About ICAS

The Institute of Chartered Accountants of Scotland ("ICAS") is the oldest professional body of accountants. We represent around 19,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies. ICAS is also a public interest body.

General Comments

ICAS welcomes the opportunity to comment on the proposals issued in the consultation document 'Modernising the taxation of corporate debt and derivative contracts'. Whilst the document contains lengthy and detailed analysis of some of the most difficult parts of the UK tax code, the level of resources which must have been dedicated to its production, and the quality of understanding and insight reflected in the analysis, is appreciated.

It may be with the benefit of hindsight, but the need for this lengthy consultation originates in the original decision in 1996 to base the tax treatment of corporate debt on accounting methodologies, without considering the mechanisms which would be appropriate to deal with the fact that HMRC and the Government does not control accounting rules. Accounting rules have always evolved and adapted to business circumstances, market developments and the needs of users. It will be appropriate to include in consideration of changes - to this or other parts of the legislation - learning points from the reflection of the need for such extensive changes in relatively short-lived legislation due to those dependencies, and greater future-proofing. Adopting a purposive direction is one of these steps but must be applied consistently through the full period of consultation planned. These learning points will also be useful in determining approaches to tax simplification, modernisation or new legislative drafting in the future.

We also note the establishment of a working group or groups to consider points of detail in these proposals; it will be extremely helpful to the many organisations affected if detailed minutes of the working groups, the areas of consideration, and rationale for decisions, can be made public on the HMRC website on a timely basis.

Many of the questions asked in the later parts of the consultation document are sector specific, or apply primarily to large groups with complex treasury functions. The ICAS representations below address primarily the points of broader concern and legislative principles; not all of the many and detailed questions have been answered.

Question 2.1

The comprehensive consideration of all of the issues raised might be expected to span at least two finance acts. With an introductory aim being "simpler and fairer" tax treatments, we question why the changes for 2014 – piecemeal as they will have to be – will only address abuse and not some of the other clear anomalies, correction of which may help businesses. A specific example provided by an ICAS member is included at Question 5.1 below; that core change in principle would be welcome from 2014.

Overall, for companies which will be changing their accounting treatments over the next few years, clarity of the tax consequences as early as possible in that consideration process will be helpful.

Questions 3.1 – 3.5

We agree with the logic in the approach outlined in paragraphs 3.18 to 3.21, to follow accounting treatments except when that does not result in taxing or relieving the profits, gains or losses etc. Circumstances when the 'exception' override would apply are attempted to be defined in figure 3, but need to be seen to be exhaustive and comprehensive; there should be no general power to overrule. This would suggest that clarity would be provided by being as specific as possible in the wording of 3.23 and in response to Q3.4. The ultimate objective would have to be that the application of such a general taxing provision to the myriad of practical circumstances permitted sufficient tax clarity and business certainty.
**Question 4.1 – 4.3**

This discussion starts from the premise that it will always be clear and certain that there is one economic profit arising from the financial transactions in mind; the definition of this for tax purposes would be the basis on which this would succeed or fail and early elaboration will be helpful.

It is interesting to see that the concept of ‘materially different’ is proposed; this in itself would need explanation or couching in terms of the intended tax result, whether by a set percentage or absolute monetary amount.

These provisions appear to be approaching a targeted anti-avoidance measure, but that need should be considered in the light of the recently enacted general anti-abuse rule ("GAAR"); clarity is needed on whether such a provision is actually required in light of the GAAR enactment.

**Question 5.1**

We strongly support this proposal set out in paragraphs 5.12 to 5.15; this will bring simplicity, be more logical and avoid tax charge volatility. The choice of accounting standard should be tax neutral if the objectives of fair financial reporting are to be achieved, albeit timing issues may arise; taxing only 'profit and loss account' items as a principle is probably the most straightforward way to achieve this. This is a good example of a change that could take place from 2014.

**Questions 6.1 – 6.3**

It is conceptually clearer and easier to follow one set of legislative provisions rather than two, where there may be confusion as to which detailed provisions are to be followed; the benefit of the codes being combined would be shorter and more coherent legislative provisioning. This has parallels in the projects over recent years to consolidate, or rewrite, old legislation. Whilst change for change's sake is cumbersome, simplified provisions may be easier to follow, to educate practitioners in and have correspondingly simplified guidance, with better compliance outcomes. The clarity of communication of changes will determine whether any difficulties are properly addressed.

**Questions 8.1 – 8.3**

Tax neutrality on intra-group transfers is an important commercial consideration, one which supports the flexibility of business structures within the UK and so its competitiveness. Such a provision is also consistent with other areas of the UK tax code, such as on physical asset transfers; we do not consider sufficient policy reason had been proposed to justify divergence from that basis.

**Questions 10.1 – 10.4**

We are supportive of the aim of simplification of the provisions in this area and in particular in connection with the "disregard regulations" of SI 2004/3256. We have had feedback from our members that they have found it difficult to interpret and to design systems to comply with all the requirements of the legislation as it currently stands.

We are aware that not all taxpayers will have fully considered the impact of the changes to the accounting standards affecting this type of instrument and we feel that it is important that any changes made to the tax rules are able to accommodate future changes to the accounting position and that the rules will not need to be updated again when these come into play. The comments made above under general comments apply to this position and we hope that these can be taken into account with a suitable period for future consultation as appropriate.