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The Rt. Hon. Nicholas Ridley, M.P.,
Treasury Chambers,
Parliament Street,
London SW1P 3AG.

Dear Nicholas,

Our correspondence on the subject of simplifying the Tax Acts came to a fairly abrupt halt and in the normal way I would simply have abandoned the idea as impracticable.

I did not do this here because I was not convinced that it was so, while the subject-matter itself seemed sufficiently important to pursue despite the initial set-back. Instead, having been encouraged by comments of one or two whose views command respect, and the result of further work on the same lines, I am venturing to re-open the matter.

I reviewed the previous draft in the light of the points raised^{A1} - which did not of course affect questions of length or readability - but thought I ought to enlarge the sample by tackling a different passage as well. I decided upon Schedule 7 to the Finance Act 1977 because of its importance to the practitioner, coupled with its obscurity. I enclose my draft^{B2}, together with the original for comparison purposes, and again you will see a reduction in length of, to my mind, an astonishing 40% or so. I hope you will also agree that in spite of the retention of some obscurities - in view of the purpose of this exercise - the re-draft is much easier to understand.

Finally, I felt it would give a more balanced view if I worked on some "easier" provisions and I chose those dealing with personal allowances. I will not over-burden you with more paperwork unless you wish it but merely say that somewhat to my surprise I found that they were even more susceptible to clarification and general improvement by re-drafting.

The result of all this has been an appreciable up-grading in what I believe could be achieved coupled with the feeling that I should approach you again.

+ [Could you possibly find time for a short discussion, in particular of a proposal for evaluating the potential benefits and also the time and effort it would take. Briefly, the proposal is that there should be a short test run in conjunction with, say, two suitable Revenue officials; a couple of weeks should suffice.

Yours sincerely,

Peter M.B. Rowland.

enclosures:

2.30 - Engle Sir G.
- Graham P
- some
- Peter Lewis

Confidential

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|-------------------|-------------------------------|
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| REC. | - 5OCT1983 |
| ACTION | Mr P LEWIS - IR |
| COPIES TO | SIR G ENGLE (PARL COUNSEL) |
| | Mr C JENKINS (LAW COMMISSION) |
| | 4 October, 1983 |
| | PS IR |

Section 53.

Purchase of own shares by unquoted trading company

- (1) A payment made on or after 6 April 1982 by an unquoted company which is either a trading company or the holding company of a trading group on the redemption, repayment or purchase of its shares shall not be a distribution for the purposes of the Corporation Tax Acts if the conditions set out in subsections (2) to (6) are satisfied or if subsection (7) applies.
- (2) The redemption, repayment or purchase (in subsections (3) to (6) of this section and Schedule 9 referred to as "the purchase") must be made wholly or mainly to benefit a trade carried on by the company or any of its 75 per cent subsidiaries and must not form part of a scheme or arrangement a main purpose of which is;
 - (a) to enable the owner of the shares (hereinafter and in Schedule 9 referred to as "the vendor") to enjoy the company's profits without receiving a dividend; or
 - (b) the avoidance of tax.
- (3) The vendor and, if the shares are held through a nominee, the nominee, must be resident and ordinarily resident in the United Kingdom in the year of assessment in which the purchase is made and for this purpose the residence and ordinary residence of personal representatives shall be those of the deceased at his death and in the case of trustees shall be determined by Section 52 of the Capital Gains Act 1979. The reference to ordinary residence shall be disregarded in the case of a company.
- (4) The vendor must have owned the shares throughout the five years ending with the purchase, but ownership by a spouse who transferred shares to the vendor when they were living together shall be treated as the vendor's unless at the time of the purchase she is alive and they are not living together.
- (5) Where the vendor acquired the shares under the will, on the intestacy, or as personal representative, of a deceased owner, the ownership of the deceased (and of his personal representatives if other than the vendor) shall be treated as that of the vendor, and the period shall be three years rather than five.
- (6) The purchase must substantially reduce the vendor's interest subject to and as provided by Schedule 9, and the identification and other supplementary provisions of that Schedule shall also have effect.
- (7) Such a payment as is referred to in subsection (1) shall not be treated as a distribution if, so far as it is not applied in paying capital gains tax charged on the redemption, payment or purchase, it is wholly or substantially applied within two years of a death in discharging the payee's liability to capital transfer tax charged on that death, but only to the extent that discharging it otherwise than by the redemption, repayment or purchase of shares

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of a company falling within subsection (1) would have caused undue hardship.

SCHEDULE 9

Section 53. PURCHASE OF OWN SHARES BY UNQUOTED TRADING COMPANY

1. Shares which for capital gains tax purposes would be identified with earlier holdings under Chapter II of Part IV of the Capital Gains Tax Act 1979 (reorganisation of share capital, conversion of securities etc.), not being shares allotted for payment, or comprised in capital to which Section 34 of the Finance (No. 2) Act 1975 (stock dividends) applies, shall be so identified for the purposes of subsections (4) and (5). Subject thereto, shares acquired earlier shall be taken into account before shares acquired later and disposals shall be on a last in first out basis.

2.-(1) Subject to paragraph 8 below, where immediately after the purchase the vendor owns shares of the company the condition that his interest must be substantially reduced shall not be satisfied unless the percentages both of the nominal share capital which he owned, and of the profits available for distribution which he would have received on a full distribution, are lower by at least one quarter immediately after the purchase than they were immediately before.

(2). In determining the division of profits for the purposes of sub-paragraph (1) any person entitled to periodic distributions based on fixed rates or amounts shall be treated as receiving his maximum entitlement for a year.

(3) For the purposes of sub-paragraph (1), the "profits available for distribution" shall comprise £100 plus

- (a) the profits available for distribution for the purposes of Part III of the Companies Act 1980, plus,
- (b) the total of the amounts, if any, to which persons are entitled under (a) above

so however that in computing the profits available for distribution before the purchase there shall be substituted, if greater, the total amount payable by the company upon that and any contemporaneous purchase.

(4) References in this paragraph to entitlement are references to beneficial entitlement except in the case of trustees and personal representatives.

3. If immediately after the purchase any associate of the vendor owns shares of the company the combined interests of the vendor and his associates must subject to paragraph 8 below have been substantially reduced and the provisions of paragraph 2 shall be applied as though the vendor's interest included those of his associates.

1. In this Schedule -
 - (a) "Abroad" means outside the United Kingdom.
 - (b) "Day of absence" means a day of absence from the United Kingdom; a day at the end of which a person is in the United Kingdom is not such a day.
 - (c) "Qualifying period" means a period of days of which at least five-sixths are days of absence and in which there is no period of more than 62 consecutive days none of which is a day of absence.
 - (d) "Qualifying day" in relation to an employment means a day of absence which -
 - (i) is substantially devoted to the performance abroad of the duties of that, or of that and other, employments; or
 - (ii) is one of at least seven consecutive days on which the person is absent from the United Kingdom in order to perform such duties abroad and which (considered as a whole) are substantially devoted thereto; or
 - (iii) is one on which the person concerned is travelling in or for the purpose of performing such duties abroad.
 - (e) "Deductions" are deductions to be made in charging emoluments under Case I of Schedule E being emoluments which are net of capital allowances and the deductions mentioned in paragraph 5 of Schedule 2 to the Finance Act, 1974, and are eligible for relief under paragraph 5 below.
 - (f) "Employment" includes "office".

Long absences

2. Where in a year of assessment the duties of an employment are performed wholly or partly abroad in the course of a qualifying period of at least 365 days there shall be a 100% deduction from the emoluments attributable to such part of the period as falls within that year. Such emoluments include those for a period of leave immediately following the qualifying period but not so as to change the year of assessment to which emoluments relate.

Short or intermittent absences

3. Where in a year of assessment the duties of an employment are performed wholly or partly abroad and there are at least 30 qualifying days in that year, there shall be a 25% deduction from the emoluments attributable to such duties.

Foreign employments

4. Where in a year of assessment the duties of an employment with a person, body of persons or partnership resident outside, and not resident in, the United Kingdom are performed wholly abroad there shall be a 25% deduction from the emoluments from that employment.

Emoluments eligible for relief

5. (1) For the purposes of this paragraph, an employment is associated with another if they are with the same person or with persons associated with each other, and persons are associated if, applying Section 302 of the Taxes Act in the case of companies, and Section 534 in the case of an individual or partnership (whether or not in relation to a company), one controls the other or both are under the control of the same person or persons, so however that no individual is to be treated as under another's control.

(2) Where in a year of assessment the duties of an employment ("the relevant employment") or an associated employment are not performed wholly abroad the emoluments of the relevant employment eligible for relief under paragraph 2 shall not exceed such proportion of the emoluments from the relevant and any such associated employment as is reasonable having regard to the nature of and time devoted to the duties performed outside and in the United Kingdom respectively and to all other relevant circumstances.

(3) The emoluments eligible for relief under paragraphs 3 or 4 shall not exceed such proportion of the emoluments for the year from the relevant and any such associated employment as is reasonable applying the criteria set out in sub-paragraph (2) or, if higher, as equals the number of qualifying days in relation to the relevant employment in that year divided by the number of days in that year on which the relevant or an associated employment is held. For this purpose any day which is a qualifying day in relation to more than one employment shall count as a fraction of a day arrived at by dividing it equally between the different employments.

Supplementary

6. Duties performed on a vessel or aircraft engaged on a journey or on part of a journey which begins or ends outside the United Kingdom (but excluding any part of a journey beginning and ending in the United Kingdom) shall be treated as performed abroad and for this purpose any area designated under Section 1 (7) of the Continental Shelf Act 1964 shall be treated as part of the United Kingdom.

7. For the purposes of paragraph 2 if the duties of an employment in a year of assessment are in substance to be performed in the United Kingdom duties which are merely incidental to United Kingdom duties shall not be treated as performed abroad.

8. The provisions of Section 184 (2) of the Taxes Act relating to duties which are incidental to duties performed abroad shall not apply for the purposes of paragraphs 1, 2 or 3.

9. The same day may be taken into account for the purposes of paragraphs 1, 2 and 3 but only one deduction shall be allowed in respect of the same emoluments.

Long absences

1 (1) Where in any year of assessment -

(a) the duties of an employment are performed wholly or partly outside the United Kingdom; and

(b) any of those duties are performed in the course of a qualifying period which falls wholly or partly in that year and consists of at least 365 days,

then, in charging tax under Case I of Schedule E on the amount of the emoluments from that employment attributable to that period, or to so much of it as falls in that year of assessment, there shall be allowed a deduction equal to the whole of that amount.

(2) For the purposes of this paragraph a qualifying period is a period of consecutive days which either -

(a) consists entirely of days of absence from the United Kingdom; or

(b) consists partly of such days and partly of days included by virtue of sub-paragraph (3) below.

(3) Where, in the case of any person, a period consisting entirely of days of absence from the United Kingdom ("the relevant period") comes to an end and there have previously been one or more qualifying periods, the relevant period and the (or, if more than one, the last) qualifying period together with the intervening days between those periods shall be treated as a single qualifying period provided that -

(a) there are no more than 62 intervening days; and

(b) the number of days in the resulting period which are not days of absence from the United Kingdom does not exceed one-sixth of the total number of days in that period.

(4) For the purposes of sub-paragraph (1) above the emoluments from an employment attributable to a qualifying period include any emoluments from that employment for a period of leave immediately following that period but not so as to make any emoluments for one year of assessment emoluments for another.

(5) In relation to the year 1977-78 references in sub-paragraphs (1) and (4) above to a qualifying period include references to any period beginning before and ending after the commencement of that year which -

(a) is a continuous period of absence from the United Kingdom as defined in paragraph 2 of Schedule 2 to the Finance Act 1974; and

(b) so far as it falls after the commencement of that year, is (or is part of) a qualifying period as defined in sub-paragraph (2) above.

Shorter or intermittent absences

- 2 (1) Where in any year of assessment -
- (a) the duties of an employment are performed wholly or partly outside the United Kingdom; and
 - (b) the number of days in that year which are qualifying days in relation to the employment (together with any which are qualifying days in relation to other employments) amounts to at least 30,

then, in charging tax under Case I of Schedule E on the amount of the emoluments from the employment attributable to duties performed outside the United Kingdom in that year, there shall be allowed a deduction equal to one-quarter of that amount.

- (2) For the purposes of this paragraph a qualifying day in relation to an employment is a day of absence from the United Kingdom -

- (a) which is substantially devoted to the performance outside the United Kingdom of the duties of that employment or of that and other employments; or
- (b) which is one of at least seven consecutive days on which the person concerned is absent from the United Kingdom for the purpose of the performance of such duties outside the United Kingdom and which (taken as a whole) are substantially devoted to the performance of such duties as aforesaid; or
- (c) on which the person concerned is travelling in or for the purpose of the performance of such duties outside the United Kingdom.

Foreign employments

- 3 Where in any year of assessment -
- (a) the duties of an employment are performed wholly outside the United Kingdom; and
 - (b) the employment is with a person, body of persons or partnership resident outside, and not resident in, the United Kingdom,

then, in charging tax under Case I of Schedule E on the amount of the emoluments from the employment for that year, there shall be allowed a deduction equal to one-quarter of that amount.

Emoluments eligible for relief

- 4 (1) This paragraph has effect where a deduction falls to be allowed under the foregoing provisions of this Schedule in respect of the emoluments from an employment ("the relevant employment") for a year of assessment in which the duties of-

- (a) the relevant employment; or
- (b) any other employment or employments held by the person concerned which are associated with the relevant employment,

are not performed wholly outside the United Kingdom.

(2) The amount of the emoluments from the relevant employment in respect of which a deduction is allowed under paragraph 1 above for the year of assessment shall not exceed such proportion of the emoluments for that year from the relevant employment and the other employment or employments (if any) as is shown to be reasonable having regard to the nature of and time devoted to the duties performed outside and in the United Kingdom respectively and to all other relevant circumstances.

Earnings from Work done Abroad

(3) The amount of the emoluments from the relevant employment in respect of which a deduction is allowed under paragraph 2 or 3 above for the year of assessment shall not exceed -

- (a) the prescribed proportion of the emoluments for that year from the relevant employment and the other employment or employments (if any); or
- (b) such larger proportion of those emoluments as is shown to be reasonable having regard to the matters mentioned in sub-paragraph (2) above.

(4) In sub-paragraph (3) (a) above "the prescribed proportion" means the proportion which -

- (a) the number of days in the year of assessment which are shown to be qualifying days (as defined in paragraph 2(2) above) in relation to the relevant employment, bears to
- (b) 365, or if there is a part of the year of assessment in which he holds neither the relevant employment nor any employment associated with it, 365 less the number of days in that part;

and where a day is a qualifying day in relation both to the relevant employment and one or more other employments that day shall, for the purposes of paragraph (a) above, count in relation to the relevant employment as the fraction arrived at by dividing the day equally between the different employments.

(5) For the purposes of this paragraph an employment is associated with another if they are with the same person or with persons associated with each other and -

- (a) a company is associated with another company if one of them has control of the other within the meaning of section 302 of the Taxes Act or both of them are under the control within the meaning of that section of the same person or persons;
- (b) an individual or partnership is associated with another person (whether or not a company) if one of them has control of the other within the meaning of section 534 of that Act or both are under the control within the meaning of that section of the same person or persons;

but paragraph (b) above shall not be construed as requiring an individual to be treated in any circumstances as under the control of another person.

5 Paragraph 5 of Schedule 2 to the Finance Act 1974 (deductions from emoluments eligible for relief under that Schedule) shall apply also for the purposes of th

Supplementary

6 For the purposes of this Schedule a person shall not be regarded as absent from the United Kingdom on any day unless he is so absent at the end of it.

7 Notwithstanding section 184(3)(b) of the Taxes Act (duties performed on vessels and aircraft), there shall be treated for the purposes of this Schedule as performed outside the United Kingdom any duties which a person performs on a vessel or aircraft engaged on ;

(a) a voyage or journey beginning or ending outside the United Kingdom (but exclusive of any part of it which begins and ends in the United Kingdom); or

(b) any part beginning or ending outside the United Kingdom of a voyage or journey which begins and ends in the United Kingdom;

and for the purposes of this paragraph any area designated under section 1(7) of the Continental Shelf Act 1964 shall be treated as part of the United Kingdom.

8 Where an employment is in substance one the duties of which fall in the year of assessment to be performed in the United Kingdom, then, for the purposes of paragraph 1 above, there shall be treated as so performed any duties performed outside the United Kingdom the performance of which is merely incidental to the performance of the other duties in the United Kingdom.

9 Section 184(2) of the Taxes Act (performance in the United Kingdom of duties incidental to duties performed abroad) shall not be construed as affecting any question under paragraph 1 or 2 above where any duties are performed or whether a person is absent from the United Kingdom.

10. The same day may be taken into account for the purposes of both paragraphs 1 and 2 above but a deduction shall not be allowed in respect of the same emoluments under both those paragraphs or under either of them as well as paragraph 3 above..

11 In this Schedule references to an employment include references to an office.