PO-CH/NL/0357
PART B

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PART B

1988 FINANCE BILL

DD's 25 years NA 23/11/95

30-3-88

CLOSED

CONTINUED ON PART C

PO -CH /NL/0357

PART B

FROM: J M G TAYLOR
DATE: 15 February 1988

PS/FINANCIAL SECRETARY

cc PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Sir P Middleton
Sir T Burns
Sir G Littler
Mr Anson
Sir A Wilson
Mr Byatt
Mr Scholar
Mr Culpin
Mr Sedgwick
Mr Odling-Smee
Miss C Evans
Mr A Hudson
Miss Sinclair
Mr Riley
Mr Cropper
Mr Tyrie
Mr Call
Mr Unwin - C&E
Mr Knox - C&E
Mr Battishill - IR
Mr Isaac - IR
Mr Painter - IR
Mr Haughton - IR
Mr Fawcett - IR

**SECTION 482: COMPANY RESIDENCE AND MIGRATION**

The Chancellor has seen Mr Fawcett's minute of 12 February. He has commented that, subject to the views of the Financial Secretary, this survey provides good defensive material.

J M G TAYLOR

3743/63

RESTRICTED

BF 17/2

FROM: P D BARNES
DATE: 15 February 1988 pnp.

MRS RYDING

cc PPS
Sir P Middleton
Sir G Littler
Mr Scholar
Miss Sinclair
Mr Peretz
Miss O'Mara
Mr Watts
Mr Cropper
Parliamentary Counsel
Mr Jenkins - T Sol

**1988 FINANCE BILL: TREATMENT OF GILT REDEMPTION MONIES AND SMALL ESTATES (STARTERS 651 AND 652)**

The Economic Secretary was grateful for your submissions of 4 and 11 February.

2. The Economic Secretary is content that these starters should be dropped from this year's Finance Bill.

PB

P D BARNES
Private Secretary

Inland Revenue

Policy Division
Somerset House

FROM: J H REED
DATE: 16 FEBRUARY 1988

ECONOMIC SECRETARY

CONVERSION OF BUILDING SOCIETIES TO PLCs

1. Before your meeting on 5 February with the Alliance & Leicester Building Society (A&L) we discussed two particular points on which A&L had suggested further legislation was necessary to smooth the path of conversion into a PLC.

2. You asked for a note about these points. I attach (separate) detailed notes on each.

3. The notes stop short of considering whether it would be appropriate to legislate this year to cover these points as part of the capital gains tax/stamp duty package already agreed.

---

cc. Chancellor
Chief Secretary
Financial Secretary
Paymaster General
Mr Scholar
Mrs Lomax
Mr Culpin
Miss Sinclair
Mr Riley
Miss Noble
Mr Murphy
Mr Stevens - BSC
Mr Jenkins (Parliamentary Counsel)
Mr Painter
Mr Isaac
Mr Beighton
Mr Calder
Mr McGivern
Mr Pitts
Mr Cleave
Mr J F Hall
Mr Pearson
Mr Moule
Mr Creed
Mr Willis
Mr Reed
Mr Kuczys
Mr Elliott
Mr Keith
Mr Cayley
Mr Michael
PS/IR

4. When we saw the Building Societies Association last year they made it clear that they did not think these points very important; and that was why we did not recommend action on them in my note to you of 8 January.

5. Clearly however A&L for their part feel that there will be potential difficulties on both points if nothing is done.

6. There is an argument for leaving these comparatively minor points on one side for the present and seeing what pressure develops for changes to meet them.

7. Alternatively, you may feel that everything possible should be done to smooth the path for the A&L and for those Societies which want to follow their lead. However, we should say that whatever you decide to include in the Finance Bill we cannot guarantee that some building society will not claim that not enough has been done and that there is another tax obstacle which should be removed.

8. Cost. In that these measures would remove or postpone a tax liability, an Exchequer cost could be said to arise, although the extent and timing depends entirely upon decisions made by individual Building Societies. However, we think that the various measures concerning the conversion of building societies can fairly be presented and costed as a package, in which case it can be argued that the package has no cost since in its absence no conversions would occur. If you are content, this is the treatment we propose for presentation in the FSBR.

9. A final but very important point is that Parliamentary Counsel is as you know very heavily committed on Finance Bill drafting at present. We have not at this stage asked him whether he could take on board an extension of the existing agreed package (this is likely to account for about three pages of legislation and the two measures dealt with in their note might take a further page). But even if he can, I doubt that there is a realistic possibility of all the legislation being ready by Budget day so it would not be possible to publish draft clauses then. It would however be possible to enter into consultations with building societies after Budget day on the basis of a Budget day press release setting out in some detail what was proposed.

J H REED

CONVERSION OF BUILDING SOCIETIES TO PLCs:

(i) CAPITAL ALLOWANCES

1. One of the points raised by the Alliance and Leicester is that the transfer of its trade to a new PLC could result in the clawback (through balancing charges) of capital allowances the Society has claimed on plant and machinery. Balancing adjustments, based on the difference between the values at which the assets are transferred and their tax written-down values, would fall to be made unless the transfer of the trade is covered by the special provisions dealing with -

a. company reconstructions without change of ownership or

b. successions to trades between connected persons.

Where those provisions do apply capital allowances continue to be computed as if there had been no change of ownership.

2. The Society's doubts arise over the likely timing of the transfer. They say the transfer agreement will be conditional upon various events and is not expected to become unconditional until after the public share offer in the PLC closes and the basis of allocation of shares is agreed and announced. It is assumed that the PLC will not start trading until that time. In that event it is unlikely (but not impossible) that the ownership and common control conditions of the special provisions will be satisfied and balancing adjustments would fall to be made.

3. Alliance and Leicester estimate that without relief from balancing charges they could suffer an immediate tax liability of £5m which it would take over ten years to reverse through capital allowances given to the successor PLC on the plant and machinery transferred. They acknowledge that this is not an accurate figure. The assumptions on which the estimate is made do not

appear to be wholly realistic and the actual liability could be significantly less.

4. The potential balancing charge problem could be overcome by the Society selling all its plant and machinery to the PLC at a price equal to the tax written-down value. No balancing charge would arise and capital allowances would be given to the PLC on the price it pays for those assets. The sale would not need to be a cash transaction but could be in exchange for other property eg shares.

5. We understand however that a sale of assets whether for cash or shares is not a practical possibility. There seems no way therefore in which the Society can reasonably be expected to so arrange its affairs as to be certain of being able to avoid a balancing charge. While it is impossible to predict the precise nature of the arrangements for floatation that any other building society proposing to pursue that course may adopt, what the Alliance and Leicester have in mind may well be the general blueprint.

6. If Ministers wished to give protection from balancing charges in order to facilitate the incorporation and floatation of building societies generally it would be a relatively straightforward matter to provide for this. About half a page of legislation would be necessary to stop the balancing adjustments and to ensure that allowances for the successor companies continue to be computed as if no change had occurred.

CONVERSION OF BUILDING SOCIETIES TO PLCs:

(ii) TRANSFER OF GILTS

1. The Alliance and Leicester want a change in the tax law under which tax may at present be charged, when a building society transfers its business, on its holdings of gilts and similar financial assets ("gilts" for short in the rest of this note.)

Present position

2. In the normal course of a building society's business, gilts which it holds are dealt with for tax purposes on what is known as the "realisation basis". That means they do not have to be valued in the accounts each year; any change in their value (e.g. an increase in the price of gilts) has no tax consequences until they are actually sold. When they are sold, any profit realised is treated as part of the Society's trading profits chargeable to corporation tax, and any loss is deductible from profits for tax purposes.

3. But when a building society's business is transferred - whether to a commercial company (Section 97, Building Societies Act 1986) or to another society (Section 93 or 94), the society's profits for the accounting period before the transfer must be calculated as if the business had ceased at the date of the transfer, and special rules which apply to the tax treatment of trading stock when a business ceases (Section 137, Income and Corporation Taxes Act 1970) accordingly apply to these realisation basis assets. Section 137(1) provides that:

> (a) if gilts are sold or transferred for valuable consideration, they are to be valued, in calculating trading profits for

the final period of trading, at the amount of the sale proceeds or the consideration received;

(b) if they are not sold, or are transferred without consideration, they have to be valued in the closing accounts at open market value.

At present therefore tax may be chargeable, even if no actual sale has taken place, on any increase in value since acquisition.

4. It is the rule at (b) which the Society is concerned about.

Purpose of the rules in S.137

5. This was introduced to tackle a form of tax avoidance, the object of which was to escape paying tax on the profit represented by the growth in value of individual items of trading stock. Trading stock is valued for tax purposes each year at the lower of cost and market value; so when stock increases in value, that increase does not come into the reckoning for tax until it is sold. Before Section 137 was introduced, a business holding stock which had appreciated considerably in value could arrange an artificial cessation, on which the stock would be valued at cost (because lower than market value). The business would then be sold to a new company formed for the purpose. Part of the price would represent the market value of the stock, but this would not come into tax as part of the profits of the old company because it would be part of a capital transaction, i.e. the sale of the one business to the other. The stock would then be valued in the opening accounts of the new business at market value, and the difference between the two valuations would fall out of tax altogether. Section 137 ensures

that no tax-free uplift is available in these circumstances by providing that on a cessation stocks transferred must be valued in the closing accounts either at the value given for the stock or, at market value.

TSB flotation

6. The Trustee Savings Bank Act specifically provided that S.137 should not apply when a TSB's business was discontinued, but that when the stock was sold by the successor company the basis price for calculating any profit or loss should be the original cost price, - i.e. a form of rollover relief.

What the Alliance and Leicester are asking for

7. The Alliance and Leicester want to avoid the charge to tax which may arise (under 3(b) above) when on conversion of a building society to a PLC its gilts are transferred without consideration. They suggest that this should be done in the same way as in the TSB Act, so that the gilts would be treated as transferred on a no-gain-no-loss basis, and the opening cost in the first accounts after incorporation would be the same as the closing cost in the last accounts before incorporation.

8. We have not at this stage consulted Parliamentary Counsel; but, subject to his views and on the basis of the TSB precedent, it looks as if the necessary legislation should be relatively straightforward.

BUDGET CONFIDENTIAL

papers pse

**Inland Revenue**

Policy Division
Somerset House

M.

FROM: M J G ELLIOTT
DATE: 16 FEBRUARY 1988

1. MR McGIVERN
2. FINANCIAL SECRETARY

FINANCIAL BILL 1988: STARTER 211:
BUSINESS ENTERTAINMENT

1. This note is about two points on Starter 211 (relief for expenses of entertaining overseas customers); the yield and the starting date.

Yield

2. I said in my note of 26 January to the Economic Secretary that we had mounted a special exercise to obtain some information from tax offices to enable us to attempt a reasoned estimate of the yield.

3. In the event enough information had come through from this exercise by the end of last week to enable us to put the figures of yield straight into the scorecard. They are

| 1988/89 | 1989/90 | 1990/91 | 1991/92 |
|---|---|---|---|
| Negligible | £m5 | £m5 | £m5 |

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cc: PS/Chancellor
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Mr Culpin
Miss Sinclair
Mr Michie
Mr Jefferson Smith (Customs)
Mr Jenkins (Parliamentary Counsel)

cc: Mr Painter
Mr McGivern
Mr Elliott
Mr Moule
Mr Fitzpatrick
PS/IR

4. Information about business entertaining expenditure which is at present allowable for tax is not generally available in tax offices because business accounts need not identify it separately. But there is information about disallowable expenditure, (i.e. expenditure on entertaining people who are not overseas customers). The conclusion from the exercise is that disallowed expenditure in 1984/85 was of the order of £m165; and since the ratio of UK exports to domestic turnover is 1 to 10, that produces a figure of some £m17 for allowable entertainment expenditure. That is the figure which underlies the estimates in the preceding paragraph.

Starting date

5. In my original submission of 11 November on this starter I suggested that the withdrawal of the relief should take effect from midnight on Budget day, with transitional relief for expenditure incurred under contracts entered into before that time (to avoid any complaint of retrospection).

6. During the drafting we have come to the conclusion that the more appropriate starting date for a provision of this kind would be midnight on the day before Budget day. This is essentially because of the transitional provision about earlier contracts; if the operative date was midnight on Budget day, it would be possible for people to forestall the effect of the disallowance by entering into as many contracts for future entertainment as they could manage between the time of the Chancellor's announcement and midnight.

7. There are, I understand, a number of other starters this year which for broadly similar reasons will be taking effect, in accordance with the guidelines agreed by Ministers in earlier years, from midnight on the day before Budget day. We would be grateful to know if you are content that we should run this provision from the earlier date as well.

M J G ELLIOTT

42/2.BTW.1234/58

**BUDGET: CONFIDENTIAL**

**FROM: J J HEYWOOD**
**DATE: 16 February 1988**

**PS/CHANCELLOR**

cc PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Sir P Middleton
Mr Scholar
Mr Culpin
Mr Cropper
Mr Tyrie
Mr Houghton IR
Mr Fawcett IR

**SECTION 482: COMPANY RESIDENCE AND MIGRATION**

The Financial Secretary has seen your minute of 15 February and agrees that this survey does provide excellent defensive material.

**JEREMY HEYWOOD**
**Private Secretary**

CONFIDENTIAL

BF 22/2

HM CUSTOMS AND EXCISE
CUSTOMS DIRECTORATE
DORSET HOUSE, STAMFORD STREET
LONDON SE1 9PS
01-928 0533 Ext 2065
GTN 2523

WLMOTT 657 17/2

From: P G WILMOTT

Date: 17 FEBRUARY 1988

ECONOMIC SECRETARY

cc Chancellor
Chief Secretary
Financial Secretary
Paymaster General
Mr Culpin
Miss Sinclair
Ms C Evans
Mr Cropper
Parliamentary Counsel

**FINANCE BILL STARTER 63 (TIME LIMITS FOR PROSECUTION)**

My submission of 17 September 1987 to the Paymaster General sought agreement for the inclusion in the Finance Bill of legislation not only on search of the person (now starter 61), but also on the maximum penalty of imprisonment for customs and excise offences (starter 62), and the time limits for prosecution (starter 63). Drafting is well in hand on starters 61 and 62 but has yet to start on 63. Our Solicitor's Office do not expect this to require much work on Parliamentary Counsel's part, but before instructions are sent we need to seek final approval on a few points.

Background

The Keith Committee noted that although as a general rule of the criminal law there should be no time limit for proceedings on indictment, on the basis that "time does not run against the Crown", and although it is common outside our enforcement areas for summary proceedings to have to commence within six months

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Internal distribution: CPS, Mr Knox, Solicitor, Mr Nash, Mr Jefferson Smith, Mr Weston, Mr Finlinson, Mr Allen, Mr Railton, Mr Jenkins, Mr Stevenson.

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of commission of the offence, Section 147 of the Customs and Excise Managment Act provides that proceedings of whatever sort should be commenced within a time limit of three years from the commission of the offence. The Committee considered, in view of the extended intervals between VAT control visits, and greater emphasis in other Departmental areas of activity on documentary methods of control, that the prosecution time limits were too short, and recommended an extension of the limit for summary proceedings to six years from the date of commission of the offence, and abolition of the limit on proceedings on indictment.

We do not think it necessary to go as far as Keith recommended, and our original proposal specified a six-year limit for both categories of prosecution. Home Office officials have subsequently argued that an unlimited period would not be easy to justify for the majority of less serious cases which may be taken on indictment, and pointed out that the Misuse of Drugs Act and the Firearms Act, taken with the Criminal Attempts Act, may already provide other routes by which the Crown Prosecution Service could bring proceedings for offences which run beyond a six-year timebar.

Recent developments

The Home Office have raised a further issue in respect of summary offences, and those 'triable either way' but taken on summary trial, suggesting that there should be a limit of six months on the amount of time which may elapse between the offence coming to the Department's notice and the initiation of proceedings. Their reasoning is that this would be in line with other statutes, such as the Social Security Act 1975 (as amended by the 1986 Act), and the Vehicles Excise Act 1971, by which prosecution of summary offences may not take place more than six months after commission of the offence, and would remove the apparently oppressive nature of a longer period for summary offences.

Our Solicitor's Office have separately advised us to amend the three year time limit for arrest at the same time as we extend the prosecution time limit. The Keith Committee pointed out that the time limit on our arrest power as it stands at present has no counterpart in mainstream criminal law, and suggested its

complete abolition, as a consequence of the removal of the time limit for prosecution of indictable offences. We are strongly persuaded by the Keith argument that our power of arrest should go hand-in-hand with that for bringing proceedings, and we have therefore been looking at the possibility of a straightforward amendment to Section 138 of the Customs and Excise Management Act to introduce there the same time limit as for bringing proceedings.

Legislative proposals

We remain convinced of the need for early implementation of our original proposal for an extension to six years of the prosecution time limits. We are prepared, however, to accommodate in some way the arguments of the Home Office. We would therefore propose a 12-month time limit for summary proceedings after the offence has come to light, to run alongside the six-year time limit from the commission of the offence. We see the 12-month limitation being preferable to one of six months, in that it is in line with the VAT Act 1983, Schedule 7, paragraph 4(3)(b) which allows assessments to be made up to one year from the finding of sufficient evidence, and takes account of the fact that in the customs area delicate piecing together of evidence can be necessary if the alleged offence extends further back than the three years over which traders are required to keep records, while in the area of revenue duties quite serious offences can build up over a number of years and involve protracted investigation.

We also seek your approval for an extension from three to six years of our arrest power, even though this was not part of our original Finance Bill proposals. We think this diluted version of the Keith recommendation unlikely to generate adverse reaction during the passage of the Bill, and as it hangs so much on the coat-tails of the prosecution time limits proposals we would see presentational advantages in dealing with it in the same legislative package.

Summary

Approval has already been given for a starter amending the time limits for prosecution. Following representations from the Home Office, however, we seek your agreement to a change in the limit for summary proceedings. We also ask approval for a consequential amendment to the time limits for arrest.

Timetable

Subject to your agreement, Instructions will need to be sent promptly to Parliamentary Counsel. Our Solicitor's Office sees no reason why the small amount of text associated with this starter could not be finalised within a few days. We would nevertheless be grateful if you could advise us at your earliest convenience whether you are content with our proposals. We shall be happy to discuss any points that you may wish to raise.

P G WILMOTT

CONFIDENTIAL

42/2.BTW.4372/01

→ Jonathon

FROM: MISS S J FEEST
DATE: 17 February 1988

MRS A C MAJOR IR

cc PS/Chancellor
PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Monck
Mr Scholar
Miss Sinclair
Mr Cropper
Mr Jenkins OPC
Mr Lewis IR
PS/IR

**SHARE ISSUES: TAXATION OF EMPLOYEE PRIORITY SHARES (STARTER No. 112)**

The Financial Secretary was grateful for your minute of 12 February 1988 and agrees the proposals therein.

Susan Feest

**SUSAN FEEST**
**(Assistant Private Secretary)**

42/2/DCG/4370/6

FROM: **MISS S J FEEST**
DATE: **17 February 1988**

NOTES. I don't know.

**PS/CHANCELLOR OF THE EXCHEQUER**

**GENERAL COMMISSIONERS OF INCOME TAX - NORTHERN IRELAND - BUDGET STARTER 450**

You asked in your minute of 17 February 1988 for the view of the Ulster Unionist MP's on this starter.

I attach a copy of a letter from James Molyneaux MP which would appear to settle this matter.

Susan Feest

**SUSAN FEEST**
**Assistant Private Secretary**

The Rt. Hon. James Molyneaux, JP., MP.
LEADER — THE ULSTER UNIONIST PARTY

House of Commons,
London, SW1A OAA.

29 October, 1987.

Sir,

The Ulster Unionist Party welcomes the proposal in the Consultative Document on Tax Appeals in Northern Ireland for a system of General Commissioners of Income Tax to hear appeals in Northern Ireland.

We regard as satisfactory the intention that General Commissioners for Northern Ireland will enable appeals, whether "delay appeals" or "contentious appeals", to be dealt with in the same manner which presently applies in the rest of the United Kingdom.

We trust that every effort will be made to attract suitably qualified local candidates for the post of Clerk and other necessary staff.

Yours faithfully,
James Molyneaux

The Board of Inland Revenue
Policy Division 2
Room 18
New Wing
Somerset House
Strand, London WC2R 1LB.

RJ4.17

RESTRICTED

19/2

FROM: J M G TAYLOR
DATE: 17 February 1988

PS/FINANCIAL SECRETARY

**GENERAL COMMISSIONERS OF INCOME TAX - NORTHERN IRELAND - BUDGET STARTER 450**

The Chancellor has seen Mr Willis' minute of 5 February, and Mr Tyrie's of 12 February.

2. He has asked what is the view of the Ulster Unionist MPs on this starter. If they favour it, he would be inclined to go ahead.

J M G TAYLOR

42/2/DCG/4370/11

Budget Confidential

FROM: **MISS S J FEEST**
DATE: **17 February 1988**

**MR J G ELLIOTT - IR**

cc PS/Chancellor
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Mr Culpin
Miss Sinclair
Mr Michie
Mr Jefferson-Smith - Custom
Mr Jenkins - Parly Counsel

**STARTER 211: BUSINESS ENTERTAINMENT**

The Financial Secretary was grateful for your minute of 16 February 1988 and is content with the proposal therein.

Susan Feest

**SUSAN FEEST**
**Assistant Private Secretary**

42/2/DCG/4370/7

FROM: **MISS S J FEEST**
DATE: **17 February 1988**

**R B WILLIS - IR**

cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Mr Tyrie
Miss Sinclair
Mrs. Burnhams.
Mr Isaac - IR
Mr Corlett - IR
Mr Cropper - IR
Mr Call - IR
PS/IR

Agreed -- Ch. See PS/FST's other minute, immediately behind.

**GENERAL COMMISSIONERS OF INCOME TAX - NORTHERN IRELAND - BUDGET STARTER 450**

The Financial Secretary was grateful for your note of 5 February 1988 (and Mr Tyrie's of 12 February 1988) and is content for this starter to be included in this year's Finance Bill.

The Financial Secretary also wishes work to continue on the transitional arrangements and the additional legislation on time limits for sending a stated case to an apellant in Northern Ireland.

Susan Feest

**SUSAN FEEST**
**Assistant Private Secretary**

mjd 3/130m

BUDGET CONFIDENTIAL

mmp

FROM: MISS M P WALLACE
DATE: 17 February 1988

PS/ECONOMIC SECRETARY

cc PS/Chief Secretary
PS/Paymaster General
PS/Financial Secretary
Mr Scholar
Mr Culpin
Miss Sinclair
Mr Michie
Mr Jenkins - Parly Counsel

Mr McGivern IR
Mr Elliott IR
PS/IR

Mr Knox C&E
Mr Jefferson Smith C&E
Mr Allen C&E
PS/C&E

**FINANCE BILL 1988: STARTER 211: BUSINESS ENTERTAINMENT**

The Chancellor has seen your minute of 12 February and agrees that the VAT measure should be implemented by Order, with an operative date of 1 August.

mpw.

MOIRA WALLACE

2656/011/AC

**CONFIDENTIAL**

**FROM: R G MICHIE**

**DATE: 18 February 1988**

1. **MISS SINCLAIR**
2. **ECONOMIC SECRETARY**

cc **Chancellor**
**Chief Secretary**
**Financial Secretary**
**Paymaster General**
**Sir P Middleton**
**Mr Scholar**
**Mr Culpin**
**Mr Revolta**
**Mrs Burnhams**
**Mr Cropper**
**Mr Tyrie**
**Mr Call**

**Mr Jenkins Parliamentary Counse**
**PS/ Customs & Excise**
**PS/Inland Revenue**

**1988 FINANCIAL BILL STARTERS : DEPARTMENT OF TRANSPORT**

Following your letter of 2 February, Mr Bottomley has now written agreeing to drop starter 630 (dishonoured cheques) and asking you to reconsider your reluctance to find Finance Bill space for his late starter 637 (minimum threshold for VED refunds). You asked (Mr Barnes' minute of 11 February) that I draft a reply rejecting Mr Bottomley's request, and also that I investigate the possibility of some form of charge to cover the administrative costs of making a VED refund.

**Administrative charge**

2. In 1987 the Department of Transport undertook an internal review which considered the case for introducing an administrative charge for refunds of VED. The report highlighted the following points:-

**Arguments against a charge**

(A) Although the administrative costs of paying refunds (estimated at £2 per licence) are not directly charged to the applicant, the costs of doing so are more than covered indirectly by the effective underpayment of refunded

VED. This is because refunds are ony made for complete months and the average applicant 'loses' 9 days worth of duty (worth around £2.50), and also because the ten percent surcharge on a six month licence is not included in the refund. At present rates of duty and volumes of refunds, this amount to a gain to the Exchequer of some £7 million a year.

(B) Given that the Government already makes a 'profit' from the refund transactions, there would be pressure to make other changes to offset the additional cost to the motorist. This might involve demands to refund the 10% surcharge on six monthly licences, or to pay refunds to the exact date of surrender. This in turn could strengthen pressure for issuing licences from any date (at present most licences run from the first day of the month during which the licence is issued) and that would involve major and expensive changes in the licensing system, leading to increases in running costs at DVLC.

(C) There was a strong argument in principle as to whether it was reasonable to impose a charge on a refund of overpaid tax to which a taxpayer was properly entitled.

**Argument in favour of a charge**

(A) Where a service is provided, it is reasonable that it should be paid for by these who enjoy the service and it might serve to make the public more aware of the costs involved. (But the report also highlighted the fact that even if a charge was raised, this would be of no direct benefit to the Department of Transport as they operate on a gross running costs basis, and there would be no question in this instance of their being allowed to offset receipts against expenses and count only net running costs. HE and RCM confirm that this is the case).

**CONCLUSION**

The Transport report concluded that there was no justification for a charge on refunds. I agree with that view.

3. Given that the strongest arguments are against raising administrative charges, and that even if such charges were to be raised they would be of no direct benefit to the Department of Transport in running costs terms, it does not appear that they offer an acceptable alternative to the Department of Transport proposal.

**Starter 637 (Minimum threshold for VED refunds)**

4. As the arguments against imposing an administrative charge are equally valid in relation to the imposition of a minimum threshold on VED refunds, it is perhaps surprising that the Department of Transport are pressing for the inclusion of this starter. The sole justification put forward for the proposal is the saving of £130,000 pa in running costs. This seems a relatively modest sum in relation to DVLC annual running costs of around £90m, but HE confirm that the potential saving should be regarded as significant. But that said, I do not consider that this saving alone, when weighed against the other arguments, provides adequate justification for this potentially controversial starter to proceed.

5. I attach a draft reply to Mr Bottomley.

R G MICHIE

2656/012/AC

**CONFIDENTIAL**

Treasury Chambers, Parliament Street, SW1P 3AG

Peter Bottomley Esq MP
Minister of Roads and Traffic
Department of Transport
2 Marsham Street
LONDON SW1P 3EB

February 1988

**1988 FINANCE BILL STARTERS**

Thank you for your letter of 10 February in which you ask me to reconsider starter 637 (minimum threshold for VED refunds).

In my letter of 2 February, I indicated that I was very reluctant to agree to the inclusion of this starter on the grounds that it was controversial and could be difficult to defend, and because there was a shortage of Finance Bill space. I considered fully the merits of your proposal before offering these views and, in the light of your recent request, have given the matter further detailed consideration. But I remain very reluctant to agree to this starter going forward.

As you know, your officials recently undertook a review of the possibility of imposing an administrative charge for each VED refund; the general concept being that if the public receive a service then they should pay for it, and through being asked to pay, would become much more aware of the administrative costs involved. This review highlighted a number of salient points:

(a) the administrative costs of paying refunds (estimated at £2 per licence) were more than covered by the effective underpayment of VED - the gain to the Exchequer was thought to be in the region of £7m per annum;

(b) given that the Exchequer already makes a 'profit' from the refund transactions, any additional administrative charge would lead to pressure for other changes to offset the cost to the motorist; these changes could include the issue of licences from any date, (not as now from the first day of the month in which the licence is issued), and this your officials anticipated, could involve major and expensive changes to the licensing system, leading to increases in runnings costs at DVLC;

(c) there was a strong argument in principle as to whether it was reasonable to impose a charge on a refund of tax to which members of the public were properly entitled.

After having taken these and other factors into account, your officials concluded that there was no justification for a charge on refunds.

Whilst I am aware that the case for imposing an administrative charge is not precisely on all fours with your proposed starter, and that your officials may well have been influenced by the fact that the charges would not help trim DVLC's gross running costs, I am convinced that the strong objections against imposing a charge are equally valid in relation to your current proposals.

I am grateful for your offer to take this matter before Committee, but firmly believe that the proposal is flawed in principle and should not be allowed to proceed. I would be grateful, therefore, for your agreement that starter 637 be dropped.

PETER LILLEY

**BUDGET: CONFIDENTIAL**

FROM: FINANCIAL SECRETARY
DATE: 18 February 1988

**CHANCELLOR**

cc Chief Secretary
Economic Secretary
Mr Scholar
Mr Monck
Mr Culpin
Miss Sinclair
Mr Cropper
Mr Tyrie
Mr Jenkins - OPC
Mr Reed - IR
PS/IR

**BES: FINANCE BILL STARTER 203**

I held a meeting today on the BES starter in order to discuss Mr Reed's minute of 27 January 1988 and finalise the issues for this year's bill.

**Ceiling on Investment in any one company**

2. It would appear that the main options are for a general ceiling of either £250,000 or £500,000.

3. A ceiling of £250,000 is favoured by David Young and Norman Fowler and a lower ceiling would encourage more private investment into local companies. However, this figure would also destroy the attractiveness of public issues and BES funds.

4. I am keen to encourage BES funds and would therefore recommend a ceiling of £500,000 to be introduced by way of statutory instrument.

**Ship Chartering**

5. With regard to a special exception to the general ceiling for ship chartering; the obvious problem here is that a general

ceiling of £500,000 could effectively rule out BES for ship chartering which may have political repercussions on our shipping policy.

6. If we are to introduce a higher ceiling for companies specialising in ship chartering, a level of £5 million would seem preferable.

7. However, I am eager to try and hold the line on the general ceiling and avoid exceptions as much as possible. As we are to have a higher ceiling on rented property we could run into problems when prsenting yet another level for shipping.

8. Peter Cropper feels that a higher ceiling for ship chartering would effect the genuine BES market badly as investment would tend to go into the large schemes like shipping and the rented sector.

9. My preference would be to maintain the general ceiling on Ship Chartering as well. However, I know you are under a lot of pressure on shipping. There will be criticism if we do this and you may feel we should give way. If so I would recommend a ceiling of £5 million.

**Secured Contracting**

10. It seems clear that if we introduce a general ceiling of £500,000, this will effectively kill the use of such schemes on any scale.

**Carryback of Relief**

11. In view of the proposed introduction of a ceiling and the wider budget changes which may reduce the attractiveness of BES investment; it would seem that in the longer term, carry-back will be less important and there is therefore less need to increase its effectiveness in reducing seasonal bunching.

12. I would, therefore, recommend that the present restrictions should be left alone in the coming Finance Bill.

**Oil Exploration**

13. Since we are introducing a cap of £500,000 I do not think there is now much point in extending the existing and exploration relief to enable exploration to qualify for relief even where the licence interest has been acquired under a farm in.

14. Of course, if Peter Morrison presses for it, and can genuinely show it is a worthwhile amendment; we can always insert it at Committee Stage.

**BES Funds**

15. I have received very strong representations from BES funds proposing that investors should be given relief by reference to the time they invest in fund. Of course this would give them a slight advantage over direct investment; but this is a minor package and I think there is a good case for helping BES funds. I would recommend that we implement the relaxation of this rule.

**BVCA**

16. With regard to the BVCA's proposals for a BES style relief for investment by an individual in a company for which is a full time employee; I do not think we should pursue this further as there will inevitably be substantial deadweight costs and a risk of abuse.

**Possible NAO Study**

17. On this final point; I would hope that the introduction of a general ceiling will convince the NAO that the clause of BES rules should not be the subject of a study.

18. I think, in conclusion, that many of these fine tuning points could be re-considered once the ceiling is introduced and once the market and investors have had a chance to react.

NORMAN LAMONT

3745/15

CONFIDENTIAL

PS/Chancellor, PS/CST, PS/FST, PS/PMG, Sir P. Middleton, Mr Scholar, Mr Culpin, Mr Revolta, Miss Sinclair, Mr Michie, Mrs Burnhams, Mr Cropper, Mr Tyrie Mr Call, Mr Jenkins - OPC, PS/C+E PS/IR.

Treasury Chambers, Parliament Street, SW1P 3AG

Peter Bottomley Esq MP
Minister of Roads and Traffic
Department of Transport
2 Marsham Street
LONDON
SW1P 3EB

19 February 1988

Dear Peter

**1988 FINANCE BILL STARTERS**

Thank you for your letter of 10 February in which you ask me to reconsider starter 637 (minimum threshold for VED refunds).

In my letter of 2 February, I indicated that I was very reluctant to agree to the inclusion of this starter on the grounds that it was controversial and could be difficult to defend, and because there was a shortage of Finance Bill space. I considered fully the merits of your proposal before offering these views and, in the light of your recent request, have given the matter further detailed consideration.

I am grateful for your offer to take this matter before Committee, but firmly believe that the proposal is flawed in principle and should not be allowed to proceed. I would be grateful, therefore, for your agreement that starter 637 be dropped.

Yours ever

Peter

PETER LILLEY

3743/101

**CONFIDENTIAL**

**FROM: G R WESTHEAD**
**DATE: 19 February 1988**

**MR WILMOTT - C&E (BY FAX)**

cc PS/Chancellor
PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
Mr Culpin
Miss Sinclair
Ms C Evans
Mr Cropper
Parliamentary Counsel

**FINANCE BILL STARTER 63 (TIME LIMITS FOR PROSECUTION)**

The Economic Secretary has seen and was grateful for your submission of 17 February.

2. The Economic Secretary is content with an increase from 3 years to 6 years for the time limit for arrest. However, he is not wholly convinced by the arguments for 12 months rather than 6 for the summary proceedings time limit after an offence comes to light. He feels that 6 months would tally better with existing laws. Also, Customs and Excise are vulnerable to criticism of always being tougher than the Inland Revenue or normal spheres of law. He would be grateful for your further comments on this please and for any additional arguments there are in favour of a 12-month limit.

Guy Westhead.

**GUY WESTHEAD**
**Assistant Private Secretary**

CONFIDENTIAL

From: C C FINLINSON
Date: 22 February 1988

Board Room
H M Customs and Excise
15th Floor Alexander House
21 Victoria Avenue
Southend-on-Sea
SS99 1AA
0702 48944

ECONOMIC SECRETARY

cc Chancellor
Chief Secretary
Financial Secretary
Paymaster General
Mr Culpin
Miss Sinclair
Mr Cropper
Mr Saunders,
Parliamentary Counsel
PS/Inland Revenue
Mr Shaw, Inland Revenue

**FINANCE BILL 1988: STARTER NO 30: KEITH REVIEW**

1. In my submissions of 9 October and 31 December 1987, I reported on our review of the Keith Penalty system and recommended a number of changes for inclusion in this years Finance Bill. These you approved and we have now received draft clauses from Parliamentary Counsel.

2. The draft clauses follow closely the changes that we recommended. There is, however, one significant exception concerning persistent misdeclaration, which while following the spirit of our proposal, would implement it in a rather different way. There are also a number of minor changes of which you will wish to be aware.

---

CPS
Mr Knox
Solicitor

Mr Nissen
Mr Trevett
Mr Fryett

Dr McFarlane
Mr Topping
Mr Orr

## Persistent Misdeclarers

3. As recommended by the Keith Committee, section 14 of the Finance Act 1985 (Penalty for Serious Misdeclaration), provided a penalty (30% of the tax liability which had not been declared) for traders who persistently misdeclared their true tax liability. This penalty, which was in theory to be automatic, was subject to a complicated test and would not have applied to large businesses. We therefore recommended that it should be repealed (submission of 9 October, Annex E, paragraph 4). This did not leave us without any penalty for traders who persistently misdeclare, as section 17 provided for daily rate penalties where a trader had failed to furnish accurate returns. We did, however, recommend that daily rate penalties were not appropriate in such cases and that section 17 should be amended to provide for tax geared penalties, but only after the issue of a warning letter (submission of 9 October, paragraphs 18 - 22).

4. Parliamentary Counsel, having considered our instructions, advised that this tax geared penalty was not proper to section 17, which was concerned with breaches of regulations, but to section 14 which deals specifically with misdeclarations. He has therefore drafted a clause for a new section 14A. As our concern is that the civil penalty regime should provide a reserve penalty for the small minority of persistent misdeclarers, we are content that the penalty for such traders should be in a new section 14A rather than in section 17.

5. However you should be aware that by placing the new persistent misdeclaration penalty in a separate clause, it is likely that the size of the misdeclaration which would trigger liability to the warning letter and subsequent penalty (£100 or 1% of the true tax liability) will be highlighted and invite unfavourable comparison with the more generous triggers for serious misdeclaration penalty in section 14. The serious misdeclaration penalty triggers are:

a. equal to or exceeds 30% of the true amount of the tax for the period.

b. equal to or exceeds whichever is the greater of £10,000 or 5% of the true amount of tax for the period.

6. Within reason we are less concerned about the level of test than in securing a sanction for persistent misdeclaration. Therefore we suggested that tactically the way to proceed is to leave the persistent misdeclaration triggers at £100 or 1% but to emphasise to the Committee three aspects of the persistent misdeclaration penalty. Firstly that while the penalties for serious misdeclaration will be triggered automatically this will not be the case for persistent misdeclaration. Secondly that the persistent misdeclaration penalty would only be imposed, particularly where the test of £100 or 1% are only marginally exceeded, in cases of flagrant disregard of the need to submit accurate tax returns. Thirdly that Customs and Ministers will be monitoring closely the application of the persistent misdeclaration penalty to ensure that is only used when fully justified by the circumstances of the individual case. If, nevertheless, the debate in Committee indicates that an easement is necessary we would recommend a government backbench amendment pitched at the appropriate level to secure acceptance.

7. My submission of 9 October, paragraph 20, proposed a scaled penalty for persistent misdeclaration, but having seen the draft clause it is clear that the scaled penalty will cause considerable operational and practical problems. These would be unwelcome and could lead to unnecessary appeals. We therefore recommend that a single penalty rate of 15% of the tax misdeclared (ie half that for the serious misdeclaration penalty) should be substituted in the new clause as published in the Finance Bill.

## Other minor and consequential changes

### Late registration and other penalties concerning registration and deregistration

8. Traders who are established and incur input tax in the UK but make supplies only overseas are entitled to be registered. When so registered they are required to inform us, within 30 days, if their entitlement to registration ceases, or if they start to make taxable supplies in the UK. We recommended (submission 9 October Annex A, paragraph 5,) that section 15, Finance Act 1985, should be amended to include a sanction for failure to so notify. After further consideration it is apparent that this sanction is in fact proper to section 17, Finance Act 1985, being similar to the existing penalty in that section for the failure by a registered trader to notify cessation of business. In addition, and to

complete the package, Parliamentary Counsel has also provided a sanction in section 17 for business registered as intending traders who fail to notify that they have ceased to be eligible for registration. We expect both of these penaltes will be imposed very rarely.

**Transitional arrangements and PC TA resolution**

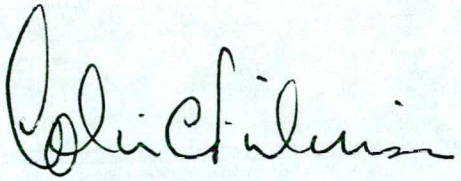
9. You agreed that the new lower penalties for late registration (section 15) and regulatory offences (section 17) should have effect as from midnight on 15 March. Parliamentary Counsel has now advised that PCTA resolutions are inappropriate for variation of the rates of penalties and he has therefore drafted in the appropriate clauses that the reduced rates will be deemed to have come into force on 16 March 1988. The actual clauses will not, of course, be public until the Finance Bill is published. We would therefore suggest that some brief mention is made in the Chancellor's speech that the reduced rate of penalty will apply as from midnight.

**News Release and proposed Leaflet on Reasonable Excuse**

10. We understand that the Chancellor has asked to see all draft news releases by 25 February. For your information we attach an advance copy of the news release detailing the Keith Review. We also attach a draft of our proposed leaflet on late registration and reasonable excuse. A copy of this has already been sent to the EDU and we are waiting for any comments they may have.

**Conclusion**

11. We would be grateful to know whether you are content with the changes we have outlined above and in particular those concerning the penalty for persistent misdeclaration. We shall, of course, be available to discuss any of these changes with you, together with tactics on the handling of the Keith provisions.



**C C FINLINSON**

PWP

**Inland Revenue**

Policy Division
Somerset House

FROM: D J HUFFER
DATE: 22 FEBRUARY 1988

1. MR REED 22/2

2. ECONOMIC SECRETARY

CONVERSION OF BUILDING SOCIETIES TO PLCs: COMPARISON WITH TRUSTEE SAVINGS BANK

1. This is in response to your request for a note asking what else was done for the TSB that might be relevant for building societies. Most of these points were mentioned in the Annex to Mr Reed's note of 8 January - but we have reviewed them.

Continuation of MIRAS arrangements

2. The TSB Act provided for the banks to remain as qualifying lenders - thus allowing MIRAS arrangements to continue automatically. As reported to you earlier, we have so far taken the view that primary legislation is unnecessary and that the new companies could be prescribed in an appropriate Treasury Order. The BSA did not object to this. However, the Alliance and Leicester have raised the TSB arrangement with us this week.

cc PPS
Chief Secretary
Financial Secretary
Paymaster General
Mr Scholar
Mrs Lomax
Mr Culpin
Miss Sinclair
Mr Riley
Miss Noble
Mr Murphy
Mr Stevens (BSC)
Mr Cropper
Mr Jenkins (OPC)
Mr Painter
Mr Isaac
Mr Calder
Mr McGivern
Mr Beighton
Mr Pitts
Mr Corlett
Mr Johns
Mr Cleave
Mr Campbell
Mr J F Hall
Mr Marshall
Mr Willis
Mr Kuczys
Mr O'Connor
Mr Creed
Mr Cayley
Mr Reed
Mr Huffer
PS/IR

3. Having reviewed the matter we now think that, even if only a small number of societies convert, it would be sensible - for general ease of administration - for MIRAS to continue automatically as it did for the TSB. We therefore recommend that this change - probably requiring no more than a quarter of a page of legislation - be included in the Finance Bill.

Capital gains

4. There are two points here. First, the TSB Act provided for unused capital losses to be carried forward for use by the successor plc. As we said earlier, the BSA raised this at our meeting with them but acknowledged that societies were unlikely to have unused losses. They said they would not press the point - and it has not appeared at all in representations from individual societies.

5. Secondly, the TSB Act removed capital gains charges on the disposal by the Central Board of shares or rights to shares in the plc. For building societies, the parallel situation would be - under the new company route only - the disposal by a society of its (few) shares in the successor company after it has issued a large number of shares to its members and/or the public. At our meeting with the BSA their view was that any such charge would probably be small. So we do not see a need to do anything here.

Carry forward of trading losses

6. The TSB Act enabled trading losses to be carried forward to the new companies as if there had been a company reconstruction. As reported earlier, we told the BSA that if the conversion was carried out in a particular way, the special provisions in Section 252 ICTA 1970 would allow any losses to go forward to the successor. However, from what we have now been told this route may present difficulties. We think there is a case in principle for allowing a carry forward on TSB lines but the BSA have not pressed the matter and it seems unlikely that a society in a position to convert

would have any trading losses. It has not been raised in any of the more recent representations. So, on balance, we do not think special provisions are needed.

Group relief

7. The TSB Act disapplied the provisions in Section 29 Finance Act 1973 - which would otherwise have meant that group relief would be denied in any period when the arrangements to convert were in existence. This could have resulted in losses being locked into certain companies - with tax paid in others. As reported earlier, the BSA raised this at the meeting but in discussion accepted that it was unlikely to be a significant problem in practice. They said they would not press the point. So we do not think a special provision is required.

Summary

8. We recommend legislation to ensure that MIRAS arrangements continue automatically (paragraphs 2 and 3). We see no strong grounds for legislation on the other points.

D J HUFFER

CONFIDENTIAL

FROM: R B WILLIS

Inland Revenue

Policy Division
Somerset House

23 February 1988

1. MR CORLETT 23/2

2. MR ISAAC 23.2

3. FINANCIAL SECRETARY

TAX APPEALS: PLACE OF HEARING BY GENERAL COMMISSIONERS: STARTER 451

The attached paper reports the response to the consultative document we issued in November 1987 on legislation to allow the Board to direct where tax appeals (and other proceedings before General Commissioners) should be heard. It seeks your decision on legislation in the 1988 Finance Bill on the lines proposed in the consultative document or on other options.

2. The paper brings out the inevitable tension between:

a. our operational efficiency: We need a solution to the mismatch between tax offices in one place and hearings before General Commissioners in another

---

cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Miss Sinclair
Mr Cropper
Mr Tyrie
Mr Mann
Mr Jenkins (OPC)
Mr Isaac
Mr Rogers
Mr Corlett
Mr Beighton
Mr Calder
Mr Cleave
Mr Cherry
Mr Hinson
Mr Moule
Mr Willis
Mr Yard
Mr Banyard
Mr Reeves
Mr Huntington
PS/IR
Mrs Gomes

place. The proposal in the consultative document could save up to 20 Inspectors, some at Grade 5, who will otherwise be needed to deal with remote appeals. These are people we could use much more profitably on other work: we would expect 20 Inspectors on technical and investigation work to bring in £10 to 15 million a year; and

b. the taxpayer's convenience and compliance costs. Some taxpayers (particularly groups of companies) may find it more convenient to have the Board direct all their appeals to a single set of General Commissioners. Others, who do not want their appeals moved, will be put to some inconvenience. At the least they will have to object on each appeal to the Board's direction. At worst, if they fail to make an objection, they could face the bother and expense of travelling to a distant city for an appeal hearing.

3. I think you will want to look at the paper to see the balance of comments from representative bodies and others (TABLE I), and the arguments we can marshal to answer their criticisms (TABLE II). But it may be helpful if I summarise here the main points

i. the problem (paras. 10 - 15) is essentially that the system of appeals was built on the basis of a local tax office dealing with local taxpayers who would appeal to the local body of General Commissioners, while today some tax offices are a long way from their taxpayers. As appeals are generally heard where the taxpayer is located, Inspectors have either to travel to the General Commissioners or send all their papers to colleagues there and brief them on the appeals. With the transfer out of London of 21 tax offices which deal with groups of companies ("Exit London") the mismatch will

increase.This could cost the time of 20 Inspectors, much of it dealing with cases where the taxpayer does not attend the hearing, and which is only needed because the taxpayer will not provide accounts or other information;

ii. the solution proposed in the consultative document (paras. 16 - 20) was legislation to allow the Board to direct that all appeals (and certain other proceedings) dealt with by a tax office should be heard by a different body of General Commissioners. This would generally be the General Commissioners where the tax office was located. The intention was to use this power only for those Districts handling groups of companies and for trusts. And the taxpayer's present rights were to be preserved by giving him a right to object to the Board's direction on each and every appeal;

iii. responses to the consultative document (para. 21 and Table I) have generally opposed the solution it offered. They recognise that there is a problem. But it is seen as a problem of our own making (eg because we concentrated work on trusts in 50 tax offices and decided to disperse the tax offices which specialise in groups and other companies). And the solution is seen as biased: either the Revenue gets what it wants or the taxpayer objects and gets the local Commissioners he has already;

iv. Our assessment of the responses (paras. 22-25 and Table II) is that we have answers to some of the detailed criticisms. The key points are that the taxpayer would always have the right to object to a direction; and that for groups of companies it is more sensible to have all appeals in one place with the Inspector who

deals with the cases rather than scattered around the country. However the latter argument carries less weight with single companies and trusts, when we will be moving hearings from one place to another. And we are left with more general comments about the proposal being for the Board's convenience, and about the lack of means for taxpayers to move appeals to a body of General Commissioners convenient for the taxpayer. The existing rules give a place of hearing which is usually, but not invariably, convenient for the taxpayer.

v. the options now (paras. 26-37) are:

a. legislation on the lines proposed in the consultative document: This is still the best solution in terms of operational efficiency. But it would mean ignoring the responses to the consultative document which opposed it strongly.

b. modified legislation on the lines of the consultative document: we could meet some of the points made in response to the consultative document by allowing the taxpayer a second chance to object to a direction when his appeal is listed - eg if it turned out he did need to attend the hearing to argue a contentious point. But the end result is likely to be a toothless provision which some taxpayers could manipulate to cause new delays and inconvenience.

c. introduce a power to agree the place of hearing or to make a direction: the proposal in the consultative document would be introduced but with an assurance

that it would be overridden if the Revenue and taxpayer could agree (under separate new legislation) on the place of hearing. We need to work out the details of a power to reach agreement but it would offer taxpayers a carrot.

d. introduce only a power to agree the place of hearing: without the threat of a direction in the background the Revenue and taxpayer would negotiate on a more equal footing. We think this proposal would be welcomed by many of those who responded to the consultative document and would help some Inspectors. However it would not solve the problem of the many unco-operative taxpayers who delay sending accounts and other information. They are unlikely to enter into serious negotiations about the place of their appeals.

e. do nothing in 1988: this option carries the cost of up to 20 Inspectors, and the saving of what could be difficult legislation.

4. The administrative costs of living with the problem are a powerful argument for pressing ahead with the proposal in the consultative document. But the strength of comments in response to the consultative document might make it difficult to carry through the legislation. And it would be pointless if in the process we attracted so much bad publicity that the bulk of companies and trusts objected to the Board's directions. We think this is unlikely although we would certainly not achieve the full potential saving of 20 Inspectors

5. We think we should therefore offer some concessions, in particular on the cases where the taxpayer does wish to attend the hearing or be represented. We do not think we can define these cases in legislation: we would have to ask taxpayers to accept assurances that Inspectors would operate the system sensibly and would be instructed to agree to move appeals when the taxpayer needs to attend. But legislation which offered the taxpayer the opportunity to reach agreement with the Inspector, together with assurances during the Finance Bill debates about the way Inspectors would deal with appeals, might answer the criticisms.

6. If these proposals were rejected in the House it might be possible to fall back on a power to reach agreement alone (option (d) above). But this would mean accepting the problems with unco-operative taxpayers and would be a less satisfactory solution to our operational problem. The staff saving would be smaller.

7. There is of course also the possibility of postponing legislation until 1989. We might be able to use the extra time to convince representative bodies that a power to reach agreement plus a power to make directions is a package with benefits to taxpayers as well as Inspectors. But we cannot be sure we would improve on their initial reactions, in which case we would have wasted a year. And we think it would be important for you to announce your intention to legislate in 1989, after further consultation, to concentrate representative bodies' minds on practicable solutions.

Timetable for decisions

8. There is no need to announce a decision on this matter in the Budget. It could be dealt with when the Finance Bill is published, or at any other convenient time.

9. Drafting of a clause for the proposal in the consultative document is well advanced. We might be able to work up, and Parliamentary Counsel might be able to draft, a revised

proposal to include a power to reach agreement for the introduction of the Bill. But we have yet to work out the details of agreements between Inspectors and taxpayers, and the means to move appeals about the country when they become contentious, and the legislation might need to be introduced later. It would in any event be desirable to consult the Lord Chancellor's Department, the Council on Tribunals and General Commissioners on a revised package.

SUMMARY

10. The present system of appeals is not good value for money, because Inspectors have to travel or send papers from one end of the country to another for appeals where - in many cases - the taxpayer has no intention of appearing. The present system is also inconvenient for some groups of companies whose appeals are scattered around the country. But there is less in the proposals for change for single companies and for trusts. And any change which saves the time of Inspectors may mean some inconvenience for taxpayers.

11. If we are to take this matter forward in this year's Finance Bill we think the choice comes down to:

Option (a) legislation for the Board to make directions as to where appeals are heard; or

Option (c) legislation for a power for the Revenue to agree with taxpayers where appeals are heard, plus the power in (a) above ~~or~~

Robin Willis

R B WILLIS

# TAX APPEALS AND OTHER PROCEEDINGS: PLACE OF HEARING BY GENERAL COMMISSIONERS: RESPONSES TO CONSULTATIVE DOCUMENT

## BACKGROUND

### The General Commissioners

1. Most appeals and other proceedings under the Taxes Acts are heard in the first instance by the General Commissioners of Income Tax ("Commissioners" hereafter). Commissioners are local, lay, people who serve on the appeal tribunals very much part-time. (Some proceedings do not necessarily involve an appeal against an assessment - eg where the Revenue takes proceedings before the Commissioners for penalties.)

2. There are nearly 500 separate local bodies of Commissioners. They are appointed by the Lord Chancellor, or in Scotland the Secretary of State, and the areas for which they sit (known as Divisions) are fixed by those Ministers.

### Where appeals are heard

3. Schedule 3 to the Taxes Management Act (TMA) lays down rules for deciding in which Division proceedings are to be heard. For corporation tax, and Schedule D tax on the profits of unincorporated businesses, for example, proceedings are to be heard by the Commissioners for the Division in which the company's or taxpayer's business is carried on, or in which its head office or principal place of business is situated.

### Link with tax office

4. In the past the system has fitted neatly with the Revenue's organisation under which business taxpayer's affairs have generally been dealt with in the local tax office in which the head office of the company/business is

situated. Even in the case of a group of companies, each separate company was dealt with by its own tax office, frequently in different parts of the country depending on where each member company's head office was. A taxpayer (or his agent) negotiated with a local Inspector and, if they could not settle the matter, went to the local Commissioners.

## REORGANISATION

### Concentration of work on groups

5. However, following a review of the work of tax offices which deal with the most complex commercial and industrial concerns, it was decided in 1985 that all the files for companies in substantial groups should be centralised in about 65 tax offices. By bringing the whole of the group together in one tax office the Revenue can deal with the group's tax affairs more effectively and look at the group as a whole. This affects about 650 groups involving perhaps 20,000 separate companies in total.

6. This consolidation will often be convenient also for the group's tax advisers, because they are now able to deal with a single tax office, rather than several offices.

7. To balance the workload some medium sized company cases were transferred into those offices dealing with groups, while some smaller and technically less demanding company and unincorporated businesses were transferred from group offices into other tax offices (usually nearby).

### Transfers out of London

8. Some of the 65 or so tax offices dealing with groups are now due to be moved from London to provincial locations such as Bristol and Manchester. This was announced last year. It will mean that the Inspector dealing with some London-based groups will now be in the provinces.

## Trusts

9. There has been similar consolidation for trusts. In order to make more effective use of resources, work on trust cases was concentrated a few years ago in about 50 tax offices.

## THE PROBLEM: THE CONSEQUENCES FOR ARRANGEMENTS FOR APPEAL AND OTHER PROCEEDINGS

### Distance between tax office and Appeal Division

10. One result of these reorganisations is that the tax office dealing with a business may be a long way away from the Division of Commissioners which would hear any proceedings on the business. For example a company based in Liverpool may at present be dealt with by a London tax office because its parent company is based in London, but proceedings would be heard in a Commissioners' Division in Liverpool. Over 200,000 companies, trusts and unincorporated businesses (including professions) currently have this mismatch.

### The Revenue's administrative difficulties

11. This mismatch causes a number of problems. The Inspector working on the business has to pass briefing (or in some cases the files) for any meeting of the Commissioners to the tax office dealing with the hearing. There has to be frequent telephone contact between the two offices to check on, say, whether accounts, information etc have been submitted before the hearing. All this is inefficient and runs the risk of error and delay. If it is an appeal case involving a contentious point in dispute, or the Commissioners want the Inspector responsible for the case to attend even for an appeal which will be adjourned, the Inspector has to travel to handle the appeal in person.

## Delay cases

12. A high proportion of appeal proceedings are simple "delay" cases. In the absence of returns and accounts, an estimated assessment has been made by the Inspector, the taxpayer has appealed against it to keep the position open, and the Inspector has arranged for the appeal to be listed for hearing because that is often the only way to extract from the taxpayer the information needed to settle the appeal. If appeals of this type have to be listed in 'foreign' Divisions, away from the Inspector dealing with the case, it means increased costs for the Revenue in dealing with appeals which arise solely because of delay on the part of the taxpayer.

## Costs

13. The cost of applying the present system could be an additional 15-20 units of staff at Inspector level. Some would be Grade 5 Inspectors (the equivalent of Assistant Secretaries). This is a heavy cost when Inspector resources are scarce. And it carries a substantial opportunity cost. 20 Inspectors on technical and investigation work would bring in about £10 to 15 million a year.

## Compliance costs

14. Involving two tax offices in this way can also increase costs for the taxpayer. In the majority of delay appeal cases, the taxpayer does not attend the appeal meeting, but supplies accounts or information to the tax office shortly before the meeting takes place. Where the place is listed for hearing in a 'foreign' Division this will normally involve the taxpayer in contacting two tax offices - his own to ensure that the material he has sent is acceptable to the Inspector, and the office handling the appeal to ensure that they are aware of what he has done and will handle the appeal meeting accordingly.

## Existing provisions for moving appeals

15. There are already provisions in Section 44(2) of the Taxes Management Act for the Revenue and the taxpayer to agree that proceedings should be heard in a different Division from that set out in Schedule 3, if satisfied that neither sets of Commissioners will object. These would, however, be difficult and cumbersome for a large number of routine proceedings because it is necessary to come to an agreement with the taxpayer for each separate proceeding.

## CONSULTATIVE DOCUMENT: A POSSIBLE SOLUTION

16. We therefore issued last November, with Ministers' agreement, a consultative document exploring how the rules which decide where appeals are heard might be amended to enable some to be dealt with by the Commissioners with which the tax office normally deals, where that would also be acceptable to the taxpayer. The proposal was that the Board of Inland Revenue should be empowered to make directions that proceedings should be heard by a specified body of General Commissioners who were not those designated in Schedule 3.

17. The document went on to explain that the procedure could work as follows. The Board would make general directions - for example that proceedings before General Commissioners in cases dealt with by a tax office in Bristol should be heard by Commissioners in Bristol. In the event of an appeal being lodged against an assessment, the Inspector would notify the appellant of the Board's direction and of the taxpayer's right to object within 30 days of the notification. If the taxpayer lodged an objection within 30 days the appeal would be heard in the Division determined under the present rules.

18. The document pointed out that this might be more convenient and cheaper for the taxpayer: for example a nationwide group of companies dealt with by a single tax

office might find it more convenient to have all their appeals dealt with in the same place, rather than spread over the country, even if that place was some distance from where the group's advisers were located. However if it was not convenient the taxpayer would have the right to object to the direction and insist on the proceedings being heard by the Commissioners designated in Schedule 3. The only additional compliance cost for taxpayers then would be the cost of making the objection.

19. Similar arrangements would also apply to appeals other than appeals against assessments and proceedings other than appeals.

20. It was made clear that the intention would be to use the power of direction in present circumstances in relation only to cases dealt with by the 30 specialist group tax offices and the 50 trust tax offices.

## RESPONSES TO THE CONSULTATIVE DOCUMENT

21. Most (but not all) Clerks to Commissioners and the Advisory Committees on the appointment of General Commissioners accepted the proposal in the consultative document, although some suggested modifications. However the vast majority of other representations received from professional bodies and individual firms strongly objected to the idea of the Board directing where appeals should be heard. Their views are summarised in the Table I.

## ANSWERS TO THE OBJECTIONS

22. Unfortunately, but inevitably, those who have responded are not representative of the main target of the proposal in the consultative document - ie taxpayers who will not communicate with the Revenue and delay providing information with the result that an appeal is listed for a delay hearing.

23. Anyone who feels strongly enough to respond to a consultative document is likely to object to the Board's directions anyway. The saving would come from those who do not feel strongly and (whether from acceptance or inertia) do not object to their appeals being transferred.

24. This is not to say the comments in the responses do not have merit. We would welcome a more flexible system. But the difficulty is that if we take on board the all the main suggestions we would be left with a scheme which would no longer tackle the problem and reduce staff costs. The dilemma is that anything which is effective against uncooperative taxpayers is likely to seem harsh to the (relatively) cooperative.

25. Our general answer to the criticisms in the consultative document would therefore have to be that i) we are aiming at taxpayers who are late in fulfilling their statutory obligations and not those who have a genuine point to argue before the Commissioners, and ii) the right to object safeguards the taxpayer. Table II summarises the criticisms and shows how they might be answered along these lines.

## OPTIONS FOR THE FUTURE IN THE LIGHT OF RESPONSES TO THE CONSULTATIVE DOCUMENT

26. The answers above may or may not be convincing. We have therefore considered again the way we might deal with the problem. There seem to be five options.

### (a) Legislate as the consultative document proposes

27. The proposal in the consultative document could be introduced without change using the arguments in paragraph 25 and Table II to answer critics. But the responses to the consultative document show that we would

have presentational difficulties, and might well meet with opposition (including opposition from the Government's supporters).

In summary:

Pros. Maximum potential staff saving of up to 15-20 Inspectors.
Convenience for Districts generally.
Clerks to Commissioners and Advisory Committees generally accept.

Cons. Strong opposition in majority of responses.
Meets none of the objections raised.
May be a difficult legislative passage.

(b) Modified legislation on the lines of consultative document

28. As our main target is delay cases we considered the possibility of confining the Board's directions to those cases, or of giving assurances that they would only be used in those circumstances. It is in principle an attractive option. We move appeals only when the taxpayer is at fault and will not appear.

29. Unfortunately there are practical problems. First, there is no easy definition of a delay case. The only dividing line we have drawn (in legislation in 1984) required decisions by the General Commissioners on what is and is not a delay case, and is proving difficult (with eg a current application for judicial review). We doubt if we could give Inspectors the power to make the same decision without generating a lot of complaints and appeals.

30. Second, delay cases are not a distinct group. In some delay cases the taxpayer will attend a hearing to plead for an adjournment (eg on grounds of ill health). In others a

substantive point will emerge during negotiations which turns the appeal into a contentious case. These are very much the exceptions rather than the rule. But as ever it is the hard cases which will attract attention.

31. If something must be done to allow contentious cases to get back to the place of hearing under the existing rules we think it would have to be by allowing late objections, to the Board's direction. This gives comfort to everyone and might reduce the number of objections made to protect the company's or trust's position. But it would also open up a route for the more cynical to delay matters: they could enter an objection when their appeal is listed, knowing that its transfer to another set of Commissioners will take several months.

32. We might also meet some opposition from Commissioners (and legal difficulties) because we should be moving an appeal part-way through the procedure. The first set of Commissioners might object to being used only for boring delay cases, and the second set for not having the full story.

Summary:

Pros. Aimed specifically at delay cases.
Shows regard to some responses.
Some staff saving (though by no means certain).

Cons. Still does not answer the criticism that the alternative location is the choice of the Revenue not the taxpayer.
The modifications could be exploited by appellants leaving us no better off than now - and in some cases worse off.
More complicated administration with attendant costs.
While possibility of difficult legislative passage reduced, not removed.

Some possibility of difficulties in moving part-heard cases.

(c) Introduce power to mutually agree place of hearing without Commissioners approval as well as the proposal in consultative document.

33. Several respondents suggested simplifying the existing provisions for moving appeals, to remove the need for Commissioners to consent. The Revenue and taxpayer would then agree any transfer of hearings. They are turning against us the argument that a single location will be more convenient for some groups, and making a point of principle that the Commissioners are an independent appeal tribunal, not a part of the Revenue's administrative machinery.

34. We rejected this approach when considering the consultative document because of the initial cost of Inspectors' time negotiating agreements with companies and trusts. It would also fail by itself to solve the problem of uncooperative (or silent) taxpayers. But in conjunction with a power of direction it would strengthen our case.

35. We have yet to work out the detailed interaction between agreements and directions. The staff saving will depend on the precise arrangements. But there could be advantages for us and taxpayers in a more flexible arrangement which allowed taxpayers an escape route from the Board's direction. However we would manifestly not save all 20 Inspector posts if there was genuine negotiation about the place of hearing with, in some cases, the taxpayer's wishes being met.

Pros. Would answer most criticisms.
Objections during legislative passage less likely.
Effective where one agent acts for large

number of appeals (eg group accountants) and cooperates.

Cons. Mutual agreements more time consuming than directions.
Would not wipe out all staff costs.
Some Commissioners may object to loss of (or increase in) work.

(d) Introduce only a power to mutually agree place of hearing without Commissioners approval.

36. With only a power to agree transfers of hearings the Inspector and taxpayer would have to negotiate. We think this would be successful with some groups of companies, who would not want scattered appeals. But the Inspector's hand would be less strong with single companies and trusts.

Pros. Would answer all criticism.
Smooth legislative passage likely.
Effective where one agent acts for large number of appeals (eg group accountant) and cooperates.

Cons. Mutual agreements more time consuming than directions.
Would not help with uncooperative taxpayers/delay cases.
Would reduce but not eliminate staff costs.

(e) Do nothing in 1988

37. If we do nothing in the 1988 Finance Bill and say nothing we face an unwelcome waste of Inspectors' time. At the very least we would hope for a new statement of intent, and a revised proposal we could discuss with representative bodies during 1988.

Pros. No need to worry about opposition to passage of legislation.

Cons. No relief from staff cost of 15-20 Inspectors; inconvenience for Districts.

SUMMARY

38. At the two extremes of (a) and (e) above the choice is between doing nothing and accepting the staff cost of 15-20 Inspectors and inconvenience to Districts, or bringing in the proposal in the consultative document in the knowledge of criticism from those who have responded and the expectation that legislation would not have a smooth passage.

39. Taking up the detailed suggestions in the responses to the consultative document (option (b) above) would in fact emasculate the proposal.

40. The suggestions for easier means to make agreements on the place of hearing may allow an effective compromise solution. This would be that in addition to the proposal in the consultative document, the present provisions of section 44(2) TMA should be widened in order to allow for alternative locations to be mutually agreed in advance and without Commissioners' approval. This would go much of the way towards meeting the criticisms of the proposal in the consultative document yet leave the power of direction to deal with the uncooperative taxpayers who do not respond to correspondence or provide information. This is option (c) above.

41. A power to make agreements by itself (option (d) above) would be better than nothing. But it would leave the big problem of taxpayers who will not communicate with Inspectors, let alone cooperate in reaching a mutually satisfactory compromise on hearings.

INLAND REVENUE
SOMERSET HOUSE
FEBRUARY 1988

SUMMARY OF REPRESENTATIONS

A. Clerks to General Commissioners/Advisory Committees on the Appointment of General Commissioners

| | Comments in favour | Comments against proposal | Neutral |
|---|---|---|---|
| Clerks to General Commissioners | | | |
| 3 | Proposal a sensible solution to problem. | | |
| 3 | In favour but had suggestions for slight modifications. | Proposal less sensible for trusts than groups,<br><br>provide for reconsidering at listing,<br><br>appellant will not know at appeal whether hearing needed therefore will always object as safeguard, therefore allow late objections. | |
| 1 | | Concerned directions would be used in all types of cases in due course. | |
| Association of Clerks to Commissioners of Taxes for Great Britain | In favour | But suggested providing for late objections when listing contentious cases. | |
| Advisory Committees on the appointment of General Commissioners | | | |
| 3 | | | No comments made. |
| 4 | Proposal a sensible solution to problem. | | |
| 1 | Proposal a sensible solution to problem (but right of objection essential). | | |
| 2 | Proposal a sensible solution (but right of objection and monitoring of Divisions' work loads was essential). | | |
| City of London Committee | | Not enough consideration given to convenience of taxpayers,<br><br>local knowledge of Commissioners undermined<br><br>appellants would not know when appealing if there would be a hearing, | |

| | Comments in favour | Comments against proposal | Neutral |
|---|---|---|---|
| | | there could be no widening of the use of directions. | |

B. Representative Bodies

| | | | |
|---|---|---|---|
| Institute of Chartered Accountants in England and Wales | Accept need for change but .. | right of objection will in fact be used often,<br><br>many cases never get to hearing; objection at time of appeal unnecessarily burdensome; objections should be made at listing of appeal for hearing,<br><br>there should be 'ongoing' and 'group' objections,<br><br>taxpayers should have an equal right to propose alternative venues,<br><br>if S44(2) is cumbersome delete requirement to consult Commissioners. | |
| Institute of Chartered Accountants in Ireland | Proposals reasonable. (NB there are no General Commissioners in Northern Ireland yet, so the Accountants there would not have experience of the problems) | - | |
| The Chartered Association of Certified Accountants | | Undermines local knowledge of Commissioners,<br><br>there is no right to late objections,<br><br>location changes should only be by mutual agreement as under S44(2). | |
| The Institute of Taxation | | Doubt whether it will always be advantageous for groups,<br><br>doubt presently inconvenient for taxpayers as suggested,<br><br>Pay and File will deal with company delay cases in due course,<br><br>taxpayers should be able to change their mind, | |

| | Comments in favour | Comments against proposal | Neutral |
|---|---|---|---|
| | | proposal relies on inertia of taxpayers which is inconsistent with Taxpayer's Charter, | |
| | | doubt S44(2) calls for Commissioners' agreement. | |
| CBI | | The emphasis should be on the convenience of taxpayers not that of the Revenue, at the time of an appeal no-one knows if it will be a "delay" case or need a contentious hearing | |
| | | Should therefore allow for objections at time of listing | |
| | | amending S44(2) to provide for mutual agreements seems the solution. | |
| Public Companies Taxation Discussion Group | | Opposed to a proposal for Revenue convenience when Revenue made the problem, | |
| | | time wasting work in making objections, | |
| | | amend S44(2) to provide for mutual agreements. | |
| The National Farmers Union | | Fear use of directions will be extended, | |
| | | the Revenue should travel to hearings not the taxpayer, | |
| | | the objection could be overlooked by appellant, | |
| | | local knowledge of Commissioners undermined, | |
| | | change of location should require taxpayer and Commissioners' agreement. | |

| | Comments in favour | Comments against proposal | Neutral |
|---|---|---|---|
| C. Others | | | |
| Individual Companies | | | |
| a) ICI | | Aimed at Revenue convenience not taxpayer convenience,<br><br>even in delay cases hearing should be convenient for taxpayers,<br><br>objection should be at time of listing for hearing not at making appeal. | |
| b) BAT | | Location changes should be mutually agreed. | |
| Individual firms of Solicitors | | | |
| a) Wedlake Bell | Sensible proposal as long as there is a right of veto for taxpayer. | | |
| b) Richard Williams | No objection. | But if a direction is in force the taxpayer should also have the right to nominate an alternative location. | |
| Individual firms of Chartered Accountants | | | |
| a) Smith and Williamson | | Proposal cumbersome,<br><br>should be ongoing objections. | |
| b) Deliotte Haskins and Sells | | Problem of Revenue making is no concern of taxpayers,<br><br>if Revenue lists an appeal Revenue should bear costs,<br><br>Pay and File will deal with company delay cases in due course,<br><br>doubts advantage to groups of dealing with one location,<br><br>directions should be made by the Lord Chancellor's Department,<br><br>objections should be at the time of listing,<br><br>would accept a system if taxpayer and Commissioners agreed, and if the agreement could be revoked. | |

| | Comments in favour | Comments against proposal | Neutral |
|---|---|---|---|
| Council on Tribunals | | One party to any appeal should not determine location,<br><br>right to object does not override the Council's view,<br><br>Revenue brought about its own problems,<br><br>changes in location should be under S44(2); remove requirement for Commissioners agreement if too cumbersome at present. | |

TABLE II

TABLE II

SUMMARY OF CRITICISMS: ANSWERS

| | |
|---|---|
| Aimed at Revenue convenience not taxpayer convenience. | Proposal mainly aimed at delay cases where taxpayer has not provided information. |
| Relies on inertia of taxpayers which is inconsistent with Taxpayer's Charter. | Unreasonable that Revenue should suffer increased costs because of delay by taxpayer. |
| Burdensome having objection at time of making appeal - should be at listing. | Listing only occurs after an attempt to settle by agreement fails. Objections at listing would provide opportunity for appellant to delay settlement even more. |
| Should be a facility for late objections on reasonable grounds. | Again would provide opportunity for delaying tactics. |
| Should be a facility for ongoing or group objections. | Inevitably would encourage the making of on-going or group objections and emasculate the whole proposal. |
| Objections will be used more often than Revenue realises. | Groups may often prefer one location to several. |
| Doubt that groups will be interested. | Not all groups, but certainly some. |
| Pay and File will be introduced so the delay problem is short term. | Not until 1992 (and then only for companies) and in the meantime the administrative difficulties are considerable and the delay problem is unresolved. |
| The proposal undermines the local knowledge of Commissioners. | Only being used in a limited number of cases. |
| There are fears the proposal would be extended. | No such plans or intentions. |
| Changes should be mutually agree; S44(2) does not require Commissioners approval and should be used more. | Our view is that currently it does require their approval, but if amended in some way there would be scope for further mutual agreement. BUT this still leaves delay cases where the problem is that the taxpayer will not communicate at all. |

From: P Trevett
Date: 23 February 1988

CONFIDENTIAL

HM CUSTOMS AND EXCISE
VAT CONTROL DIVISION D
ALEXANDER HOUSE 21 VICTORIA AVENUE
SOUTHEND-ON-SEA X SS99 1AJ
TELEPHONE SOUTHEND-ON-SEA (0702) 348944 ext

Economic Secretary

cc Chancellor
Chief Secretary
Financial Secretary
Paymaster General
Mr Cassel
Miss Sinclair
Mr Michie
Mr Cropper
Mr Saunders
(Parliamentary Counsel)

**FINANCE BILL 1988: STARTER NO 35: AMENDMENTS TO SCHEDULE 1, VAT ACT 1983**

1. We have now received draft clauses for this starter and there are two minor alterations to the legislative proposals approved by Ministers (my notes of 2 September 1987 and 2 November 1987).

2. In my note of 2 November, I said that it was desirable that Schedule 1 should be explicit with regard to the Commissioners powers to invalidate a registration ab initio where there had never been an entitlement to registration. This we saw as both putting the matter beyond doubt and as a necessary anti-avoidance measure.

3. In the few cases where we may find it necessary to take such action the person who incorrectly obtains registration may have also obtained repayments of input tax. The sums involved can be large and if we invalidate the registration it is necessary that we can recover these monies to which the person concerned was never entitled. Again our existing powers were not explicit and Parliamentary Counsel has amended Schedule 7 paragraph 4 (1983 Value Added Tax Act) to enable us to assess where we have repaid claims to input tax in such cases. The amendment is short (ten lines), but essential.

---

Internal Distribution:

CPS
Mr Knox
Mr Finlinson
Mr Nissen
Dr McFarlane
Mr Allen, DPU
Mr Topping

4. The amendments to Schedule 1 we had estimated to take up some sixteen to eighteen lines of Finance Bill space. Parliamentary Counsel has, however, and following last years major amendments to paragraphs 1 to 4 of this Schedule, thought it necessary to restructure paragraphs 5 to 12 of the Schedule. This restructuring is effectively, in large part, a consolidation and not an amendment of existing legislation. The result is a considerable simplification of what was becoming a very complicated and confusing Schedule. It does, however, take up some two and a half pages.

5. In doing this consolidation exercise it has come to our notice that in last years amendments to Schedule 1 a consequential amendment to paragraph 12 was missed. Paragraph 12 allows, by Treasury Order, for increases in the registration and deregistration thresholds (Starter 31). In last years amendments we also included, at paragraph 4(3), an anti-avoidance provision which makes specific reference to the registration threshold. It is therefore necessary for us to amend paragraph 12 so that it refers to all sums specified in the Schedule. While this small deficiency does not prevent us from amending the thresholds by Order, the amendment is necessary if the anti-avoidance measure is in future to stay in line with the registration threshold.

6. We would be grateful to know whether you are content with the changes we have outlined above and can provide further details if necessary.

P TREVETT

3744/84

**BUDGET CONFIDENTIAL**

**FROM: G R WESTHEAD**
**DATE: 24 February 1988**

**PS/CHANCELLOR**

Ch/ content? OK - mpw 26/2

cc PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
Mr Scholar
Mrs Lomax
Mr Culpin
Miss Sinclair
Miss Noble
Mr Murphy
Mr Stevens - BSC
Mr Jenkins - Parly Counsel
Mr Painter - IR
Mr Pitts - IR
Mr Corlett - IR
Mr Willis - IR
Mr Reed - IR
Mr Huffer - IR
PS/IR

**CONVERSION OF BUILDING SOCIETIES TO PLCs**

The Economic Secretary has considered Mr Reed's submission of 16 February and Mr Huffer's of 22 February about the possible extension of the building societies' conversion package in the 1988 Finance Bill.

2. The Economic Secretary has concluded, subject to the Chancellor's agreement that it would be desirable to legislate in this year's Finance Bill to cover the two points outlined in Mr Reed's note of 16 February:

(i) to remove clawback of capital allowances,

(ii) to allow for any gilts transferred from the converting society to the successor company to be transferred on a no-gain no-loss basis.

3. The Economic Secretary does not think we need to legislate on any of the points raised in Mr Huffer's minute since failure to legislate would not hold up conversion. The need to apply automatic MIRAS Arrangements (paragraph 2 of Mr Huffer's note) can be covered by individual Treasury Orders as necessary.

4. The Economic Secretary notes that the changes he proposes above would add about an extra page to the existing 3 pages of legislation.

Guy Westhead

GUY WESTHEAD
Assistant Private Secretary

PARLIAMENTARY UNDER SECRETARY OF STATE

MINISTER
FOR ROADS AND TRAFFIC

DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB
01-212 3434

My ref: B/PSO/2332/88

Your ref:

CONFIDENTIAL

Peter Lilley Esq MP
Economic Secretary to the Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

25 FEB 1988

Dear Peter

Your letter of 19 February asks me to agree the proposal that the Finance Bill should provide a minimum threshold for VED refunds should be dropped. Since it appears that you are not prepared to take it on board, do I have a choice?

Is it satisfactory that the Treasury should impose tight running cost restraints and block measures which we find it necessary to adopt to keep within those limits?

Yours ever

Peter

PETER BOTTOMLEY

ECONOMIC SECRETARY
REC'D 25 FEB 1988
ACTION Mr Michie
COPIES TO Chancellor, CST, EST, PMG, Sir P Middleton, Mr Scholar, Mr Culpin, Mr Ruffle, Miss Sinclair, Mrs Burnhams, Mr Cropper, Mr Tyrie, Mr Call, Mr Jenkins OPC, PS/CHE, PS/IR.

CONFIDENTIAL

42/2.BTW.4373/19

FROM: MISS S J FEEST
DATE: 29 February 1988

MR R B WILLIS - IR

cc PS/Chancellor
PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Miss Sinclair
Mr Cropper
Mr Tyrie
Mr Mann
Mr Jenkins OPC
Mr Battishill IR
Mr Isaac IR
Mr Corlett IR

**TAX APPEALS: PLACE OF HEARING**
**by General Commissioners: Starter 451**

The Financial Secretary held a meeting on this Starter today and decided to legislate in this year's Bill by way of Option C.

2. However, in view of the possible objections which might arise, the Financial Secretary would like to be able to fall back to Option D at report stage if necessary.

3. I understand that you will be providing a summary of the procedures involved under Option C.

Susan Feest

**SUSAN FEEST**
**(Assistant Private Secretary)**

FROM: J M G TAYLOR
DATE: 29 February 1988

PS/FINANCIAL SECRETARY

cc PS/Chief Secretary
PS/Economic Secretary
Mr Scholar
Mr Monck
Mr Culpin
Miss Sinclair
Mr Cropper
Mr Tyrie
Mr Battishill - IR
Mr Isaac - IR
Mr Painter - IR
Mr McGivern - IR
Mr Reed - IR
PS/IR

**BES: FINANCE BILL STARTER 203**

The Chancellor has seen the Financial Secretary's minute of 18 February, covering Mr Reed's submission of 27 January.

2. The Chancellor thinks that the ceiling for ship chartering should be set at £5 million. He thinks that this ceiling should, however, be the same as for rented property: hence the ceiling for rented property should now be set at £5 million rather than £10 million. This gives something to concede at Committee, if a sufficiently powerful argument is made.

3. The Chancellor otherwise agrees with the Financial Secretary's recommendations.

J M G TAYLOR

CONFIDENTIAL

Inland Revenue

Policy Division
Somerset House

(Ch. Sec FOX)

FROM: C W CORLETT

29 February 1988

CHANCELLOR OF THE EXCHEQUER

MAINTENANCE PAYMENTS: (STARTER 150): OVERVIEW 29 FEBRUARY

The package, in the light of the decisions at your meeting this morning is set out in the attached note.

The important new features are

- payers to ex-spouses under the new rules to get relief of 1370 (present value)

- divorced and ex-wife recipients under "old" (existing) rules to get exemption on 1370

---

cc Principal Private Secretary
Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Sir P Middleton
Sir T Burns
Sir G Littler
Mr J Anson
Sir A Wilson
Mr I Byatt
Mr M C Scholar
Mr R Culpin
Mr P Sedgwick
Mr J Odling-Smee
Miss C Evans
Mr A Hudson
Mr P McIntyre
Mr P Cropper
Mr A Tyrie
Mr M Call
Miss C E C Sinclair
Mr C J Riley
Mr Unwin (C&E)
Mr Knox (C&E)

Chairman
Mr Isaac
Mr Painter
Mr Beighton
Mr Calder
Mr Lewis
Mr Mace
Mr Stewart
Mr Davenport
Miss Dougharty
Mr Yard
PS/IR
Mr Corlett

- both parties stay on old rules until

  - payer opts for new

  - maintenance ends naturally.

Scorecard figures (based on 2425 for payer and no exemption for "old" wives)

| 88/89 | 89/90 | 90/91 | 91/92 |
|---|---|---|---|
| -10 | -5 | 0 | 0 |

Revised figures (new package)

| | | | |
|---|---|---|---|
| -10 | -5 | +5 | +15 |

The break-down of cases is as follows.

| | | |
|---|---|---|
| Total payers of maintenance | 500,000 | |
| of which payers of affiliation only | 90,000 | will want to stay on old rules |
| matrimonial cases | 410,000 | |
| of which paying over 1370 | 125,000 | will want to stay an old rules until exempt amount exceeds "cap" |
| paying under 1370 to children | 220,000 | will want to stay on old rules until amount payable increases (at which point they will switch payment to wife under new rules) |

paying under 1370 to ex-spouse

65,000 will stay old rules, and exemption will protect spouse.

C W CORLETT

RJ4.63

BUDGET CONFIDENTIAL

FROM: J M G TAYLOR
DATE: 1 March 1988

PS/FINANCIAL SECRETARY

**SECTION 482 REPLACEMENT: COMPLIANCE AND TRANSITIONAL ASPECTS**

The Chancellor has seen Mr Fawcett's note of 25 February to the Financial Secretary. He has commented that it is rather late for these major matters to come up for decision. Is the Financial Secretary happy with these proposals?

J M G TAYLOR

53/2/MAD/3756/26

CONFIDENTIAL

FROM: G R WESTHEAD
DATE: 1 March 1988

PS/CHANCELLOR

Ch/OK?

mpw 3/3

OK.

cc: PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
Miss Sinclair
Mr Michie
Mr Cropper
Mr Saunders, Parl Counsel
Mr Trevett, C&E
PS/C&E

**FINANCE BILL 1988: STARTER NO 35: AMENDMENTS TO SCHEDULE 1, VAT ACT 1983**

The Economic Secretary has considered Mr Trevett's submission of 23 February.

2. The Economic Secretary recommends that the changes Mr Trevett proposes in paragraphs 3 and 4 of his minute be accepted and would be grateful for the Chancellor's agreement to this course of action.

3. Although the change in paragraph 4 would require 2½ pages of Finance Bill space, the great majority of this would not be new legislation but a reordering of existing legislation. It would simplify what has become a very complicated and confusing schedule and Customs believe the result should be welcomed by taxpayers and their advisers. Customs do not believe that this clause should prove at all contentious. It is, as Mr Trevett says, at the suggestion of Parliamentary Counsel.

Guy Westhead

GUY WESTHEAD
Assistant Private Secretary

FROM: J M G TAYLOR
DATE: 1 March 1988

PS/FINANCIAL SECRETARY

**SECTION 482 REPLACEMENT: COMPLIANCE AND TRANSITIONAL ASPECTS**

The Chancellor has seen Mr Fawcett's note of 25 February to the Financial Secretary. He has commented that it is rather late for these major matters to come up for decision. Is the Financial Secretary happy with these proposals?

J M G TAYLOR

CONFIDENTIAL

FROM: C C FINLINSON
DATE: 2 MARCH 1988

Board Room
H M Customs and Excise
15th Floor Alexander House
21 Victoria Avenue
Southend-on-Sea
SS99 1AA
0702 48944

ECONOMIC SECRETARY

cc Chancellor
Chief Secretary
Financial Secretary
Paymaster General
Mr Culpin
Miss Sinclair
Mr Cropper
Mr Saunders,
Parliamentary Counsel
PS/Inland Revenue
Mr Shaw, Inland Revenue

**FINANCE BILL 1988: STARTER NO 30: KEITH REVIEW**

1. Further to my note of 22 February, we have now met with Parliamentary Counsel to finalise the draft clauses and there is one additional minor change of which you will wish to be aware.

2. In my submission of 9 October 1987 (paragraph 27) I said that it was necessary for the computer operation of Keith Phase III for us to have the vires to set off debts against credits, be they tax, penalties, interest or surcharge. Parliamentary Counsel has drafted the necessary clause, which is short and not likely to be contentious. However, with this all embracing power of set off a consequential amendment is required to section 14(7) of the VAT Act 1983. This section empowers us to hold over a repayment where the registered trader has "failed to submit returns or pay tax for any earlier period". Parliamentary Counsel advises us that with the new clause the words "or pay tax" should be repealed.

3. We are content that these words should be repealed and foresee no unfortunate consequences given our new powers of set off.

C C FINLINSON

---

CPS
Mr Knox
Solicitor

Mr Nissen
Mr Trevett
Mr Fryett
Mr Allen

Dr McFarlane
Mr Topping
Mr Orr

CONFIDENTIAL

HM CUSTOMS AND EXCISE
CUSTOMS DIRECTORATE
DORSET HOUSE, STAMFORD STREET
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01-928 0533
GTN 2523

FROM: P G Wilmott
DATE: 2 March 1988

Economic Secretary

cc Chancellor
Chief Secretary
~~Industrial~~ Secretary
Paymaster General
Mr Culpin
Miss Sinclair
Ms C Evans
Mr Cropper
Parliamentary Counsel

**FINANCE BILL STARTER 63 (TIME LIMITS FOR PROSECUTION)**

1. We have been giving further thought to the issues behind my submission of 17 February and this note seeks your agreement to some revisions to the proposals then put forward.

2. As you will remember, the Keith Committee recommended that the present 3 year limit in Section 147 CEMA should be abolished altogether for offences triable on indictment, and replaced with a 6 year limit for offences triable summarily. Our assessment was that we would need to extend the existing 3 year limit but could work within a common 6 year restriction for both types of offences.

3. We have now come to the view that we should take more from the Keith recommendation than we had first intended. Our reason is, principally, that, once a successful method has been established, frauds tend to be continued until discovered. Given the increasingly extended intervals between regular controls this means that more can be evaded over greater periods of time. In fact, longer and continuous periods of fraud are particularly true for VAT. For those VAT cases which we have immediately been able to analyse we find that out of 64 subject to criminal proceedings in 1987, 11 were running for more than 6 years before the date on which proceedings could reasonably be instituted. This could apply equally to other Customs and Excise frauds.

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**Internal Circulation :** CPS, Mr Knox, Solicitor, Mr Nash, Mr Jefferson Smith, Mr Finlinson, Mr Weston, Mr Allen, Mr Hogg, Mr Railton, Mr Jenkins, Mr Stevenson

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4. This concern is only partly met, in the VAT field. Under Section 22(4) Finance Act 1985 we are able to assess evaded arrears for 20 years where a civil penalty has been imposed for dishonest conduct under Section 13 of that Act or where a person has been convicted of criminal fraud. Under Section 13, we can impose an added civil penalty equal to the amount of tax evaded. However our scope for applying criminal sanctions, which are generally reserved for the more serious offences, is in practice not proportionate to the penalties available civilly. For recovering the proceeds of fraud, we are concerned that notwithstanding the 20 year provision in Section 22(4), it would prove difficult to sustain an assessment of arrears for the longer period when the Court had only been able to hear and convict for fraud over a lesser term. For sentencing, it seems only right that in line with our starter 62 proposal the Court should be able to consider the whole of the time in which the revenue has been cheated. Large VAT or CAP frauds may be as complex (and as lucrative) as those to be investigated by the Serious Fraud Office; however, these will be prosecuted under non Revenue Acts (Theft Act, Companies Act, Financial Services Act), to which no time limits for proceedings apply. We now believe that it would be anomalous to apply a six year restriction to our offences, and damaging to the control of taxes which are increasingly self assessed and hence dependent upon the deterrent effect of adequate legal sanctions.

5. The successful prosecution of long-running VAT and other frauds will almost always depend on documentary evidence. Our requirement is for most business records to be kept for up to 6 years, and businesses will usually keep key documents longer, but such documents are not kept indefinitely; we would not therefore see any purpose in seeking the full Keith prescription of an unlimited period in which to bring proceedings on indictment. We do, however, seek your agreement to a 20 year limit for such proceedings, to bring our civil and criminal sanctions into line and to enable a fuller idea of the scale of persistent frauds to be placed before judges. As a concomitant, we would need to equip officers with the power to arrest for offences committed within this period; as noted in my earlier submission, the time limit upon our arrest power in Section 138 CEMA has no counterpart in mainstream criminal law.

6. For cases triable only in Magistrates' Courts, we have also reconsidered our needs in the light of our further thoughts on indictable proceedings and your response (Mr Westhead's note of 19 February) to my earlier submission. We can, for summary offences, accommodate a 6 months' limit on proceedings starting at the time on which there was sufficient evidence available to institute proceedings. The precise wording, which would have to cater for both English and Scottish law, would be a matter for Parliamentary Counsel, but in Section 28 of the Vehicles (Excise) Act 1971 there are the words: "from the date on which evidence sufficient in the opinion of the authorised prosecutor to warrant the proceedings came to his knowledge (Section 28 of the Immigration Act 1971 has similar phraseology). This would ensure that once the investigative work is done, there are no undue procedural delays. However we still see the need for an absolute limit of time after the commission of the offence, since the alternative would be to rely on Magistrates' discretion under the Magistrates Courts Act to reject any cases brought an unreasonable time after the event. It would clearly be inappropriate to try to align the time limit for summary proceedings with the 20 year limit proposed for indictable offences, and we would suggest instead standing on the present

3 year limit (again, this is in line with the absolute limits provided in the Vehicles (Excise) and Immigration Acts).

**Summary**

7. We now seek your approval for extending the time limit for proceedings on indictment to 20 years after the commission of the offence and for an accompanying power of arrest. For summary proceedings, we propose the retention of the present 3 year limit, to be accompanied, however, by a new requirement that proceedings should be taken within 6 months of the evidence being available for the institution of criminal proceedings.

8. We would appreciate your comments on these proposals as soon as possible, so that final instruction can be sent to Parliamentary Counsel. We are, of course, happy to discuss any points you may wish to raise.

P G WILMOTT

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Inland Revenue

FROM: R B WILLIS
Policy Division
Somerset House

3 March 1988

FINANCIAL SECRETARY

TAX APPEALS: PLACE OF HEARING BY GENERAL COMMISSIONERS: STARTER 451

You agreed on 29 February to attempt legislation in the 1988 Finance Bill to deal with the problem of tax appeals which have to be heard a long way from the Inspector's office. This submission describes how the proposed solution would work. It also seeks your agreement to our consulting representatives bodies on the revised package after the Budget, but before you are committed to legislation.

PROPOSALS

2. Following your meeting on Monday we now propose to emphasise the possibility of the Inspector reaching agreement with the taxpayer on where an appeal should be heard.

Notices of directions to move the appeal will be issued only (i) after an attempt to reach agreement has failed and (ii) where the taxpayer has not indicated that he wants to keep the appeal hearings where they are now. Even then, the taxpayer will of course still be able to object to the direction, and thus keep the appeal where it is at present.

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cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Miss Sinclair
Mr Cropper
Mr Jenkins (OPC)

Chairman
Mr Isaac
Mr Rogers
Mr Corlett
Mr Beighton
Mr Calder
Mr Cleave
Mr Cherry
Mr Hinson
Mr Moule
Mr Yard
Mrs Gomes
PS/IR
Mr Willis

3. The sequence will be:

a. a taxpayer appeals against an Inspector's assessment;

b. the Inspector seeks the taxpayer's agreement to moving future appeals to a place convenient to the Inspector;

c. the taxpayer may then:

i. agree on arrangements to deal with future appeals (which need not necessarily be agreement to what the Inspector suggested in the first place); or

ii. discuss an agreement with the Inspector but fail to reach agreement or indicate clearly that he wants to keep appeals where they are under the existing rules; or

iii. not reply.

d. when future appeals are received the Inspector will send a notice of a direction moving the appeal only to taxpayer who failed to reply to his invitation to reach agreement (iii. above). There is not much point in issuing notices to other taxpayers who have agreed to other arrangements, or indicated positively that they want to keep there appeals where they are.

Examples

4. The Annex to this not gives 4 examples of how this would work for:

a. a company which agrees to have its appeals moved subject to a right to have hearings where it is based in certain cases;

b. a group of companies which makes an agreement with the Inspector to move all of its appeals;

c. a company (or trust) which indicates that it wants none of its appeals moved from their present place; and

d. a company or trust which is silent - ie it neither suggests an agreement nor response to the Inspectors suggestion.

5. Of these only (d) would be sent notices of directions to move their appeals.

Legislation

6. The legislation to enable us to work in this way would have two parts:

a. changes to the existing legislation to make it easier for a taxpayer and an Inspector to agree that appeals will be moved; and

b. new legislation to allow the Board to make directions which specify companies and trusts in certain tax districts and where their appeals will be heard if - and only if - the Inspector issues a notice of the direction and the taxpayer does not object.

7. The legislation would not spell out the procedures described above, but they could be described in a Press Release and you could give assurances in debate that Inspectors would not use directions where the taxpayer has clearly indicated he will object to any appeal being moved.

8. If taxpayers need further reassurance we could delay the start of the power to make directions until, say, the end of 1988 to leave time for agreements to be made - or for taxpayers to indicate they will not accept any change to their appeals.

FURTHER CONSULTATION

9. If this revised package is simply introduced in the Finance Bill we fear there could be a knee-jerk reaction against it, because it will look superficially very much like the proposal in the consultative document which attracted so much criticism. We think it would therefore be helpful for us to talk to some of the key representative bodies (including the CBI and chartered accountants) about the proposals before you are finally committed to legislation.

10. We suggest an announcement very shortly after the Budget that you are considering legislation which will take account of the responses to the consultative document but wish first to have their results of further consultations. We could then meet representative bodies to explain how the new proposals would work, and report to you their reaction. This would allow you to decide whether or not to introduce the legislation (in Committee) with a clearer measure of the likely reaction.

11. If you agree we shall draft a Press Release for your approval.

SUMMARY

12. We should be grateful for:

a. any comments on the procedures for agreeing to move appeals;

b. your decision on the proposal to consult representative bodies on the revised package before you introduce legislation.

R B WILLIS

ANNEX

EXAMPLE (a): COMPANY WHICH AGREES TO APPEALS BEING MOVED, SUBJECT TO RIGHTS TO HAVE SOME RETURNED TO THEIR PRESENT PLACE

1. In this example we assume the Inspector does not make a specific approach to the company and the company does not approach the Inspector to seek an agreement.

2. The process will then start with:

a. the Inspector makes an assessment;

b. the company appeals

c. the Inspector asks the company to agree to subsequent appeals being heard by General Commissioners other than those given by the rules in the legislation. The Inspector will suggest the General Commissioners for the area in which he is based;

d. the company does not agree to this but indicates it is willing to discuss an agreement.

3. After negotiation the Inspector and company agree that all appeals will be moved to the General Commissioners convenient for the Inspector provided that the Inspector agrees to move them back to the General Commissioners convenient for the taxpayer if and when the appeal becomes "contentious" - ie the company needs to appear and argue its case before the Commissioners. (We could not provide for this in legislation. It would have to be part of the agreement between individual taxpayers and companies. And in any dispute about what is and is not a contentious case the Inspector would have to give way to the taxpayer.)

4. When subsequent appeals are received the Inspector knows that he has an agreement with the company, and will be able to list it at his local Commissioners if a hearing is necessary - unless it is one of the small minority of appeals which lead to an actual hearing of arguments and evidence. The Inspector does not need to issue any notice of a direction.

EXAMPLE (b): A LARGE GROUP OF COMPANIES WHICH REACHES AGREEMENT WITH THE INSPECTOR

1. In this example we assume a large group of companies where the Inspector and tax manager or adviser are in frequent contact. The Inspector may then not wait for an appeal before starting the procedure.

2. The Inspector approaches the tax manager or adviser. He suggests it would be more convenient for both sides if appeals were heard in one place rather than in different locations around the country. The Inspector naturally suggests they are all heard where he is based.

3. Negotiations between the Inspector and the group lead to agreement to list all the appeals for companies in the group where the group has its headquarters. This is not ideal for the Inspector. He has still to travel to that location or send briefing and papers to a colleague there. But it is better than travelling to or briefing for many different locations. The group gains the benefit of all its appeals in one convenient location.

4. When subsequent appeals are received the Inspector does not need to ask for agreement to move them or to issue a notice of direction. There is an agreement in existence.

5. The same procedure could start with the company initiating matters by asking the Inspector to make an agreement.

EXAMPLE (c): TAXPAYER WANTS ALL APPEALS TO REMAIN WHERE THEY ARE UNDER EXISTING LEGISLATION

1. The steps here might be as follows:

   a. Inspector issues assessment;

   b. taxpayer appeals;

   c. Inspector invites agreement to move future appeals to the General Commissioners where he is based;

   d. taxpayer replies that he is not willing to have the appeal moved, finds the place of hearing he has convenient and does not want to change the existing arrangements.

2. In these circumstances the Inspector knows it would be pointless to issue notices of directions to which the taxpayer would automatically object. He accepts that appeals will be heard where the existing rules dictate.

3. The Inspector might approach the taxpayer again some years later to see if he has changed his mind, but this would probably be done in the course of other correspondence.

EXAMPLE (d): TAXPAYER IS SILENT IN RESPONSE TO INSPECTOR'S SUGGESTIONS

1. The procedure starts as in the examples above:

   a. Inspector issues assessment;

   b. taxpayer appeals;

   c. Inspector invites agreement to moving future appeals to the General Commissioners where he is based.

2. However nothing is heard from the taxpayer.

3. The Inspector lets the current appeal continue with the General Commissioners given by the present rules.

4. When the next appeal is received from the taxpayer the Inspector does not invite the taxpayers agreement to moving it but issues a notice of direction which moves it unless the taxpayer objects within thirty days.

5. The difference between this and the other examples is that:

   a. in examples (a) - (c) taxpayers responded to the invitation to move their appeals: they expressed a positive view;

   b. in this example the taxpayer has not expressed a view. The Inspector therefore changes to the procedure which requires the taxpayer to speak up if he wants to stop the appeal being moved.

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FROM: MISS M P WALLACE
DATE: 4 March 1988

APS/ECONOMIC SECRETARY

cc PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
Miss Sinclair
Mr Michie
Mr Cropper

Mr Saunders, Parl Counsel
Mr Trevett C&E
PS/C&E

**FINANCE BILL 1988: STARTER NO 35: AMENDMENTS TO SCHEDULE 1, VAT ACT 1983**

The Chancellor has seen your minute of 1 March, and Mr Trevett's submission of 23 February. He is content with the Economic Secretary's recommendation.

MOIRA WALLACE

53/2/LPD/3756/029

CONFIDENTIAL

FROM: G R WESTHEAD
DATE: 4 March 1988

MR WILMOTT - C&E

cc PS/Chancellor
Miss Sinclair
Miss C Evans

Parliamentary Counsel

PS/C&E
Mr Nash - C&E
Mr Finlinson - C&E

**FINANCE BILL STARTER 63 (TIME LIMITS FOR PROSECUTION)**

The Economic Secretary has seen and was grateful for your submission of 2 March.

2. As I told you on the telephone, the Economic Secretary would prefer to stick with the 6 year limit for bringing proceedings on indictment. He thinks this a logical length. Since businesses are only required to keep documents for 6 years and documents are usually necessary for conviction, he finds it hard to believe that many fraudsters would keep records of fraud longer than need be. He also feels that this measure would aggravate the historic image of Customs and Excise seeking draconian powers, unfair though this is.

3. The Economic Secretary is content for the three year limit on summary proceedings he has already agreed to be accompanied by a new requirement that proceedings should be taken within 6 months of the evidence being available for the institution of criminal proceedings.

Gus Westhead.

G R WESTHEAD
Assistant Private Secretary

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Inland Revenue

Policy Division
Somerset House

FROM: J D HINTON
DATE: 7 MARCH 1988

1. MR KUCZYS
2. MR CORLETT
3. FINANCIAL SECRETARY

STARTER 151: PERSONAL PENSIONS

1. The purpose of this note is

(a) to report progress on the drafting of the minor amendments to last year's personal pensions legislation, and

(b) to suggest a change of policy on the manner in which members of occupational schemes may contract-out of SERPS.

Progress update

2. There are four specific points that you have agreed should be included in this Starter (see Mr Munro's submissions dated 24 August and 3 November and responses dated 25 August and 23 November). They are:

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c.c. Chancellor of the Exchequer
Chief Secretary
Paymaster General
Economic Secretary
Mr Scholar
Mr Culpin
Miss Peirson
Miss Sinclair
Mr McIntyre
Mr Cropper

Mr Isaac
Mr Beighton
Mr Corlett
Mr Lusk
Mr Kuczys
Mr Hinton
Mr Gilbert
PS/IR

Mr Jenkins (Parliamentary Counsel)



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(i) the change (already announced) in the personal pensions start date;

(ii) technical changes to ensure that DHSS 'minimum contributions' to a contracted-out personal pension scheme may be backdated to 6 April 1987;

(iii) an extension of the statutory exemption of lump sum retirement benefits where people defer retirement beyond its due date; and

(iv) the extension to personal pension schemes of exemption from additional rate tax on the income of discretionary trusts.

3. The drafting of legislation to cover points (i), (iii) and (iv) above is now complete. But we have become aware of further problems in relation to the DHSS 'minimum contributions' to contracted-out personal pension schemes: these are the subject of the remainder of this note.

## The contracting-out problems

4. In his note of 13 November, Mr Munro explained that one representation not accepted last year was that members of contracted-in occupational pension schemes should be able to contract-out of SERPS through a special personal pension without having to leave their scheme. The personal pension would be 'special' in that the only contribution it would receive would be the DHSS 'minimum contribution' - neither employee nor employer would contribute directly to it.

5. This idea was rejected at the time because of practical problems of enforcing the controls on occupational pension benefits. These problems mainly arise from a DHSS requirement that the rules of a personal pension scheme should not prohibit the payment of voluntary contributions.

6. So the position at present is that anyone in a contracted-in scheme who wants to contract-out on an individual basis has the choice of:

a. leaving his occupational pension scheme to take out a contracted-out personal pension; or

b. remaining in his scheme and contracting-out through a free-standing AVC scheme (subject to benefit limits).

7. You agreed (Miss Feest's note of 23 November) that a change should be made to Section 30(2) of last year's Finance (No 2) Act so that DHSS 'minimum contributions' may be paid for the whole tax year where a person leaves his occupational scheme part way through the year. Legislation to deal with this point is being prepared, but some further problems with Section 30(2) have become apparent. They are:

i. The DHSS cannot distinguish between different contracted-in employments. So when a person has two jobs (one of which is pensioned) 'minimum contributions' will relate to both jobs. Section 30(2) will then force him to leave his occupational scheme if he wishes to contract-out. (This contrasts with the normal tax rules which treat each job separately so that a person can be a member of an occupational scheme in one job and have a personal pension for the other).

ii. Where a person leaves a personal pension scheme part way through a tax year and joins an occupational pension scheme, Section 30(2) would generally prevent him being contracted-out for the whole of that year.

8. In addition, the alternative of a member of a contracted-in pension scheme contracting-out through a free-standing AVC will not always be available. Although

DHSS 'minimum contributions' do not count against the limit on an individual's contributions, the benefits which build-up do count against benefit limits. As you may recall from the meeting on 9 February with Mr John Watts MP and representatives of the Institute of Actuaries, there is often insufficient headroom for younger pension scheme members to contract out. And, as you know, there is no tax relief on the employees 'deemed' share of minimum contributions to a FSAVC scheme.

9. These contracting-out problems are a source of friction between the pensions industry, the DHSS and ourselves. We have therefore been discussing them at length with the DHSS to try and find an alternative way of meeting both their and our policy objectives.

Possible solutions

10. Two possible options have emerged from these discussions. Both would meet our objective of controlling occupational pension benefit limits.

(a) The first resurrects the idea of a 'special' personal pension scheme which could only accept DHSS minimum contributions. To make this workable would require an amendment to both Section 30(2), and an alteration to DHSS regulations so that the scheme rules could prohibit payment of direct contributions by the member.

(b) The second would allow members of contracted-in occupational schemes to contract-out through a normal personal pension scheme provided that the individual's arrangements under the scheme prohibited payment of contributions other than by the DHSS. This option would also require a small amendment to Section 30(2).

11. Either option resolves all the contracting-out problems mentioned in this note and would be widely welcomed by the

pensions industry. DHSS officials have a preference for the second option subject to getting confirmation from their lawyers that it is consistent with Social Security regulations. A further advantage of this option is that the costs of managing the scheme should be lower than they would be under a 'special' scheme. (DHSS officials will, of course, have to consult their Ministers; and Mr Scott may write to you.)

Cost

12. If members of a contracted-in pension scheme could contract-out of SERPS through some form of 'minimum contribution only' personal pension the tax cost would be about £m10 in 1988-89 and £m5 in 1989/90 (the tax relief in the first year is doubled-up because of back-dating by the DHSS).

Conclusion

13. Subject to confirmation by the DHSS that there are no hitches on their side, we recommend Option 2 (Paragraph 9(b) above) as the best solution. The legislation required would probably be less than one-half page in the Finance Bill. It is, however, too late now to try and include anything in the Budget announcement. So, if you agree to this change it will be necessary to make an announcement at a later date - perhaps in conjunction with consultations on Starter 152 (accelerated accrual, etc). Mr Kuczys is minuting you separately on that.

J D HINTON

BD/45

Covering CONFIDENTIAL

FROM: B O DYER
DATE: 7 March 1988

01-270 4520

PS/CHIEF SECRETARY
PS/FINANCIAL SECRETARY
PS/PAYMASTER GENERAL
PS/ECONOMIC SECRETARY

cc PS/Chancellor
Miss C Evans - FP

**FINANCE BILL 1988 : GUIDANCE FOR OFFICIALS**

Appended below is a draft of the customary note we circulate to officials at this time of the year.

2. I should be grateful if you could confirm that its content meets the wishes of your respective Ministers; bearing in mind that Notes on Clauses and Amendments must, perforce, be uniform in their style and format.

3. If you wish to propose any revisions, may I ask that they reach me by Friday 11 March; a phone call will suffice. I should like, if possible, to get this guidance out to officials over the weekend.

B O DYER
Parliamentary Clerk

# GUIDANCE TO OFFICIALS ON FINANCE BILL 1988

**CONTENTS**

**FINANCE BILL 1988**

**1. NOTES**

1.1 **Types**

There are two types of Note on a Finance Bill:

(i) Notes on Clauses, Schedules, Government Amendments, Government New Clauses New Schedules and any associated Resolutions; and

(ii) Notes on other (non-Government) amendments and other New Clauses and New Schedules.

1.2 **Heading and Numbering**

All Notes should be headed and numbered in the top right hand corner. In the case of Notes on Clauses produced for the Bill as first published, these need only indicate 'Finance Bill 1988' and the Clause/Schedule number; all other notes should indicate 'Finance Bill 1988', the stage of the Bill ie Committee of the Whole House, Committee Stage or Report Stage, the number of the Clause/Schedule/New Clause and the amendment number, plus (if appropriate) the page and line of the Bill being amended.

1.3 **Type (i)**

These should comprise two parts: the first part of the Note - <u>which should not be numbered as Part I</u> - should contain a short note on the purpose of the Clause or amendment, followed, if necessary, by more detailed explanation, which should be factual and as succinct as is consistent with comprehensibility; the second part, which should start on a separate sheet of paper, should be numbered Part II and clearly marked 'Speaking Notes (Not for circulation)'. Examples of type (i) Notes are appended at Annexes B and C. The reason for dividing the Note into two is because copies of the first part are distributed to Members of the Standing Committee and to MPs generally for Clauses taken in Committee and

the Whole House (see Section 2 on Distribution).

NB. Where substantial amendments to a Clause or Schedule are proposed by the Government, the first part of the Note should also include a retype of the Clause or Schedule showing how it would look if all the Government amendments were to be agreed.

1.4 **Type (ii)**

These are for use by Ministers only and do not therefore need to be split into two parts. They closely follow the layout of type (i) Notes; after the heading and numbering there should be:

(a) the Movers and text of the amendment
(b) The cost and line to take expressed simply in such terms as "Resist - cost £5m"
(c) A brief explanation of the purpose of the amendment
(d) Speaking Notes
(e) Background Note

An example of such a note is attached at Annex D.

1.5 **Hints on Drafting**

In drafting Notes, the following points should be borne in mind.

1.51 Ministers have specifically asked that Notes be kept brief and to the point. Speaking Notes should be well signposted with the main points to be made in separate paragraphs and the first paragraph or so covering the main argument. Where the nature of a Clause or Schedule is such as to require a statement to be made in a precise form, this should be made clear in the Speaking Note and the precise form of words provided. It is also important to provide some defensive notes on likely Opposition views so that the Minister has something to refer to in replying to a debate.

1.52 A Background Note, if considered necessary, should give other relevant material. The aim here should be to distinguish the more important points, bringing these to the beginning of the note while relegating the less important matters to an annex. Again clear signposting is essential for Ministers to identify relevant points quickly in debate and if any information is given in the background note which is **NOT FOR USE IN DEBATE,** it should be clearly marked.

## 2. DISTRIBUTION

2.1 Both types of Note are distributed by Parliamentary Section to Treasury Ministers' offices and where appropriate, to those supporting Ministers as set out in Annex A to this note. 19 copies of each Note are required by Parliamentary Section. Where copies of Notes on more than one Clause or Amendment are sent to the Parliamentary Section together, they should not be collated into sets by the originator.

2.2 Distribution to other officials or offices of other Ministers should be undertaken by the originator of the Note in accordance with whatever arrangements may have been agreed departmentally or inter-departmentally. It should be noted, however, that in every case, copies should be sent to:

Miss K Sedgwick - FP Treasury, 44/1, GOGGS ..... 2 copies

Mr J C Jenkins - Parliamentary Counsel, 36 Whitehall
SW1A 2AY ..... 3 copies

Miss Hughes - Legislative Draughtsman's Office
Stormont, BELFAST
BT5 3SW ..... 1 copy

Mr G Kowalski - Lord Advocate's Department
Fielden House,
10 Great College Street ..... 1 copy

2.3 With Clauses etc to be taken in Committee of the Whole House, Parliamentary Section requires 200 copies of the first part of the Notes, preferably collated into sets. These are deposited in the Vote Office of the House of Commons, and available to MPs on request (their availability to Members is announced through an inspired PQ).

2.4 With Clauses etc and Government Amendments to be taken in Standing Committee, Parliamentary Section requires 40 copies of the first part of the Notes. Again it would be helpful, where Notes on more than one clause are sent simultaneously, if these could be collated into 40 sets. These are sent to Members serving on the Standing Committee.

2.5 When collating Members' sets on Notes on Clauses, Notes on Government amendments or Notes on Government New Clauses for Committee of the Whole House or Standing Committee, care must be taken to ensure that Part II Notes are NOT included.

3. **TIMING**

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3.1 **Timetable**

Currently, the tightest probable timetable for the passage of the Bill through the House of Commons is:-

| | |
|---|---|
| Publication of Bill | 14 April 1988 |
| 2nd Reading | 25 April 1988 |
| Committee of Whole House | 3, 4 & 5 May 1988 |
| Standing Committee | 12 May 1988 |
| Report and 3rd Reading | 5 July 1988 |

**3.2 Notes on Clauses and Schedules**

Notes on Clauses and Schedules should be prepared and circulated at least one week before Committee Stage is due to start; and, ideally, prior to Second Reading.

3.3 **Notes on New Clauses and Schedules and on Amendments**

Notes on New Clauses and Schedules and on amendments should be prepared with all despatch. Priority should be given to Government and Opposition Front Bench amendments. Those remaining should be dealt with as quickly as possible bearing in mind the order in which the Clauses are to be taken by the House/Standing Committee.

3.31 The aim should be for all Notes relevant to the part of the Bill to be debated the following week to be received by Parliamentary Section by lunch-time Friday at the latest. This enables Ministers to read the bulk of the Notes during the weekend. It is appreciated that, although desirable, this will not always be possible eg in the case of Notes for amendments which first appear on the Order Paper on Friday morning. Ministers will of course wish to read such Notes as soon as they are available. Both for this reason and to avoid bottlenecks in typing and reproduction services, originators of Notes should send them to Parliamentary Section <u>as soon as they are available</u>.

4. **OFFICIALS ON DUTY IN THE SPEAKER'S BOX**

4.1 The Finance Bill debates can cover a lot of ground quickly and Ministers frequently require rapid advice from officials in the Box. Ministers of course differ in their style and preference and a word with each of the Private Secretaries is advisable, but, on the whole, Ministers have found it helpful if the following procedure is followed.

4.2 <u>Officials should take the initiative</u> in passing notes to the responsible Minister on the Treasury Bench, to help answer points made in the debate, especially those made from the Opposition Front Benches. They should always have available a spare set of the relevant duplicated Notes. These can be broken up, the relevant passage sidelined, the page torn out and handed to the

Parliamentary Private Secretary. This should be particularly helpful in the case of rather technical points dealt with in the middle of a long complex Note.

4.3 The above suggestion will reduce the need for manuscript notes, but these will still be required on occasion. Manuscript notes for Ministers should be clear, easily legible and short.

4.4 The Box is manned throughout by representatives of Treasury Private Offices and representatives of the departments responsible for the clause under discussion. The responsibility for briefing the Minister or for ensuring that advice is obtained rests with the senior official responsible for the clause under discussion. It is not the function of Private Secretaries to brief Ministers on how to reply to the debate.

4.5 Even though individual officials may not be on continuous duty in the Box, it is important that points raised in the debate that call for reply are noted and passed on. Ministers have expressed concern that they should have the opportunity to consider answering points raised during winding up speeches when appropriate.

4.6 Officials who are waiting at the Back-of-the-Chair for their turn to come on in the Box are requested to gather in a reasonably orderly manner, making use of the settees provided and not crowding the centre of the passageway to the inconvenience of Ministers and Members passing through.

## 5. OFFICIALS ATTENDING STANDING COMMITTEE

5.1 There have been a number of occasions recently where officials attending Standing Committees have been rebuked for failing to respect the rules of the Committee. While there is no evidence to suggest that officials attending in support of Treasury Ministers have been guilty, prudence suggests that the following guidance issued by the Public Bill Office should be drawn to the attention of officials prior to their attendance.

5.2 Officials attending Standing Committee may only sit on the dais to the right of the Chairman and in the seats provided in the corner at the far end of the dais.

5.3 While a committee is sitting they must enter or leave via the Chairman's Entrance and behind the Chairman. Under no circumstances may they enter any part of the body of the Committee Room.

5.4 Members of the Chairmen's Panel have expressed concern that only those officials absolutely necessary for a particular debate should be present. Large numbers of people sorting papers and moving about behind the Chairman can be extremely distracting.

5.5 If there is space, officials may of course use the public gallery in the usual way, although consideration should be given to the rights of access of the public and the press.

**ANNEX A**

**PARLIAMENTARY CLERK'S REQUIREMENTS OF NOTES ON CLAUSES, SCHEDULES, NEW CLAUSES AND SCHEDULES, AND AMENDMENTS.**

| | |
|---|---|
| Chancellor of the Exchequer | 1 |
| Principal Private Secretary | 1 |
| Chief Secretary to the Treasury | 1 |
| Private Secretary | 1 |
| Financial Secretary to the Treasury | 1 |
| Private Secretary | 1 |
| Paymaster General, Treasury | 1 |
| Private Secretary | 1 |
| Economic Secretary to the Treasury | 1 |
| Private Secretary | 1 |
| Parliamentary Private Secretary | 1 |
| Government Whip | 1 |
| Mr J Williams - IDT | 1 |
| Mr P Cropper | 1 |
| Mr A Tyrie | 1 |
| Spares to be held by Parliamentary Clerk | 4 |
| **Total** | **19 copies** |

The nineteen copies of each Note for distribution by the Parliamentary Clerk are to be passed direct to him by originators.

The distribution of Notes to officials not listed above will be undertaken by the originator in accordance with arrangements made between the departments concerned.

**BOARD OF INLAND REVENUE** SUMMER FINANCE BILL 1987
CLAUSE 76

# CLAUSE 76: GAINS FROM OIL EXTRACTION ACTIVITIES ETC

## SUMMARY

1. This clause introduces consequential amendments to the existing provisions affecting the set off of ACT against CT on profits from UK or UKCS oil extraction activities. The amendments result from the proposal in Clause 74 to allow ACT to be set against corporation tax on gains. The Clause extends the scope of Section 16 of the Oil Taxation Act 1975, and the associated provisions in Sections 44 and 45 of the Finance Act 1987, to bring in, for accounting periods beginning on or after 17 March 1987, gains on disposals of interests in producing fields to which Section 79 Finance Act 1984 applies. There is a corresponding provision in paragraph 8(8) Schedule 5 for gains in accounting periods straddling 17 March 1987.

## DETAILS OF THE CLAUSE

2. Subsection (1) applies the provisions to accounting periods beginning on or after 17 March 1987. Subsection (2) extends the scope of Section 16 of the Oil Taxation Act 1975, so that the restrictions on set off of ACT against CT apply to CT on ring fence profits not just to CT on ring fence income.

3. Subsection (3) brings within ring fence profits gains on disposals of interests in producing fields within Section 79 Finance Act 1984.

4. Subsections (4) and (5) make corresponding amendments to the terms "ring fence income" in Section 44 Finance Act 1987 (limited rights to carry back surrendered ACT) and in Section 45 Finance Act 1987 (surrender of ACT where oil extraction company etc owned by a consortium).

PART II SPEAKING NOTES (NOT FOR CIRCULATION)

GENERAL NOTE

5. Section 16 of the Oil Taxation Act 1975 is an important part of the corporation tax ring fence, the purpose of which is to prevent the erosion of Exchequer revenues from United Kingdom or United Kingdom Continental Shelf oil extraction activities by the set off of losses from other activities against North Sea income. Section 16 prevents ACT paid by a company on distributions to a UK resident associated company from being set against its own CT on North Sea income. Without such a provision if the company in a group receiving the dividend had losses unrelated to North Sea oil production, it could have used those losses to claim payment of tax credits attached to dividends received from an associate which had set off the ACT corresponding to the tax credits against its ring fence CT. In this way, the group would have effectively set off its other losses against ring fence CT.

6. Because Clause 74 provides for the set off of ACT against CT on gains it is necessary also to extend the scope of Section 16 of the Oil Taxation Act 1975 to prevent set off of ACT paid on distributions to a UK resident associated company against CT on ring fence gains as well as ring fence income. Clause 76 also makes corresponding adjustments to the two measures in Finance Act 1987 (Sections 44 and 45) which made some amendments to Section 16 in order to mitigate certain disadvantages caused by the restrictions on ACT set off.

DEFENSIVE NOTES

Is this extension really necessary?

7. The avoidance at which Section 16 is directed, namely, the effective set off of non-North Sea losses against North Sea profits by using the losses to claim payment of tax credits included in franked investment income derived from a North Sea company, could just as easily be achieved in relation to ring

fence gains now that we are allowing ACT set off against CT on gains. It is logical to extend Section 16 to cover ring fence gains as well.

---

/BACKGROUND NOTE

BACKGROUND NOTE

8. Chargeable gains are within the CT ring fence provisions in Section 13 and 15 OTA 75 if they are gains to which S79 FA 1984 applies (ie gains arising from disposals of interests in producing fields). The dual purpose of S.79 was to ensure that the tax on these gains was not reduced by trading losses from non-ring fence activities, or by capital losses except insofar as Section 79 itself provides for them to be set off. Chargeable gains not within Section 79 which may arise from oil activities are not subject to special rules. Because ACT is not currently offsettable against gains, S16 OTA 1975 applies only to income from oil extraction activities, and it was not affected by the S.79 FA 1984 changes.

**BOARD OF INLAND REVENUE**

SUMMER FINANCE
BILL 1987

COMMITTEE

Clause 70

| Amendment | Page | Line |
|---|---|---|
| * 19 | 40 | 45 |
| * 20 | 41 | 2 |
| * 24 | 41 | 18 |

Mr Chancellor of the Exchequer

19

Clause 70, page 40, line 45, leave out from 'Lloyd's' to end of line 47 and insert 'and in consideration of the payment of a premium, one underwriter agrees with another to meet liabilities arising from the latter's business for an underwriting year so that the accounts of the business for that year may be closed'.

20

Clause 70, page 41, line 2, leave out 'reinsurance'.

24

Clause 70, page 41, line 18, leave out 'for the purpose of closing' and insert 'in connection with the closing of'.

---

PURPOSE OF THE AMENDMENTS

Government amendments

1. These are technical amendments, which clarify the wording of Clause 70, which deals with the tax deductibility of Lloyd's reinsurance to close premiums.

2. Amendment 19 revises subsection 1 of the Clause to provide a more detailed description of the Lloyd's reinsurance to close arrangements. The effect of the amendment is to put it beyond

doubt that the Clause is sui generis to Lloyd's reinsurance to close - ie that the criteria for tax deductibility set out in the Clause are free-standing, and independent of the case law on insurance company provisions.

3. Amendments 20 and 24 make consequential amendments to the description to the reinsurance to close arrangements in subsections 2 and 6 respectively.

PART II SPEAKING NOTE (NOT FOR CIRCULATION)

4. The purpose of these Government amendments is to reinforce the fact that Clause 70 is a free-standing piece of legislation, which is specific to Lloyd's reinsurance to close arrangements and takes account of the special features of those arrangements.

5. Clause 70 meets the twin objectives set out by my hon friend, the Chief Secretary, at Second Reading. In its revised form, it meets the objective of insuring that the tax deductibility of reinsurance to close can be properly reviewed by the Tax Inspector. But it does so in a way which takes account of the special features of Lloyd's reinsurance to close arrangements. It meets Lloyd's concerns about the original proposals, in Clause 58 of the April Finance Bill, by establishing a free-standing set of criteria for the tax deductibility of reinsurance to close, instead of treating RIC in the same way as provisions made by insurance companies.

6. These amendments are the outcome of discussions between Lloyd's and the Revenue on the detailed wording of the Clause. The Revenue have made it clear in those discussions that Clause is sui generis to Lloyd's and does not import the case law on insurance company provisions. For the avoidance of doubt, the Revenue have also made it clear they would not seek to argue that the case law on insurance company provisions did apply if a case were to come before the courts. Nevertheless, Lloyd's were understandably concerned that the free-standing nature of the Clause should be made crystal clear. The wording of the amendment achieves this. But it does so without in any way impairing the effectiveness of the Clause in ensuring that the tax deductibility of reinsurance to close can be properly scrutinised by the Tax Inspector.

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/BACKGROUND NOTE

BACKGROUND NOTE

7. These amendments are part of the package of cosmetic changes to the Clause which have been agreed with Lloyd's. The other amendments in the package (nos 21, 22 and 23) are being put down by Sir William Clark. Mr Peter Miller, the Chairman of Lloyd's, has responded to the agreement to accept these amendments by sending a letter to his members saying that he, and the Lloyd's Council, regard the legislation as "workable and acceptable".

8. These three Government amendments (like Sir William Clark's amendments) do not affect the substance of the Clause in any way. Lloyd's recognise this. But Lloyd's nevertheless consider the amendments would be presentationally valuable, in emphasising that there is no risk of the test for the tax deductibility of Lloyd's reinsurance to close being infected by the case law on insurance company provisions. The amendment achieves this cosmetic purpose by spelling out the full details of the legal nature of the reinsurance to close arrangement (which is that one set of underwriters contract with the previous set to meet their outstanding liabilities when the underwriting account is closed).

**BOARD OF INLAND REVENUE**

SUMMER FINANCE
BILL 1987
COMMITTEE

Schedule 3

| Amendment | Page | Line |
|---|---|---|
| 83 | 79 | 35 |

Sir Brandon Rhys Williams (Kensington - Con)

Schedule 3, page 79, line 35, leave out paragraph 18.

---

PURPOSE OF THE AMENDMENT

Resist Cost: unquantifiable

1. This amendment would remove the provision that the new restrictions imposed by Part II of Schedule 3 shall be deemed to come into force on 17 March 1987 (Budget Day). Without a prescribed commencement date, the new rules would only have effect from Royal Assent.

NOTES FOR USE IN DEBATE

2. My hon Friend dislikes, as a matter of principle, the manner in which we propose to implement the changes made by Part II of this Schedule. These are anti-exploitation measures which, we intend, should apply from Budget Day, when they were announced. It has never been our policy to give advance warning of such changes, which would merely invite forestalling.

3. But there are only two ways of implementing any change which affects the rules of existing occupational pension schemes (so far as they concern new members, joining on or after Budget Day). One is to require each scheme to amend its rules and resubmit them for approval by the Inland Revenue. Since there are at least a quarter of a million active pension schemes and arrangements - and probably many more - this was not an attractive option. It would impose a considerable administrative burden on schemes and the Revenue alike, and substantial delays in approving rule changes would be inevitable.

4. The alternative is to override scheme rules to provide that their effect, so far as new members is concerned, is as set out in this Part of the Schedule. In principle, such overriding provisions must be used very carefully. But where the alternative is to plunge the entire pensions industry into confusion for several months, I believe our approach is justified.

BACKGROUND NOTE

5. Sir Brandon Rhys Williams objects in principle to measures which override scheme rules, particularly where the result is to impose more restrictive conditions than applied hitherto. This amendment would not, in itself, disapply the overriding provisions, but would simply mean they would not come into effect until Royal Assent. The amendment may simply be intended to provide the opportunity for a debate.

506/2

**CONFIDENTIAL**

**FROM :** B O DYER
**DATE :** 8 March 1988

**CHANCELLOR**

01-270 4520

**cc** Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Sir P Middleton
Mr Scholar
Miss Sinclair
Miss C Evans
Mr Jenkins - PCO
PS/IR
PS/C&E

**1988 FINANCE BILL : BACKERS**

We shall shortly need to provide Parliamentary Counsel with the names of the Ministers to 'back' this year's Finance Bill.

2. For the record, Counsel give the list of backers to the Public Bill Office when handing in the Bill text. The list is subsequently passed to the Treasury Minister presenting the Bill (traditionally the Financial Secretary) to read out when he 'Walks the Floor' at the conclusion of the Budget debates, and after the passing of the associated Resolutions (around 10.30pm on Monday 21 March).

3. By convention the Chairman of Ways and Means heads the list of 'backers' and includes all the Treasury Ministers in the Commons. In addition, up to six other Ministers may be associated with the Bill. These are usually Ministers who have an interest in one or more of its clauses or have taken part in the Budget debates. The 1987 Bill was supported by the Secretaries of State for Energy, Social Services, Transport, Environment, Trade and Industry and the Minister for Employment.

4. It would seem in order for essentially the same departmental Ministers to support this year's Bill - ie Messrs. Fowler, Ridley, Clarke, Channon and Parkinson; but with Mr MacGregor (MAFF) perhaps taking the place of Mr Moore (DHSS)?. If you are content to proceed in this way, I will seek the formal agreement of the Minister's concerned and inform Parliamentary Counsel accordingly.

B O DYER

BUDGET CONFIDENTIAL

Inland Revenue

Policy Division
Somerset House

FROM: C W CORLETT
FAX No. 6766
EXTN. 6614
8 March 1988

FINANCIAL SECRETARY

MAINTENANCE: FOREIGN COURT ORDERS (STARTER 150)

1. You asked (Mr Heywood 7 March) why there is so much less scope for abuse in exempting recipients of maintenance under foreign Court Orders, than in giving relief to payers.

2. The main reason is simply that for the recipient to be given relief the payment must actually have been received. If she has had no maintenance there is no way she can claim relief in respect of it. The only real scope for abuse is someone claiming that receipts from abroad are (exempt) maintenance, whereas in reality they are some other form of taxable income. But that is unlikely to be a common situation; people trying to evade tax on foreign income are more likely simply to conceal it.

3. The payer's relief is very different. The danger there is that claims would be made even though there was no Court Order at all, no ex-wife and no payments of any nature made.

4. Another way of putting it is perhaps as follows: there would be much more risk in introducing a tax relief for parents paying pocket money than there is in having an exemption for children who receive it.

C W CORLETT

cc Chancellor of the Exchequer
Miss Sinclair
Mr Cropper

Mr Isaac
Mr Beighton
Mr Stewart
Mr Davenport
Mrs Fletcher
PS/IR
Mr Corlett

4369/046

CONFIDENTIAL

FROM: MISS S J FEEST
DATE: 9 March 1988

J D HINTON - IR

cc Chancellor of the Exchequer
Chief Secretary
Paymaster General
Economic Secretary
Mr Scholar
Mr Culpin
Miss Peirson
Miss Sinclair
Mr McIntyre
Mr Cropper
Mr Jenkins
(Parliamentary Counsel)

**STARTER 151 : PERSONAL PENSIONS**

With reference to your minute of 7.3.88 and our meeting today, the Financial Secretary agrees that the Option 2 is the best solution.

He thinks that an announcement should be made by way of a press release on the day the Finance Bill is published.

Susan Feest

**MISS S J FEEST**

BUDGET CONFIDENTIAL

FROM: J M G TAYLOR
DATE: 9 March 1988

PS/FINANCIAL SECRETARY

**EMPLOYEE SHARE SCHEMES: LINKAGE**

The Chancellor has seen the Financial Secretary's minute of 8 March.

2. He thinks that we need a full meeting to discuss this, which will have to wait until after the Budget Debate. This means that any announcement will have to wait until the second reading of the Finance Bill.

J M G TAYLOR

ps2/25M

**CONFIDENTIAL**

FROM: MISS M P WALLACE
DATE: 9 March 1988

MR B O DYER

cc Chief Secretary
Financial Secretary
Paymaster General
Economic Secretary
Sir P Middleton
Mr Scholar
Miss Sinclair
Miss C Evans
Mr Jenkins - PCO
PS/IR
PS/C&E

**1988 FINANCE BILL: BACKERS**

The Chancellor has seen your minute of 8 March. He is content for you to proceed as you describe.

MOIRA WALLACE

506/45

RESTRICTED

cc PS/Chancellor
1. Mr. Savage
2. For file

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

Dear Parliamentary Clerk

9 March 1988

**BACKERS FOR THE 1988 FINANCE BILL**

As you know, the Chancellor will open his Budget on Tuesday, 15 March. The Finance Bill, giving legislative effect to his proposals, will be brought in upon approval of the associated Resolutions at the conclusion of the Budget debates.

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

3. The Bill, being founded on a Ways and Means Resolution, 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,
The Chancellor of the Exchequer,
Mr Secretary Fowler,
Mr Secretary Ridley,
Mr Kenneth Clarke,
Mr John MacGregor,
Mr Secretary Channon,
Mr Secretary Parkinson,
Mr John Major,
Mr Norman Lamont,
Mr Peter Brooke and
Mr Peter Lilley

4. A phone call will suffice to confirm that your Minister will support the Bill.

Yours sincerely,

B O DYER
Parliamentary Clerk

Department of Employment
Department of the Environment
Department of Trade and Industry

Ministry of Agriculture,
Fisheries and Food
Department of Transport
Department of Energy

3259/1

**Covering CONFIDENTIAL**

**FROM:** B O DYER
**DATE:** 9 March 1988

**01-270 4520**

**MISS M HAY - FP**
**MR G MICHIE - FP**
**PS/HMCE (3 copies)**
**PS/IR (3 copies)**

**cc** Principal Private Secretary
PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr M C Scholar
Mr R P Culpin
Miss C E C Sinclair
Miss C Evans
Mr J C Jenkins CB - Parliamentary Counsel
Mr M L Saunders - Law Officer's Dept
Miss Hughes - Legislative Draftsman's Office, NI
Mr G Kowalski - Lord Advocate's Department, SO

**FINANCE BILL 1988 : GUIDANCE FOR OFFICIALS**

Appended below are the customary guidance notes on the handling of the Finance Bill - timing and drafting of notes on clauses, amendments etc.

2. The guidance for officials is, with a few minor amendments, the same as that issued last year. It has been cleared with Ministers' Private Offices.

3. I would draw attention in particular to Section 3 of the guidance, which sets out the probable (rather tight) timetable to which we may have to work.

4. Further guidance will be issued if necessary and appropriate - eg should the timetable for the Bill alter significantly. In the meantime, any queries on the mechanics, circulation of notes etc should be directed to Richard Savage on 270 5006.

**B O DYER**
**Parliamentary Clerk**

# GUIDANCE TO OFFICIALS ON FINANCE BILL 1988

## CONTENTS

**FINANCE BILL 1988**

## 1. NOTES

### 1.1 Types

There are two types of Note on a Finance Bill:

(i) Notes on Clauses, Schedules, Government Amendments, Government New Clauses New Schedules and any associated Resolutions; and

(ii) Notes on other (non-Government) amendments and other New Clauses and New Schedules.

### 1.2 Heading and Numbering

All Notes should be headed and numbered in the top right hand corner. In the case of Notes on Clauses produced for the Bill as first published, these need only indicate 'Finance Bill 1988' and the Clause/Schedule number; all other notes should indicate 'Finance Bill 1988', the stage of the Bill ie Committee of the Whole House, Committee Stage or Report Stage, the number of the Clause/Schedule/New Clause and the amendment number, plus (if appropriate) the page and line of the Bill being amended.

### 1.3 Type (i)

These should comprise two parts: the first part of the Note - which should not be numbered as Part I - should contain a short note on the purpose of the Clause or amendment, followed, if necessary, by more detailed explanation, which should be factual and as succinct as is consistent with comprehensibility; the second part, which should start on a separate sheet of paper, should be numbered Part II and clearly marked 'Speaking Notes (Not for circulation)'. Examples of type (i) Notes are appended at Annexes B and C. The reason for dividing the Note into two is because copies of the first part are distributed to Members of the Standing Committee and to MPs generally for Clauses taken in Committee and

the Whole House (see Section 2 on Distribution).

NB. Where substantial amendments to a Clause or Schedule are proposed by the Government, the first part of the Note should also include a retype of the Clause or Schedule showing how it would look if all the Government amendments were to be agreed.

1.4 **Type (ii)**

These are for use by Ministers only and do not therefore need to be split into two parts. They closely follow the layout of type (i) Notes; after the heading and numbering there should be:

(a) the Movers and text of the amendment
(b) The cost and line to take expressed simply in such terms as "Resist - cost £5m"
(c) A brief explanation of the purpose of the amendment
(d) Speaking Notes
(e) Background Note

An example of such a note is attached at Annex D.

1.5 **Hints on Drafting**

In drafting Notes, the following points should be borne in mind.

1.51 Ministers have specifically asked that Notes be kept brief and to the point. Speaking Notes should be well signposted with the main points to be made in separate paragraphs and the first paragraph or so covering the main argument. Where the nature of a Clause or Schedule is such as to require a statement to be made in a precise form, this should be made clear in the Speaking Note and the precise form of words provided. It is also important to provide some defensive notes on likely Opposition views so that the Minister has something to refer to in replying to a debate.

1.52 A Background Note, if considered necessary, should give other relevant material. The aim here should be to distinguish the more important points, bringing these to the beginning of the note while relegating the less important matters to an annex. Again clear signposting is essential for Ministers to identify relevant points quickly in debate and if any information is given in the background note which is **NOT FOR USE IN DEBATE,** it should be clearly marked.

## 2. DISTRIBUTION

2.1 Both types of Note are distributed by Parliamentary Section to Treasury Ministers' offices and where appropriate, to those supporting Ministers as set out in Annex A to this note. 19 copies of each Note are required by Parliamentary Section. Where copies of Notes on more than one Clause or Amendment are sent to the Parliamentary Section together, they should not be collated into sets by the originator.

2.2 Distribution to other officials or offices of other Ministers should be undertaken by the originator of the Note in accordance with whatever arrangements may have been agreed departmentally or inter-departmentally. It should be noted, however, that in every case, copies should be sent to:

Mr K Sedgwick - FP Treasury, 44/1, GOGGS ..... 1 copy

Mr J C Jenkins - Parliamentary Counsel, 36 Whitehall
SW1A 2AY ..... 3 copies

Miss Hughes - Legislative Draughtsman's Office
Stormont, BELFAST
BT5 3SW ..... 1 copy

Mr G Kowalski - Lord Advocate's Department
Fielden House,
10 Great College Street ..... 1 copy

2.3 With Clauses etc to be taken in Committee of the Whole House, Parliamentary Section requires 200 copies of the first part of the Notes, preferably collated into sets. These are deposited in the Vote Office of the House of Commons, and available to MPs on request (their availability to Members is announced through an inspired PQ).

2.4 With Clauses etc and Government Amendments to be taken in Standing Committee, Parliamentary Section requires 40 copies of the first part of the Notes. Again it would be helpful, where Notes on more than one clause are sent simultaneously, if these could be collated into 40 sets. These are sent to Members serving on the Standing Committee.

2.5 When collating Members' sets on Notes on Clauses, Notes on Government amendments or Notes on Government New Clauses for Committee of the Whole House or Standing Committee, care must be taken to ensure that Part II Notes are NOT included.

3. **TIMING**

CONFIDENTIAL

3.1 **Timetable**

Currently, the tightest probable timetable for the passage of the Bill through the House of Commons is:-

| | |
|---|---|
| Publication of Bill | 14 April 1988 |
| 2nd Reading | 25 April 1988 |
| Committee of Whole House | 3, 4 & 5 May 1988 |
| Standing Committee | 10 May 1988 |
| Report and 3rd Reading | 5 July 1988 |

**3.2 Notes on Clauses and Schedules**

Notes on Clauses and Schedules should be prepared and circulated at least one week before Committee Stage is due to start; and, ideally, prior to Second Reading.

3.3 **Notes on New Clauses and Schedules and on Amendments**

Notes on New Clauses and Schedules and on amendments should be prepared with all despatch. Priority should be given to Government and Opposition Front Bench amendments. Those remaining should be dealt with as quickly as possible bearing in mind the order in which the Clauses are to be taken by the House/Standing Committee.

3.31 The aim should be for all Notes relevant to the part of the Bill to be debated the following week to be received by Parliamentary Section by close of play on Thursday, if at all possible; and no later than lunch-time Friday. This enables Ministers to read the bulk of the Notes on the Friday (a light Parliamentary day) and over the weekend. It is appreciated that, although desirable, this will not always be possible eg in the case of Notes for amendments which first appear on the Order Paper on Friday morning. Ministers will of course wish to read such Notes as soon as they are available. Both for this reason and to avoid bottlenecks in typing and reproduction services, originators of Notes should send them to Parliamentary Section <u>as soon as they are available</u>.

4. **OFFICIALS ON DUTY IN THE SPEAKER'S BOX**

4.1 The Finance Bill debates can cover a lot of ground quickly and Ministers frequently require rapid advice from officials in the Box. Ministers of course differ in their style and preference and a word with each of the Private Secretaries is advisable, but, on the whole, Ministers have found it helpful if the following procedure is followed.

4.2 <u>Officials should take the initiative</u> in passing notes to the responsible Minister on the Treasury Bench, to help answer points made in the debate, especially those made from the Opposition Front Benches. They should always have available a spare set of the relevant duplicated Notes. These can be broken up, the relevant passage sidelined, the page torn out and handed to the

Parliamentary Private Secretary. This should be particularly helpful in the case of rather technical points dealt with in the middle of a long complex Note.

4.3 The above suggestion will reduce the need for manuscript notes, but these will still be required on occasion. Manuscript notes for Ministers should be clear, easily legible and short.

4.4 The Box is manned throughout by representatives of Treasury Private Offices and representatives of the departments responsible for the clause under discussion. The responsibility for briefing the Minister or for ensuring that advice is obtained rests with the senior official responsible for the clause under discussion. It is not the function of Private Secretaries to brief Ministers on how to reply to the debate but, if time permits, it would be useful if briefing notes could be passed through the Private Secretary.

4.5 Even though individual officials may not be on continuous duty in the Box, it is important that points raised in the debate that call for reply are noted and passed on. Ministers have expressed concern that they should have the opportunity to consider answering points raised during winding up speeches when appropriate.

4.6 Officials who are waiting at the Back-of-the-Chair for their turn to come on in the Box are requested to gather in a reasonably orderly manner, making use of the settees provided and not crowding the centre of the passageway to the inconvenience of Ministers and Members passing through.

## 5. OFFICIALS ATTENDING STANDING COMMITTEE

5.1 There have been a number of occasions recently where officials attending Standing Committees have been rebuked for failing to respect the rules of the Committee. While there is no evidence to suggest that officials attending in support of Treasury Ministers have been guilty, prudence suggests that the following guidance issued by the Public Bill Office should be drawn to the attention of officials prior to their attendance.

5.2 Officials attending Standing Committee may only sit on the dais to the right of the Chairman and in the seats provided in the corner at the far end of the dais.

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5.5 If there is space, officials may of course use the public gallery in the usual way, although consideration should be given to the rights of access of the public and the press.

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**BOARD OF INLAND REVENUE** SUMMER FINANCE BILL 1987
CLAUSE 76

# CLAUSE 76: GAINS FROM OIL EXTRACTION ACTIVITIES ETC

## SUMMARY

1. This clause introduces consequential amendments to the existing provisions affecting the set off of ACT against CT on profits from UK or UKCS oil extraction activities. The amendments result from the proposal in Clause 74 to allow ACT to be set against corporation tax on gains. The Clause extends the scope of Section 16 of the Oil Taxation Act 1975, and the associated provisions in Sections 44 and 45 of the Finance Act 1987, to bring in, for accounting periods beginning on or after 17 March 1987, gains on disposals of interests in producing fields to which Section 79 Finance Act 1984 applies. There is a corresponding provision in paragraph 8(8) Schedule 5 for gains in accounting periods straddling 17 March 1987.

## DETAILS OF THE CLAUSE

2. Subsection (1) applies the provisions to accounting periods beginning on or after 17 March 1987. Subsection (2) extends the scope of Section 16 of the Oil Taxation Act 1975, so that the restrictions on set off of ACT against CT apply to CT on ring fence profits not just to CT on ring fence income.

3. Subsection (3) brings within ring fence profits gains on disposals of interests in producing fields within Section 79 Finance Act 1984.

4. Subsections (4) and (5) make corresponding amendments to the terms "ring fence income" in Section 44 Finance Act 1987 (limited rights to carry back surrendered ACT) and in Section 45 Finance Act 1987 (surrender of ACT where oil extraction company etc owned by a consortium).

PART II SPEAKING NOTES (NOT FOR CIRCULATION)

GENERAL NOTE

5. Section 16 of the Oil Taxation Act 1975 is an important part of the corporation tax ring fence, the purpose of which is to prevent the erosion of Exchequer revenues from United Kingdom or United Kingdom Continental Shelf oil extraction activities by the set off of losses from other activities against North Sea income. Section 16 prevents ACT paid by a company on distributions to a UK resident associated company from being set against its own CT on North Sea income. Without such a provision if the company in a group receiving the dividend had losses unrelated to North Sea oil production, it could have used those losses to claim payment of tax credits attached to dividends received from an associate which had set off the ACT corresponding to the tax credits against its ring fence CT. In this way, the group would have effectively set off its other losses against ring fence CT.

6. Because Clause 74 provides for the set off of ACT against CT on gains it is necessary also to extend the scope of Section 16 of the Oil Taxation Act 1975 to prevent set off of ACT paid on distributions to a UK resident associated company against CT on ring fence gains as well as ring fence income. Clause 76 also makes corresponding adjustments to the two measures in Finance Act 1987 (Sections 44 and 45) which made some amendments to Section 16 in order to mitigate certain disadvantages caused by the restrictions on ACT set off.

DEFENSIVE NOTES

Is this extension really necessary?

7. The avoidance at which Section 16 is directed, namely, the effective set off of non-North Sea losses against North Sea profits by using the losses to claim payment of tax credits included in franked investment income derived from a North Sea company, could just as easily be achieved in relation to ring

fence gains now that we are allowing ACT set off against CT on gains. It is logical to extend Section 16 to cover ring fence gains as well.

---

/BACKGROUND NOTE

BACKGROUND NOTE

8. Chargeable gains are within the CT ring fence provisions in Section 13 and 15 OTA 75 if they are gains to which S79 FA 1984 applies (ie gains arising from disposals of interests in producing fields). The dual purpose of S.79 was to ensure that the tax on these gains was not reduced by trading losses from non-ring fence activities, or by capital losses except insofar as Section 79 itself provides for them to be set off. Chargeable gains not within Section 79 which may arise from oil activities are not subject to special rules. Because ACT is not currently offsettable against gains, S16 OTA 1975 applies only to income from oil extraction activities, and it was not affected by the S.79 FA 1984 changes.

**BOARD OF INLAND REVENUE**

SUMMER FINANCE
BILL 1987

COMMITTEE

Clause 70

| Amendment | Page | Line |
|---|---|---|
| * 19 | 40 | 45 |
| * 20 | 41 | 2 |
| * 24 | 41 | 18 |

Mr Chancellor of the Exchequer

19

Clause 70, page 40, line 45, leave out from 'Lloyd's' to end of line 47 and insert 'and in consideration of the payment of a premium, one underwriter agrees with another to meet liabilities arising from the latter's business for an underwriting year so that the accounts of the business for that year may be closed'.

20

Clause 70, page 41, line 2, leave out 'reinsurance'.

24

Clause 70, page 41, line 18, leave out 'for the purpose of closing' and insert 'in connection with the closing of'.

---

PURPOSE OF THE AMENDMENTS

Government amendments

1. These are technical amendments, which clarify the wording of Clause 70, which deals with the tax deductibility of Lloyd's reinsurance to close premiums.

2. Amendment 19 revises subsection 1 of the Clause to provide a more detailed description of the Lloyd's reinsurance to close arrangements. The effect of the amendment is to put it beyond

doubt that the Clause is sui generis to Lloyd's reinsurance to close - ie that the criteria for tax deductibility set out in the Clause are free-standing, and independent of the case law on insurance company provisions.

3. Amendments 20 and 24 make consequential amendments to the description to the reinsurance to close arrangements in subsections 2 and 6 respectively.

---

PART II SPEAKING NOTE (NOT FOR CIRCULATION)

4. The purpose of these Government amendments is to reinforce the fact that Clause 70 is a free-standing piece of legislation, which is specific to Lloyd's reinsurance to close arrangements and takes account of the special features of those arrangements.

5. Clause 70 meets the twin objectives set out by my hon friend, the Chief Secretary, at Second Reading. In its revised form, it meets the objective of insuring that the tax deductibility of reinsurance to close can be properly reviewed by the Tax Inspector. But it does so in a way which takes account of the special features of Lloyd's reinsurance to close arrangements. It meets Lloyd's concerns about the original proposals, in Clause 58 of the April Finance Bill, by establishing a free-standing set of criteria for the tax deductibility of reinsurance to close, instead of treating RIC in the same way as provisions made by insurance companies.

6. These amendments are the outcome of discussions between Lloyd's and the Revenue on the detailed wording of the Clause. The Revenue have made it clear in those discussions that Clause is sui generis to Lloyd's and does not import the case law on insurance company provisions. For the avoidance of doubt, the Revenue have also made it clear they would not seek to argue that the case law on insurance company provisions did apply if a case were to come before the courts. Nevertheless, Lloyd's were understandably concerned that the free-standing nature of the Clause should be made crystal clear. The wording of the amendment achieves this. But it does so without in any way impairing the effectiveness of the Clause in ensuring that the tax deductibility of reinsurance to close can be properly scrutinised by the Tax Inspector.

---

/BACKGROUND NOTE

BACKGROUND NOTE

7. These amendments are part of the package of cosmetic changes to the Clause which have been agreed with Lloyd's. The other amendments in the package (nos 21, 22 and 23) are being put down by Sir William Clark. Mr Peter Miller, the Chairman of Lloyd's, has responded to the agreement to accept these amendments by sending a letter to his members saying that he, and the Lloyd's Council, regard the legislation as "workable and acceptable".

8. These three Government amendments (like Sir William Clark's amendments) do not affect the substance of the Clause in any way. Lloyd's recognise this. But Lloyd's nevertheless consider the amendments would be presentationally valuable, in emphasising that there is no risk of the test for the tax deductibility of Lloyd's reinsurance to close being infected by the case law on insurance company provisions. The amendment achieves this cosmetic purpose by spelling out the full details of the legal nature of the reinsurance to close arrangement (which is that one set of underwriters contract with the previous set to meet their outstanding liabilities when the underwriting account is closed).

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**BOARD OF INLAND REVENUE**

SUMMER FINANCE
BILL 1987
COMMITTEE

Schedule 3

| Amendment | Page | Line |
|---|---|---|
| 83 | 79 | 35 |

Sir Brandon Rhys Williams (Kensington - Con)

Schedule 3, page 79, line 35, leave out paragraph 18.

---

PURPOSE OF THE AMENDMENT

Resist Cost: unquantifiable

1. This amendment would remove the provision that the new restrictions imposed by Part II of Schedule 3 shall be deemed to come into force on 17 March 1987 (Budget Day). Without a prescribed commencement date, the new rules would only have effect from Royal Assent.

NOTES FOR USE IN DEBATE

2. My hon Friend dislikes, as a matter of principle, the manner in which we propose to implement the changes made by Part II of this Schedule. These are anti-exploitation measures which, we intend, should apply from Budget Day, when they were announced. It has never been our policy to give advance warning of such changes, which would merely invite forestalling.

3. But there are only two ways of implementing any change which affects the rules of existing occupational pension schemes (so far as they concern new members, joining on or after Budget Day). One is to require each scheme to amend its rules and resubmit them for approval by the Inland Revenue. Since there are at least a quarter of a million active pension schemes and arrangements - and probably many more - this was not an attractive option. It would impose a considerable administrative burden on schemes and the Revenue alike, and substantial delays in approving rule changes would be inevitable.

4. The alternative is to override scheme rules to provide that their effect, so far as new members is concerned, is as set out in this Part of the Schedule. In principle, such overriding provisions must be used very carefully. But where the alternative is to plunge the entire pensions industry into confusion for several months, I believe our approach is justified.

BACKGROUND NOTE

5. Sir Brandon Rhys Williams objects in principle to measures which override scheme rules, particularly where the result is to impose more restrictive conditions than applied hitherto. This amendment would not, in itself, disapply the overriding provisions, but would simply mean they would not come into effect until Royal Assent. The amendment may simply be intended to provide the opportunity for a debate.

CONFIDENTIAL

**Inland Revenue**

Policy Division
Somerset House

FROM: H B THOMPSON
DATE: 11 March 1988

1. MR PITTS

2. FINANCIAL SECRETARY

STARTER 258: INDEXATION AND GROUPS

1. I am sorry to have to bother you - especially at this particular juncture - with a point on which we need urgent ministerial guidance.

2. In a nutshell, the issue is this. It has been agreed that, where one group company finances another with a loan which is in a form which would get CGT indexation (and ordinary loans will not), indexation relief will be denied. We warned Ministers that one consequence might well be that such loans would be routed, to get round the legislation, via a cooperative independent third party. It was decided that we would watch the position and recognised that at some point the legislation might have to be extended to catch such devices: but that we should not do so now. (Mr Cayley's submission of 12 October 1987 and your office's minute of 16 October 1987).

---

cc. Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Sir P Middleton
Mr Scholar
Mr Culpin
Miss Sinclair
Mr P J Davies
(Parliamentary Counsel)

Mr Isaac
Mr Painter
Mr Beighton
Mr Houghton
Mr McGivern
Mr Pitts
Mr Cayley
Mr Spence
Mr Hamilton
Mr Hunter
Mr Thompson
Mr Skinner
Mr T R Evans
Mr C Gordon
Mrs Hay
PS/IR

3. The new development - and it is very new - is that we are now just beginning to see multinationals doing what is effectively this very thing, as part of their tax planning following closure of the dual resident company loophole by the Finance (No 2) Act 1987 (section 63). (The precise objective and so the mechanism of the cases we have seen so far is different - to escape tax liability rather than to establish a tax loss. So they involve indexed debt, which converts income into untaxed capital with the aid of the capital gains indexation allowance).

4. The immediate question is - do we extend Starter 258 now to catch cases where the loan finance from one group member to another is routed through a third party?

5. The provisions involved should add no more than a few lines to the legislation Counsel is already drafting. The Budget Day Press Release and FSBR description are in sufficiently general terms to cover an extension of this kind.

6. Over time the amounts of tax at stake will run into hundreds of millions. In the six multinational cases we have just seen, the loans range from £50m to £350m. But the full tax loss will take some time to build up. In the next year or eighteen months, the loss involved will be smaller - though in the nature of things we cannot quantify the short-term revenue at risk with any certainty because it all depends how many more companies exploit the device and the maturity dates of the debts involved.

7. The argument for acting now is that it would pre-empt avoidance developments before they burgeon, and it may avoid further legislation in a year or two's time.

8. There are, though, other considerations. First, we think the Starter 258 legislation may well be controversial: any extension of it would add to the controversy - but in this case perhaps not unduly.

9. Second, it has been agreed that, if COBO is abolished next year (as is currently envisaged), the boundaries of the deep discount bond legislation would almost certainly have to be extended. There is also Lloyds exploitation of indexed bonds, which is to be kept under review. Depending on the form it took, it is possible that action to restrict the use/abuse of indexation on one or both of these could, as a by-product, tackle the multinational devices we are now seeing. But this can by no means be guaranteed - those situations do not involve group finance as such - and we do not think extension of Starter 258 would make it any more difficult to take action on the Lloyds and/or COBO fronts later on.

10. Finally, although we hope that Counsel would - given an early decision - be able to draft the extra legislation in time for the Bill as first published, we cannot promise this.

11. Against this background, you may want to extend the legislation on Starter 258 to cover situations where one group company routes loan finance to another group company via an intermediate third party. If so, we shall instruct Counsel urgently. Should it transpire that the legislation cannot be prepared in time for the Bill, we can report back and Ministers can then consider whether they want to introduce a Committee Stage amendment.

12. In conclusion, I should add our by now standard warning that, even if we stop this particular device, the tax planners are bound to seek other ways to exploit indexation. As ever, we can only monitor the position and report developments.

H B THOMPSON

FROM: I C SEARS
DATE: 14 March 1988

01-270 5183

MISS M HAY - FP
MR G MICHIE - FP
PS/HMCE
PS/IR

cc Principal Private Secretary
PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr M C Scholar
Mr R P Culpin
Miss C E C Sinclair
Miss C Evans
Mr J C Jenkins CB - Parliamentary Counsel
Mr M L Saunders - Law Officer's Dept
Mr A Jones - Legislative Draftsman's Office, NI
Mr G Kowalski - Lord Advocate's Department, SO

**FINANCE BILL 1988 : GUIDANCE FOR OFFICIALS**

Further to Brian Dyer's minute of 9 March circulating the 1988 Finance Bill Guidance to Officials, would you please amend the distribution list in para 2.2 to the Guidance so that notes on clauses etc are directed to Mr A K R Jones, in the Legislative Draftsman's Office at Stormont, rather than to Miss Hughes.

IAN SEARS
Parliamentary Section

4374/036/lk

CONFIDENTIAL

FROM: MISS S J FEEST
DATE: 14 March 1988

H B THOMPSON - IR

cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Sir P Middleton
Mr Scholar
Mr Culpin
Miss Sinclair
Mr P J Davies
(Parliamentary Counsel)

**STARTER 258: INDEXATION AND GROUPS**

The Financial Secretary was grateful for your minute of 11 March 1988 and approves the suggested extension to the legislation.

Susan Feest

SUSAN FEEST

506/44

RESTRICTED

BF 17/3 pm

FROM: B O DYER
DATE: 15 March 1988

01-270-4520

CHIEF SECRETARY

cc Chancellor
Financial Secretary
Paymaster General
Economic Secretary
Sir P Middleton
Mr Scholar
Mr R I G Allen
Miss Sinclair
Miss C Evans
Mr Jenkins - Parly Counsel
PS/Inland Revenue
PS/C&E
Mrs J Tassell - HMSO

**PUBLICATION OF THE FINANCE BILL**

On Monday, 21 March, following the conclusion of the Budget debates and approval of the associated Resolutions (circa 10.30pm), the Finance Bill will be brought in by the Financial Secretary, receive its formal First Reading and ordered to be printed.

2. I am advised that Parliamentary Counsel intend to hand the final draft of the Bill to the House Authorities on Thursday, 31 March, and that the Bill will be published on Thursday 14 April.

3. It is customary to announce the date of the Bill's publication by way of an inspired PQ, as soon as practicable after First Reading . Following is a draft Question and Answer for this purpose:

**Q.** "To ask Mr Chancellor of the Exchequer, when the Finance Bill will be published."

**A.** "The Finance Bill will be published on Thursday 14 April."

PTO

4. To bring the publication date to the attention of a wider audience and to make clear the position on the availability of copies to the public, it is proposed that a press notice be issued at the same time as the arranged PQ is answered. A draft is attached. It is brief, to the point, and conforms to the usual pattern.

5. Subject to your endorsement, I will arrange for the tabling of the question and, in concert with the Information Division, for the issue of the associated press notice. I suggest we aim to answer the question next week, eg table the question on Wednesday 23 and answer on Thursday, 24 March.

B O DYER
Parliamentary Clerk

506/44

DRAFT PRESS NOTICE

**FINANCE BILL PUBLICATION DATE**

In response to a written Parliamentary Question, the Rt Hon John Major MP, the Chief Secretary to the Treasury, today announced that the Finance Bill will be published on Thursday, 14 April.

PRESS OFFICE
HM TREASURY
PARLIAMENTARY STREET
LONDON
SW1P 3AG
01-270-

**NOTE TO EDITORS**

Copies of the Finance Bill will be on sale to members of the public on 14 April at HMSO book shop 49 High Holborn, London WC1V 6MB. Copies will be available elsewhere in the country on Friday 15 April.

~~BUDGET CONFIDENTIAL~~

Inland Revenue

Policy Division
Somerset House

FROM: C STEWART
DATE: 15 MARCH 1988

Chief Secretary

FINANCE BILL - HANDLING OF PROVISIONS ON INCOME TAX RATES

1. The Finance Bill will contain provisions to -

   a. fix the new basic and higher rates for 1988-89;

   b. reduce the additional rate on trusts to 10 per cent; and

   c. reduce the "long-stop" charge on income taken out of heritage maintenance funds for non-heritage purposes, so that the total income tax charge does not exceed the new higher rate.

2. Parliamentary Counsel has drafted a single Clause covering all these points. This would mean that the debate on the Clause - presumably in Committee of the Whole House - could cover all of them, and amendments could be put down on any of them. But it would get the trust and heritage points out of the way early on, and avoid the need for a separate - and possibly longer - debate on them in Standing Committee.

---

cc Chancellor
Financial Secretary
Paymaster General
Economic Secretary
Mr Scholar
Mr Culpin
Miss Sinclair
Mr Cropper
Mr Tyrie
Mr Jenkins
Mr Isaac
Mr Corlett
Mr Lewis
Mr Cleave
Mr Mace
Mrs Fletcher
Mr Stewart
PS/IR

3. We think it is logical to have a single Clause covering all these points on income tax rates and would be grateful to know whether you are content with that. If you would prefer to have the Clause split up, Parliamentary Counsel will need to know soon because it will affect the numbering of the Clauses in the Bill.

CS

C STEWART

442/082/AC

cc as before

Mrs Burnhams

21 MAR 1988

FROM: MRS T C BURNHAMS

DATE: 18 March 1988

I found the arrangement very helpful. As you mention, the summary sheets did not always reflect the state of play towards the later stages of Budget preparations, but the information which you and Miss Evans were able to provide orally meant that we could always be assured of knowing the state of play.

12/2

MR TAYLOR

MISS RUTTER

MR HEYWOOD

MR JUDGE

MR BARNES S2/2

cc Mr Culpin
Miss Sinclair
Miss Evans

Ms French C&E
Mr Shaw IR
Mr Jenkins Parliamentary Counsel

FR 21/3

**FINANCE BILL STARTERS**

There were a number of changes to the mechanics of the starters' exercise this year, and while the details are still fresh in your minds it would seem an opportune moment to consider if our current arrangements are geared to your requirements and if any further improvements could be introduced.

2. From my point of view, circulating reference starters only once and limiting updating to the summary sheets on a fortnightly basis, worked well. It would be helpful to know, however, if sufficient information was provided or if any further simplification could be achieved. The summary sheet includes information about the latest submission; however, this column can be slightly misleading as it is likely to refer to the main submission in each starter and not supplementary information which might be requested subsequently. There is also some difficulty when a number of starters are dealt with together as happened with benefits in kind.

3. In the later stages where the tempo for decisions and changes increases, there is inevitably some time lapse and it is almost impossible for the summary sheet to represent the exact state of play. However, we have tried to minimise delays and for the first time the information on the summary sheets was provided direct by Inland Revenue and Customs and Excise.

004/3295

FROM: JILL RUTTER
DATE: 21 March 1988

MR STEWART - IR

cc:
PS/Chancellor
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Mr Culpin
Miss Sinclair
Mr Cropper
Mr Tyrie

Mr Jenkins (Parliamentary Counsel
PS/IR

**FINANCE BILL - HANDLING OF PROVISIONS ON INCOME TAX RATES**

The Chief Secretary was grateful for your minute of 15 March which he has discussed with his Ministerial colleagues.

2 Ministers want to have separate clauses on the basic rate and on the higher rates. They therefore suggest the following format - one clause on the basic rate and a second clause to take the higher rates, the additional rate on trusts and the heritage maintenance funds point.

3 I would be grateful if you could advise me immediately if there is any problem in constructing the clauses in this fashion.

JILL RUTTER
Private Secretary

PWP

FROM: J C JENKINS

DATE: 21 March, 1988

Mrs T C Burnhams
Mr Taylor
Miss Rutter
Mr Heywood
Mr Judge
Mr Barnes

cc Mr Culpin
Miss Sinclair
Miss Evans

Ms French C & E
Mr Shaw IR

FINANCE BILL STARTERS

I have two points on your note of 18 March.

First, you say that the usual Ministerial meetings to review minor starters were brought forward this year because of the heavy workload. I hope that they will not be any later next year, whatever the prospective workload.

If it were possible for the lists to identify the starters on which we might receive early instructions, it would be most helpful.

J C JENKINS
PARLIAMENTARY COUNSEL

442/083/AC

**CONFIDENTIAL**

BF 22/3 23/3 pmp

**FROM: MRS T C BURNHAM**

**DATE: 21 March 1988**

**MR WALKER IR**

**MS FRENCH CE**

**MR MICHIE**

**cc PS/Chancellor**
**PS/Chief Secretary**
**PS/Financial Secretary**
**PS/Paymaster General**
**PS/Economic Secretary**
**Mr Culpin**
**Miss Sinclair**
**Mr Dyer**
**Miss Evans**
**Miss Hay**
**Mr R K C Evans**

**FINANCE BILL 1988 : LOBBY NOTES**

The Finance Bill is to be published on 14 April. Treasury Press Office will issue the usual background notes on that day and the purpose of this note is to commission contributions.

2. The Financial Times will, as in previous years, wish to reproduce the notes in full and in order to achieve publication on the day following publication, it will be necessary to pass copy to the paper, under embargo, by Wednesday 13 April. In addition this year we will need to provide the notes in disk form. This however seems likely to cause some difficulty as I understand that the disks produced by Customs cannot be used by the Financial Times. I would be grateful for Richard Evans' comments on this problem. If there is no alternative to the hard copy being transferred on to a disk in the Treasury, we may need to ask for the Customs' contribution a day early but otherwise contributions should reach me by close on **12 April.**

3. The texts should be cleared with the appropriate Treasury Ministers and I would be grateful if you could ensure that this is done for your area before the final version is sent to me please.

4. Each clause and schedule should be covered with a short description of its effect. These should be kept as brief and jargon-free as possible. I would be grateful if Mr Walker and Ms French could edit the individual contributions from within their departments.

Lengthy sub-section by sub-section summaries are not required and we suggest a maximum of 10 lines per clause. The notes should refer to the date on which the change takes effect if this is not the date of Royal Assent; and to any Press Notice as appropriate.

5. On the basis of the latest draft of the Finance Bill the allocation of responsibility for clauses appears to be as follows:

| | | |
|---|---|---|
| i) | **CUSTOMS** | Clauses 1-3, 5-20 and Schedule 1 |
| ii) | **TRANSPORT** | Clause 4 and Schedule 2 |
| iii) | **INLAND REVENUE** | Clauses 21-136 and Schedules 3-9 |

Please let me know if you disagree with this allocation.

6. We will also need a similar note for any measure which the Government intends to introduce at Committee Stage. I would be grateful if you could let me have a list of your starters for Committee as soon as possible.

Teresa Sachs.

**MRS T C BURNHAMS**

Inland Revenue

Policy Division
Somerset House

FROM: R B WILLIS
21 March 1988

1. MR CORLETT 21/3

2. MR ISAAC 21.3

3. FINANCIAL SECRETARY

TAX APPEALS: STARTERS 450 AND 451

This submission considers how to publicise your decisions:

a. to introduce legislation which enables a system of General Commissioners to be set up in Northern Ireland (Starter 450); and

b. to announce that you are considering legislation on the place of hearing by General Commissioners but wish first to have the results of further consultation (Starter 451).

2. It seeks your agreement to an arranged Parliamentary Question announcing both decisions (flag A) and an Inland Revenue press release which would give further details about the proposals (flag B).

---

cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Miss Sinclair
Mr Cropper
Mr Tyrie
Mr Dyer
Mr R. Allen

Mr Isaac
Mr Rogers
Mr Corlett
Mr Beighton
Mr Cleave
Mr Cherry
Mr Hinson
Mr Moule
Mr Yard
Mr Willmer
Mrs Gomes
PS/IR
Mr Willis

BACKGROUND

General Commissioners for Northern Ireland

3. We issued last year a consultative document proposing the introduction of General Commissioners in Northern Ireland. It received a generally positive response, apart from the Law Society for Northern Ireland whose members have a vested interest in keeping appeals with the Courts. You therefore decided to introduce the necessary legislation in the 1988 Finance Bill.

Place of hearing by General Commissioners

4. A second consultative document proposed the Board should have powers to direct where appeals would be heard. It produced a hostile response from representative bodies. But in view of the potential benefits of allowing Inspectors to concentrate on productive work you agreed to try to carry through a revised package in the 1988 Finance Bill which concentrated on taxpayers and tax offices agreeing where appeals should be heard, subject to our first undertaking further consultations on the new proposals before the necessary legislation was introduced.

OPTIONS

4. There are 3 main options for announcing the changes

(i) announce only the proposals for place of hearing

5. You could announce just the revised proposals for dealing with the place of hearing. This would leave the decision on Northern Ireland to emerge when the Finance Bill is published.

6. We feel this would have no particular advantages, and two disadvantages. First, the proposals for Northern Ireland were welcomed by the majority of those who replied to the

consultative document. It is positive news which balances the more negative reactions to the other proposals for tax appeals. Second, there will need to be an announcement at some time on how the changes in Northern Ireland will be made. It would be helpful to make it as soon as possible to remove doubts and to allow plans for the change to move ahead.

(ii) separate announcements on Northern Ireland and on place of hearing

7. Separate but simultaneous announcements before the Finance Bill is published have no practical advantage: the changes in Northern Ireland affect only taxpayers there, but need to be publicised more widely because accountants and others may act for clients in Northern Ireland.

8. We see little if any presentational advantage in separate announcements.

(iii) a combined announcement covering both proposals

9. We therefore recommend an announcement covering both proposals. We think this allows you to present the firm decision on Northern Ireland and the decision to consult further on the place of hearing proposals as a natural consequence of the consultative process.

What form of announcement?

10. Any announcement about tax appeals will have a narrow audience: accountants and other tax advisers, companies' tax departments, and the General Commissioners themselves. These can be reached by an Inland Revenue press release.

11. However we take it the decision to introduce legislation should be announced first to the House. We recommend an arranged Written Question and Answer for this purpose. The draft attached is rather long but we think it is important to

include sufficient information to reassure any companies which see your answer before they see the press release giving more details.

SUMMARY

12. We recommend

a. an arranged PQ to announce the proposals for tax appeals (flag A); and

b. an Inland Revenue press release to give practitioners details of the proposals and invite comments (flag B)

13. We shall of course report towards the end of April the responses to the press release and the results of the discussions we shall be arranging with major representative bodies.

R B WILLIS

ANNEX A

DRAFT WRITTEN QUESTION

To ask Mr Chancellor of the Exchequer what representations were received in response to the Inland Revenue's consultative documents on the General Commissioners of Income Tax, and if he will make a statement.

DRAFT REPLY

"In July 1987 the Inland Revenue published, with the authority of my Rt Hon friends the Chancellor of the Exchequer and the Lord Chancellor, a consultative document on the possibility of setting up General Commissioners in Northern Ireland. Comments were received from professional bodies, individual firms and others, representing a wide range of interests. A clear majority of these were in favour of the introduction in Northern Ireland of local tax tribunals. Where reservations were expressed they were predominantly about the importance of appointing and training appropriate General Commissioners, and about the transitional arrangements for introducing the new system.

In view of this broad measure of support the Finance Bill will include the legislation necessary to enable General Commissioners to be introduced in Northern Ireland. However, the system will not be brought into operation ~~immediately~~ before January 1989. My Rt Hon friend the Lord Chancellor will set the date for the change in the light of progress with the appointment of General Commissioners. This will also allow the Inland Revenue to inform taxpayers and their advisers in Northern Ireland how their rights to appeal to an independant tribunal will be preserved and improved by the new system.

The Board of Inland Revenue issued a separate consultative document in November 1987 on possible changes to the legislation which determines which body of General Commissioners deal with an appeal (or other proceedings). The proposal was that in some tax offices appeals by companies, trusts and large unincorporated businesses should be brought before the General Commissioners for the Division in which the tax office was situated, subject to the taxpayer's right of objection. Comments from professional and representative bodies, individual firms and others recognised that the existing legislation was inflexible and caused difficulty. However, there was concern that the proposed changes to the legislation might in practice be equally inflexible, and about the lack of opportunities for taxpayers to propose a different place of hearing for their appeals.

The Inland Revenue are therefore undertaking further consultation on new proposals which will make it easier for taxpayers to agree with tax offices where their appeals should be heard. This should make it unnecessary for the Inland Revenue to make use of directions for many taxpayers.

If taxpayers and their advisers find this revised approach more acceptable the aim will be to introduce the necessary legislation in this year's Finance Bill."

ANNEX B

DRAFT INLAND REVENUE PRESS RELEASE

TAX APPEALS: GENERAL COMMISSIONERS OF INCOME TAX

The Government have decided to introduce General Commissioners of Income Tax in Northern Ireland. Following the consultative document the Inland Revenue published last year, proposals to enable the new system to be set up will be included in the Finance Bill.

No decision has been taken on other proposals, published in a separate Inland Revenue consultative document last year, which would move some taxpayer's appeals and other proceedings to a different body of General Commissioners. The Inland Revenue are issuing today, with the approval of Ministers, proposals for alternative changes which would make it easier for taxpayers to agree with their tax offices which General Commissioners will deal with proceedings. The Inland Revenue will undertake further consultation on these new proposals.

The necessary legislation for all these changes will, if appropriate, be proposed in this year's Finance Bill.

---

DETAILS

1. The Financial Secretary to the Treasury the Rt Hon Norman Lamont MP, announced these proposals in a reply to a Parliamentary Question today. The full text of his reply was as follows:

> "In July 1987 the Inland Revenue published, with the authority of my Rt Hon friends the Chancellor of the Exchequer and the Lord Chancellor, a consultative document on the possibility of setting up General Commissioners in Northern Ireland. Comments were received from professional bodies, individual firms and others, representing a wide range of interests. A clear majority of these were in favour of the introduction in Northern Ireland of local tax tribunals. Where reservations were expressed they were predominantly about the importance of appointing and training appropriate General Commissioners, and about the transitional arrangements for introducing the new system.

/In view of

In view of this broad measure of support the Finance Bill will include the legislation necessary to enable General Commissioners to be introduced in Northern Ireland. However, the system will not be brought into operation before January 1989. My Rt Hon friend the Lord Chancellor will set the date for the change in the light of progress with
the appointment of General Commissioners. This will also allow the Inland Revenue to inform taxpayers and their advisers in Northern Ireland how their rights to appeal to an independant tribunal will be preserved and improved by the new system.

The Board of Inland Revenue issued a separate consultative document in November 1987 on possible changes to the legislation which determines which body of General Commissioners deal with an appeal (or other proceedings). The proposal was that in some tax offices appeals for companies, trusts and large unincorporated businesses should be brought before the General Commissioners for the Division in which the tax office was situated, subject to the taxpayer's right of objection. Comments from professional and representative bodies, individual firms and others recognised that the existing legislation was inflexible and caused difficulty. However, there was concern that the proposed changes to the legislation might in practice be equally inflexible, and about the lack of opportunities for taxpayers to propose a different place of hearing for their appeals.

The Inland Revenue are therefore undertaking further consultation on new proposals which will make it easier for taxpayers to agree with tax offices where their appeals should be heard. This should make it unnecessary for the Inland Revenue to make use of directions for many taxpayers.

If taxpayers and their advisers find this revised approach more acceptable the aim will be to introduce the necessary legislation in this year's Finance Bill."

2. The new proposals would change the present legislation for deciding which body of General Commissioners should hear an appeal:

a. to allow taxpayers and tax offices to agree which Division of General Commissioners should hear appeals or other proceedings; and

b. to enable the Inland Revenue to nominate a different Division of General Commissioners if taxpayers have not responded to invitations to reach agreement. But taxpayers would have the right to object to the Revenue's nomination if it was not acceptable.

3. The facility to make agreements would be available to all taxpayers. However the Inland Revenue intend to apply the nomination procedures in (b) above only to companies and trusts

/and some

and some unincorporated businesses, and then only where the tax office is some distance from the Commissioners who would normally deal with the appeals under the existing legislation.

4. The annex to this press release describes the new proposals in greater detail. Further copies are available on written application or to callers to the Public Enquiry Room at Somerset House.

5. Comments on the proposals should be sent by 20 April 1988 to the Board of Inland Revenue, Room 3, New Wing, Somerset House, London WC2R 1LB.

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NOTES FOR EDITORS

1. The Inland Revenue issued on 31 July 1987 a press release and consultative document on the possibility of setting up General Commissioners for Income Tax in Northern Ireland, on the same basis as in England and Wales and in Scotland. At present appeals and other proceedings in Northern Ireland are heard by the Special Commissioners of Income Tax (or in relatively few cases by the County Courts).

2. The Inland Revenue issued on 5 November 1987 a consultative document on the problems which have emerged over arrangements for appeals and other proceedings for some companies (especially groups of companies), trusts and large unincorporated businesses when the tax office dealing with the matter may be a very long way from the General Commissioners who would hear the case under the present rules. It proposed that the Board of Inland Revenue should have power to move these cases to a more convenient body of General Commissioners, provided this was acceptable to the taxpayer.

3. The further suggestion, published today, is that taxpayers and tax offices should be able to agree where appeals and other proceedings will be heard (which may be the place given by the present rules) in advance of an appeal being made, and without the need routinely to consult both bodies of General Commissioners. The power to move appeals would then be used only in the last resort, when a taxpayer does not respond to the tax office's enquiries. It would again be subject to a taxpayer's right to keep a hearing at the place determined by the existing rules.

ANNEX

TAX APPEALS AND OTHER PROCEEDINGS: FURTHER PROPOSALS FOR PLACE OF HEARING BY GENERAL COMMISSIONERS: PART II

1. This note describes the new proposals for changes to the arrangements for determining which body of General Commissioners should hear certain appeals and other proceedings under the Taxes Acts.

BACKGROUND

2. The Inland Revenue published in November 1987 a consultative document on the possibility of changing the legislation which decides which body of General Commissioners must deal with an appeal.

The document:

a. described the present legislation in the Taxes Management Act 1970 which decide which of nearly 500 bodies of General Commissioners shall deal with proceedings;

b. outlined the problems which have emerged where tax offices dealing with substantial groups of companies and with trusts are a long way from the General Commissioners who deal with proceedings; and

c. considered the possibility of enabling the Board of Inland Revenue to make directions in these circumstances that proceedings should be heard by a specified body of General Commissioners, if the taxpayer did not object.

3. The intention was to make directions only in relation to appeals by companies, trusts and some large unincorporated businesses in certain tax offices.

COMMENTS ON THE POSSIBLE CHANCES

4. Responses to the documents were received from professional and representative bodies, companies, solicitors, accountants, General Commissioners, Clerks to General Commissioners, Advisory Committees and the Council on Tribunals. The Board of Inland Revenue gratefully acknowledge the helpful and generally constructive comments and suggestions they offered.

5. Three main points emerged from the responses.

The need for change

6. The need for some change to the arrangements for deciding where proceedings should be heard was accepted by many of those who responded. However there was concern that the power for the Board to make directions would not help taxpayers who wished to move proceedings to a different body of General Commissioners.

Agreements on place of hearing

7. Several respondents suggested a better balance of interests would be possible if taxpayers and tax offices had the option of agreeing where proceedings should be heard.

Flexibility

8. There were worries about the work for taxpayers and their advisers if tax offices routinely issued notices of a direction moving proceedings and taxpayers had routinely to give notice of their wish to keep proceedings with the General Commissioners given by the present legislation.

PROPOSALS

9. The proposal now is to make it easier for taxpayers and tax offices to agree where proceedings should be heard. Only if taxpayers do not reach an agreement, or indicate that they want proceedings to be governed by the existing legislation, will the tax office consider making use of a direction by the Board of Inland Revenue.

Agreements between taxpayer and tax office

10. The existing provisions for a taxpayer to agree with the Inland Revenue that proceedings should be heard by a different body of General Commissioners are not easy to apply. First, they require the Inspector to be satisfied that neither of the two Divisions of General Commissioners is likely to object. Second, they can only be applied appeal by appeal, and proceedings by proceedings after each appeal has been made or proceedings instituted.

11. The proposal is that provision should be made for taxpayers and tax offices to reach agreements on where proceedings will be heard which do not require consultation with the General Commissioners on each specific arrangement, and which can apply to all future proceedings or proceedings of a particular kind.

12. For example a substantial group of companies may have, under existing rules, proceedings in many parts of the country depending on where companies in the group have their registered offices. The tax office dealing with all these proceedings may be in Manchester. The group and the tax office might then enter into a standing agreement that all proceedings, or perhaps specific types of appeals or other proceedings, will be heard by General Commissioners in Manchester, except when the company has a particularly difficult point to argue (eg involving several witnesses) and wants a hearing near the group's headquarters in London.

Directions

13. Although it is hoped that agreements would be possible for many companies and trusts there will remain occasions when a tax office has to list an appeal for a hearing before General Commissioners when the taxpayer has not provided accounts or other information, has not replied to enquiries, and has not responded to an invitation to agree where appeals should be heard. It is these "delay" appeals which cause most difficulty. The Inspector has either to travel to a distant Division of General Commissioners, or send his papers to and brief a colleague there, for a hearing which is only necessary because of the taxpayer's delay, and for a hearing which in all probability will be routinely adjourned.

14. The proposal, as in the consultative document in November, is that the Board may make directions for group or trust districts specifying where proceedings before General Commissioners shall be heard. However it is now envisaged that an Inspector will only put a direction into effect (by issuing a notice of the direction) for specific proceedings and in limited circumstances - ie where a taxpayer has not replied to enquiries or suggestions. As described in the previous document, the taxpayer would always have the right to object within 30 days of the Inspector's notice, and the proceedings would then be heard in the Division determined by the present legislation.

CONCLUSION

14. The necessary legislation for these proposals could be included in the Finance Bill in 1988. However the Inland Revenue have been asked to discuss the arrangements with interested parties before the Government introduce the necessary provisions. Any comments on the proposals should be sent, by 20 April 1988 to

Board of Inland Revenue
Room 3
New Wing
Somerset House
LONDON
WC2R 1LB


With the Compliments
of the Parliamentary Counsel

Mr J C Jenkins

Office of the Parliamentary Counsel
36 Whitehall London SW1A 2AY
Telephone 01-210 Ext: 6640

FROM: J C Jenkins

DATE: 22 March 1988

BF 23/3

Office of the Parliamentary Counsel 36 Whitehall London SW1A 2AY

Telephone Direct line 01 210 6640
Switchboard 01 210 3000

JILL RUTTER

cc:
PS/Chancellor
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Mr Culpin
Miss Sinclair
Mr Cropper
Mr Tyrie
Mr Stewart
PS/IR

**FINANCE BILL - HANDLING OF PROVISIONS ON INCOME TAX RATES**

We have spoken about your note of yesterday to Charles Stewart.

I see no difficulty with having separate clauses. In the past, the imposition of income tax for the coming year and the fixing of rates have all been done in one breath, as they are in subsection (1) of the present clause. If we split the basic rate from the rest, the first clause will (a) impose a tax and (b) fix the basic rate. The second clause will fix the higher rate and make the necessary consequential amendments to existing legislation.

The fact that the Bill will for the first time separately charge tax and fix the rates is probably an advantage rather than the reverse.

Christopher Jenkins

J C JENKINS

mjd 3/52m

RESTRICTED

FROM: MISS M P WALLACE
DATE: 23 March 1988

PS/CHIEF SECRETARY

cc PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Mr Culpin
Miss Sinclair

**FINANCE BILL - PERSONAL ALLOWANCES**

The Chancellor noted that the income tax minor personal allowances (housekeepers, dependent relatives etc) were covered in a separate budget resolution from the main personal allowances. He thinks that, if possible, all ought to be covered in the same clause in the Finance Bill. I should be grateful if you could investigate.

MPW.

MOIRA WALLACE

PPS 12/2.

# H. M. TREASURY

Parliament Street, London SW1P 3AG, Press Office: 01-270 5238
Facsimile: 270 5244
Telex: 9413704

24 March 1988

**FINANCE BILL PUBLICATION DATE**

In response to a written Parliamentary Question, the Rt Hon John Major MP, the Chief Secretary to the Treasury, today announced that the Finance Bill will be published on Thursday, 14 April.

**PRESS OFFICE**
**HM TREASURY**
**PARLIAMENT STREET**
**LONDON**
**SW1P 3AG**
**01-270-5238**

**19/88**

**NOTE TO EDITORS**

Copies of the Finance Bill will be on sale to members of the public on 14 April at HMSO bookshop, 49 High Holborn, London WC1V 6MB. Copies will be available elsewhere in the country on Friday 15 April.

004/3295

RESTRICTED

FROM:JILL RUTTER
DATE: 24 March 1988

MR C JENKINS - PARLIAMENTARY COUNSEL

cc:
2- PS/Chancellor (Miss Wallace)
PS/Financial Secretry )
PS/Paymaster General )without
PS/Economic Secretary )attach
Mr Scholar )ment
Mr Culpin )
Miss Sinclair )

FINANCE BILL - PERSONAL ALLOWANCES

... Please see the attached note from Moira Wallace in the Chancellor's office.

2 I would be grateful if you could investigate the question she raises and let the Chief Secretary have advice on the possibilities.

JILL RUTTER
Private Secretary

ASSOCIATION OF BRITISH INSURERS

LIFE INSURANCE COUNCIL

ALDERMARY HOUSE, QUEEN STREET, LONDON, EC4N 1TT
TELEPHONE 01-248 4477 TELEX 937035 FAX 01-489 1120

25 MAR 1988

FINANCIAL SECRETARY

| | |
|---|---|
| REC. | 25 MAR 1988 |
| ACTION | Mr. J. Hinton IR. |
| COPIES TO | PS CHX |
| | Mr. McIntyre |
| | Mr. Clapp |
| | Mr. Kuczys IR |

Reference: T/731/013

24th March 1988

The Rt. Hon. Norman Lamont, M.P.,
Financial Secretary to the Treasury,
Treasury Chambers,
Parliament Street,
London, SW1P 3AG.

Dear Financial Secretary PS/IR.

**1988 Finance Bill - Pension Schemes**

We have been in correspondence with the Inland Revenue for some time concerning an anomaly which arises out of Paragraph 22, Schedule 3 Finance (No. 2) Act 1987. The need to remove this anomaly was also included in our pre-Budget technical representations to the Chancellor. The Inland Revenue have told us that the point is a political matter and I am therefore writing to draw it to your attention because it is of some importance.

Under Paragraph 22, all employees whose annual final remuneration is over £100,000 for years beginning on or after 6th April 1987 have their final remuneration for pension purposes calculated as the highest average remuneration for any period of three or more years ending in the last 10 years before retirement.

This results in the anomalous position that someone whose earnings in the last three years are £80,000, £90,000 and £99,999.99 can have a pension based on the latter figure, i.e. a pension of £66,666, while, if the figure in the last year were £100,000.01, the pension must be calculated on the average of the last three years. This produces a maximum pension of £60,000, a reduction of £6,666 occasioned by additional earnings of 2p. This example illustrates the theoretical effect of the anomaly, but it will give rise to genuine problems in practice where increases take earnings over £100,000.

We feel that this anomaly should be righted, possibly by some form of tapering relief or by giving employees the option of ignoring salary in excess of £100,000 at the date when their remuneration first exceeded £100,000. We believe that the 1988 Finance Bill gives you a suitable opportunity to resolve this, and trust that you will do so.

Yours sincerely,

Richard Zamboni

R.F.C. Zamboni
Chairman

42/2 4374/046/MDG

**NOTES OF A MEETING HELD IN THE FINANCIAL SECRETARY's ROOM ON THURSDAY 24 MARCH 1988 AT 11.00 AM**

| | | | |
|---|---|---|---|
| **Those Present:** | Mr R Ivison | ) | |
| | Mr R Jennings | ) | Institute of |
| | Mr J Clarke | ) | Taxation |
| | Mr C Corlett | ) | |
| | Mr J Bryce | ) | IR |
| | Mr D Shaw | ) | |
| | Mr P Cropper | | |

**Mr Ivison** said he felt that the present system for the discussion of finance legislation before it was enacted, was unsatisfactory. He felt that it was inefficient as it led to further legislation having to be passed in order to correct earlier anomolies.

He called for extensive pre-publication of Finance Bill clauses, with in depth discussion of technical clauses by a Commons Advisory Committee and Permanent Standing Committees which would have the power to examine witnesses from the Inland Revenue as well as experts from the business world.

He also suggested that the Finance Bill could be split in such a way that the technical and non controversial clauses could be heard by these Special Committees, whilst more controversial items (such as tax rates etc) could be heard in the House.

**The Financial Secretary** pointed out that draft clauses were already issued in certain cases (ie Section 79 - unapproved share schemes). However, there were some areas of legislation where consultation would not be possible, as it might be controversial ie the recent BES legislation. The Financial Secretary asked for an example of the Institute of Taxation's past experiences.

**Mr Ivison** highlighted the CTT legislation in 1985. He said that the Institute had tried to advise the Government at the time, but a number of anomolies were put in legislation. He said that the Institute would like to see the clauses published in draft at least 6 months in advance in order to give experts the chance to comment on the technical details.

**Mr Corlett** felt that progress had been made in recent years. He gave the example of Keith legislation as one in which a lot of time had been spent on draft legislation. He agreed that discussion on a technical level was particularly useful. He pointed out that technical drafting was better suited to discussion between officials whilst policy details were normally heard in front of Select Committee.

**Mr Ivison** felt that if MP s had a chance to cross-examine expert witnesses, they would have a far better understanding of technical tax subjects and this would subsequently improve the quality of debate in the Commons.

**Mr Cropper** agreed that the Standing Committees often failed to scrutinise the details closely.

**Mr Clarke** said the present situation gave the Institute very little time to comment on the draft Finance Bill before the Committee Stage.

**The Financial Secretary** accepted that more use could be made of the draft clauses but he was concerned that, if outside organisations were involved in Standing Committee discussion, they would misuse the opportunity for political purposes.

**Mr Jennings** asked, if it would be possible to split the Bill into two sections - with the sections on Rates and Allowances etc being enacted by August; whilst the technical areas could be given a later deadline thus allowing a longer period for debate.

**The Financial Secretary** reminded the Institute that draft legislation could not be carried over from one session to another.

**Mr Corlett** said it would be difficult to divide the Finance Bill into two parts; as most of the clauses had an important policy content. He asked, if there was anything that the Revenue could do to help the Institute between publication of the Finance Bill and Royal Assent.

**Mr Ivison** noted that the Revenue were sometimes slow to react to the Institute's comments on consultative documents. He also asked for more opportunities for meetings between the Institute and the Revenue. He felt, it was important for Ministers to be aware of the Institute's views. He returned to his idea of a Special Advisory Committee which could work in conjunction with the Inland Revenue to advise Ministers on policy.

In conclusion, Mr Ivison said he was a member of inter-professional working party who were about to produce a document on this whole area. He said he would forward their report to the Financial Secretary.

**PRIVILEGE**

**Mr Ivison** said that the Institute were seeking an extension of legal professional privilege to accounting bodies which would, in turn cover the removal of those privileges suggested by the Keith Committee.

He said that the Institute acknowledged the Revenue's right to ascertain facts and also the Law Society's fundamental position on privilege. He said that Institute were seeking a careful modification of Section 20B of TMA 1970.

**Mr Ivison** said he would like to see an extension of privilege to cover tax advisory files: (ie papers on tax advice on transactions outstanding as well as those completed) and the audit papers and supporting documents produced by a tax advisor. He also called for an extension to the categories of person covered by privilege ie the term - "tax accountant" should include tax advisors and consultants.

**Mr Jennings** he felt that there was very little practical distinction between working and audit papers as presented in the Keith Committee proposals.

**Mr Shaw** said that there was an important difference between the production and the audit of accounts. The privilege covering audit papers was established to allow to enable an auditor to carry out his statutory function. Similarly,

The legal professional privilege was established to allow the legal profession to act with the statutory framework. He pointed out that there was no equivalent to this situation when a tax advisor was working on behalf of his client.

**Mr Corlett** suggested that the subject of privilege could be discussed more fully between officials in order to iron out the definitions involved in the Keith legislation. He asked if there were any wider aspects of privilege which concerned the Institute.

**Mr Jennings** mentioned Section 50 TMA 1970 which refers to Hearings by the General Commissioners. He said that the present system disallowed members of the Institute from appearing before the Commissioners. He felt this was unfair as their members were as professionally qualified as chartered accountants. (The present legislation only allows a member of an Incorporated Society of Accountants to be permitted).

**Mr Shaw** thought it would be very rare for the Commissioners not to allow admission to members of the Institute. He suggested that this area should be looked at along with the question of the definition of tax advisors. He pointed out that if the Section 50 was extended to the Institute, it could lead to complaints from the Banks (who also feel their tax advisors are qualified to appear before the Commissioners).

**The Financial Secretary** concluded that the whole area of privilege was still under discussion and that the Institute should continue their talks with the Revenue direct.

Susan Feest

**SUSAN FEEST**
25/3/88

cc: **PS/CHX**
**PS/CST**
**PS/PMG**
**PS/EST**
**Mr Cropper**
**Mr Corlett IR**
**Mr Shaw IR**
**Mr Bryce IR**
**PS/IR**

3363/19

FINANCIAL SECRETARY TO THE TREASURY

PWP

**FROM: J J HEYWOOD**
**DATE: 24 MARCH 1988**

**MR P D HALL - IR**

cc PS/Chancellor
PS/Chief Secretary
Mr Culpin
Mr Dyer
Mr Cropper
Mr Jenkins - OPC
PS/IR

**ICTA 1988**

The Financial Secretary was grateful for your minutes of 9 and 23 March.

2. He is content for a New Clause and Schedule to be tabled at the Committee Stage of the Finance Bill making the necessary amendments.

9 4

**JEREMY HEYWOOD**
**PRIVATE SECRETARY**

005/3295

FROM: JILL RUTTER
DATE: 25 March 1988

MR JENKINS – Parliamentary Counsel

cc:
PS/Chancellor
PS/Financial Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Scholar
Mr Culpin
Miss Sinclair
Mr Cropper
Mr Tyrie
Mr Stewart

PS/IR

**FINANCE BILL - HANDLING OF PROVISIONS ON INCOME TAX RATES**

The Chief Secretary has seen your minute of 22 March. He is glad it is possible to achieve the result desired and agrees that separate clauses should be drafted.

JILL RUTTER
Private Secretary

**Inland Revenue**

Policy Division
Somerset House

FROM: N WILLIAMS
DATE: 28 March 1988

1. MR ISAAC Seen in draft.

2. FINANCIAL SECRETARY

**FINANCE BILL PRESS RELEASE : EMPLOYEE SHARE OWNERSHIP**

1. I attach a copy of a draft Press Notice dealing with the two measures concerning employee acquisitions of shares that were announced last autumn.

2. I would be grateful to know if you are content with the draft Press Notice.

N. Williams

N WILLIAMS

Encl.

---

cc PS/Chancellor
Mr Monck
Mr Scholar
Mrs Lomax
Mr Allen (IDT)

Mr Isaac
Mr Beighton
Mr Lewis
Mr German
Mr Farmer
Mrs Majer
Miss McFarlane
PS/IR

INLAND REVENUE

Press Release

INLAND REVENUE PRESS OFFICE, SOMERSET HOUSE, STRAND, LONDON WC2R 1LB
PHONE: 01–438 6692 OR 6706

DRAFT

[3]

April 1988

**EMPLOYEE SHARE OWNERSHIP**

Clauses 63 and 64 of the Finance Bill published today contain two relaxations in existing tax rules about employee acquisitions of shares. These changes were announced last autumn.

Public Offers of Shares : Employee Priority Shares

Clause 63 ensures that the benefit of priority given to employees in the allotment of shares in a public offer of shares will be exempt from income tax subject to certain conditions.

The effect of the clause differs in one minor respect from that of the draft clause published on 18 November 1987. The exemption is extended to include, as well as priority in a fixed price offer, priority given to employees acquiring shares in a tender offer at the lowest price successfully tendered.

In all other respects the purpose and character of the clause, including the conditions on the tax exemption proposed, are as set out in the Inland Revenue Press Releases of 23 September and 18 November 1987.

Subject to the approval of Parliament, the legislation will be effective from 23 September 1987.

Finance Act 1984 Employee Share Option Schemes : Restricted Shares

Clause 64 contains a small change in the Finance Act 1984 legislation relating to approved employee share option schemes designed to help the smooth operation of such schemes. The clause will enable employees or directors to enter into certain loan arrangements in relation to the scheme shares they acquire on exercising their options, without affecting their eligibility for income tax relief under the scheme.

Subject to the approval of Parliament the change will be deemed to have had effect from the start of the scheme concerned.

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/Notes for Editors

Notes for Editors

Clause 63

A full explanation of the reasons for the introduction of this legislation and of the conditions for exemption from the income tax charge is contained in the Inland Revenue Press Release of 23 September 1987.

A draft clause was published in a further Press Release on 18 November. This incorporated an extension to the original proposals to cater for instances where the priority allocation was extended to employees outside the immediate group.

The further extension now proposed acknowledges a concern expressed after publication of the draft clause in November.

Clause 64

Full details of the background to this measure were given in the Inland Revenue Press Release of 19 October.

---

Philip Nash
Director: Customs

Board of Customs and Excise
Dorset House
Stamford Street
London SE1 9PS
01-928 0533

**FROM: PHILIP NASH**
**DATE: 28 MARCH 1988**

**ECONOMIC SECRETARY**

cc Chancellor of the Exchequer
Chief Secretary
Financial Secretary
Paymaster General
Mr Culpin
Miss Sinclair
Ms C Evans
Mr Cropper
Parliamentary Counsel

**FINANCE BILL STARTER 62 (PENALTIES OF IMPRISONMENT)**

1. You will recall that Starter 62 implements recommendation 132 from Volume 4 of the Keith Committee report, viz:-

> ' outside the VAT area the maximum penalty of imprisonment for Customs and Excise offences of fraud, including the making of false statements and the making use of false documents, be increased from ? to 7 years '. This brings these offences into line with the changes already made to the VAT offence code.

2. At chapter 36.6.58 of the report, the Committee suggested that offences under the Customs and Excise offence code should be banded into 5 classes, class A being the most serious to which the increased penalty proposed in recommendation 132 should apply. The Committee listed in a footnote most of the offences which they felt should be included in this class. This list formed the basis of our proposals relating to starter 62.

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**Internal distribution:** CPS
Mr Knox
Solicitor
Mr Jefferson Smith
Mr Finlinson
Mr Allen
Mr Wilmott
Mr Vaughan
Mr Savins
Mr McGuigan
Mr Whitmore

3. The Keith Committee's Class A offences fell into two broad groups covering (i) those offences which required proof of an intended fraud on the revenue or evasion of prohibitions or restrictions (eg sections 50, 68 or 170 of the Customs and Excise Management Act 1979); and (ii) offences of making untrue declarations (section 167(1) CEMA), counterfeiting documents (section 168 (1) CEMA) or knowingly or recklessly making a statement false in a material particular (Betting and Gaming Duties Act 1981, Schedule 1, paragraph 13 (3)(a) and Schedule 2, paragraph 7 (3)(a) and Car Tax Act 1981, Schedule 1, paragraph 8 (2)(b).)

4. The Keith Committee took the view that in the tax and duty context the making of false declarations was a very serious matter, warranting severe sanctions. They also recognised that with Customs' increasing reliance on documentary, as opposed to physical, controls it was of ever greater importance that such declarations should be protected by strong deterrent penalties. They received no representations on this point when taking evidence from the public or other interests, nor did their recommendation attract any comment during the public consultation process which followed its publication.

5. The Scottish Home and Health Department have now raised a late objection of principle to the inclusion of the offences in this second group in the general increase in maximum penalties to 7 years. Their objection is that whereas the former group of offences require proof of an intent to achieve a clear criminal outcome, the latter involve merely proving a criminal act, the making of a false statement or document, which may be only preparatory or ancillary to a fraud or evasion. These offences are already recognised as being more than regulatory, being triable on indictment and punishable by imprisonment of up to 2 years, and are in each case complemented by summary offences attracting lesser penalties which are available for simple regulatory cases of such conduct; nevertheless the SHHD argues that the indictable offences are less serious in nature than the fraud or evasion offences of the first group and do not warrant the same increased maximum penalty. Their reservations have attracted support from the Home Office and Northern Ireland Office and we have therefore agreed to remove the offences to which they object from the publication print of the Finance Bill while the matter continues under discussion.

6. We shall continue to try to satisfy the objecting Departments as to the value of implementing this recommendation in full, and show them precedent in the Companies Act and elsewhere for similar penalties for such offences of false documents. If we succeed, we may seek your approval to re-insert the offences in question by a Government amendment in Committee. If our discussions are more prolonged, we may have to seek their inclusion in a subsequent Finance Bill.

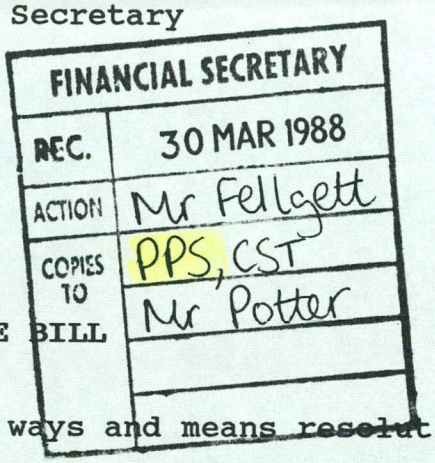
**PHILIP NASH**

Office of the Parliamentary Counsel 36 Whitehall London SW1A 2AY

Telephone Direct line 01 210 6620
Switchboard 01 210 3000

30 MAR 1988

J Heywood Esq
Office of the Financial Secretary
HM Treasury
Parliament Street
LONDON SW1




28 March 1988

Dear Heywood

**LOCAL GOVERNMENT FINANCE BILL**

I enclose 3 copies of a ways and means resolution.

Under the Bill as it stands sums are paid into and out of the non-domestic rating pool. In pursuance of a change of policy sums are to be paid into the Consolidated Fund and out of votes. The pool will not exist. There will be accounts: no sums will be paid into or out of them. I have drafted amendments to the Bill accordingly.

Paragraph (a) of the enclosed resolution allows charges to be imposed in accordance with the new policy. The money resolution already passed will cover the payments to be met from votes.

Paragraph (b) of the enclosed resolution provides for payments into the Fund. The "other sums" arise under clauses 82 and 111 (as amended in Committee). These other sums would have had to go into the Fund anyway because there is nowhere else for them to

go: now that we are referring to the Fund for other reasons I think we should cover these sums.

Now done 29/1

When the department and the House authorities have cleared the resolution I shall contact you with a view to your returning it with the Financial Secretary's initials. It may be needed urgently.

Yours sincerely

Geoffrey Bowman.

E G BOWMAN
Encs

**LOCAL GOVERNMENT FINANCE BILL [WAYS AND MEANS]**

Mr Norman Lamont

That any Act resulting from the Local Government Finance Bill may provide for-

(a) sums to be paid to the Secretary of State in respect of non-domestic rating, and

(b) those and other sums to be paid into the Consolidated Fund.

25 March 1988

j051

**LOCAL GOVERNMENT FINANCE BILL [WAYS AND MEANS]**

Mr Norman Lamont

That any Act resulting from the Local Government Finance Bill may provide for-

(a) sums to be paid to the Secretary of State in respect of non-domestic rating, and

(b) those and other sums to be paid into the Consolidated Fund.

25 March 1988

j051

**LOCAL GOVERNMENT FINANCE BILL [WAYS AND MEANS]**

Mr Norman Lamont

That any Act resulting from the Local Government Finance Bill may provide for-

(a) sums to be paid to the Secretary of State in respect of non-domestic rating, and

(b) those and other sums to be paid into the Consolidated Fund.

25 March 1988

j051

3363(A)/26

FROM: MISS S J FEEST
DATE: 28 March 1988

R WILLIS - IR

cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Miss Sinclair
Mr Cropper
Mr Tyrie
Mr Dyer
Mr R Allen

**TAX APPEALS: STARTERS 450 AND 451**

The Financial Secretary was grateful for your minute of 21 March 1988 and approves the proposals therein.

**SUSAN FEEST**

Inland Revenue

Policy Division
Somerset House

FROM: C S McNICOL
EXTN: 7237
DATE: 29 MARCH 1988

1. MR CORLETT
2. MR ISAAC
3. FINANCIAL SECRETARY

FINANCE BILL PRESS RELEASES: PERSONAL EQUITY PLANS

1. This note seeks your approval for a Finance Bill Press Release concerning Personal Equity Plans (PEPs).

2. You have already given authority (Miss Feest's note of 14 January) for legislation to ensure that, as always intended, a disposal on or after 18 January 1988 of investments in a PEP should not create an allowable loss for capital gains tax purposes.

3. As Mr Kuczys explained in his submission of 28 January, this change is to be implemented in two stages. First, the Finance Bill will contain a clause allowing regulations to be made to secure the appropriate treatment of disposals made on or after 18 January 1988. Second, the regulations themselves will be made once the Bill receives Royal Assent. Drafting of these regulations is under way and will be completed shortly.

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cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Mr Culpin
Mrs Lomax
Mr R I G Allan
Miss Sinclair
Mr Ilett
Mr Neilson
Mr Cropper
Mr Tyrie
Mr Isaac
Mr Beighton
Mr Corlett
Mr Cleave
Mr Davenport
Mr Hamilton
Mr Kuczys
Mr Cayley
Miss MacFarlane
Mr Howe (Bootle)
Miss Lees
PS/IR
Mr McNicol

4. We propose to publish the draft regulations on 14 April as an Annex to a Finance Bill Press Release. I attach a draft of the Press Release for your approval and should be grateful for your authority to proceed in this way.

for C S McNICOL

DRAFT

# INLAND REVENUE

## Press Release

INLAND REVENUE PRESS OFFICE, SOMERSET HOUSE, STRAND, LONDON WC2R 1LB
PHONE: 01–438 6692 OR 6706

[3x]

14 April 1988

PERSONAL EQUITY PLANS (PEPs): TREATMENT OF LOSSES

On 18 January 1988, the Financial Secretary to the Treasury, the Rt Hon Norman Lamont MP, announced that a disposal on or after that day of investments in a Personal Equity Plan (PEP) would not create an allowable loss for capital gains tax purposes.

The Finance Bill, published today, contains a clause enabling the Treasury to make the regulations necessary to implement this measure. A draft of the regulations, which will be made once the Finance Bill receives Royal Assent, is attached as an Annex to this Press Release.

NOTES FOR EDITORS

1. The announcement made on 18 January 1988 followed legal advice received by the Inland Revenue which cast doubt on the appropriate treatment of losses from disposals of shares in a PEP.

2. It was always intended that losses incurred within a plan should not be allowable for capital gains tax purposes outside the plan. In the same way, gains from disposals of shares in a PEP are exempt from tax, provided the plan is kept going until the end of the year following the calendar year in which it was started.

3. Individuals can obtain relief for losses incurred on or after 18 January 1988 by closing the plan before the qualifying period expires. But in doing this, they will lose the tax exemptions in connection with the PEP.

/ANNEX

**Inland Revenue**

Policy Division
Somerset House

FROM: A W KUCZYS
29 March 1988

1. MR CORLETT

2. MR ISAAC

3. FINANCIAL SECRETARY

FINANCE BILL PRESS RELEASE: PERSONAL PENSIONS

1. At your meeting on 9 March on Starter 151 (see Miss Feest's note of the same date) you decided that, if DHSS agreed, we should adopt option 2 from Mr Hinton's minute of 7 March. This would allow members of contracted-in occupational schemes to contract out through a personal pension provided that the scheme prohibited payment of contributions other than by the DHSS. You also decided that the announcement should be made by way of a press release when the Finance Bill is published. Subsequently you wrote to Mr Portillo on 15 March telling him this.

2. I now attach a draft press release, and would be grateful for your approval. We need to finalise the terms of the press release by Friday 8 April if at all possible.

A W KUCZYS

---

cc PS/Chancellor of the Exchequer
Chief Secretary
Paymaster General
Economic Secretary
Mr Scholar
Mr Culpin
Mr R I G Allen
Miss Sinclair
Mr McIntyre
Mr Dyer
Mr Cropper
Mr Isaac
Mr Corlett
Mr Beighton
Mr Lusk
Mr Kuczys
Mr Hinton
Mr Willmer
PS/IR

DRAFT PRESS RELEASE

[3x] 14 April 1988

PERSONAL PENSION SCHEMES

In addition to the minor changes in the tax rules for personal pensions announced at the time of the Budget, the Finance Bill published today contains a further measure.

This new proposal will make it possible for someone in a contracted-in occupational pension scheme to contract out of the State Earnings Related Pension Scheme (SERPS) through a personal pension while staying in the occupational scheme. The change involves ~~changes~~ amendments to DHSS Regulations as well as Finance Bill legislation. It represents a useful further step forward in giving employees full flexibility and freedom of choice in their pension arrangements.

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DETAILS

Clause 54 of the Finance Bill contains provisions which will allow a member of a contracted-in occupational pension scheme to contract out of SERPS through a personal pension. This will be achieved by relaxing the normal Inland Revenue rule - that someone may not be in an occupational scheme and a personal pension scheme in respect of the same employment - for members for whom the personal pension scheme rules can prohibit payment of contributions other than by the DHSS.

/Separately, the

Separately, the Department of Health and Social Security will amend their Regulations to make it clear that a personal pension scheme may have such a provision in its rules.

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NOTES FOR EDITORS

1. Where someone wishes to contract out of the State Earnings Related Pension Scheme, by taking out a personal pension, the personal pension must meet the requirements of the Social Security Act 1986. In such a case, the DHSS will pay a 'minimum contribution' into the scheme, comprising the difference between the contracted-in and contracted-out rates of national insurance contributions.

2. The tax regime for personal pensions introduced by the Finance (No 2) Act 1987 allows tax relief on the employee's share of the DHSS 'minimum contribution'.

3. In addition the tax rules provide that members of occupational pension schemes cannot generally participate in a personal pension scheme in respect of the same employment. So a person in a contracted-in occupational pension scheme who wants to contract-out of SERPS on an individual basis would have the choice of:

a. leaving his occupational pension scheme to take a contracted-out personal pension; or

b. remain in the occupational scheme, but contract-out through a free-standing additional voluntary contribution (AVC) scheme.

/4. For some people

4. For some people these options are not ideal. In some cases leaving an occupational pension scheme is not the best choice. And free-standing AVC schemes have disadvantages for contracting-out because:

- there may not always be scope within the normal occupational pension benefit limits for DHSS 'minimum contributions' to be paid; and

- there is no tax relief on the employee's share of DHSS 'minimum contributions'.

5. Accordingly, the Government now proposes to allow occupational scheme members to contract out of SERPS through a personal pension, while remaining in the occupational scheme.

6. However, there needs to be some way of maintaining an effective limit on the tax relief available. In the occupational scheme this takes the form of a limit on pension benefits, while in a personal pension scheme the limit is on contributions. It is therefore a requirement that, where a personal pension is used in this way, the scheme rules should prohibit acceptance of contributions from the scheme member or from the employer. The only contributions which the personal pension scheme will be able to receive in these cases will therefore be DHSS 'minimum contributions'.

7. As a consequential measure the DHSS will make in Regulations an exemption from the voluntary contributions requirements in Section 12 of the Social Security Act 1986, in order to accommodate this proposal.

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**Inland Revenue**

Policy Division
Somerset House

FROM: B A MACE
DATE: 29 MARCH 1988

Seen in draft
BAM 27/3

1. MR ISAAC
2. FINANCIAL SECRETARY

FINANCE BILL PUBLICATION: PRESS RELEASE
PERSONAL ALLOWANCES FOR NON-RESIDENTS

1. We think it would be helpful to have a short press release when the Finance Bill is published explaining the changes which are proposed (from 1990-91) in the rules for personal allowances for non-resident British Subjects and certain others as a consequence of the move to Independent Taxation. The removal of the restriction on relief for this group of non-residents has not so far been announced in the Budget material and a brief explanation seems desirable as the changes have a Clause to themselves in the Bill.

2. I attach a draft of a Press Release and should be grateful for your approval.

BA Mace.

B A MACE

---

cc Chancellor
Chief Secretary
Paymaster General
Economic Secretary
Mr Scholar
Mr Culpin
Mr R I G Allen
Miss Sinclair
Mr S Robson
Mr Cropper
Mr Tyrie

Mr Isaac
Mr Painter
Mr Beighton
Mr Lewis
Mr Houghton
Mr Fawcett
Mr Mace
Mr J B Shepherd
Mr Davenport
Miss McFarlane
Miss Dyall
PS/IR

INLAND REVENUE

Press Release

INLAND REVENUE PRESS OFFICE, SOMERSET HOUSE, STRAND, LONDON WC2R 1LB
PHONE: 01–438 6692 OR 6706

[3x] 14 April 1988

## PERSONAL ALLOWANCES FOR NON-RESIDENTS

The Chancellor announced in his Budget that he proposes to introduce a system of Independent Taxation of husband and wife from April 1990, with a new structure of income tax personal allowances. As part of this change the rules under which some non-residents, including British and other Commonwealth citizens, are allowed to claim personal allowances are being simplified. The proposals are contained in Clause [31] of the Finance Bill published today.

## DETAILS OF THE PROPOSAL

1. Most non-residents are not entitled to claim personal allowances but some, including British and other Commonwealth citizens, qualify for a measure of relief calculated by reference to the proportion of their total world income which is chargeable to tax in the United Kingdom. From 1990-91, when Independent Taxation is introduced, this restriction will be removed and qualifying non-residents will become entitled to full income tax allowances in the same way as individuals resident in the United Kingdom. Each individual will have a personal allowance, and married men living with their wives will be entitled to the new married couple's allowance. (Details of the new structure of allowances under Independent Taxation were given in the Budget day press release: "Independent Taxation of Husband and Wife"). The allowances may be set against any of the person's income which is liable to tax in the United Kingdom.

2. A married man who has insufficient income to use the married couple's allowance will be able to transfer any unused part of the allowance to his wife provided that she qualifies for personal reliefs in her own right either as a resident or a qualifying non-resident. However, on the change to Independent Taxation non-residents will not be eligible for the transitional relief which is being provided to resident married couples where the husband has an income less than his personal allowance.

3. Those who may benefit from the removal of the restriction on relief include non-resident British and other Commonwealth citizens living or working abroad including Servicemen and Crown pensioners.

Inland Revenue

Policy Division
Somerset House

FROM M PRESCOTT
DATE 30 MARCH 1988

1. MR ISAAC

2. FINANCIAL SECRETARY

FINANCE BILL PRESS RELEASE: UNAPPROVED EMPLOYEE SHARE SCHEMES

1. Attached, for your approval please, is a Finance Bill publication-day Press Release, covering the proposed changes following the review of Section 79 FA 1972.

2. The Bill will include all of the changes to the earlier draft Clauses recommended in my note of 8 February, and approved by you. As proposed, we have also in the Press Release dealt with the query we had in a number of the representations about the impact of the new regime on shares subject to performance-related rights or restrictions.

M PRESCOTT

---

cc PS/Chancellor
PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Monck
Mr Scholar
Mr Culpin
Miss Sinclair
Mr Cropper
Mr Jenkins (OPC)
Mr Isaac
Mr Beighton
Mr Lewis
Mr Easton
Mr German
Mrs Eaton
Mr Prescott
Mr Swann (SVD)
Mr N Williams
Miss McFarlane
PS/IR

INLAND REVENUE

Press Release

INLAND REVENUE PRESS OFFICE, SOMERSET HOUSE, STRAND, LONDON WC2R 1LB
PHONE: 01–438 6692 OR 6706

[3x] 14 April 1988

**FINANCE BILL: UNAPPROVED EMPLOYEE SHARE SCHEMES**

The Chancellor announced in his Budget major changes to the rules - in Section 79 of the 1972 Finance Act - which apply to certain shares acquired by employees outside an approved scheme. These changes are contained in Clauses 73-85 of the Finance Bill, published today.

The changes are designed to help companies and employees by targeting the provisions much more narrowly on the particular kinds of abuse at which they are aimed. This relaxation will also apply where the shares are those in a qualifying subsidiary company.

The proposals are substantially the same as those that were announced on 26 October 1987 and published in the form of draft Clauses for consultation. These were generally welcomed as a significant improvement on the existing provisions. However, some minor, technical changes to the earlier draft Clauses have been made, to help ensure that they achieve the result intended and to meet various points made in representations.

The main changes to the earlier draft Clauses are

(a) subject to certain safeguards, a company which is a subsidiary will not be deemed to be a "non-qualifying" subsidiary solely by virtue of having subsidiaries of its own (Clause 82);

(b) any payments to a company concerned in respect of group relief will be excluded from the definition of "intra-group" transactions (Clause 82(2));

(c) shares in a subsidiary company may still qualify for the new treatment even if the "majority test" in Clause 74(6) is not satisfied, provided that the company has only a single class of shares

(d) amendments have been made to clarify how relief for income tax charged under these provisions will be given in capital gains tax computations where company reorganistions occur or there are transactions with "connected" persons;

/(e) for shares

(e) for shares acquired before 26 October 1987 which at the time of acquisition had attached to them a restriction previously exempt under the provisions of paragraph 7, Schedule 8, Finance Act 1973, the lifting of any such restriction shall not count as a chargeable event under the new provisions;

(f) the time limits (in Clauses 81 and 82) relating to the furnishing of returns have been relaxed.

Performance-related rights or restrictions

Under the proposed new regime there will in most cases be a charge only if, when and to the extent that value is actually shifted preferentially in to the employee shares as a result of manipulation of rights or restrictions attaching to the shares. There was concern in some representations, however, that this might also catch certain kinds of performance-related right or restriction (sometimes known as "equity ratchets") which are commonly to be found in management buy-outs, and under which the portion of the company's equity represented by the managers' shares is increased on some predetermined basis by reference to the company's performance.

Subject to the precise facts in each particular case, the Inland Revenue agree that a charge should not normally arise on the triggering of such a right or restriction on achievement of the predetermined performance level, where the right or restriction attached to the shares from the outset. Obviously, the Revenue will still, for normal Schedule E purposes, need to ensure that the price paid for the shares reflects their true value including the effect of any such rights relating to them.

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**NOTES FOR EDITORS**

1. Section 79 Finance Act 1972 contains wide-ranging anti-avoidance provisions relating to unapproved employee share schemes. The main effect is to apply a charge to income tax on the whole of any increase in the value of shares acquired by employees in that capacity outside an approved scheme, where the shares are subject to certain kinds of restriction or where certain other conditions are not satisfied.

2. The aim is to prevent companies from passing to their employees share-related benefits which in reality are part of the employee's remuneration, but which, because they are in "capital" form, avoid a charge to income tax on that remuneration. This might be done in a number of ways - for example, by subjecting the employee shares (prior to acquisition) to special restrictions of one kind or another which depress their value and then, after acquisition, removing those restrictions, thus restoring the value of the shares to that of the Company's shares in general issue, and thereby giving the employees an essentially artificial benefit.

/3. Section 79 has

Section 79 has increasingly been criticised for being too wide-ranging in its effect. For example, the growth in value charge can apply even if there is no actual manipulation of the restrictions concerned. The detailed provisions are also such that Section 79 will nearly always apply where the shares are those in a subsidiary company, again whether or not abuse actually occurs.

4. A review of Section 79 was announced by the Chancellor of the Exchequer on 17 March 1987, when a Consultative Document was also issued by the Inland Revenue and views were invited on ways of simplifying and improving the provisions, consistent with their underlying purpose. The review was undertaken by the Inland Revenue, with the assistance of a small informal working group of outside practitioners who have expertise in this area.

5. Following completion of the review and consideration of the Group's report, the Government announced last October its intention to introduce major changes, designed to help companies and their employees by targeting the provisions as narrowly as possible on the particular kinds of abuse at which this legislation is aimed. In most cases, the present growth in value charge is to be replaced with a new, more narrowly targeted charge that will arise only if and to the extent that value is actually shifted preferentially into the employee shares as a result of manipulation. This relaxation will also apply to shares in "qualifying" subsidiaries.

6. The proposed changes will take effect from 26 October 1987 when draft Clauses incorporating them were published for consultation. Shares acquired before 26 October 1987 and at present subject to Section 79 will also be able to get the benefit of the new more relaxed rule with effect from that date, provided that the qualifying conditions are satisfied.

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~~BE 7/4 to m.~~

HM CUSTOMS AND EXCISE
CUSTOMS DIRECTORATE
DORSET HOUSE, STAMFORD STREET
LONDON SE1 9PS
01-928 0533 2138
GTN 2523

**FROM: MARTIN BROWN**
**DATE: 30 March 1988**

**ECONOMIC SECRETARY**

cc. PS/Chancellor
PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
Mr Scholar
Miss Sinclair
Mr Michie
Parliamentary Counsel

**SEARCH OF PERSON : A) CRIMINAL JUSTICE BILL COMMITTEE DEBATE**
**: B) FINANCE BILL CLAUSE**

**A) CJB Debate**

Yesterday the Committee considered Opposition new clauses designed to impose tighter constraints on our power to search persons under s.164 CEMA. The Opposition's quality of presentation and argument was much better than for the similar amendments debated in the Lords before Christmas, and gave a foretaste of what we can expect when our Finance Bill Clause is debated.

Mr Patten, for the Government, duly persuaded the Opposition to withdraw their clauses by revealing that the Finance Bill would be including a provision amending the powers of search. Faced with direct questions about search statistics, he also revealed the following figures for the 6 months July-Dec 87:

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Internal: CPS
Mr B Knox
Mr Nash
Solicitor
Mr Ellis (Sols)
Mr Wilmott
Mr Helsdon

| | |
|---|---|
| Total searches | 22,101 |
| - rubdown | 12,112 |
| - strip | 9,733 |
| - intimate | 256 |
| Searches revealing smuggled goods | 1,057 |
| Goods found just before or after search | 2,925 |
| Appeals total | 59 |
| (of which to JP: | 7) |

The Opposition's main concerns appear to be:

a) levels of authorisation of search

b) passengers' low level of awareness of rights of appeal

c) need for a published Code of Practice on how we conduct searches

d) what constitutes adequate grounds for suspicion.

We will of course provide full briefing on these points for the Finance Bill debates.

**B) Finance Bill clause**

I am sorry we were unable to provide alternative and less emotive wording for "suspect" and "rub-down" before the Finance Bill's printing deadline yesterday. Parlimentary Counsel advised that the noun "suspect" was the proper and appropriate term for a person whom we have "reasonable grounds to suspect" of smuggling; and that in drafting the Bill he had been unable to find a suitable alternative to "rub-down" which would meet the requirements of our instructions. For our own part we felt that the words conveyed the required meaning in plain English, and could suggest no other wording that was neither ambiguous nor inaccurate.

We and Parliamentary Counsel felt that your own suggestions for more neutral wording were not quite right when set in the context of what the Clause is to achieve. "Person to be searched" would fit the case where we wish to search the suspect's **body**, but not the cases where under the Clause we intended to search only "an article which he has with him".

"Clothed search" (by which would be understood search of a clothed person) would, we feel, give a false impression, in that we can require removal of outer garments (and, if necessary, shoes and socks) as part of a rub-down search.

We understand your concern that the admittedly blunt wording of the Clause might act as a red rag to the civil libertarian bulls. On the evidence of the Criminal Justice Bill, however, we expect a rough ride for this Clause in any case. It is arguable that no amount of euphemism or circumlocution would defuse the issue, and that it might be best to meet it head on, running the line that yes, search of person **is** a blunt and distasteful process; unfortunately, it is necessary to counteract the far greater evil of drug smuggling.

**MARTIN BROWN**

013/2761

RESTRICTED

FROM: JILL RUTTER
DATE: 30 March 1988

PWP

MISS G C EVANS

cc:
Principal Private Secretary
PS/Financial Secretary
PS/Economic Secretary
PS/Paymaster General
Mr Culpin
Mrs Burnham

**FINANCE BILL**

I told you that following the "rubdown search" being discovered in the Finance Bill the Chief Secretary was concerned that someone should read through the Finance Bill to ensure that there were no provisions which would strike the layman as absurd.

2 You told me that FP would, as always, undertake to do such a check before the Finance Bill is published.

Jill Rutter

JILL RUTTER
Private Secretary

53/2/LPD/3761/037

RESTRICTED

FROM: P D P BARNES
DATE: 30 March 1988

MR NASH - C&E

cc PS/Chancellor
PS/Chief Secretary
PS/Financial Secretary
PS/Paymaster General
Mr Culpin
Miss Sinclair
Miss Evans
Mr Cropper
Parly Counsel

Mr Knox - C&E
Solicitor - C&E
Mr Jefferson Smith - C&E
Mr Finblinson - C&E
Mr P R H Allen - C&E
Mr Wilmott - C&E
Mr Vaughan - C&E
Mr Savins - C&E
Mr McGuigan - C&E
Mr Whitmore - C&E

**FINANCE BILL STARTER 62 PENALTIES OF IMPRISONMENT**

The Economic Secretary was grateful for your minute of 28 March.

2. The Economic Secretary agrees with your approach, but starts with the preference, if it is necessary to reinstate the offences, then it would be better to do so in the 1989 Finance Bill than in Committee this year.

P D P BARNES
Private Secretary

42/2.BTW.4372/05

FROM: N M DAWSON
DATE: 30 March 1988

C S McNICOL IR

cc PS/Chancellor
PS/Chief Secretary
PS/Paymaster General
PS/Economic Secretary
Mr Culpin
Mrs Lomax
Mr R I G Allan
Miss Sinclair
Mr Ilett
Mr Neilson
Mr Cropper
Mr Tyrie
PS/IR

**FINANCE BILL PRESS RELEASES: PERSONAL EQUITY PLANS**

The Financial Secretary has seen your minute of 29 March and is content with the Press Release attached.

NIGEL DAWSON
Diary Secretary

-5 APR 1988

THE BOC GROUP

Chertsey Road
Windlesham
Surrey GU20 6HJ
England
Tel: Bagshot (0276) 77222

NMC/jjb

30th March, 1988

FINANCIAL SECRETARY
REC. 05 APR 1988
ACTION Mr. Cayley IR
COPIES TO PS/CHX
Mr. Schdak
Mr. Culpin Mr. Cropper
Mr. Pitts IR
PS/IR.

The Financial Secretary to the Treasury
Treasury Chambers
Parliament Street
LONDON
SW1P 3AG

Dear Sir

Finance Bill 1988
Artificial Capital Loss Devices Countered

The Chancellor referred in his Budget Statement to provisions to be included in the Finance Bill to counteract exploitation of capital gains tax indexation allowances within groups of companies. More detail of these proposals were promulgated in an Inland Revenue Press Release dated 15th March 1988.

It is recognised that, in general, provisions on the lines proposed are justificable and necessary. There is, however, a situation where they appear to produce an unjustified impact.

The situation to which I refer is that where an overseas subsidiary has been financed by a loan from its UK parent in a currency other than sterling and the loan is such that it is a "debt on a security" for capital gains tax purposes.

It is frequently necessary that such a loan shall be framed in this form in order to satisfy local legal and commercial requirements of the overseas borrowing subsidiary.

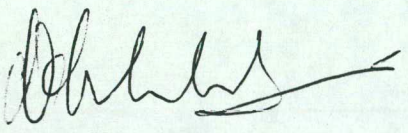
Repayment of such a loan after, perhaps, a number of years can give rise to a capital gain (or loss) for United Kingdom tax purposes by virtue of changes in the exchange rate between sterling and the currency of denomination of the loan.

In economic theory movements in exchange rates are influenced by the differential in inflation rates within the countries concerned, and a chargeable gain arising from this cause is a genuine gain that I consider should continue to attract the benefit of indexation.

I respectively suggest that the intended provision of the Bill should allow for an exception where a loan to a "linked" company is denominated in a currency other than sterling.

It may be appropriate that such an exception should extend only to the retention of indexation relief so far as it reduces a capital gain, but does not create a capital loss.

Yours faithfully



Nigel M Chisholm
Group Manager - Taxation