded from apportionment as being members of a trading group (see paragraph 4.b. above). If the overseas subsidiaries invest in property, the existing rules may result in apportionment which would not occur if the subsidiaries were UK resident. So, for example, a UK property investment group will not have any interest payments apportioned while a foreign investment group, with a UK parent, will be liable to apportionment on any interest paid by the UK parent.

9. However, this discrimination between UK resident and overseas subsidiaries can be justified. First, a UK resident individual who invests in property can only get relief for interest if the property is in the UK (or Ireland). Since the reason for apportioning interest paid by a company is to prevent an individual gaining a tax advantage by investing (and borrowing) through a close company (see paragraph 3 above), there is therefore some logic in discriminating between UK resident and overseas subsidiaries. Of course, the overseas subsidiary might invest in UK property and vice versa, but the present discrimination provides a straightforward rule which is easy to apply and should usually produce a fair result.

10. Second, a UK resident subsidiary will be liable to UK tax on its profits while an overseas subsidiary will not. So if the overseas subsidiary retains its profits, instead of passing them on to the UK parent, they will not usually be liable to UK tax, while if the UK parent borrowed to provide finance for the overseas subsidiary it will get tax relief for the interest paid (which can be set against the profits of the UK parent or any UK subsidiaries). There is therefore a good case for apportioning this interest to prevent the

participators gaining an advantage through using their company to borrow for overseas investment instead of UK investment.

11. All in all, we think that the balance of the arguments lies against changing the existing law.

Multiple apportionment

12. Where a parent company borrows money and lends it on to a UK resident subsidiary it is in theory possible for there to be double apportionment. The interest paid by the subsidiary to its parent can be apportioned to the parent and this, together with the interest paid by the parent, can be apportioned to the participators in the parent company. For example, suppose that the parent borrows £100,000 and pays 10 per cent interest. It on-lends the money to a subsidiary at the same rate of interest. The annual interest of £10,000 paid by the subsidiary could be apportioned from the subsidiary to the parent and this amount, and the £10,000 interest paid by the parent, could be apportioned to the parent's participators. So they would be liable to the higher rates of income tax on a total of £20,000 even though the group had paid interest of only £10,000 (and if the subsidiary on-lent the money to another subsidiary there could be a third level of apportionment, making £30,000 overall). This could not be justified and the Institute have asked for it to be prevented by a change in the legislation. This is the other problem area which they have emphasised.

13. In principle, there is clearly a case for this. But in practice we have never seen a case of multiple apportionment. This is not surprising. We would normally expect the subsidiary to which the money was on-lent to fall within one of the exclusions listed in paragraph 4. And even if there is a subsidiary which is a holding company and so does not fall within these exclusions, it is easy to avoid the double apportionment by on-lending the money directly to the company which will make use of it. The Institute accept that this can be done but say that this is a trap for the unwary, and

even the well-advised may have to arrange their affairs in a way they would not do if tax was not a consideration. Clearly there is something in both these points, although we doubt that this point causes much difficulty in practice.

14. Looked at in isolation, we would not recommend legislation to prevent multiple apportionment, because we think the point is more theoretical than real. However, if you wish to give something to the Institute in recognition of their concerns, an amendment to the legislation to prevent multiple apportionment in straightforward cases would be relatively simple and would do no harm. It would still be possible to think of cases in which multiple apportionment could happen but it would require very long and complicated legislation to prevent this in all cases. The Institute recognises the difficulty and would accept a more limited measure.

Interest which does not give rise to tax relief

15. In some cases a company does not get tax relief for its interest payments (for example, interest paid by an investment company on short-term borrowings from a non-bank does not normally qualify for tax relief). And in others, while the interest will be eligible for tax relief the company will not get effective relief at the time because it does not have any taxable profits. The Institute say that in both instances the interest should not be apportioned to the participators since the company gets no tax relief and therefore the participators are not getting a tax advantage by borrowing through a close company.

16. We think this argument is sound if the interest is not eligible for tax relief, although we are not aware that the point causes difficulties in practice (the Institute say they know of one case where this situation "almost" happened). As for the previous point, we do not see a strong enough case here to justify amending the legislation to prevent apportionment, but it would be easy to do this if you want to concede something to the Institute.

17. However, we recommend against changing the legislation to prevent apportionment where the interest is eligible for tax relief but there are insufficient profits to make use of this immediately. In this case relief can be given against future profits and if this happened the participators would gain an advantage if the interest were not apportioned (and the company might rearrange its affairs to maximise the advantage). It would not be easy to devise rules to make apportionment dependent upon whether tax relief was eventually given for the interest and so we recommend against any change in the legislation in this case.

Publicly quoted debt

18. The Institute say that interest paid on publicly quoted debt should not be apportioned. They say that this would not give rise to an advantage for the participators because this sort of debt is not available to an individual. While this last point may well be true we do not see that it is relevant. The point is that if the interest were not apportioned the participators would gain an advantage over individuals who borrowed directly (whatever form the borrowings took). So we do not see any case for excluding such interest from apportionment.

Interest and dividends received from subsidiaries

19. This point is not about the apportionment of interest payments: it concerns the apportionment of the investment income of a close company. An example will illustrate the point. If a close company carries on a trade its trading income is exempt from apportionment. But suppose the trade is carried on by a subsidiary and the parent company is a holding company. If the subsidiary pay interest or dividends to the parent company this is liable to be apportioned to the participators in the parent company (subject to various exclusions), even though the interest or dividends may have been paid exclusively out of the trading income of the

subsidiary. In this case, the company which chose to trade through a subsidiary, instead of directly, is put at a disadvantage. The Institute say that in these circumstances the interest or dividends should not be liable to apportionment.

20. This point is a familiar one, which is raised with us year after year. In principle, there is a case for changing the legislation. But this would be difficult. There would need to be arbitrary and complicated rules to determine whether the interest or dividends had been paid out of trading income or out of other income or capital gains, and these would have to deal with the case where the subsidiary itself had subsidiaries. In the past we have asked for evidence that this point causes difficulties in practice but so far this has not been supplied. So our present view is that the case for amending the legislation has not been adequately made out.

REINTRODUCTION OF CLAUSE 40

21. The Institute's concerns all relate to the existing legislation and would not be directly affected by Clause 40 - it would not be right to use the existing discretion, which would be removed by Clause 40, to override the clear wording of the legislation. So we see no reason why the Institute's worries should prevent Clause 40 being reintroduced.

AMENDMENTS TO THE EXISTING LEGISLATION

22. Nevertheless, we accept that the Institute has made some valid points about the existing legislation and in principle there is a case for making some amendments. Since we are not aware of significant practical difficulties arising out of the existing legislation, we do not think the case for making these amendments is strong. But they would be harmless and would show the Government to be responsive to representations about technical anomalies. So we do not recommend

against making some amendments if you wish to. The ones we have in mind are:

i. the prevention of multiple apportionment of interest payments (paragraphs 12-14 above); and

ii. excluding from apportionment any interest payments for which the company cannot get tax relief (paragraphs 15 and 16 above).

23. We doubt that it would be possible to introduce the amendments in the Summer Finance Bill, for which the timetable is extremely tight, and so we recommend that any amendments should be considered for next year's Finance Bill. Although we would not expect the necessary legislation to be long or complicated, it seems inevitable, given the pressures on Finance Bill space, that including these amendments in next year's Finance Bill would displace other desirable legislation. You may therefore prefer not to make a firm decision about these possible amendments in advance of consideration of Finance Bill starters generally.

24. We do not see any real difficulty in reintroducing Clause 40 in the Summer Finance Bill but deferring any amendments to the existing legislation until next year's Finance Bill. You might however wish to let the Institute know that the Government will consider (but without commitment) some possible changes to the apportionment legislation in next year's Finance Bill.

CONCLUSION

25. We recommend including Clause 40 as it stands in the Summer Finance Bill. We recommend against including any other changes to the apportionment legislation. But we propose to publish a Statement of Practice about our interpretation of the phrase "a member of a trading group" (see paragraph 5 above). If you wish to make a positive

response to the Institute's representations we suggest that you tell them that you will be considering these in the run-up to next year's Finance Bill (we can provide a draft letter) and, if you wish, we shall bring forward a Finance Bill starter for the two amendments we have in mind (see paragraph 22 above). Are you content with these proposals?

J H REED

RT4.57 UNCLASSIFIED

FROM: A W KUCZYS
DATE: 22 June 1987

MISS C EVANS

cc PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Cassell
Mr Scholar
Mr Dyer
Mr Jenkins -Parly. Counsel
Mr Johns - IR
Mr Wilmott - C&E

FINANCE BILL

The Chancellor would be grateful for a note setting out the new Finance Bill timetable, assuming Resolutions on 2 July, Bill published on 3 July, and Second Reading on 6 July.

A W KUCZYS

3369/01

CONFIDENTIAL

1 Tony
2 Alex

FROM: J J HEYWOOD
DATE: 22 June 1987

PS/CHIEF SECRETARY

cc PS/Chancellor
PS/Paymaster General
PS/Economic Secretary
Sir P Middleton
Mr Cassell
Mr A Wilson
Mr Scholar
Mr Culpin
Mr Dyer
Miss Evans
Mr Jenkins OPC
Mr Corlett IR
Mr Houghton IR
Mr McGivern IR
Mr Johns IR
PS/IR
PS/C&E

PS/FST to PS/CST 22/6

FINANCE BILL

1. The Financial Secretary has seen Mr Scholar's useful minute of today.

2. He notes that in addition to the amendments to certain of the pre-election Finance Bill clauses (which must be ready for the new Bill as published), the following new clauses are envisaged:

(i)	PRP	: possibly one or two additional clauses
(ii)	CGT	: one new clause on building society shares
(iii)	IHT	: one clause extending the 1987 Acceptance in lieu provision
(iv)	Stamp Duty	: two new clauses
(v)	Oil	: two new clauses
(vi)	BES	: one new relieving clause
(vii)	Fees and Charges	: one new clause
(viii)	Klondykers	: one new clause.

As a result of the extremely tight timetable for the new Bill, the Financial Secretary has decided that there should be no new clauses unless they are absolutely essential and, any that are included should be in the Finance Bill as published on 3 July.

4. The Financial Secretary presumes that the Chief Secretary will have no objection to the dropping of the Fees and Charges clause. He would welcome the Paymaster General's advice on whether any new PRP clauses are essential, and the Economic Secretary's views on the new oil clauses.

5. Of the other new clauses set out in paragraph 2 above, the Financial Secretary is content to see (ii) included. He sees no case for including (iii), (iv) and (vi). On Klondykers, the Financial Secretary would value the comments of his Ministerial colleagues.

JEREMY HEYWOOD
Private Secretary

5-25

CONFIDENTIAL

FROM: M C SCHOLAR
DATE: 22 JUNE 1987

FINANCIAL SECRETARY

cc Chancellor of the Exchequer
Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Sir Peter Middleton
Sir Terence Burns
Mr Cassell
Mr Monck
Mr Culpin
Miss O'Mara
Mr Dyer
Miss Evans
Mr C Jenkins - Parliamentary Counsel
PS/IR
Mr Johns - IR
PS/C&E
Mr Wilmott - C&E

I agree with first conclusions (it starts in June X) in

Ch
'X' is the timetable you asked for
AWK 22/6
(doesn't yet take a Lord Wednesday for resolutions)

FINANCE BILL

You and the Chief Secretary are to meet Mr Gould and Mr Blair within the next day or so to discuss the handling of the Finance Bill. You asked for briefing on

(a) the Founding Resolutions which we envisage will be tabled on 25 June;

(b) a list, at Annex A, of the clauses in the Bill which could fairly be described as 'anti-avoidance';

(c) the scope for a possible deal with the Opposition.

2. This note also discusses, as requested by the Chancellor, the feasibility - if this should prove unavoidable - of delaying the Lords stages of the Bill, and Royal Assent, until October. A timetable for the Bill based on the assumption that all stages (Lords and Commons) are completed by 23 July is attached at Annex B. X

3. I attach a copy of the latest print of the Bill (27 May).
(top copy only)

SCHOLAR TO FST 22/6

Founding Resolutions

4. Normally the Finance Bill is introduced on the basis of a General Amendment of the Law Resolution (GALR) which brings in order all relieving or neutral provisions together with specific Resolutions for clauses not covered by the General Resolution ie clauses which increase taxes or impose a new tax. The alternative to a GALR is to have specific Resolutions covering all subjects actually dealt with in the Bill. We recommend introducing the Bill with specific Resolutions rather than a GALR, to cut down the scope for Opposition new clauses as the Bill proceeds. The disadvantage with specific Resolutions is that if the Government wished to move amendments outside the scope of the Resolutions it would need to table late additional Resolutions, but this seems unlikely this year to be a problem. Relying on specific Resolutions is likely, we understand, to make little difference to the scope of the debate on the Resolutions themselves, which is likely to be allowed to go wide, although in theory it will be based on the first Resolution (there can be no debate on the others though they can be divided on). I attach, at Annex C, for convenience, the specific Resolutions which have so far been drafted; the rest should be available later on today.

Negotiations with the Opposition

5. In discussion with Mr Gould and Mr Blair it may be necessary to make some concessions. But the provisions left over for legislation in the post election bill are, by and large, either measures which are very important to the Government's strategy (such as PRP and personal pensions) or ones which the Opposition would approve of rather than the reverse (such as the various loophole-closing measures). So there is not much scope for concession to sweeten the progress of the Bill.

6. One possible group of clauses for deferment is the Taxes Management Provisions in Clauses 77-91 and Schedule 6. We would suggest retention of Clause 88 which tightens up PAYE and collection arrangements and will yield £50 million next year (and which the Opposition would not want to see dropped). Most of the rest relates

to Pay and File which does not come into force before 1992 at the earliest. However, the Opposition have no reason to want to see this dropped so the only advantage of doing so would be to save length. If you were to drop it this year it would need to be included in Finance Bill 1988 if the earliest practicable implementation date of these reforms is to be kept open.

7. Another candidate, which I imagine you would be less keen to drop, is Clause 55 and Schedule 3 (about 4½ pages) on pensions: it is a combination of the measures needed for AVC's and the anti-exploitation measures. The Opposition will presumably support the latter but oppose the former. The pension funds have been slow to react to these measures and would be likely generally to welcome more time than given by the announced October start-date.

Royal Assent in October

8. The Chancellor asked us to consider with the Revenue the practical implications of delaying Royal Assent until October. We do not think the problems would be insuperable: the effect on the main measures would be likely to be as follows:

(a) Profit related pay

Schemes could not be registered formally until Royal Assent gave statutory basis for registration. However it would be possible for the PRP Office to issue guidance notes and enter into correspondence with companies on the basis of informal applications in advance of Royal Assent. However the Revenue believe that to enable them to carry out these advance preparations there would need to be a Ministerial announcement (cleared with the House Authorities) and probably also one in the Lords, explaining what the PRP Office was doing. It might otherwise upset the Lords by appearing to anticipate the Parliamentary process. The practical effect of delaying Assent would be that companies whose profit year starts between July and October would not be able to give tax relief on profit years, starting in 1987, since there has to be formal registration in advance of the first profit

year in respect of which tax relief is given. However we believe that relatively few companies fall into this category so there would be no need to revise the FSBR forecast of take up in 1988-89.

(b) Pensions (clauses 17-54) and AVCs (clause 55)

Delaying Royal Assent until October should not delay the start of personal pensions - though it would cause the pensions industry to complain even more about the shortage of time to prepare their product. But draft regulations and guidance notes would have to be issued (and consultations would need to begin in August or September) so as to allow the industry to plan on a firm basis. Following Royal Assent, formalities would have to be completed fairly quickly in order to meet the starting date of 4 January 1988.

On AVCs, as with personal pensions, draft regulations and guidance notes would need to go out before Royal Assent, to allow consultations and planning. Formalities could be put in hand immediately after Royal Assent, but not in time to preserve the October starting date which was announced at the time of the Budget. If Ministers wished, the scheme could start later in 1987 or in January 1988 to coincide with personal pensions. But possibly a more logical approach - given that the original October date could not be met - would be to defer the start until April 1988 when the DHSS legislation specifies that AVCs have to be offered to all employees. The pensions industry would be likely to prefer a later start date.

Possible additions and amendments to clauses in latest print of the Bill

9. You have asked what additions and amendments to the Bill are currently envisaged. I attach (Annex D) a list of these. You will see that two new clauses (on Building Societies and BES, plus perhaps something on PRP) are contemplated, together with a sizeable number of amendments to existing clauses. Time is now very short indeed. Some of these amendments (eg those on pay and file, schedule 6) may now need to be dropped, and we strongly recommend that only essential

amendments to the Bill should now be contemplated: a self-denying ordinance all round is required to allow Parliamentary Counsel time to draft amendments (like those to clause 67 on Lloyd's) which Ministers have already agreed must go ahead.

Conclusion

10. We recommend that:

(a) if it proves impossible to agree with the Opposition an acceptable timetable for the whole Bill your tactic might be to offer dropping clauses 77-91 (pay and file). You would probably want to think further before agreeing to drop any of the anti-avoidance/exploitation clauses listed in annex B;

(b) the option of taking all the Commons stages by 24 July, leaving the Lords stages and Royal Assent until October, be held in reserve as unattractive but not impossible;

(c) a very stringent approach be taken to the new clauses and amendments listed in Annex D (and a fortiori to any changes beyond these which may be contemplated).

MCS

M C SCHOLAR

MEASURES WHICH PREVENT AVOIDANCE OR CLOSE UNINTENDED LOOPHOLES

Clause 55 and Schedule 3	- implement the anti-exploitation measures relating to personal pens (eg on exercise lump sums) announced in the Budget.
Clause 57	- aligns the date on which certain interest and other payments are treated as paid and received where payment is between companies in the same group or under common control.
Clause 58	- makes it obligatory rather than optional, where statutory conditions are satisfied, for Inspectors of Taxes to apportion the income of close companies to shareholders.
Clause 59	- ensures that a UK resident partner in a foreign partnership is fully chargeable to UK tax on his share of the profits of the partnership.
Clauses 60 and 61 and Schedule 4	- prohibit dual resident companies, other than certain trading companies, from surrendering their losses to other members of a UK group under the UK group relief rules.
Clause 62	- amends legislation concerning controlled foreign companies so that, in addition to the existing conditions, an acceptable distribution policy will be satisfied only if a dividend is paid when the company is not resident in the UK.
Clauses 64 and 65	- change the rules for calculating banks' taxable income from making loans to non-residents, and impose restrictions on double taxation relief where loan interest is effectively paid as dividends to UK banks.
Clause 67	- applies the normal criteria for the tax deductibility of provisions for outstanding liabilities to Lloyds reinsurance to close.
Clause 72	- makes technical changes to the provisions relating to the set-off of advance corporation tax against corporation tax on income from oil extraction activities.
Clause 74	- makes it explicit that established tax law will continue to apply where an investor in a multi-portfolio unit trust switches from one portfolio to another.
New Clause	- prevents the setting-off of capital losses on building society shares against income.

FBT

ANNEX B

FINANCE BILL TIMETABLE

Thursday 25 June	-	Queen' Speech and Founding Resolutions tabled
Friday 26 June	-	Founding Resolutions appear on Order Paper
Thursday 2 July	-	Conclusion of Debate on Queen's Speech - Resolutions taken (with maximum 3 hr debate encompassing all Resolutions)
Friday 3 July	-	Finance Bill published
Monday 6 July	-	Second Reading
Wednesday 8 July) Thursday 9 July)	-	Committee Stage
Monday 13 July) Tuesday 14 July) Wednesday 15 July) Thursday 16 July)	-	Committee Stage
Monday 20 July) Tuesday 21 July) Wednesday 22 July)	-	Committee Stage
Thursday 23 July	-	Report and Third Reading

Draft resolutions

Profit-related pay

That provision may be made about schemes providing for the payment of emoluments calculated by reference to profits.

Annuities etc

That provision may be made about contracts, schemes or other arrangements providing for the payment of annuities or lump sums.

Retirement benefit schemes

That provision [(including provision taking effect in the year of assessment 1986-87)] may be made about retirement benefit schemes.

Lloyd's underwriters

That charges to income tax (including charges for the years of assessment 1985-56 and 1986-87) may be imposed by provisions about underwriters.

Recognised investment exchanges

That provision may be made enabling enactments referring to The Stock Exchange to have effect, with or without modification, in relation to other recognised investment exchanges.

Collective investment schemes

That provision may be made about collective investment schemes.

Stamp duty reserve tax

That further provision (including provision having retrospective effect) may be made in relation to stamp duty reserve tax.

Stamp duty (exempt securities)

That provision may be made amending section 50 of the Finance Act 1987.

PROCEDURE (PERSONAL PENSION SCHEMES): That, notwithstanding anything to the contrary in the practice of the House relating to the matters which may be included in Finance Bills, any Finance Bill of the present Session may make provision for the payment of sums out of or into the National Insurance Fund or the Northern Ireland National Insurance Fund inconnection with provisions relating to the payment of minimum contributions under Part I of the Social Security Act 1986 or Part II of the Social Security (Northern Ireland) Order 1986.

Possible additions and amendments to clauses in first print of new Financ Bill.

The aim is to get all these changes into the Bill for initial publication if possible.

Measure	Clause numbers	Comments
Profit-related pay	1-16	Alterations in preparation: desirable improvements but not essential. Could involv one or two additional clauses. Note to PMG 18 June.
Personal pensions	17-54	Minor drafting changes required.
Occupational pensions	55	Some redrafting of anti-exploitation provisio in progress - work well advanced.
Employee share schemes	56	no amendments
Interest payments between companies	57	"
Close companies: apportionment	58	"
Foreign partnerships	59	"
Dual resident companies	60, 61	"
Controlled foreign companies	62	"
Offshore funds	63	"
Double taxation relief: banks	64, 65	alteration to length of transitional period proposed. Note to FST 19 June.
Disclosure of information	66	no amendments
Lloyd's	67	amendment to clause approved by FST. Drafting near complete.
Assured tenancies	68	no amendments
Recognised investment exchanges	69	"
Capital gains	70-76	amendment to retain rate of tax on gains of life assurance policyholders at 30 per cent. Also additional clause to prevent capital losses on building society shares to be set against income. Both amendment and new clause drafted.

Measure	Clause numbers	Comments
CT pay & file etc	77-91	Schedule 6 at advanced stage of drafting. If not ready for Bill as published, could be dropped and reintroduced in later year.
Inheritance tax	92-94	Technical drafting changes to Clause 92 desirable if time. Clause 93 (not in current draft of Bill) now drafted. Note to FST 19 June.
Stamp duty and stamp duty reserve tax	95	Two separate clauses drafted (one on stamp duty, the other introducing a schedule containing amendments to the reserve tax) in place of current clause. Note of 19 June to FST seeks decisions on whether action needed on ADR avoidance, and various technical points.
Oil taxation	96, 97	Nothing in first print of Bill, but clause and schedule drafted amending FA 1987. Further clause needed on CGT rollover relief: draft ready, but final shape depends on Ministers decisions. Note to FST 19 June.
BES	not in first print	Clause on BES to encourage on-share oil exploration drafted and ready for inclusion in Bill as published.
Fees and charges	98	Urgent work in progress: it is hoped that an amended version of Clause 98 will be acceptable to all Departments concerned and can be drafted in time
Klondykers	99	no amendments

Confidential

PRP

FROM: M C SCHOLAR
DATE: 23 JUNE 1987

FINANCIAL SECRETARY

cc Chancellor of the Exchequer
Chief Secretary
Paymaster General
Economic Secretary
Sir Peter Middleton
Mr Cassell
Mr Culpin
Mr Dyer
Miss Evans
Mr Walters
Mr Tyrie
Mr Cropper

FINANCE BILL: MEETING WITH THE OPPOSITION

I attach a list of clauses in the new Finance Bill for you to use at the meeting with Mr Gould and Mr Blair at 5.30 today. It was agreed at the Chancellor's meeting this morning that the following clauses might be dropped if necessary:

Clauses 99 and 100:	Stamp duty
Clause 101 and Schedule 8:	amendments to PRT nomination scheme
Clause 16:	PRP: new clause on partnership
Clauses 82-91, and Schedule 6:	Pay and File
Clause 97:	IHT: extends acceptance in lieu to Estate Duty and CTT
Clause 103:	Klondykers

2. There are, of course, some sensitivities about handing over this list to Messrs Gould and Blair in advance of making it available to the House generally. But that is for you and the Chief Secretary to judge.

3. There is also a risk that this indication of the contents of the No 2 Finance Bill will become public knowledge - with press stories, for example, about the new oil and stamp duty clauses. But we have, I hope, desensitised the text, so that no-one will be able to see that we are planning eg changes to the Lloyd's clause, a new clause on CGT and Building Society shares and so on.

MCS

M C SCHOLAR

FINANCE BILL

PROFIT RELATED PAY

Clauses 1 to 17 and Schedule 1 introduce the new income tax relief for employees who receive profit-related pay (PRP) under registered schemes which link part of their pay to the profits of the business in which they work. Half of PRP will be eligible for tax relief (to be given by the employer through PAYE) up to the point where PRP is the lower of 20 per cent of the employee's total pay or £3,000. These provisions establish the tax relief and the conditions for its operation, define the employers eligible to introduce a registered PRP scheme, stipulate the conditions to be met by such schemes, and prescribe the method by which schemes may be registered. Employers' applications to the Inland Revenue for registration of PRP schemes will be dealt with after the Finance Bill receives Royal Assent.

PERSONAL PENSION SCHEMES

Clauses 18 to 57 and Schedule 2 introduce the new tax regime for personal pension schemes, to apply with effect from 4 January 1988. The new legislation replaces and extends the existing retirement annuity provisions in S.226 et seq of the 1970 Taxes Act, which will cease to have effect for such arrangements made after 4 January 1988. The main provisions are:

Clause 18 defines various terms used in the legislation.

Clause 19 enables the Inland Revenue to approve personal pension schemes subject to certain conditions.

Clauses 20 to 26 set out the pension and lump sum benefits which may be provided by approved schemes.

Clauses 27 to 30 outline certain administrative requirements which approved schemes must satisfy.

Clauses 31 to 37 set out the rules governing tax relief for contributions by individual members (whether employed or self-employed) of personal pension schemes.

Clause 38 gives tax relief for any contributions to a personal pension scheme by an employer, in respect of any employee of his who is a member of that scheme.

Clause 39 provides a tax exemption for schemes' investment income and gains.

Clauses 40 and 41 concern the tax treatment of unit trust based schemes and of annuities paid to members of personal pension schemes.

Clause 42 concerns the 'minimum contributions' which the Secretary of State for Social Services will pay to personal pension schemes which are 'contracted-out' of the State Earnings Related Pension Scheme (SERPS).

Clause 43 enables the Inland Revenue to withdraw approval from personal pension schemes or arrangements in certain circumstances.

Clause 44 imposes a tax charge on certain unauthorised payments to scheme members.

Clauses 45 and 46 concern tax relief for contributions to a personal pension scheme. Such contributions by employees will qualify for basic rate tax relief at source.

Clause 47 concerns appeals procedures.

Clauses 48, 49 and 53 cover procedural matters relevant to tax relief for an individual's contributions.

Clauses 50 and 51 concern the Inland Revenue's powers to obtain information about contributions to, and payments by, personal pension schemes.

Clause 52 enables Government Ministers and MPs who are not members of the Parliamentary Pension Scheme to join a personal pension scheme.

Clauses 54 and 55 concern retirement annuity contracts made before 4 January 1988.

Clause 56 concerns applications for approval of personal pension schemes before 4 January 1988.

Clause 57 and Schedule 2 make minor consequential amendments to the Taxes Act.

GENERAL

Clause 58 and Schedule 3 makes various amendments to the legislation in the 1970 Finance Act concerning occupational pension schemes, to implement the anti-exploitation measures concerning eg excessive lump sums announced on Budget Day, and applying to arrangements entered into on or after that day. Other measures enable occupational scheme members to obtain full tax relief for additional voluntary contributions (AVCs) paid to a separate pension plan, from October 1987.

Clause 59 makes minor adjustments consequential on the Finance Act 1987 provisions which, in the event of a takeover, enable companies to offer participants in Finance Act 1980 and 1984 approved share option schemes the opportunity to exchange their existing share options for options over shares in the acquiring company. The amendments ensure that no unintended CGT charge arises from the operation of the new facility.

Clause 60 aligns the date on which certain interest and other payments are treated as paid and received for tax purposes where the payment is between companies within a group or otherwise under common control. The new rule applies to payments made on or after 17 March 1987.

Clause 61 makes it obligatory, where the statutory conditions are satisfied, for the Inspector to apportion the income of a close

ompany to its shareholders. Apportionment of convenanted payments to charity (and other annual payments) will also be made obligatory. (The Inland Revenue had believed that the existing legislation had this effect but the Court of Appeal said in 1986 that the Inspector's powers were discretionary.) The apportionment changes apply to accounting periods beginning on or after 17 March 1987.

Clause 62 ensures that a UK resident partner in a foreign partnership is fully chargeable to tax in the UK on his share of the profits of the partnership. It will apply so as to prevent claims to relief from tax for past years.

Clauses 63, 64 and Schedule 4 prohibit dual resident companies, other than certain trading companies, from surrendering their losses after 1 April 1987 to other members of a UK group under the UK group relief rules. They also limit the application of certain other reliefs where a dual resident investing company is involved in intra-group transactions.

Clause 65 amends the legislation concerning controlled foreign companies (in Schedule 17 Finance Act 1984). With effect from Budget Day, in addition to the existing conditions, an acceptable distribution policy will be satisfied only if a dividend is paid at a time when the company is not resident in the UK.

Clause 66 introduces a degree of flexibility in applying the conditions which an offshore fund must satisfy to qualify as a distributing fund. For account periods which end after Royal Assent, the Inland Revenue will be able to extend the time limit for making distributions and disregard a failure to comply with the investment conditions in Section 95(3), Finance Act 1984 where the Board are satisfied that the failure was inadvertent and was remedied without unreasonable delay.

Clause 67 changes the rules for calculating banks' taxable income from making a loan to a non-resident. Under the new rules any tax credit for foreign withholding tax paid, or deemed to be paid, on the interest they receive may in future be offset only against the UK tax due on the net profit from that loan. The change applies to interest payable on new loans made on or after 1 April 1987. For existing loans, the new rules apply to interest arising on or after 1 April 1989.

Clause 68 imposes restrictions on double taxation relief, which parallel those imposed by Clause 67, for underlying tax on dividends in circumstances where loan interest is effectively remitted as a dividend to a bank operating from the UK. The change applies to interest payable on new loans made on or after 1 April 1987. For existing loans the new rules apply to interest arising on or after 1 April 1989.

Clause 69 permits the Department of Employment to pass on certain limited information provided to it by the Inland Revenue under Section 58 Finance Act 1969 to local authorities for use in formulating local employment policy. The information consists of employer's names and addresses and the numbers of employees they have under PAYE.

Clause 70 concerns Lloyd's reinsurance to close (RIC) arrangements. The Clause will first take effect for RIC payments in the Lloyd's 1985 account, which closes at the end of 1987.

Clause 71 stops a possible loophole in CGT indexation.

Clause 72 extends by five years from 31 March 1987 to 31 March 1992 the period during which capital allowances are available to companies for costs of construction of properties for letting on assured tenancy terms. It also makes provision for effect to be given to certain initial allowances whose benefit might otherwise have been lost.

Clause 73 deals with the tax treatment of securities traded on new recognised investment exchanges (RIEs) which may be established under the Financial Service Act 1986. The Clause provides an enabling power for regulations to be made (after Royal Assent) which will allow securities traded on a new RIE to be treated in the same way for tax purposes as securities traded on the existing Stock Exchange.

CAPITAL GAINS

Clause 74 and Schedule 5 amend the rules for taxing companies capital gains so that they are taxed at the same rates as companies' income instead of the present 30 per cent effective rate. For small companies the rate will thus be cut to 29 per cent from 17 March 1987 and again to the new 27 per cent small companies rate from 1 April. Companies will be able to set advance corporation tax against corporation tax on gains as well as on income. These changes apply to disposals on or after 17 March 1987. There are transitional arrangements for accounting periods straddling that date.

Clause 75 makes consequential changes to the special provisions for life assurance companies.

Clause 76 makes technical changes to the provisions relating to the set-off of advance corporation tax against corporation tax on income from oil extraction activities. These changes are consequential on the extension to capital gains of the set-off for advance corporation tax and ensure that from 17 March 1987 farmout gains will be included with oil extraction income for the purposes of the restrictions on ACT set-off.

Clause 77 makes minor technical amendments to the provisions relating to the interaction of advance corporation tax and double taxation relief. The amendments reflect the extension to capital gains of the set-off for advance corporation tax.

Clause 78 makes it explicit that established tax law will continue to apply where an investor in a multi-portfolio unit trust switches from one portfolio to another. It prevents doubts about the tax position arising because of a detailed provision in the Financial Services Act.

Clause 79 brings Building Societies within the capital gains regime for groups of companies.

Clause 80 gives effect to the Government's 14 May announcement to introduce legislation to make clear that gains on the disposal of oil licence interests do not qualify for CGT Roll-over Relief. This legislation will apply to such gains made at any time.

Clause 81 brings, subject to certain conditions, the treatment of over-the-counter futures and options in line with that of traded options and of transactions on recognised exchanges. The main effects are that profits on over-the-counter transactions will always be treated as capital gains unless they arise in the course of trading, and that a capital loss will arise when an over-the-counter option expires without being exercised.

TAXES MANAGEMENT PROVISIONS

Clauses 82-95 and Schedule 6 introduce a new system for the collection of corporation tax known as Pay and File. This will come into effect from a date, not before 31 March 1992, which will be announced nearer the time. Under Pay and File a company will make its own estimate of its corporation tax liability and pay this by its normal due date. It will then have until one year after its accounting date to make its return with automatic penalties if it is late. Where the estimate turns out to be too low, interest will be charged, and where the estimate was too high, interest will be paid on the tax outstanding after the due date.

Clause 82 allows a new style of company return to be introduced for Pay and File and sets a one year time limit for its completion.

Clauses 83-84 set automatic penalties for returns not made within the time limit and provides a right of appeal against the penalty.

Clauses 85-89 provide for interest to be charged on overdue corporation tax and on recoveries of overpayments, for interest to be paid on repayments of corporation tax, income tax and tax credit, and for interest rates to be altered where necessary.

Clause 90 provides for corporation tax to be payable without assessment.

Clause 91 makes the amendments needed to the tax on loans to participators in close companies for Pay and File.

Clause 92 provides enabling powers to introduce regulations applying an interest charge on PAYE paid late in circumstances where the Inspector has formally to determine the amount due; and clarifying the meaning of 'payment' for PAYE purposes.

Clause 93 provides enabling powers to introduce regulations requiring the Inland Revenue to be informed of the change of control of a company holding a '714C' subcontractor certificate; giving the taxpayer a right of appeal against cancellation of a subcontractor certificate; and requiring the production to the Revenue of contractors' records.

Clause 94 improves the drafting of the present S.118(2) Taxes Management Act (which provides that a person's failure to do something such as render a tax return, shall be ignored when there was reasonable excuse for failure) for cases for continuing.

Clause 95 provides for Pay and File to come into effect on an appointed day which will not be before 31 March 1992.

INHERITANCE TAX

Clause 96 abolishes the existing inheritance tax charge on certain transfers made more than seven years before death involving interest in possession trusts (IIP trusts). Transfers to and from IIP trusts will be potentially exempt transfers (PETs) on the same basis as transfers of property owned absolutely. Schedule 7 imposes, in certain circumstances, a special rate of charge where property that has been the subject of a PET on its transfer into an IIP trust becomes held on discretionary trusts in the next seven years and the person who made the PET is still alive. The special rate takes account of any chargeable transfers made by that person in the seven years before he made the PET. The changes apply to transfers made on or after 17 March 1987.

Clause 97 provides that if property is accepted in satisfaction of estate duty or pre-1985 capital transfer tax on terms that the value of the property is determined as at a date earlier than the acceptance, the terms may also provide that the tax so satisfied will not carry interest from the earlier date.

Clause 98 extends to personal pension schemes the existing inheritance tax reliefs for pension schemes and retirement annuities.

MISCELLANEOUS AND SUPPLEMENTARY

Clause 99 amends Section 50 Finance Act 1987 which exempts from stamp duty options in respect of gilt edged and other exempt securities.

Clause 100 further amends the reserve tax. The main change is the introduction of special rules for public issues. These provisions were contained in an amendment to the pre-Election Bill which was tabled but not moved. The Clause also clarifies the application of the reserve tax to agency contracts.

Clause 101 and Schedule 8 make technical amendments to Part V of the Finance Act 1987, mostly to the PRT nomination scheme in Section 61 and Schedule 10.

Clause 102 confers on Ministers the power to prescribe the amount of any fees or charges for the provision of any services or facilities.

Clause 103 introduces relief on the stores which are imported for foreign factory ships.

Clause 104 and Schedule 9 provide for the short title interpretation and repeals.

FINANCE BILL

RT4.59

CONFIDENTIAL

FROM: A W KUCZYS
DATE: 23 June 1987

PS/FINANCIAL SECRETARY

cc PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Sir P Middleton
Sir T Burns
Mr Cassell
Mr Monck
Mr Scholar
Mr Culpin
Miss O'Mara
Mr Dyer
Miss Evans
Mr C Jenkins - Parly. Counsel
PS/IR
PS/C&E

AWK to PS/FST 23/6

FINANCE BILL

The Chancellor has seen Mr Scholar's minute of 22 June. He agrees with Mr Scholar's conclusions, and strongly endorses the point in Mr Scholar's paragraph 9 - a self-denying ordinance all round is required to allow Parliamentary Counsel time to draft amendments which Ministers have already agreed must go ahead.

A W KUCZYS

Finance Bill

BIF with advice.

IOD
Institute of Directors

23 June 1987

From the Chairman of the Taxation Committee
Bruce Sutherland CBE

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
Treasury Chambers
Parliament Street
London SW1P 3AG.

Dear Nigel,

FINANCE (NO 2) BILL

In view of the manner in which consideration of the Finance Bill 1987 was cut short by the general election and the Government's announcement that the provisions dropped from the Bill would be re-introduced in a new Bill as soon as possible, we thought it would be useful if we made a submission now which:

a. covers items in the Finance Act 1987 which the opportunity should be taken to correct;

b. sets out our updated comments on the clauses which were dropped and are to be re-introduced.

ITEMS FROM FINANCE ACT 1987

VAT: Tour Operators (Section 16)

Until we have seen and considered the approach taken in the draft regulations and leaflet, we must reserve our position as to whether section 16 itself is acceptable or requires amendment.

Income Tax Rates (Section 20)

We note the post-election press comment that you are considering significant reductions in the higher rates of income tax in the next Budget. We have long urged such a move which would have little or no adverse effect on tax revenues and considerable positive effects on the economy. If a reduction would be beneficial as you and we appear to agree, why defer it until next year? We suggest you reduce the top rate to 50% immediately.

We regret your decision this year as last year to increase the "additional rate" for trusts to offset the reduction in the basic rate of income tax. The total (basic plus additional) rate for trusts will at 45% be out of all proportion to the income tax rates for individuals. The additional rate for trusts was introduced in 1973 as the equivalent of the 15% investment income surcharge for individuals and the total rate of 45% then compared with the income tax basic rate of 30 and top rate on investment income of 90%. Now the basic and top rates are 27 and 60%

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respectively and the investment income surcharge has been abolished. We therefore urge you immediately to abolish the additional rate for trusts or failing that to reduce it significantly.

Corporation Tax Payment Date (Section 36)

We remain convinced that it is unjust to bring forward the payment date in a way which results in pre-1965 companies having corporation tax accounting periods over their lifetime whose total duration exceeds the life of the company. As you accepted in your letter to us of 11 May, it would be feasible to devise rules to prevent exploitation of the different regime for pre-1965 companies or to allow some profits to drop out of charge when the payment date is brought forward. We urge that this latter course be adopted.

Carry-back of BES Relief (Section 42)

We accept that BES investors to date may have only invested £10,000 in a tax year on average and that half this figure is £5,000. It seems to us, however, unduly parsimonious and short-sighted to limit the carry-back to £5,000. Section 42 is essentially a deregulatory measure designed to reduce the influence of the tax system on the timing of BES investments, one desirable effect of which should be to increase the average annual investment, rendering the £5,000 limit immediately out of date even on the basis by which Ministers have justified it. We suggest that the aims would be better achieved by allowing half the annual limit i.e. £20,000, if invested in the first half of the year, to be carried back.

POINTS ON CLAUSES DROPPED FROM FINANCE BILL 1987

Occupational Pension Schemes (Clause 34 and Schedule 4)

We accept that the new rules on revaluation of deferred pensions and on transfer values will go a long way to remedy the previous problems for early leavers. They operate to protect the real value, however, only of pension entitlements at or accrued since the commencement date of the legislation, so that an individual in his 40's or 50's whose prospective pension had previously been reduced substantially by job changes remains reliant on the accrual facility to have a hope of a pension approaching two thirds of his final remuneration. The effect of allowing accelerated accrual only over 20 rather than 10 years will be to tie those currently benefitting from accelerated accrual to their present employers. There will also be some incentive for many other over-40's to stick with their present employer rather than risk further erosion of their pension entitlement which could occur, for example, if inflation rose again to double figures. We consider that the accelerated accrual facility improves the equity of the tax system for the over-40's (for whom personal pensions will not be an effective answer) and in particular for women who are more likely to have had significant breaks in their working career. We urge that the present minimum accrual period of 10 years be retained. This proposal would especially effect senior executives whose skills it is important should be deployed to maximum effect without fiscal or other impediments to mobility.

The definition of "final remuneration" is crucial to enforcement of the two thirds limit for pensions payable under occupational schemes and paragraph 13 tightens up this definition. The proposed ceiling, however, of £150,000 on lump sums payable under occupational schemes is unnecessary to prevent avoidance. It appears to derive from the sort of misplaced egalitarian sentiment more normally associated with parties opposing the present Government. High earnings should be the subject of congratulations not of fiscal restrictions which carry connotations of avoidance. In any event there is no possible justification for restricting commutation in the case of early retirement through ill health. The restrictions on commutation will also be a significant discouragement to job mobility for those higher earners anticipating a large lump sum on retirement. These proposals were not included in the consultative paper "Improving the Pensions Choice" or any other consultative paper. We urge that they be withdrawn and be re-considered after proper consultation which might appropriately look at the whole question of commutation and its tax treatment not just this limited aspect.

Retrospective Overruling of Cases (Clause 47)

We have written separately to the Financial Secretary urging that any legislative overruling of court decisions in the case of Padmore v IRC (clause 47) or the case on roll-over of oil licence gains (Parliamentary Answer May 14) should be retrospective only to the date the proposal was announced.

Dual Resident Companies (Clauses 48 and 49, Schedule 8)

The proposals in the Bill incorporated a few minor changes from the draft legislation in the consultative document of 5 December 1986 - but are essentially the same. We regret that the Government proceeded to include this legislation in the Bill still with no proper explanation of:

(a) why the UK needs legislation to correct an anomaly in US legislation which the US has already corrected; and

(b) if so, why the UK legislation needs to go beyond correcting the anomaly (ie preventing the obtaining of a double deduction) to the opposite extreme of denying any relief for loss-making DRIC's; and

(c) why the UK legislation needs to come into force before the publication of the detailed US regulations without which a group cannot know how best to carry out the restructuring envisaged in paragraph 13 of the consultative paper or even if any restructuring is necessary.

The comments in our response to the consultative document, therefore, still stand both as regards the principle of the legislation and the detail.
Accordingly we again ask the Government:

(a) to confirm that it is acting solely on the basis of what is in the UK's interest (as opposed to the US's interest);

(b) to explain why it is in the UK's interest to legislate against DRC's in this manner.

If there is justification for UK legislation against DRC's, then we urge that it be confined to correcting the mischief at which it purports to be aimed, the obtaining of a double deduction i.e. deduction in the UK should be denied only where and to the extent that a deduction has actually been obtained in the other country. It should, moreover, be left to the company to choose in which country to take the deduction. This would remove the need to restructure in most cases. We also urge that:

(a) the major fiscal disincentives to overseas investment by UK groups mentioned in paragraph 13 of our submission be corrected at the same time;

(b) commencement of the provisions be deferred until a reasonable time after the publication of the US regulation.

In the annex to this letter we repeat the more important technical points from our submission and explain why the minor changes in clause 48(6) from the original draft are totally inadequate to protect the genuine trading company.

Lloyd's Underwriters (Clause 58)

We have received representations about clause 58 from IOD members who are also names at Lloyd's. More generally our membership has an interest in nothing further being done to aggravate the shortage of capacity in the insurance market for those, mainly longtail, risks such as product liability, employer's liability and directors' personal liability. In our view there is a fundamental commercial and legal distinction between an irrevocable legal contract (reinsurance to close) between two different parties (syndicates for different years) and an accounting provision subject to future adjustment made by an insurance company. There is also a real difference as regards tax enforcement problems between the kind of business done by most insurance companies, which readily lends itself to standardised techniques, and the kind of business, particularly of longtail business, done by Lloyd's, where historical claims experience is often non-existent or irrelevant to likely future claims experience. In the latter case the only "price" that means anything is the price which can be negotiated for the contract at arm's length in the market. We therefore support what we understand to be Lloyd's approach in its discussions with the Revenue, namely that the appropriate way to police reinsurance to close provisions is not that put forward in clause 58 but for the Revenue to satisfy itself that the contract price has been arrived at on an arm's length basis or as close to that as can reasonably be demonstrated. In any event the self-interest of the new names and/or the names from the old syndicate with an increased share in the successor syndicate is a substantial guarantee that the price will be at arm's length in all but the 10% of syndicates in a typical year where no change in the composition of the names or their shares takes place.

Rate of Tax on Chargeable Gains (Clause 61)

As we said in our letter of 3 April we believe it to be wrong in principle to tax chargeable gains, whether of a company or an individual, at the same rate as profits or income. The distinction between revenue and capital is fundamental to the UK tax system and pervaded every aspect of it. The most crucial distinction in this connection is the asymmetric treatment of gains which are always taxable (subject to the annual exemption for individuals and trusts) and losses which are allowable only against current or future gains. The asymmetry is greater than for trading profits and losses since trading losses can be carried back one, or sometimes three years and a continuing trade offers the prospect of profits in the relatively near future; capital transactions are by contrast infrequent and often large in relation to the taxpayer's income and net assets so that the relief for losses is often never obtained or obtained only years later when the discounted value is a fraction of the original loss.

This asymmetry in our view justifies gains being taxed at a significantly lower rate than income or profits. There is, we accept, nothing sacred about the differential between the rates in April 1965 but that differential seems to us at least to have been of the right order.

In any event it must be wrong on any basis to tax gains at the same, or (as for most individuals now) at a higher rate than, income before full relief has been introduced for pre-1982 inflation. We therefore urge you immediately to reduce the rates of tax on the gains of both corporate and individual taxpayers to a single rate of 20% in the next Budget.

ACT Imputation on Companies' Gains (Clause 64)

We particularly urge the re-introduction of this clause in the Finance (No 2) Bill. It has nothing to do with the issue of whether gains should be taxed as income discussed in the previous paragraph.

Personal Pension Schemes and Profit-Related Pay (Chapters III and IV)

Since PRP is specifically intended not to be "icing on the top of the cake" but rather to replace part of existing (pensionable) pay, it is vital that PRP is itself pensionable. Thus pay under an approved PRP scheme should be specifically included in the definition of "relevant earnings" for personal pension schemes in clause 86.

Other technical points on personal pensions and PRP schemes are included in the annex.

Inheritance Tax - Interests in Possession (Clause 148 and Schedule 13)

We particularly urge that these provisions be re-introduced in the Finance (No. 2) Bill.

Yours sincerely

Bruce

Bruce Sutherland
Chairman, Taxation Committee

ANNEX

TECHNICAL POINTS

Dual Resident Companies

1. The term "tax" in clause 48(4)(b) should be defined and the definition should exclude irrelevant taxes such as sales and property taxes, stamp duties and transfer duties or rather should include only taxes which are comparable to UK corporation tax (the flat rate corporation tax on companies incorporated in the Channel Islands is not comparable). A precedent for such a limited definition of "tax" can be found in Section 54(7) FA 1985.

2. It should be made clear whether local and state as well as national taxes are to be taken into account and whether "territory" refers to sovereign states or to political sub-divisions thereof (cf FA 1985, Schedule 13 para 5).

3. Clarification is required as to how the Revenue will interpret the words "place of management" and "resident" in clause 48(4)(b)(ii) and (iii) given the great variety of tax systems and tax treaties around the world (as drafted, it appears that both will be as interpreted by the foreign tax system and may, for example, include deemed residence).

4. It should be made clear whether a company, which would be within the "charge to tax" in a foreign territory but for the provisions of a double tax treaty, is or is not within the definition of a DRC.

5. The definition of a DRIC in clause 48(5) and (6) should exclude not just trading companies but other companies engaged in legitimate commercial activities such as property holding companies and intermediate holding companies for trading companies.

6. The amendments to clause 48(6) are insufficient. The sub-clause needs complete re-thinking if it is to be a reasonable restriction on the trading company exemption:

    1. clause 48(6)(a) fails to ensure that trading companies with heavy initial outgoings in the start-up phase are not caught;

    2. the meaning of the words "of such a description that its main function" etc are wholly unclear. They could mean either:

        (a) that the trade must be of a description within sub-clause (6)(a)(i) to (iv) ie a financial or related trade so that the main function consists of all or any of (i) to (iv), or

        (b) that the trade may be of any type but of such a description (eg of a minor nature in comparison) that the main function of the company is still all or any of (i) to (iv).

In addition, it is not clear how clause 48(6) fits in with the definition of a trading company in s.258(5)(c) ICTA 1970 which is adopted by clause 48(9);

3. it seems from clause 48(6)(b) that a single transaction of a type within clause 48(6)(a) which cannot be justified in terms of the company's trade (of whatever nature) will remove the trading exemption. This restricts significantly and unnecessarily the trading company exemption, irrespective of the reasons for the transaction in question.

4. The concept of activity in clause 48(6)(c) is not appropriate to suffering discounts, which are not paid and are only deemed to be charges on income.

7. The restrictions in clause 49 should not apply just because the company is a DRIC; they should be confined to where a double deduction or double relief would otherwise actually be obtained.

8. It should be made clear that:

   a. Furniss v Dawson will not be invoked where the restructuring has no purpose other than to ensure that a single deduction is available in future; and

   b. s.278 ICTA 1970 will not be invoked.

Personal Pension Schemes (Chapter III)

9. We would welcome confirmation that the death benefit (clause 76 and 77) will be excluded from the inheritance tax charge on death and can be nominated to specific beneficiaries as with death benefit under RAP schemes.

10. What happens to the surplus if the lump sum permissible under clause 77(2) is less than the full value of the fund on death?

11. Clause 80(1)(a) presumably needs amendment to reflect the decision to allow an individual to have more than one personal pension scheme.

12. Pay under an approved Profit-related Pay scheme should be included in the definition of "relevant earnings" in clause 86.

13. Provision should be made for the individual whose scheme's approval has been withdrawn by the Board under clause 93 to transfer his investments to another approved scheme.

Profit-Related Pay (Chapter IV)

14. If the employee is a member of more than one PRP scheme such that by virtue of clause 110 relief is only available in respect of one of the schemes, he should be allowed to choose the scheme for which he will get relief.

15. One month for the joint notification of change of scheme employer is too short. We suggest six months would be more reasonable.

16. It is not clear why clause 118 requires an annual return for PRP earlier than the accounts are required under clause 123. We would be most disturbed if the powers under clause 118 were used to obtain accounts and other information not otherwise required for another three or five months.

Taxes Management Provisions (Chapter V)

17. We still think that the Revenue should not be given such broad powers in clause 123 to prescribe the information, accounts, statements and reports to be supplied with companies' tax returns, not least because that effectively gives the power to prescribe accounts which are not just more extensive but compiled on a different basis from that required under the Companies Acts. Clearly the closest possible consultation with representative bodies will be required when the regulations are being drafted if unacceptable burdens are not to be placed on corporate businesses (and no doubt used as a precedent in due course for unincorporated businesses).

18. We believe that the concept of "mirror image" interest is crucial to the fairness of the new penalty regime. That includes the interest rate being the same for over and under-payments of tax i.e. there is no more justification for an incentive to the Revenue to delay agreeing refunds of tax than for an incentive to the taxpayer to delay paying tax which is due. We therefore urge that the words " for the purposes of the provision in question "be deleted from clause 131, so that the Government's commitment to the mirror image principle is made clear.

19. Any overpayment of tax before the due date is likely to be the result of error by the taxpayer. We do not see why he should have to wait until after the "material date" to obtain a refund under clause 132(5).

50/2912

WILSON TO PS/CST 23/6

FROM: A WILSON
DATE: 23 June 1987

PS/CHIEF SECRETARY

cc PS/Chancellor
PS/Paymaster General
PS/Economic Secretary
PS/Financial Secretary
Sir P Middleton
Mr F E R Butler
Mr Cassell
Mr Scholar
Mr Culpin
Mr Dyer
Miss Evans
Mr Jenkins - OPC

FINANCE BILL

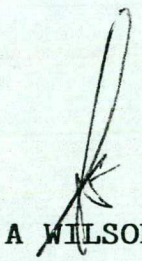
I have seen Mr Heywood's minute to you of 22 June about the contents of the Finance Bill.

2. It is important that the Fees and Charges clause currently being drafted by Parliamentary Counsel should find space in the Finance Bill. I am told that a first draft of the clause will be ready by tonight, although I understand that it is extremely tricky to draft because of the necessary coverage. Without this clause Departments will continue to be at risk of challenge to their current charges for a wide variety of services provided to the public, which include an element of enforcement costs now thought to be ultra vires. If the capacity to challenge these charges was recognised, there could be a current loss of revenue to the Government, and a potential loss of past revenue if refunds had to be made following successful Court actions.

3. The instructing letter to Parliamentary Counsel from Department of Transport lawyers, who are in the lead on this matter, received endorsement from the Attorney General yesterday, and I hope that Counsel will complete successful drafting of the clause by tonight.

4. It must be recognised that once a clause to rectify the

defects in the Fees and Charges legislation begins to circulate, public interest in its purpose may be aroused and it will be dangerous to drop it.



A WILSON

3369/16

CONFIDENTIAL

FROM: J J HEYWOOD
DATE: 23 June 1987

MR SCHOLAR

cc PS/Chancellor
PS/Chief Secretary
PS/Economic Secretary
PS/Paymaster General
Sir Peter Middleton
Sir Terence Burns
Mr Cassell
Mr Monck
Mr Culpin
Miss O'Mara
Mr Dyer
Miss Evans
Mr C Jenkins OPC
PS/IR
Mr Johns IR
PS/C&E
Mr Wilmott C&E

FINANCE BILL

1. Further to your minute of yesterday, may I confirm that the Financial Secretary was content with your recommendation that specific Resolutions rather than a General Amendment of the Law Resolution be used to introduce the new Finance Bill.

2. On negotiating tactics, the Financial Secretary is to discuss these with colleagues post-Prayers tomorrow.

JJH

JEREMY HEYWOOD
Private Secretary

2518/006

CONFIDENTIAL

FROM: A WILSON

DATE: 24 June 1987

CHIEF SECRETARY

cc PS/Chancellor
PS/Paymaster General
PS/Economic Secretary
PS/Financial Secretary
Sir P Middleton
Mr F E R Butler
Mr Cassell
Mr Scholar
Mr Culpin
Mr Dyer
Miss Evans
Mr Jenkins - OPC

FEES AND CHARGES CLAUSE FOR FINANCE BILL

Parliamentary Counsel has drafted the clause to rectify the defects in the fees and charges legislation identified by the Joint Committee on Statutory Instruments and it is attached. Departmental ~~consent~~ comment, which should be cleared today, is not expected to result in any material changes and Counsel and the Treasury Solictor are sure that the clauses, as amended if necessary following departmental consideration, can be in the hands of the printer in time to appear in the first printed draft of the Finance Bill.

A WILSON

Government fees and charges.

(1) This section applies where a Minister of the Crown has or any Commissioners have power under any enactment (whenever passed) to require the payment of, or to determine by subordinate legislation the amount of, any fee or charge (however described), whether payable to the Minister, the Commissioners or any other person.

(2) In the following provisions of this section, a power falling within subsection (1) above is referred to as a "power to fix a fee" and, in relation to such a power,—

(a) "fee" includes charge;

(b) "the appropriate authority" means the Minister of the Crown or Commissioners on whom the power is conferred; and

(c) "the recipient" means the person (whether or not being the appropriate authority) to whom the fee is payable.

(3) In relation to any power to fix a fee, the appropriate authority or any Minister of the Crown with the consent of the appropriate authority may, by order made by statutory instrument, specify functions of the recipient (whether arising under any enactment, by virtue of any Community obligation or otherwise) the costs of which, in addition to any other matters already required to be taken into account, are to be taken into account by the appropriate authority in determining the amount of the fee.

(4) Where a power to fix a fee relates (expressly or by implication) to the recovery of costs of a particular description, the appropriate authority or any Minister of the Crown with the

consent of the appropriate authority may, by order made by statutory instrument, specify additional descriptions of costs to the recovery of which the power is to relate; and, without prejudice to the generality of any reference above to costs, in this subsection "costs" includes deficits incurred before as well as after the making of an order under this subsection and sums representing a return on capital of a description specified in such an order.

(5) A statutory instrument made in exercise of the power conferred by subsection (3) or subsection (4) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) An order under subsection (3) or subsection (4) above relating to a power to fix a fee has effect in relation to any exercise of the power after the making of the order; but no earlier exercise of the power shall be regarded as having been invalid if, had the order been made before that exercise of the power, the exercise would have been validated by the order.

(7) In this section—

(a) "Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

1975 c.26.

(b) "Commissioners" means the Commissioners of Customs and Excise or the Commissioners of Inland Revenue;

(c) "enactment" does not include Northern Ireland legislation, as defined in section 24(5) of the Interpretation Act 1978; and

1978 c.30.

(d) subject to paragraph (c) above, "subordinate legislation" has the same meaning as in the Interpretation Act 1978.

3314/005/AC

PLWP

FROM: MISS C EVANS

DATE: 24 June 1987

MISS O'MARA

MR WALKER I/R

MR GRAY

MISS FRENCH C+E

MR BRADLEY

cc PS Chief Secretary
PS Financial Secretary
PS Paymaster General
PS Economic Secretary
Mr Scholar
Mr Hudson 12/2
PS IR
PS C & E

FINANCE BILL : SECOND READING AND WIND UP DEBATES

I have been asked to submit a draft speech to the Financial Secretary by next Tuesday 30 June, for the second reading of the Finance Bill, scheduled for either Monday 6 July or Thursday 7 July. I should therefore be grateful for contributions (1½ spacing, 2 inch margin, please) by noon on Monday 29 June, as follows, please:-

Miss O'Mara	:	the economy
Mr Gray	:	PRP
Mr Walker	:	pensions antiavoidance/loopholes taxes management provisions oil taxation capital gains tax LLoyd's IHT stamp duty
Miss French	:	Klondykers
Mr Bradley	:	Fees and Charges.

2. This list is subject to the Chief Secretary and Financial Secretary's meeting with the Opposition, and Treasury Ministers' decisions on who will cover what in the debate. I will let you know as soon as possible of any

changes in the content of the Bill, and any steer from Ministers on the content of their speeches. In the meantime, I suggest that we should prepare material on all the main clauses on the basis that this can be shared out between the opening and wind up speeches later. I envisage an opening speech of about 20-25 minutes and a wind up of 10-15 minutes so we need to put together material covering about 30-40 minutes.

3. It will not be easy to find anything new to say about these clauses. However, it will be very helpful if you could try to find a new angle if possible, or at least, a different form of words. One obvious theme for the speech would be to relate individual measures to Ministers' past and continuing programme of reform, and it would be helpful if you could draft individual sections with this in mind.

Cays Evans

MISS C EVANS

3369/40

CONFIDENTIAL

cc:. PPS CST PMG EST
Mr. Dyer
Mr. Johns | IL
PS | IL

Treasury Chambers, Parliament Street, SW1P 3AG

Christopher Jenkins Esq
Office of the Parliamentary Counsel
36 Whitehall
LONDON
SW1A 2AY

25 June 1987

Dear Christopher,

FINANCE BILL

I can confirm that the Financial Secretary has authorised you to put down this evening the resolutions on which the Finance Bill will be founded, including, if necessary, an amended version of resolution 30.

Yours sincerely,

Jeremy.

JEREMY HEYWOOD
Private Secretary

CE41

1 Alex
2 Tom.

FROM: MISS C EVANS
DATE: 25 JUNE 1987

agreed

1. **MR SCHOLAR**

2. **MR R EVANS**

cc PS/Chancellor 12/2
PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr C Jenkins
Mr Walker - IR
Miss French - C&E

FINANCE BILL: RESOLUTIONS

You asked for a line to take in response to Press enquiries about why the Bill is founded only on specific Resolutions instead of the usual practice of having a General Amendment of the Law Resolution. I suggest the following line which I have discussed with Parliamentary Counsel:

> "Spring Finance Bills are normally based on a General Amendment of the Law Resolution (GALR) which brings in order provisions which reduce taxes or deal with tax administration. In addition specific resolutions are needed for provisions which increase taxes or impose new taxes. Spring Finance Bills set tax rates for the whole year and provide a forum for general debate on taxation - thus GALR appropriate. This Finance Bill is less wide-ranging, and aims to implement specific measures not passed before the Election - thus specific resolutions more appropriate.'

CE

MISS C EVANS

CONFIDENTIAL

67/2

1. Alex
2 Tony
3 Andrew

PS/PAYMASTER GENERAL

FROM: J J HEYWOOD
DATE: 25 June 1987

cc PS/Chancellor
PS/Chief Secretary
PS/Economic Secretary
Sir P Middleton
Mr Scholar
Mr Dyer
Miss Evans
Mr Cropper
Mr Walker - IR
PS/IR
PS/C&E

FINANCE BILL: ALLOCATION OF CLAUSES

The Paymaster General and Economic Secretary discussed with the Financial Secretary today the allocation of clauses for Committee Stage of the Finance Bill. The following allocation was agreed:

Clause :	1 - 17	: Paymaster General
	18 - 66	: Financial Secretary
	67 - 68	: Economic Secretary
	69	: Paymaster General
	70	: Financial Secretary
	71 - 73	: Paymaster General
	74 - 75	: Financial Secretary
	76 - 95	: Economic Secretary
	96 - 100	: Financial Secretary
	101	: Economic Secretary
	102 - 103	: Paymaster General
	104	: Financial Secretary

The Schedules were allocated accordingly.

2. It was agreed that the Financial Secretary would open the Second Reading Debate and - subject to his final confirmation - the Paymaster General would wind-up. The Financial Secretary said

that he would want to place emphasis in his speech on the PRP and Pensions measures, and also on Lloyds, CGT for life assurance policy-holders and IHT. He would not need any general material on the economy.

3. The Paymaster General indicated that he expected to have to speak for longer than 15 minutes and therefore would welcome any material that officials could provide (including some paragraphs on the economy).

4. The expected timetable is as follows:

1 July	:	Founding Resolutions taken
3 July	:	Finance Bill publication
7 July	:	Second Reading Debate
13 - 15 July	:	Committee of Whole House
20 July	:	Report and Third Reading

9.H

JEREMY HEYWOOD
Private Secretary

CONFIDENTIAL

(Weeded)

cc. PS/Chancellor
PS/PMG
PS/EST
Mr. Dyer
Mr. Johns - IR
PS/IR

Office of the Parliamentary Counsel 36 Whitehall London SW1A 2AY

Telephone Direct line 01 210 6640
Switchboard 01 210 3000

RD

Jeremy Heywood Esq
Private Secretary to the Financial
Secretary
H M Treasury
Parliament Street
SW1

25 June 1987

Dear Jeremy

FINANCE BILL

I enclose copies of the draft resolutions on which the Finance Bill will be founded.

All the resolutions have now been agreed by those responsible for the provisions to which they relate. But it is possible that we may need to change resolution 30 (Government fees and charges) as a result of discussions we are holding with the Public Bill Office later this morning.

I should be grateful if you could confirm that I have authority to arrange for the resolutions to be put down this evening, with any necessary amendment of resolution 30.

I am sending copies of this letter and its enclosure to Jill Rutter and Michael Scholar.

Yours sincerely

Christopher Jenkins

J C JENKINS

Enc

CONFIDENTIAL

CONFIDENTIAL

Draft resolutions

1. Profit-related pay

That provision may be made about schemes providing for the payment of emoluments calculated by reference to profits.

2. Annuities etc.

That provision (including provision having retrospective effect) may be made about contracts, schemes or other arrangements providing for the payment of annuities or lump sums.

3. Retirement benefit schemes

That provision (including provision having retrospective effect) may be made about retirement benefit schemes.

4. Employee share schemes

That provision may be made amending section 47 of and Schedule 10 to the Finance Act 1980 and Schedule 10 to the Finance Act 1984.

5. Charges on income

That provision may be made as to the dates on which certain payments made between companies on or after 17 March 1987 are to be treated as received.

6. Apportionment of income etc of close companies

That provision may be made amending Schedule 16 to the

Finance Act 1972 with respect to accounting periods beginning on or after 17 March 1987.

7. Foreign partnerships

That provision (including provision having retrospective effect) may be made with respect to the taxation of persons resident in the United Kingdom who are members of partnerships resident outside the United Kingdom.

8. Dual resident companies

That provision (including provision having retrospective effect) may be made with respect to companies which are resident in the United Kingdom and are also within a charge to tax under the laws of a territory outside the United Kingdom.

9. Controlled foreign companies

That provision may be made, in relation to dividends paid on or after 17 March 1987, with respect to the circumstances in which a controlled foreign company, within the meaning of Chapter VI of Part II of the Finance Act 1984, is to be regarded as pursuing an acceptable distribution policy.

10. Offshore funds

That provision may be made amending Schedule 19 to the Finance Act 1984.

11. Double taxation relief: interest on overseas loans

That provision (including provision having retrospective

effect) may be made amending sections 65 and 66 of the Finance Act 1982.

12. Disclosure of employment information obtained from Inland Revenue

That provision may be made amending section 58 of the Finance Act 1969.

13. Lloyd's underwriters

That charges to income tax (including charges for the years of assessment 1985-86 and 1986-87) may be imposed by provisions about underwriters.

14. Relief for losses on unquoted shares

That provision (including provision having retrospective effect) may be made extending the definition of "excluded company" in section 37(12) of the Finance Act 1980.

15. Capital allowances for dwelling-houses let on assured tenancies

That provision may be made with respect to capital allowances in respect of expenditure incurred on the construction of buildings consisting of or including dwelling-houses let on assured and certain other tenancies.

16. Recognised investment exchanges

That provision may be made enabling enactments referring to The Stock Exchange to have effect, with or without modification, in relation to other recognised investment exchanges.

17. Companies' chargeable gains

That provision may be made with respect to the treatment for the purposes of corporation tax of chargeable gains accruing to companies on or after 17 March 1987.

18. Collective investment schemes

That provision may be made about collective investment schemes.

19. Roll-over relief: oil licences

That provision (including provision having retrospective effect) may be made excluding licences under the Petroleum (Production) Act 1934 and the Petroleum (Production) Act (Northern Ireland) 1964 from the classes of assets in section 118 of the Capital Gains Tax Act 1979.

20. Building societies: groups of companies

That provision may be made for the purposes of sections 272 onwards of Chapter II of Part XI of the Income and Corporation Taxes Act 1970 extending references to a company to include a building society within the meaning of the Building Societies Act 1986.

21. Commodity futures, financial futures and options

That provision may be made-

(a) for bringing gains on certain disposals of commodity futures, financial futures and options within the charge to capital gains tax or corporation tax on chargeable gains, and

(b) with respect to the treatment under the Capital Gains Tax Act 1979 of certain options.

22. Pay as you earn

That provision may be made with respect to the payments to which section 204 of the Income and Corporation Taxes Act 1970 (pay as you earn) applies.

23. Sub-contractors in the construction industry

That provision may be made amending section 70 of the Finance (No.2) Act 1975.

24. Management provisions

That provision may be made amending section 118 of the Taxes Management Act 1970.

25. Inheritance tax: interests in possession

That, for the purposes of inheritance tax, provision (including provision having restrospective effect) may be made with respect to interests in possession in settled property.

26. Capital transfer tax and estate duty: acceptance in lieu

That provision may be made, with retrospective effect, with respect to the acceptance of property by the Commissioners of Inland Revenue in satisfaction of capital transfer tax or estate duty.

27. Stamp duty (exempt securities)

That provision may be made amending section 50 of the Finance Act 1987.

28. Stamp duty reserve tax

That further provision (including provision having retrospective effect) may be made in relation to stamp duty reserve tax.

29. Oil taxation

That provision may be made -

(a) amending section 62 of the Finance Act 1987 with respect to chargeable periods ending after 31 December 1986;

(b) amending section 63 of that Act and paragraph 5 of Schedule 2 to the Oil Taxation Act 1975 with respect to chargeable periods ending after 1 January 1987; and

(c) amending Schedule 10 to the Finance Act 1987 with respect to March 1987 and subsequent months.

30. Government fees and charges

That provision may be made with respect to certain powers to require the payment of, or to determine by subordinate legislation the amount of, fees or charges which are payable to Ministers of the Crown or to other persons who are required to pay them into the Consolidated Fund.

31. Goods transhipped as stores etc

That provision may be made with respect to goods transhipped as stores and the use in port, without payment of duty, of goods carried as stores.

17/5

PROCEDURE (FUTURE TAXATION)

That, notwithstanding anything to the contrary in the practice of the House relating to matters which may be included in Finance Bills, any Finance Bill of the present Session may contain the following provisions taking effect in a future year -

(a) provisions amending the Taxes Management Act 1970;

(b) provisions with respect to amounts due by way of penalty or interest;

(c) provisions with respect to interest on tax overpaid;

(d) provisions with respect to the payment of corporation tax without assessment;

(e) provisions amending Chapter II of Part XI of the Income and Corporation Taxes Act 1970;

(f) provisions amending section 418 of that Act; and

(g) provisions amending section 87 of the Capital Gains Tax Act 1979.

PROCEDURE (PERSONAL PENSION SCHEMES)

Mr Chancellor of the Exchequer

That, notwithstanding anything to the contrary in the practice of the House relating to matters which may be included in Finance Bills, any Finance Bill of the present Session may make provision for the payment of sums out of or into the National Insurance Fund or the Northern Ireland National Insurance Fund in connection with provisions relating to the payment of minimum contributions under Part I of the Social Security Act 1986 or Part II of the Social Security (Northern Ireland) Order 1986.

506/45

RESTRICTED

PS/Chancellor
PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Miss Evans

Treasury Chambers, Parliament Street, SW1P 3AG
01-270 4520

Dear Parliamentary Clerk

26 June 1987

BACKERS FOR THE SUMMER 1987 FINANCE BILL

As you know, the Government is committed to re-introducing, with the same effective dates, all the measures which were included in the original 1987 Finance Bill, but which it was not possible to include in the shorter Finance Act passed before the Election. To meet this commitment a second (summer) Finance Bill will be brought in next week incorporating all the measures which had to be left out of the truncated Finance Act. It will include, among other things, measures on profit-related pay and on personal pensions.

2. The purpose of this letter is to ask you to seek the agreement of your respective Secretaries of State and Chancellor of the Duchy of Lancaster to support this Bill - ie to their being included in the list of "Backers".

3. The Bill, being founded on Ways and Means Resolutions, is traditionally brought in by the Chairman of Ways and Means, the Chancellor of the Exchequer, a selection of other Ministers in charge of Departments and the remaining members of the Treasury Ministerial team. On the assumption that each of your Ministers agree, the list would appear as follows:

Ordered to be brought in by
The Chairman of Ways and Means,
Mr Chancellor of the Exchequer,
Mr Secretary Fowler,
Mr Secretary Ridley,
Mr Kenneth Clarke,
Mr Secretary Channon,
Mr Secretary Moore,
Mr Secretary Parkinson,
Mr John Major,
Mr Norman Lamont,
Mr Peter Brooke
Mr Peter Lilley

4. As time is short, a phone call will suffice to confirm that your Minister will support the Bill; by close on Monday 29 June, if possible.

Yours sincerely,

B O DYER
Parliamentary Clerk

Department of Employment
Department of the Environment
Department of Trade and Industry
Department of Transport
Department of Health and Social Security
Department of Energy

3361.

CC - PPS, CST, PMG, EST
Sir. P. Middleton
Mr. Scholar
Miss. Noble
Miss. Sinclair
Mr. Cropper
Mr. Reed / IR
PS / IR.

Treasury Chambers, Parliament Street, SW1P 3AG

B W Sutherland Esq CBE FCA
The Manor House
SHIPSTON-ON-STOUR
Warwickshire

26 June 1987

Dear Barry

FINANCE BILL: CLAUSE 37 (Now Section 36 FA 1987)

Thank you for your letter of 28 April. I am sorry that I have not replied sooner.

There are I think two separate, although related, points here. One is the commencement and cessation rules for income tax, and the effect of the change to corporation tax. The other is the date of payment of corporation tax on the profits of a particular accounting period.

When corporation tax was introduced the general rule was that it first applied to income arising after the end of the last period which formed the basis of a charge to income tax. So no income fell out of charge altogether on the transition, nor was any doubly charged. For a continuing business this produced a reasonable result.

If, however, the business subsequently ceased, this rule, in isolation, would as you say have produced an element of double charge. This, as you are aware, is because on the commencement of a business the income tax rules provide for some profits to form the basis of the assessment for more than one tax year and so to this extent there would be a double charge. For income tax, there is indeed a compensating relief on the cessation of a business, under which some profits escape tax altogether (although these may be very different in amount from those which were doubly taxed). But it was decided that it would not be appropriate to make a relief of this kind a permanent feature of the corporation tax. There was, however, a transitional relief for companies which ceased trading in 1970-71.

Section 36 makes no change to the amount of profits which are charged to corporation tax. If a company ceases trading it would eventually pay the same amount of tax as it does at present. The difference is in the timing of the tax payments.

This brings me on to the second point. As you say, the effect of the arrangements for the introduction of corporation tax was that the company continued to pay tax at annual intervals (assuming that it continued to have accounting periods of twelve months). This was done by making corporation tax payble at the end of the same interval as had applied for income tax. So some companies paid tax nine months after the end of their accounting periods while others had a longer payment interval (of up to almost 21 months).

The trouble with this arrangement is that at a time of rising profits the company with a longer payment interval gains an advantage over a company with a shorter interval. If their profits are identical throughout the whole period, the company with the longer interval will always pay less tax in any given year than the company with the shorter interval. This continuing advantage has been present for over twenty years and if the legislation were not altered it would continue indefinitely (assuming profits continue to rise). This is contrary to our general policy of letting businesses compete on equal terms.

So I have no doubt that it is right in principle to harmonise payment intervals at nine months. This will of course mean that the companies affected will during the transitional period pay corporation tax at intervals of less than twelve months. But in general this will no more than compensate for the continuing advantage these companies have received since 1965. The balance between the two factors does of course depend upon the circumstances of each company. But an example gives some idea of this. Assume that a company with a payment interval of almost 21 months has a CT liability which has increased at an average rate of 5 per cent a year over the last 20 years (slightly below the actual average increase), and that it could earn (or save) 5 per cent after tax on the amount it saved by having a smaller tax bill in any year than a company with the same profits but a payment interval of nine months. Over this twenty year period the amount it could have earned or saved would be equal in amount to an extra year's tax liability. This shows the large advantage it would have gained ove a company with a nine months payment interval. We recognised that making our proposed change in one go would have caused severe cash-flow difficulties for some companies, which is why we have provided a transitional period.

I note what you say about the abuse of the existing provisions. The new arrangements will indeed stop this abuse but that is not the main reason why we proposed them. Their main purpose is to ensure that companies (and building societies) compete with each other on more equal terms. The change will of course also result in a further simplification of the corporation tax system.

NORMAN LAMONT

b/f 29/6

FROM: S P JUDGE
DATE: 26 June 1987

PAYMASTER GENERAL

PS/CHIEF SECRETARY

cc PS/Chancellor
PS/Financial Secretary
PS/Economic Secretary
Mr Lavelle
Mr Edwards
Mr Scholar
Miss Evans
Parliamentary Clerk
Mr Cropper
PS/Inland Revenue
Mr Walker - IR
PS/Customs & Excise
Mr Jenkins - Parly Counsel

FINANCE BILL: COMMITTEE STAGE: ECOFIN

I had a word with you about this.

The Chancellor has not yet decided whether he or the Paymaster General should represent the UK at ECOFIN on Monday, 13 July.

In order to keep the options open, he would be grateful if CWH could be arranged so that the Paymaster does not have any clauses on the Monday. As I see it, this can be done in two ways:

a. defer CWH to 14/15/(16?) July;

b. table an ordering motion, so that (perhaps) Clauses 1-17 are taken after Clause 73.

I would be grateful if you could consult the Chief Secretary, the Whips and the Opposition about this. I imagine Parliamentary Counsel would not be keen on renumbering all the clauses: this would be a substantial proof-reading job at this stage, given that the Bill goes to press around lunch-time on Tuesday.

S P JUDGE
Private Secretary

4472/14

PMG 29 JUN 1987

FINANCIAL SECRETARY TO THE TREASURY

Tony?

RP

FINANCE BILL: MISCELLANEOUS CLARIFICATIONS

- The allocation of clauses is as agreed in my note of 25 June
- The Chief Secretary will open the Second Reading Debate on 7 July
- The Financial Secretary will close the Second Reading Debate
- The Financial Secretary will handle the Debate on Resolutions: 1 July
- X | Committee Stages will be on 14, 15, 16 July
- The clauses will be taken in the order they appear in the Bill

g.m/l

JEREMY HEYWOOD
Private Secretary

cc PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Mr Dyer
Mr Walker IR

cc PS/Chancellor.

We spoke.

Ch/

NB 'X'. This means PMG is available to do ECOFIN on 13 July, if required.
At present it is unlikely that the Cockfield plans on tax harmonization will come up at the July ECOFIN; and we wd hope to have the French spanner removed from the cash accounting works before then.
According to his office, Balladur will not be attending the July ECOFIN. Wd you be content to postpone your chat with him on EMS until the margins of the informal ECOFIN (when Sir G L + Lebegue will be on hand)? Ask

SJS 29/6

good.

No: we will have to fix up speedily a...

4472/08

1. Cathy
2. Ref (Cathy) with advice

FROM: N WILLIAMS
DATE: 29 June 1987

MR A J WALKER IR

cc PS/Chancellor
PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Mr Walters
PS/IR

FINANCE (No. 2) BILL

1. The Financial Secretary has seen the letter from I.o.D (copy attached) concerning the Finance (No.2) Bill. He would be grateful for a brief note commenting on the points made by the IoD.

NIGEL WILLIAMS
(Assistant Private Secretary)

ENC

IOD
Institute of Directors

23 June 1987

From the Chairman of
the Taxation Committee
Bruce Sutherland CBE

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
Treasury Chambers
Parliament Street
London SW1P 3AG.

Dear Nigel,

FINANCE (NO 2) BILL

In view of the manner in which consideration of the Finance Bill 1987 was cut short by the general election and the Government's announcement that the provisions dropped from the Bill would be re-introduced in a new Bill as soon as possible, we thought it would be useful if we made a submission now which:

a. covers items in the Finance Act 1987 which the opportunity should be taken to correct;

b. sets out our updated comments on the clauses which were dropped and are to be re-introduced.

ITEMS FROM FINANCE ACT 1987

VAT: Tour Operators (Section 16)

Until we have seen and considered the approach taken in the draft regulations and leaflet, we must reserve our position as to whether section 16 itself is acceptable or requires amendment.

Income Tax Rates (Section 20)

We note the post-election press comment that you are considering significant reductions in the higher rates of income tax in the next Budget. We have long urged such a move which would have little or no adverse effect on tax revenues and considerable positive effects on the economy. If a reduction would be beneficial as you and we appear to agree, why defer it until next year? We suggest you reduce the top rate to 50% immediately.

We regret your decision this year as last year to increase the "additional rate" for trusts to offset the reduction in the basic rate of income tax. The total (basic plus additional) rate for trusts will at 45% be out of all proportion to the income tax rates for individuals. The additional rate for trusts was introduced in 1973 as the equivalent of the 15% investment income surcharge for individuals and the total rate of 45% then compared with the income tax basic rate of 30 and top rate on investment income of 90%. Now the basic and top rates are 27 and 60%

Fax 01-930 1949 Institute of Directors 116 Pall Mall London SW1Y 5ED Telephone 01-839 1233 Telex 21614 IOD G

respectively and the investment income surcharge has been abolished. We therefore urge you immediately to abolish the additional rate for trusts or failing that to reduce it significantly.

Corporation Tax Payment Date (Section 36)

We remain convinced that it is unjust to bring forward the payment date in a way which results in pre-1965 companies having corporation tax accounting periods over their lifetime whose total duration exceeds the life of the company. As you accepted in your letter to us of 11 May, it would be feasible to devise rules to prevent exploitation of the different regime for pre-1965 companies or to allow some profits to drop out of charge when the payment date is brought forward. We urge that this latter course be adopted.

Carry-back of BES Relief (Section 42)

We accept that BES investors to date may have only invested £10,000 in a tax year on average and that half this figure is £5,000. It seems to us, however, unduly parsimonious and short-sighted to limit the carry-back to £5,000. Section 42 is essentially a deregulatory measure designed to reduce the influence of the tax system on the timing of BES investments, one desirable effect of which should be to increase the average annual investment, rendering the £5,000 limit immediately out of date even on the basis by which Ministers have justified it. We suggest that the aims would be better achieved by allowing half the annual limit i.e. £20,000, if invested in the first half of the year, to be carried back.

POINTS ON CLAUSES DROPPED FROM FINANCE BILL 1987

Occupational Pension Schemes (Clause 34 and Schedule 4)

We accept that the new rules on revaluation of deferred pensions and on transfer values will go a long way to remedy the previous problems for early leavers. They operate to protect the real value, however, only of pension entitlements at or accrued since the commencement date of the legislation, so that an individual in his 40's or 50's whose prospective pension had previously been reduced substantially by job changes remains reliant on the accrual facility to have a hope of a pension approaching two thirds of his final remuneration. The effect of allowing accelerated accrual only over 20 rather than 10 years will be to tie those currently benefitting from accelerated accrual to their present employers. There will also be some incentive for many other over-40's to stick with their present employer rather than risk further erosion of their pension entitlement which could occur, for example, if inflation rose again to double figures. We consider that the accelerated accrual facility improves the equity of the tax system for the over-40's (for whom personal pensions will not be an effective answer) and in particular for women who are more likely to have had significant breaks in their working career. We urge that the present minimum accrual period of 10 years be retained. This proposal would especially effect senior executives whose skills it is important should be deployed to maximum effect without fiscal or other impediments to mobility.

The definition of "final remuneration" is crucial to enforcement of the two thirds limit for pensions payable under occupational schemes and paragraph 13 tightens up this definition. The proposed ceiling, however, of £150,000 on lump sums payable under occupational schemes is unnecessary to prevent avoidance. It appears to derive from the sort of misplaced egalitarian sentiment more normally associated with parties opposing the present Government. High earnings should be the subject of congratulations not of fiscal restrictions which carry connotations of avoidance. In any event there is no possible justification for restricting commutation in the case of early retirement through ill health. The restrictions on commutation will also be a significant discouragement to job mobility for those higher earners anticipating a large lump sum on retirement. These proposals were not included in the consultative paper "Improving the Pensions Choice" or any other consultative paper. We urge that they be withdrawn and be re-considered after proper consultation which might appropriately look at the whole question of commutation and its tax treatment not just this limited aspect.

Retrospective Overruling of Cases (Clause 47)

We have written separately to the Financial Secretary urging that any legislative overruling of court decisions in the case of Padmore v IRC (clause 47) or the case on roll-over of oil licence gains (Parliamentary Answer May 14) should be retrospective only to the date the proposal was announced.

Dual Resident Companies (Clauses 48 and 49, Schedule 8)

The proposals in the Bill incorporated a few minor changes from the draft legislation in the consultative document of 5 December 1986 - but are essentially the same. We regret that the Government proceeded to include this legislation in the Bill still with no proper explanation of:

(a) why the UK needs legislation to correct an anomaly in US legislation which the US has already corrected; and

(b) if so, why the UK legislation needs to go beyond correcting the anomaly (ie preventing the obtaining of a double deduction) to the opposite extreme of denying any relief for loss-making DRIC's; and

(c) why the UK legislation needs to come into force before the publication of the detailed US regulations without which a group cannot know how best to carry out the restructuring envisaged in paragraph 13 of the consultative paper or even if any restructuring is necessary.

The comments in our response to the consultative document, therefore, still stand both as regards the principle of the legislation and the detail.
Accordingly we again ask the Government:

(a) to confirm that it is acting solely on the basis of what is in the UK's interest (as opposed to the US's interest);

(b) to explain why it is in the UK's interest to legislate against DRC's in this manner.

If there is justification for UK legislation against DRC's, then we urge that it be confined to correcting the mischief at which it purports to be aimed, the obtaining of a double deduction i.e. deduction in the UK should be denied only where and to the extent that a deduction has actually been obtained in the other country. It should, moreover, be left to the company to choose in which country to take the deduction. This would remove the need to restructure in most cases. We also urge that:

(a) the major fiscal disincentives to overseas investment by UK groups mentioned in paragraph 13 of our submission be corrected at the same time;

(b) commencement of the provisions be deferred until a reasonable time after the publication of the US regulation.

In the annex to this letter we repeat the more important technical points from our submission and explain why the minor changes in clause 48(6) from the original draft are totally inadequate to protect the genuine trading company.

Lloyd's Underwriters (Clause 58)

We have received representations about clause 58 from IOD members who are also names at Lloyd's. More generally our membership has an interest in nothing further being done to aggravate the shortage of capacity in the insurance market for those, mainly longtail, risks such as product liability, employer's liability and directors' personal liability. In our view there is a fundamental commercial and legal distinction between an irrevocable legal contract (reinsurance to close) between two different parties (syndicates for different years) and an accounting provision subject to future adjustment made by an insurance company. There is also a real difference as regards tax enforcement problems between the kind of business done by most insurance companies, which readily lends itself to standardised techniques, and the kind of business, particularly of longtail business, done by Lloyd's, where historical claims experience is often non-existent or irrelevant to likely future claims experience. In the latter case the only "price" that means anything is the price which can be negotiated for the contract at arm's length in the market. We therefore support what we understand to be Lloyd's approach in its discussions with the Revenue, namely that the appropriate way to police reinsurance to close provisions is not that put forward in clause 58 but for the Revenue to satisfy itself that the contract price has been arrived at on an arm's length basis or as close to that as can reasonably be demonstrated. In any event the self-interest of the new names and/or the names from the old syndicate with an increased share in the successor syndicate is a substantial guarantee that the price will be at arm's length in all but the 10% of syndicates in a typical year where no change in the composition of the names or their shares takes place.

Rate of Tax on Chargeable Gains (Clause 61)

As we said in our letter of 3 April we believe it to be wrong in principle to tax chargeable gains, whether of a company or an individual, at the same rate as profits or income. The distinction between revenue and capital is fundamental to the UK tax system and pervaded every aspect of it. The most crucial distinction in this connection is the asymmetric treatment of gains which are always taxable (subject to the annual exemption for individuals and trusts) and losses which are allowable only against current or future gains. The asymmetry is greater than for trading profits and losses since trading losses can be carried back one, or sometimes three years and a continuing trade offers the prospect of profits in the relatively near future; capital transactions are by contrast infrequent and often large in relation to the taxpayer's income and net assets so that the relief for losses is often never obtained or obtained only years later when the discounted value is a fraction of the original loss.

This asymmetry in our view justifies gains being taxed at a significantly lower rate than income or profits. There is, we accept, nothing sacred about the differential between the rates in April 1965 but that differential seems to us at least to have been of the right order.

In any event it must be wrong on any basis to tax gains at the same, or (as for most individuals now) at a higher rate than, income before full relief has been introduced for pre-1982 inflation. We therefore urge you immediately to reduce the rates of tax on the gains of both corporate and individual taxpayers to a single rate of 20% in the next Budget.

ACT Imputation on Companies' Gains (Clause 64)

We particularly urge the re-introduction of this clause in the Finance (No 2) Bill. It has nothing to do with the issue of whether gains should be taxed as income discussed in the previous paragraph.

Personal Pension Schemes and Profit-Related Pay (Chapters III and IV)

Since PRP is specifically intended not to be "icing on the top of the cake" but rather to replace part of existing (pensionable) pay, it is vital that PRP is itself pensionable. Thus pay under an approved PRP scheme should be specifically included in the definition of "relevant earnings" for personal pension schemes in clause 86.

Other technical points on personal pensions and PRP schemes are included in the annex.

Inheritance Tax - Interests in Possession (Clause 148 and Schedule 13)

We particularly urge that these provisions be re-introduced in the Finance (No. 2) Bill.

Yours sincerely

Bruce

Bruce Sutherland
Chairman, Taxation Committee

ANNEX

TECHNICAL POINTS

Dual Resident Companies

1. The term "tax" in clause 48(4)(b) should be defined and the definition should exclude irrelevant taxes such as sales and property taxes, stamp duties and transfer duties or rather should include only taxes which are comparable to UK corporation tax (the flat rate corporation tax on companies incorporated in the Channel Islands is not comparable). A precedent for such a limited definition of "tax" can be found in Section 54(7) FA 1985.

2. It should be made clear whether local and state as well as national taxes are to be taken into account and whether "territory" refers to sovereign states or to political sub-divisions thereof (cf FA 1985, Schedule 13 para 5).

3. Clarification is required as to how the Revenue will interpret the words "place of management" and "resident" in clause 48(4)(b)(ii) and (iii) given the great variety of tax systems and tax treaties around the world (as drafted, it appears that both will be as interpreted by the foreign tax system and may, for example, include deemed residence).

4. It should be made clear whether a company, which would be within the "charge to tax" in a foreign territory but for the provisions of a double tax treaty, is or is not within the definition of a DRC.

5. The definition of a DRIC in clause 48(5) and (6) should exclude not just trading companies but other companies engaged in legitimate commercial activities such as property holding companies and intermediate holding companies for trading companies.

6. The amendments to clause 48(6) are insufficient. The sub-clause needs complete re-thinking if it is to be a reasonable restriction on the trading company exemption:

    1. clause 48(6)(a) fails to ensure that trading companies with heavy initial outgoings in the start-up phase are not caught;

    2. the meaning of the words "of such a description that its main function" etc are wholly unclear. They could mean either:

        (a) that the trade must be of a description within sub-clause (6)(a)(i) to (iv) ie a financial or related trade so that the main function consists of all or any of (i) to (iv), or

        (b) that the trade may be of any type but of such a description (eg of a minor nature in comparison) that the main function of the company is still all or any of (i) to (iv).

In addition, it is not clear how clause 48(6) fits in with the definition of a trading company in s.258(5)(c) ICTA 1970 which is adopted by clause 48(9);

3. it seems from clause 48(6)(b) that a single transaction of a type within clause 48(6)(a) which cannot be justified in terms of the company's trade (of whatever nature) will remove the trading exemption. This restricts significantly and unnecessarily the trading company exemption, irrespective of the reasons for the transaction in question.

4. The concept of activity in clause 48(6)(c) is not appropriate to suffering discounts, which are not paid and are only deemed to be charges on income.

7. The restrictions in clause 49 should not apply just because the company is a DRIC; they should be confined to where a double deduction or double relief would otherwise actually be obtained.

8. It should be made clear that:

   a. Furniss v Dawson will not be invoked where the restructuring has no purpose other than to ensure that a single deduction is available in future; and

   b. s.278 ICTA 1970 will not be invoked.

Personal Pension Schemes (Chapter III)

9. We would welcome confirmation that the death benefit (clause 76 and 77) will be excluded from the inheritance tax charge on death and can be nominated to specific beneficiaries as with death benefit under RAP schemes.

10. What happens to the surplus if the lump sum permissible under clause 77(2) is less than the full value of the fund on death?

11. Clause 80(1)(a) presumably needs amendment to reflect the decision to allow an individual to have more than one personal pension scheme.

12. Pay under an approved Profit-related Pay scheme should be included in the definition of "relevant earnings" in clause 86.

13. Provision should be made for the individual whose scheme's approval has been withdrawn by the Board under clause 93 to transfer his investments to another approved scheme.

Profit-Related Pay (Chapter IV)

14. If the employee is a member of more than one PRP scheme such that by virtue of clause 110 relief is only available in respect of one of the schemes, he should be allowed to choose the scheme for which he will get relief.

15. One month for the joint notification of change of scheme employer is too short. We suggest six months would be more reasonable.

16. It is not clear why clause 118 requires an annual return for PRP earlier than the accounts are required under clause 123. We would be most disturbed if the powers under clause 118 were used to obtain accounts and other information not otherwise required for another three or five months.

Taxes Management Provisions (Chapter V)

17. We still think that the Revenue should not be given such broad powers in clause 123 to prescribe the information, accounts, statements and reports to be supplied with companies' tax returns, not least because that effectively gives the power to prescribe accounts which are not just more extensive but compiled on a different basis from that required under the Companies Acts. Clearly the closest possible consultation with representative bodies will be required when the regulations are being drafted if unacceptable burdens are not to be placed on corporate businesses (and no doubt used as a precedent in due course for unincorporated businesses).

18. We believe that the concept of "mirror image" interest is crucial to the fairness of the new penalty regime. That includes the interest rate being the same for over and under-payments of tax i.e. there is no more justification for an incentive to the Revenue to delay agreeing refunds of tax than for an incentive to the taxpayer to delay paying tax which is due. We therefore urge that the words " for the purposes of the provision in question "be deleted from clause 131, so that the Government's commitment to the mirror image principle is made clear.

19. Any overpayment of tax before the due date is likely to be the result of error by the taxpayer. We do not see why he should have to wait until after the "material date" to obtain a refund under clause 132(5).

4084/31

RESTRICTED

1 Jan
2 Alex

FROM: Deputy Parliamentary Clerk
DATE: 29 June 1987

01-270 5006

PS/FINANCIAL SECRETARY

cc PPS
PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Miss C E C Sinclair - FP
Mr K Bradley - CA
PS/IR
PS/HMCE

FINANCE BILL 1987/8 : NOTES ON CLAUSES

Parliamentary Section expects to be in receipt of both Part I and Part II of the Notes on Clauses and Schedules by close Thursday (2 July). Given the accelerated timetable for the bill requiring all clauses to be taken on the floor of the House, I would propose placing in the Vote Office the requisite 400 copies of the Part I Notes in 2 instalments: 200 this coming Friday (3 July), the same day as publication of the bill; and a further 200 copies before Committee of the Whole House begins. Making half the requisite number of copies available a whole weekend before 2nd Reading should help to defuse any Backbench criticism over the Bill's accelerated consideration and passage. Members' attention would be drawn to their early availability by means of an inspired question:

> 'To ask Mr Chancellor of the Exchequer, if Notes on Clauses to the Finance Bill will be made available to hon Members'
>
> 'Mr Norman Lamont : Yes. The Notes on Clauses were placed in the Vote Office earlier today'.

The question would need to be tabled this Thursday in order to alert Members on Friday. Is the Financial Secretary content for this to be done?

Richard Savage

RICHARD SAVAGE

009/3293

FROM: JILL RUTTER
DATE: 29 June 1987

PS/FINANCIAL SECRETARY

cc:
PS/Chancellor
PS/Economic Secretary
PS/Paymaster General
Mr Lavelle
Mr Edwards
Mr Scholar
Miss Evans
Parliamentary Clerk
Mr Cropper

FINANCE BILL: COMMITTEE STAGE

The Chief Secretary has seen Simon Judge's minute of 26 June.

2 I have spoken to Murdo MacLean and he is prepared to defer Committee of the Whole House to 14 to 16 July. The Third Reading of the Report will still take place on 20 July.

3 Second Reading will, as previously thought, be on 7 July.

4 The resolutions had been tabled for discussion after the Three Line Whip on 1 July. Mr MacLean tells me that if there are signs that there will be division on many of the resolutions he proposes that resolutions after the 1st be "not moved" and deferred until Thursday evening. This is a contingency arrangement. There is no reason to expect trouble on present indications.

5 As previously agreed the Chief Secretary will now open the Second Reading Debate; the Financial Secretary will wind.

Jill Rutter

JILL RUTTER
Private Secretary

4077/37

1. Cathy
2. Nigel - worth keeping

Mr. Kinsey

You may like a copy in Private Office for the record. 29/6

CONFIDENTIAL

FROM: B O DYER
DATE: 29 June 1987

01-270 4520

PS/ECONOMIC SECRETARY

cc PS/Financial Secretary
PS/Paymaster General
Mr Scholar
Miss Evans
Mr Cropper
Mr Jenkins - OPC

FINANCE BILL : PROCEDURE

Your minute of 25 June asked for a note explaining the procedure for each stage of the Bill's passage through the House, including the form of words Ministers employ.

Following is, I hope, a comprehensive note; together with the current timetable for the Bill and allocation of responsibility between Ministers:

Wednesday 1st July (circa 10.15pm : exempted business) : Founding resolutions on which the Bill is brought in, given a formal First Reading and ordered to be printed

The Financial Secretary is handling this stage. He will move the first resolution, which is open to debate, and respond to any questions that may arise. Once agreed, the Chair must put the question on each of the remaining resolutions forthwith without further debate under SO50(3).

Note: As there is no 'Amendment of the Law' resolution on this occasion, no amendments or new clauses may be moved unless they are covered by the founding Ways and Means resolutions.

Immediately following the passing of the resolutions, the Chair asks:

'who will prepare and bring in the Bill'

To which the Financial Secretary, standing in his place, responds:

> 'The Chairman of Ways and Means, Mr Chancellor of the Exchequer, Mr Secretary Fowler, Mr Secretary Ridley, Mr Kenneth Clarke, Mr Secretary Channon, Mr Secretary Moore, Mr Secretary Parkinson, Mr John Major, Mr Peter Brooke, Mr Peter Lilley and myself, Sir.'

The Financial Secretary then proceeds to the Bar of the House with the 'Dummy Bill' (this will have been given to him previously by the Clerk at the Table); at the Bar, he bows once, takes six short steps, bows a second time, takes another six steps - which should bring him to the table - bows a third time and formally hands the 'Dummy Bill' to the Clerk. The Clerk then reads out the title of the Bill and a day will thereupon be appointed for Second Reading (with Government Business it is always tomorrow). The Bill is then ordered to be printed.

Friday 3rd July : Finance Bill publication

No action is required of a Minister at this stage. Lobby notes (a brief explanation of each of the Bill's clauses) are given to the Press to coincide with publication; and factual explanatory notes covering each clause and schedule in the Bill are deposited in the Vote Office for the convenience of Members.

Tuesday 7th July : Second Reading

The Bill even though founded upon Ways and Means resolutions, is governed by the ordinary rules of relevancy; however, the scope of the Second Reading debate is fairly wide and admits of a broad discussion of all the proposals embodied in the Bill, and a general review of national finance is normally permitted.

The Chief Secretary will open the debate for the Government with the words : 'I beg to move, that the Bill be now read a second time.' The Financial Secretary will wind up the debate, concluding with the words 'I commend the Bill to the House.' Once Second Reading is obtained (ie after any division), the Financial Secretary will formally 'move that the Bill be committed to a Committee of the Whole House.'

13 - 15 July : Committee of the Whole House

For this stage the House resolves itself into a Committee of Ways and Means chaired by its Chairman, the deputy Speaker. The mace is placed under the table while the House is in Committee. The Bill will be considered Clause by Clause in sequential order unless there is a Government motion to the contrary (eg that a schedule be considered with the Clause to which it relates); in this event, the Financial Secretary will move such a motion at the commencement of proceedings in Committee.

Form of words when moving a Government Amendment in Committee :

'I beg to move amendment No. X, in page Y, line Z, leave out A and insert B.'

In winding up, the Minister might conclude with the words

'I commend the amendment(s) to the Committee.'

Form of words a Minister might use when resisting an amendment :

After stating the Government's objections to the amendment the Minister might conclude with 'for the reasons given, I cannot recommend the Committee to accept the amendment(s).'

Form of words after consideration of any amendments, or if there are no amendments :

'I beg to move, that the Clause [as amended] Stand Part of the Bill'.

I understand that the Economic Secretary is taking charge

of the following Clauses at Committee Stage: 67 and 68, 76 to 95, and 101. Currently, it appears unlikely that there will be any Government amendments to these Clauses.

Any new Clauses tabled to the Bill will normally be taken at the end of proceedings. If they come from the Opposition, they are likely to be resisted, eg 'I cannot recommend the Committee to accept the New Clause for the following reasons'

Monday 20th July : Report Stage and Third Reading

At Report Stage New Clauses are taken before amendments (and Government New Clauses before other New Clauses). There are no 'Clause Stand Part' debates. At the conclusion of the debates the Bill is reprinted as amended. Third Reading affords a final discussion of the Government's financial proposals as contained in the Bill. The Financial Secretary will take charge of Third Reading and once obtained, the Bill is passed to the House of Lords.

If no amendments are accepted at Committee Stage the Bill is reported without amendment and can proceed direct to Third Reading.

21st July : House of Lords/Royal Assent

Normally, after the Bill has received its Second Reading in the Lords (which takes the form of a general debate on the economy), Standing Orders are suspended and the remaining stages taken formally; on this occasion, the Lords may take all stages formally. After being passed by the Lords the Bill is returned to the Commons for safe custody and is handed in by the Speaker at the bar of the House of Lords for the purpose of receiving Royal Assent (as are any other Bills founded on Ways and Means or Supply resolutions).

B O DYER

3101/09

FROM: R K C EVANS
DATE: 30 JUNE 1987

MISS C EVANS

cc Mr Scholar
Mr Culpin
Mr Pickford
Mr Hudson ~ 12/2
Mr Dyer
Mr Bradley
Mr Walters
Mr A Walker - IR
Miss French - C&E

FINANCE BILL: PUBLICITY

The arrangements you suggest for publication of the Finance Bill seem fine to me.

2. I have spoken to the FT on an operational (ie not for reporting) basis and they are likely to concentrate on the various changes to be outlined in the IR press notices. But they will be interested in seeing a copy of the Lobby Notes as early as possible.

3. Given the particular circumstances of this publication, they are more likely to summarise the Bill rather than reproduce the Lobby Notes in full.

RICHARD EVANS

3756/053

Alex. RP
Two minute

FROM: P D P BARNES
DATE: 30 June 1987

MR DYER 2

cc PS/Financial Secretary
PS/Paymaster General
Mr Scholar
Miss Evans
Mr Cropper
Mr Jenkins - OPC

FINANCE BILL : PROCEDURE

The Economic Secretary has seen your submission of 25 June on the above which he found useful. He has, however, some further questions on procedure.

2. The Economic Secretary would like to know:

(i) whether there is a usual form of words where a Government Minister begins the discussion on a particular clause - ie by way of introduction?

(ii) what happens if after when introducing a clause, no one stands up on the opposition bench to reply? Does the Government Minister proceed to "I beg to move" stage?

(iii) is there any particular form of words for use by the Government Minister in responding after Opposition intervention? - (not necessarily when there is an amendment as in your examples).

PB

P D P BARNES
Private Secretary

4077/40

Tony
For the record

FROM: B O DYER
DATE: 30 June 1987

01-270 4520

PS/ECONOMIC SECRETARY

cc PS/Financial Secretary
PS/Paymaster General
Mr Scholar
Miss Evans
Mr Cropper
Mr Jenkins - OPC

FINANCE BILL : PROCEDURE

Your minute of 30th June posed three supplementary questions:

Q1 : Whether there is a usual form of words where a Government Minister begins the discussion on a particular Clause - ie by way of introduction?

A1 : Page three of my earlier note covered this point. If there are no amendments moved to the Clause, the Minister says : 'I beg to move, that the Clause Stand Part of the Bill'; and is generally followed by a brief exposition as to the purpose of the Clause. If any amendments (which are taken first) are made to the Clause, the Minister says: 'I beg to move, that the Clause as amended Stand Part of the Bill'.

Q2 : What happens if after when introducing a Clause, no one stands up on the Opposition Bench to reply.

A2 : The Government Minister need say nothing further. The Chairman of the Committee will automatically put the question.

Q3 : Is there any particular form of words for use by the Government Minister in responding after Opposition intervention?

A3 : There is no set wording, but a Minister can score a brownie point by recognising the Member who intervenes and prefacing his response with : 'It may help the hon Member for [Sedgefield] if I were to explain/draw his attention/point out ...'. It is always, of course, open to the Minister not to give way, and thus forestall any intervention.

Since my procedural note of 29 June setting out, among other things, the timetable for the Bill's passage, you will have noted that **Second Reading** has now switched from Tuesday 7th July to **Wednesday 8th July**, and **Committee Stage** has been deferred by one day to **14, 15 and 16 July.**

B O DYER

3756/053

FROM: P D P BARNES
DATE: 30 June 1987

MR DYER 2

cc PS/Financial Secretary
PS/Paymaster General
Mr Scholar
Miss Evans
Mr Cropper
Mr Jenkins - OPC

FINANCE BILL : PROCEDURE

The Economic Secretary has seen your submission of 25 June on the above which he found useful. He has, however, some further questions on procedure.

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(iii) is there any particular form of words for use by the Government Minister in responding after Opposition intervention?- (not necessarily when there is an amendment as in your examples).

PB

P D P BARNES
Private Secretary

4077/38

CONFIDENTIAL

1. Cathy
2. Alex
3. PS

FROM: B O DYER
DATE: 30 June 1987

01-270 4520

PS/FINANCIAL SECRETARY

cc PS/Chancellor
PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Miss Evans
Mr Savage
Mr Cropper

FINANCE BILL : WAYS AND MEANS RESOLUTIONS

I spoke to Murdo Maclean last night about his proposal to take the first of the founding resolutions tomorrow evening (Wednesday 1 July around 10.15pm) and defer the remaining 30 odd resolutions until the following evening (Thursday 2 July around 10.15pm).

2. It seems he is concerned that a few rogue Members might try to divide the House on many of the remaining resolutions which could take up to seven hours. (Under SO50(3) they are not debateable but can be voted on). I told Murdo that I thought such a scenario unlikely in view of Bryan Gould's relaxed approach, but recognised it was a possibility. We agreed that the best way forward would be to seek to persuade the Speaker to take the resolutions en bloc. If the motion was opposed, it would quickly flush out if such a ploy were afoot. He said he would pursue this with the Speaker.

3. Having reflected further overnight, it seems to me that Murdo's proposal to defer the remaining resolutions to Thursday evening could be counter productive. In such an event, I suspect the resolutions might become debateable. I conveyed this additional consideration to Murdo's office this morning, and suggested he checks the procedural position with the House Authorities.

4. In view of this element of uncertainty surrounding consideration of the resolutions, you will probably wish to keep in touch with Murdo during the course of Wednesday evening. I will also keep my ear to the ground.

B O DYER

4077/39

RP

FROM: B O DYER
DATE: 30 June 1987

01-270 4520

PS/CHIEF SECRETARY

cc PS/Chancellor
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Lavelle
Mr Edwards
Mr Scholar
Miss Evans
PS/Inland Revenue
PS/Customs and Excise
Mr Cropper
1. Mr Savage
2. File

FINANCE BILL : SECOND READING

Further to your minute of 29 June, Murdo Maclean has now advised me that, at the request of the Opposition, Second Reading has been switched from Tuesday 7th July to **Wednesday 8th July.**

2. I have confirmed with your office that, notwithstanding the change in date, the Chief Secretary will open the Second Reading debate, and the Financial Secretary will wind.

B O DYER

2513/001

CONFIDENTIAL

RP

Ref: RCA/BQ/1

FROM: K E BRADLEY

DATE: 1 July 1987

PAYMASTER GENERAL

cc Chancellor
Chief Secretary
Financial Secretary
Economic Secretary
Sir P Middleton
Mr Butler
Mr Wilson
Mr Anson
Mr Beastall
Mr Gilmore
Mr Burgner
Mr Scholar
Mr Turnbull
Mr Mason
Mr Revolta
Miss Sinclair
Mr Bonney
Mr Waller
Mr Dyer
Mr Graham - Parl Counsel
Miss Wheldon - T. Sol

FEES AND CHARGES: FINANCE BILL

The Fees and Charges query raised by the Joint Committee on Statutory Instruments is being dealt with by Clause 102 in the Finance Bill 1987/8. You are familiar with the background and the issues involved. Notes on Clauses for the Bill are required by Parliamentary Section by close of play on Thursday 2 July.

2. I attach Part I and II Notes on the Clause, which have been prepared in conjunction with the Department of Transport (who have been in the lead on the Clause) and with T.Sol. I also attach a copy of the Clause.

3. Your approval to the Notes is invited.

KB.

K E BRADLEY

CLAUSE 102: GOVERNMENT FEES AND CHARGES

SUMMARY

1. This clause enables Ministers and others to extend by order the range of functions and costs which are to be taken into account when the amount of any fee or charge is determined, but only where there is a requirement that the fee or charge be paid into the Consolidated Fund. Orders under the clause may only be made by Ministers, the Treasury, or the Commissioners of Inland Revenue or of Customs and Excise.

DETAILS OF THE CLAUSE

2. Subsection (1) states the circumstances in which the clause applies. It applies where a Minister or any other person has power under any enactment (whether passed before or after the Bill) to require the payment of, or to determine by subordinate legislation the amount of any fee or charge, but only if the fee or charge is payable to the Minister or to any other person who is required to pay the fee or charge into the Consolidated Fund. The words in brackets at the end of the subsection make clear that the clause applies to those cases where the requirement is expressed in terms of paying the fee or charge into the Exchequer.

3. Subsection (2) contains a number of definitions of terms which are used in subsection (2) and the following subsections of the clause. Thus -

(a) "power to fix a fee" is a reference to any power falling within subsection (1), namely powers under any enactment to require the payment of a fee or charge or to determine by subordinate legislation the amount of any fee or charge;

(b) "fee" includes charge;

(c) "the appropriate authority" means, if the original fee-setting power falling within subsection (1) is exercisable by a Minister, the Treasury, or the Commissioners of Inland Revenue or of Customs and Excise, the Minister in question or the Treasury or the Commissioners in question. In any other case, the expression means such Minister as the Treasury may determine; and

(d) "the recipient" means the Minister or other person to whom the fee is payable.

4. Subsection (3), in relation to any power to fix a fee, enables the appropriate authority, or any Minister with the consent of the appropriate authority, by order to specify functions the costs of which are to be taken into account in determining the amount of the fee. The order must be in the form of a statutory instrument. The functions specified in the order may be those of the recipient or of any other person and may arise under any enactment, any European Community legislation or otherwise (for example, under an international convention). The costs of the specified functions are to be taken into account in addition to any other matters required to be taken into account (as, for example, where the statute containing the power to fix the fee itself specifies matters to be taken into account).

5. Subsection (4), in relation to any functions the costs of which fall to be taken into account when a fee is fixed, enables the appropriate authority (or any Minister with the consent of the appropriate authority) by order to specify matters which are to be taken into account in determining those costs. The order must be in the form of a statutory instrument. The specified matters are to be taken into account in addition to any matters already required to be taken into account (as, for example, if a second order under this subsection was being made, and the first order had already specified certain matters). As examples of matters which may be specified in an order, the subsection mentions deficits (whether incurred before or after a fee is fixed), a requirement to secure a return on capital, and the depreciation of assets.

6. Subsection (5) subjects orders under the clause to the affirmative resolution procedure; that is to say, no such order may be made unless a draft of it has been laid before, and approved by a resolution of, the House of Commons.

7. Subsection (6) contains provisions relating to the effect of an order under subsection (3) or (4). Any such order has effect in relation to the exercise of the power to fix the particular fee only after it (the order) is made. However, no earlier exercise of that power is to be regarded as invalid if, had the order been made before the earlier exercise of the power, that exercise would have been invalidated by the order.

8. Subsection (7) contains definitions of terms used throughout the clause. Thus -

(a) "Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1974, and so includes any Minister or Secretary of State, and the Treasury;

(b) "Commissioners" means the Commissioners of Customs and Excise, or of Inland Revenue;

(c) "enactment" excludes Northern Ireland legislation, as defined in section 24(5) of the Interpretation Act 1978 (and so excludes Acts of the Parliaments of Ireland and of Northern Ireland, Orders in Council under section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972, Measures of the Northern Ireland Assembly, and Orders in Council under Schedule 1 to the Northern Ireland Act 1972); and

(d) subject to that, "subordinate legislation" has the same meaning as in the Interpretation Act 1978 (and so includes Orders in Council, orders, rules, regulations, schemes, warrants, byelaws and other instruments made or to be made under any Act).

9. Subsection (8) makes provision for the extension of the clause to Northern Ireland. This may be done by an Order in Council under Schedule 1 to the Northern Ireland Act 1974. Any such Order is not to be subject to the affirmative resolution procedure prescribed in subsection (5), but it is subject to the negative resolution procedure (amendment in pursuance of a resolution of either House of Parliament). However, any order exercising the new powers conferred by the clause in Northern Ireland will be subject to the affirmative resolution procedure.

HM TREASURY

PART II - SPEAKING NOTES (NOT FOR CIRCULATION)

GENERAL NOTE

Present position

10. Treasury guidance on fees charges ("Fees and Charges: A Guide for Government Departments" issued in 1983) describes the principles to be adopted by departments when setting fees and charges for the services and facilities they provide under statutory powers. Departments are normally expected to set their fees and charges to recover full cost, ie taking all direct costs and overheads (actual and notional) associated with the provision of the service into account. Departments set their fees and charges either by administrative action under primary legislation or by subordinate legislation.

Problem

11. Reports by the Joint Committee on Statutory Instruments have suggested that, in seeking to recover the full cost of services, departments are going beyond the expected and reasonable use of their powers. In particular, the Committee have doubted whether the costs of related law enforcement can lawfully be recovered through fees or charges set for specific services or facilities.

Proposal

12. The proposal in the Clause will permit the extension, by order, of the range of functions the costs of which may lawfully be taken into account when powers to set fees and charges are exercised. It also permits an order to specify the matters which are to be taken into account when determining the costs of those functions, thereby for example enabling notional costs to be recovered.

13. The Clause supplements existing legislation and is intended to enable departments to take into account additional matters, over and above the matters which they are already lawfully able to take into account, when determining the amount of fees and charges, to the extent necessary to enable them to implement the normal policy of full cost recovery.

DEFENSIVE NOTE

14. The intention of the Clause is to place beyond all reasonable possibility of successful challenge (whether of the Joint Committee or otherwise) the actions of departments when setting fees and charges at a level which implements the principles described in the Fees and Charges Guide.

15. It seems right in principle that people who use services and facilities provided by departments should pay the full cost of provision, and the principles described in the Fees and Charges Guide seek to achieve this result. In some circumstances functions which contribute to a service may take place outside the department determining the fee (for example, investigatory duties placed on the Official Receiver in relation to compulsory windings up and bankruptcies are funded from fees levied by DTI). To meet this requirement, subsection 3 makes provision for functions of the recipient or any other person to be specified in an order.

16. Subsection 6 includes a provision for retrospectivity to cover the earlier exercise of the power to fix a fee before an order has been made under the Clause. This is to safeguard past exercises of doubtful powers from challenge once the new powers have been exercised.

BACKGROUND NOTE

17. In 1985 the Joint Committee on Statutory Instruments queried whether an increase in registration fees for driving instructors fairly reflected the administrative costs of processing the relevant applications. The Committee was particularly concerned that, although the Secretary of State for Transport had sought to recover through those fees the costs of enforcing the system of driver instructor registration in accordance with the policy of full cost recovery, in their view he had no power to do so. Subsequent legal advice confirmed that the recovery of such enforcement costs might well be beyond reasonable defence.

18. Further examination by the Department of Transport of its powers to set fees and charges for road transport related activities suggested that similar difficulties could arise over

the recovery of enforcement and other descriptions of costs in other areas. A trawl of other departments suggested that the DTI and MAFF too could face difficulties with some of their fees and charges.

19. Resolving the difficulties of these 3 departments by means of a Clause in the Finance Bill may cast doubts upon the costs taken into account by other departments in setting fees and charges. If so, the other departments will be able to resolve these doubts by making orders in exercise of the powers contained in the new provision.

1/

Government fees and charges.

102.--(1) This section applies where a Minister of the Crown or any other person has power under any enactment (whenever passed) to require the payment of, or to determine by subordinate legislation the amount of, any fee or charge (however described), which is payable to the Minister or to any other person who is required to pay the fee or charge into the Consolidated Fund (whether the obligation is so expressed or is expressed as a requirement to make the payment into the Exchequer).

(2) In the following provisions of this section, a power falling within subsection (1) above is referred to as a "power to fix a fee" and, in relation to such a power,--

(a) "fee" includes charge;

(b) "the appropriate authority" means, if the power is exercisable by a Minister of the Crown or any Commissioners, that Minister or those Commissioners and, in any other case, such Minister of the Crown as the Treasury may determine; and

(c) "the recipient" means the Minister or other person to whom the fee is payable.

(3) In relation to any power to fix a fee, the appropriate authority or any Minister of the Crown with the consent of the appropriate authority may, by order made by statutory instrument, specify functions, whether of the recipient or any other person and whether arising under any enactment, by virtue of any Community obligation or otherwise, the costs of which, in addition to any other matters already required to be taken into account, are to be taken into account in determining the amount of the fee.

1/ contd (4) In relation to any functions the costs of which fall to be taken into account on the exercise of any power to fix a fee (whether by virtue of subsection (3) above or otherwise) the appropriate authority or any Minister of the Crown with the consent of the appropriate authority may, by order made by statutory instrument, specify matters which, in addition to any matters already required to be taken into account, are to be taken into account in determining those costs, and, without prejudice to the generality of the power conferred by this subsection, those matters may include deficits incurred before as well as after the exercise of that power, a requirement to secure a return on an amount of capital and depreciation of assets.

(5) No order shall be made under subsection (3) or subsection (4) above unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons.

(6) An order under subsection (3) or subsection (4) above has effect in relation to any exercise of the power to fix the fee concerned after the making of the order; but no earlier exercise of that power shall be regarded as having been invalid if, had the order been made before that exercise of the power, the exercise would have been validated by the order.

(7) In this section--

(a) "Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975; 1975 c.26.

(b) "Commissioners" means the Commissioners of Customs and Excise or the Commissioners of Inland Revenue;

1/ contd

(c) "enactment" does not include Northern Ireland legislation, as defined in section 24(5) of the Interpretation Act 1978; and

1978 c.30.

(d) subject to paragraph (c) above, "subordinate legislation" has the same meaning as in the Interpretation Act 1978.

(8) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of this section--

1974 c.28.

(a) shall not be subject to sub-paragraphs (4) and (5) of paragraph 1 of that Schedule (affirmative resolution of both Houses of Parliament); but

(b) shall be subject to annulment in pursuance of a resolution of either House.

3757/003

FROM: P D P BARNES
DATE: 1 July 1987

APS/FINANCIAL SECRETARY

cc PS/Chancellor 2nd.
Mr Scholar
Miss Evans

Mr Isaac - IR
Mr Corlett - IR
Mr D Shaw - IR
Mr Walker - IR
PS/IR

SUMMER FINANCE BILL : GENERAL INLAND REVENUE PRESS RELEASE

The Economic Secretary has seen Mr Walker's submission to the Financial Secretary of 1 July.

2. The Economic Secretary suggest a change to the last page of the press release dealing with the taxes management provisions. This would now read:-

"... clarifying amendments and measures introduced in response to representations. The changes:

(i) ensure that all the information required to complete the corporation tax return is specified on the form. The proposed Revenue power to issue separate regulations is dropped; and ..."

P D P BARNES
Private Secretary

3757/006

CONFIDENTIAL

FROM: P D P BARNES
DATE: 1 July 1987

PS/CHIEF SECRETARY

cc PS/Chancellor
Sir P Middleton
Mr Scholar
Mr Culpin
Miss Evans

Mr Shepherd - IR
Mr Corlett - IR
Mr Walker - IR

FINANCE BILL SECOND READING DEBATE : 8 JULY

The Economic Secretary has seen Miss Evans' submission to the Chief Secretary, dated 30 July.

2. The Economic Secretary suggests the following amendments to the Chief Secretary's speech:-

(i) In paragraph 49, final sentence, begin "In the light of these we have decided to double the length of the transitional period before ..."

(ii) In paragraph 58, delete, "accordingly we propose action to prevent taxpayers' money being eroded as a result.";

(iii) In paragraph 60, end "... by Treasury Order should evidence of actual abuse become apparent."

P D P BARNES
Private Secretary

CONFIDENTIAL

UNCLASSIFIED

FROM: A W KUCZYS
DATE: 1 July 1987

PS/FINANCIAL SECRETARY

cc: PS/CST
PS/PMG
PS/EST
Mr Lavelle
Mr A Edwards
Mr Scholar
Miss Evans
Mr Savage
Mr Cropper
PS/IR
PS/C&E

FINANCE BILL: COMMITTEE OF THE WHOLE HOUSE

The Chancellor has seen Jill Rutter's note of 1 July. He has commented that it is far to soon to be confident about Marcus Kimball's view that the Lloyds problem will not loom large at Committee Stage. We must stick to three days, at least for the time being, and can discuss further at Prayers on Friday.

A W KUCZYS

001/3293

FROM: JILL RUTTER
DATE: 1 July 1987

PS/FINANCIAL SECRETARY

cc:
PS/Chancellor
PS/Paymaster General
PS/Economic Secretary
Mr Lavelle
Mr A Edwards
Mr Scholar
Miss Evans
PS/Inland Revenue
PS/Customs & Excise
Mr Cropper
Mr Savage

FINANCE BILL: COMMITTEE OF THE WHOLE HOUSE

As I mentioned to you yesterday Murdo Maclean reported to me that he had discussed with Marcus Kimball who had given him to believe that the Lloyds problem was not likely to loom at the Committee of the Whole House stage of the Finance Bill. Murdo therefore wondered if we could reduce our bid for days from 3 to 2. As you know Murdo is reluctant to cede 3 given that the Opposition have only asked for 2 - but will do so if we insist.

2 The Chief Secretary would be grateful for the Financial Secretary's advice on the likely backbench reaction to the new Lloyds proposals, and whether we can bank on it not creating trouble. The Chief Secretary thinks it might also be useful if the Whips were to talk to various Conservative backbenchers. I think it would be useful if you could liaise with Murdo Maclean on this point, since you will know the timescale on Lloyds better than we do.

Jill Rutter

JILL RUTTER
Private Secretary

(Weeded)

INLAND REVENUE
CENTRAL DIVISION
SOMERSET HOUSE

FROM: A J WALKER
DATE: 1 July 1987

1. Mr Johns

2. Financial Secretary

SUMMER FINANCE BILL: GENERAL INLAND REVENUE PRESS RELEASE

1. This note seeks approval for a press release to be issued on Friday to coincide with the publication of the Finance Bill. Its purpose is to emphasise that the Summer Bill reintroduces the measures dropped from the pre-election Bill with relatively little change, and to put such changes as have been made on Inland Revenue taxes in a positive light. (I attach the proposed text of the release).

2. We are planning to issue three other press notices on Friday in connexion with the Finance Bill: two on capital gains tax (which you have seen) and one on Lloyd's.

3. I should be grateful for your approval for the issue to be general release.

A J WALKER

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cc PS/Chancellor
PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Mr Evans
Miss Evans
Mr Isaac
Mr Painter
Mr Beighton
Policy Directors
Mr Johns
Miss McFarlane
Mr Walker
PS(IR)

INLAND REVENUE PRESS NOTICE

3 July 1987

SUMMER FINANCE BILL 1987

The Finance Bill, published today, contains the measures originally introduced in the Finance Bill published in April, but which were not enacted before the General Election. This fulfils the Government's commitment before the Election to reintroduce all these provisions as soon as possible in the new Parliament. Most of the measures in the new Bill reproduce those in the earlier Bill. There are, however a few changes and additions. Those concerning Inland Revenue taxes are as follows.

Profit-related pay (PRP): Clauses 1-17 & Schedule 1

A number of relatively minor changes have been made, aimed at improving and clarifying these provisions, in response to comments received.

It is hoped to publish Guidance Notes on PRP in the first half of September, provided these provisions are enacted before then. Employers who want a copy should write to

Profit Related Pay Office
Inland Revenue
St Mungo's Road
Cumbernauld
GLASGOW
G67 1YZ

Any employer who wishes to apply for registration of a scheme after the PRP provisions have been enacted but before the publication of these Guidance Notes should ask the Profit Related Pay Office for an application form.

Personal and occupational Pension Schemes: Clause 18-58 & Schedules 2 & 3

Apart from technical improvements in drafting, there are two main changes. First, where an individual's total pension benefits are boosted above the normal maximum, his lump sum benefit can be increased by a commensurate amount. Second, certain friendly societies and retirement annuity trust schemes which were previously excluded will now be allowed to offer personal pensions.

Employee Share Schemes: Clause 59

This clause makes an adjustment consequential on the Finance Act 1987 provisions which allow participants in approved share option schemes to exchange existing options for options in the acquiring company in the event of a takeover. The amendments ensure that no unintended capital gains charge arises for acquiring companies.

Double Taxation Relief: Interest on certain overseas loans: Clauses 67 and 68

The only significant change is in the transitional period for existing loans. This is extended to two years, so that, where a loan existed at 1 April 1987, the new provisions will apply to interest arising on or after 1 April 1989 (rather than 1 April 1988 as proposed earlier).

Lloyd's reinsurance to close: clause 70

Changes to this provision are described in a separate Inland Revenue press release issued today.

Capital Gains: clauses 74-81 & Schedule 5

The main change is to retain the 30 per cent rate of tax on gains of life assurance policyholders.

In addition there is a new measure which puts it beyond doubt that tax relief against income is not available for losses existing as a result of capital gains indexation on withdrawals from share accounts in bulding societies and industrial and provident societies. Separate Inland Revenue press releases issued today give further details.

In response to representations, technical amendments have been made to clause 81 (over the counter options and futures) to ensure that it extends to traditional Stock Exchange options in all stocks dealt in on the Exchange, including overseas, Unlisted Securities Market and Third Tier Market stocks.

Taxes management provisions: clauses 82-95 & Schedule 6

These clauses reintroduce the new scheme for payment of corporation tax known as "Pay and File". A new schedule has been added which makes provision for certain special cases. The schedule was announced in a Press Release of 17 March 1987 but was omitted from the pre-Election Finance Bill.

The remaining clauses are substantially as originally introduced apart from minor technical and

clarifying amendments and measures introduced in response to representations which:

i. remove the proposed power whereby the Revenue would have been able to use regulations to expand upon the questions in the corporatin tax return; and

ii. restrict the accounts which companies have to provide to the Revenue to those which they prepare under the Companies Act.

Inheritance Tax: clauses 96-98 & Schedule 7

These clauses and schedule reproduce Clauses 148 and 152 and Schedule 13 of the pre-election Bill, with some technical changes. Clause 97 (Acceptance in lieu) extends to estate duty and pre-1985 capital transfer tax the interest waiver facility created for inheritance tax by section 60 of the Finance Act 1987.

Stamp duty & reserve tax: clauses 99 & 100

Clause 99 makes minor changes to Section 50 Finance Act 1987 which exempted from stamp duty options etc in respect of gilt edged and other exempt securities. Clause 100 introduces the special rules for public issues announced on 8 May.

Oil taxation clauses 80 & 101 and Schedule 8

Clause 80 gives effect to the Government's announcement on 14 May to bring forward legislation which makes it clear that gains on the disposal of oil licence interests do not qualify for rollover relief. Clause 101 and Schedule 8 make mainly technical amendments to the oil taxation provisions in Sections 61-63 of the Finance Act 1987. They include a measure - to take effect only when brought in by Treasury Order - to counter arrangements to circumvent the PRT nomination scheme.