

## Further submission Chartered Institute of Taxation Clause 18 (FB15)

### Partnerships (clause 18 and schedule 6)

#### Executive Summary

**We support efforts to make the rules around taxation of partnerships clearer and more in keeping with modern commercial practice. However we are disappointed by the Government's selectivity on which points it has taken forward from consultation and OTS recommendations. Specifically:**

- **We are disappointed that the government has not taken the opportunity to amend how penalties for late partnership returns are imposed.**
- **We are disappointed that the government has not taken forward OTS proposals on partners claiming their own partnership expenses through their personal tax return.**
- **We think the legislation should be amended to permit disputes about the quantum of profits to be resolved in the same way as disputes as to the allocation of profits or losses.**
- **We think the legislation should be amended to permit more than one dispute at a time to be made, as to a partner's share of the profits/losses, and for all such disputes to be heard at the same time if the parties agree.**

1. This measure introduces new provisions relating to the taxation of partnerships. These provisions:
  - Deal with the circumstances in which a partner acts as bare trustee for a beneficiary who is absolutely entitled to the partner's share of the profits.
  - Deal with the circumstances in which a partner in the partnership is itself a partnership.
  - Introduce new reporting requirements for partnerships with partners that are partnerships.
  - Relax the reporting requirements for investment partnerships with overseas partners not liable to UK tax which are subject to Common Reporting Standard (CRS) or Foreign Account Tax Compliance Act (FATCA) requirements.
  - Confirm that the allocation of partnership profit shown on the partnership return is conclusive for tax purposes for all of the partners, and implement a new process for resolving partner disputes on the allocation through application to the First-tier Tax Tribunal.
2. This legislation has emerged from a consultation process that began in August 2016. The consultation was aimed at covering areas 'where the government has identified that the tax rules may be seen as unclear or produce an inappropriate outcome'. At the time we welcomed the consultation which was intended to ensure the rules 'fit with modern commercial practice'. However, the government has been selective on which points it has picked up. For example, the amendments included in Part 5 of the Schedule do nothing to improve the situation where partners with little influence in the partnership have imposed on them a penalty for a late partnership return where the partnership's nominated partner has not submitted the partnership return on time. Compare this to a company where only the company gets a penalty, not each shareholder/director. We think it would have been fairer if the legislation had been amended so that the penalty for a late return is imposed on either the partnership or the nominated partner rather each partner.

3. We are also disappointed that some of the recommendations made by the Office of Tax Simplification in its 2015 report on partnerships have not been taken forward. For example, the suggestion that partners should be able to claim allowable expenses as deductions from their share of profits without these having to go through the partnership accounts was worth considering further, as it would have simplified the administration of many partnerships and made easier the calculation of the allocation of profits.

#### *Part 1*

4. We think the provisions to put beyond doubt that where a partnership has a partner acting in the capacity of a bare trustee (normally on behalf of other partners) the beneficiaries are to be treated as the partners for tax purposes achieve their purpose.
5. One effect of the change is that the partnership return will have to name both the nominee partner and the beneficiary. The new rules will apply from 2018-19 and nominated partners (the partner nominated as being responsible for making a partnership return to HMRC) will need to ensure that they are aware of nominee arrangements.

#### *Part 2*

6. We think that the provisions introducing an 'indirect partner' which are aimed at dealing with partnerships with partners that are partnerships will achieve their purpose. The existing rules prescribe how the basis period rules, for the allocation of profits or losses, apply to individuals who are members of a partnership. The new provisions extend the rules to members of a partnership which is itself a member of a partnership. In most cases, we think, this amendment is unlikely to have much practical effect.

#### *Part 3*

7. This part introduces new provisions requiring additional information in a partnership return and statement where the reporting partnership is a partner in another partnership or where the reporting partnership (the 'bottom partnership') includes a partner which is itself a partnership (the 'top partnership').
8. The legislation requires the profits and losses of the bottom partnership to be calculated on 4 bases, unless the members of the top partnership are individually named (which may be administratively impossible in large multi-national partnerships). The 4 bases are as if any partnership that is a member of the bottom partnership were (i) a UK resident individual, (ii) a non-UK resident individual, (iii) a UK resident company, and (iv) a non-UK resident company.
9. While often there is little or no difference in the calculation of profits under the various bases in some cases there will be and, even if this measure is not as onerous as we think it will be, it will give rise to more work for some nominated partners.

#### *Part 4*

10. This part arises from suggestions to simplify the return requirements of investment partnerships when there is no UK tax at stake. While the government expects investment partnerships to continue to provide normal partnership returns this legislation does provide that, for returns made after Royal Assent, no unique taxpayer reference (UTR) will need to be included for non-UK partners if certain conditions are met. We welcome this relaxation.

## Part 5

11. Various cases over recent years have shown how difficult it is for an individual that is a partner in a partnership to comply with his/her own tax obligations to make a return that is correct to the best of his/her knowledge and belief if the partner disagrees with the information included in the partnership return. Current legislation requires that a partner include in his/her personal tax return the amount shown as allocated to him/her on the partnership return but how can the individual do this and sign the return as 'correct' if he/she disputes the allocation of partnership profits or losses in the partnership return?
12. It is understandable that HMRC does not like it when individual partners challenge the reporting of profits allocated to them by a partnership – despite there being successful appeals in this area – see the *Self* case and the recent *Robert King* case, and while the amendments made by Part 5 will provide more certainty in cases of dispute, they will also make the challenging of profit allocation more difficult for partners.
13. First, if a partner disagrees with the partnership return it is unclear what they should do until the position is resolved. Part 5 provides that the partnership return is 'conclusive'. So that seems to mean the partner must return on his/her personal tax return the amount allocated to him/her in the partnership return until the dispute over that allocation is resolved, even though in the individual's view his/her return will now not be 'correct' to the best of his/her belief. Also, a challenge to the allocation of profits/losses has to be made through the Tribunal and a successful outcome received before the partner's personal tax return can be 'corrected' – so potentially this means that he/she will be overpaying tax and then trying to claim it back. In our view this does not seem to reflect the relative 'power' of the individuals – everything will be in favour of the partnership and HMRC, rather than the hard-done-by partner.
14. Second, Part 5 does not extend to a dispute about the quantum (before allocation) of the partnership's profits or losses for a period. This was the subject of the dispute in the *King* case. As it stands it is only the allocation that can be challenged under the new rules. This would seem to mean that if a partner disputes the basic analysis as to whether an amount forms part of taxable profits he/she would not have any recourse under these new rules. We think the legislation should be amended to permit an appeal in such circumstances.
15. Third, Part 5 provides that a partnership return that has been the subject of a referral to tribunal may not be the subject of another referral (unless that is the first one after the return is amended). We do not understand why, if one partner has made a referral, no other partner should be able to make a referral, even on an unrelated matter. It would be more logical, and less expensive on all parties, if all disputes were resolved at the same time.
16. **The Chartered Institute of Taxation**
17. The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

18. The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.
19. The CIOT's 18,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

10 January 2018