

**TAXGUIDE 5/06**

**GUIDANCE NOTE ON THE TAX ASPECTS OF UITF  
ABSTRACT 40**

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# GUIDANCE NOTE ON THE TAX ASPECTS OF UITF ABSTRACT 40

## BACKGROUND

### Purpose of guidance note

1 This purpose of this note is to provide guidance to members on the tax implications of UITF Abstract 40 (UITF 40). This guidance note is concerned solely with the tax aspects and if members are in doubt as to the accounting implications of UITF 40 they should consult the appropriate accounting practice in this area. This includes UITF 40, SSAP 9 *Stocks and Work in progress* and Amendment to FRS 5 *Reporting the substance of transactions: revenue recognition*.

2 Readers should also refer to the ICAEW guidance note on UITF that was published on 28 April 2006, available online <http://www.icaew.co.uk/index.cfm?route=135435>. At the time that the present guidance is being prepared, in mid July 2006, the ICAEW is seeking to have the April (accounting) guidance note endorsed by the other five members of the CCAB, the UK and Irish accountancy umbrella body.

### Tax, GAAP and TAX 30/98

3 Since the withdrawal of the so-called 'cash basis' for professional firms in 1998, for tax purposes the profits of professional firms taxable under Schedule D case I or II must be calculated in accordance with UK generally accepted accounting principles ((GAAP) (section 42, FA 1998). At the time, the Tax Faculty produced guidance (TAX 30/98) on the withdrawal of the cash basis which was agreed with the Inland Revenue and published in Issue 38 (December 1998) of the Tax Bulletin. The note was designed to give practical help based upon Accounting Standards and practices current at November 1998. The guidance confirmed the basic principle that the accounts of professional firms should be computed on a true and fair basis and that this would require the inclusion of overheads in work-in-progress, although it allowed smaller firms some flexibility in doing so.

### TAX 30/98 and revenue recognition

4 The question of how professional firms should recognise revenue was not addressed in detail in TAX 30/98. However, paragraph 48 stated that:

*Profit cannot be deferred by leaving jobs in work-in-progress after they have reached a billable stage. Once a job has been completed the billable amount should normally be recognised as a debtor rather than work-in-progress.*

5 In other words, UK GAAP in relation to recognition of revenue was that revenue on completed contracts should be recognised.

6 UITF 40 now provides, for the first time in UK GAAP, detailed provisions on how a service provider should recognise revenue. The result is that the earlier guidance for professional firms set out in TAX 30/98 is overtaken, at least as regards how revenue should be recognised, by UITF 40. For many firms of service providers, therefore, the adoption of UITF 40 is likely to result in a change in accounting basis in respect of how revenue is recognised.

## CHANGE IN BASIS: INCOME TAX RULES

### Tax rules where there is a change in accounting basis

- 7 FA 1998 set out new rules for calculating the tax charge where there was a change of accounting basis and both the old and new accounting bases complied with GAAP. These rules were rewritten in 2002 (see section 64, FA 2002 and Schedule 22) and, for income tax purposes only, have now been rewritten again as part of the Tax Law Rewrite Project. The income tax rules are now found in section 226 to 240, Income Tax (Trading and other Income) Act 2005 (ITTOIA 2005), which came into force with effect from 6 April 2005. Because of various changes that were made in ITTOIA 2005 and the abolition of the ‘Schedular’ approach for income tax purposes, we now have two similar but separate systems for dealing with an adjustment on a change in basis, one for income tax (in ITTOIA 2005) and one for corporation tax (in the FA 2002).

### How to calculate the adjustment income on a change of basis

- 8 The accounts for the period in which the new basis is adopted should be drawn up fully on the new basis. This means that the closing and opening uncompleted work must be ‘revalued’ in accordance with UITF 40. The difference between the opening valuation pre UITF 40 and post UITF 40 will be the adjustment income (in other words adjustment income is the prior year adjustment). Any uplift in the value of uncompleted work at the year end pre and post UITF 40, less the amount already taken to adjustment income, will be included as part of the trading profit for the year of change.
- 9 The adjustment income is treated as arising on the last day of the year in which UITF 40 is adopted and the general rule is that all adjustments are taxed in full in the year of the change. However, any adjustment arising as a result of applying UITF 40 is subject to an automatic spreading relief (described in more detail in the section **Spreading Relief** below) such that the adjustment income is spread over a period of three years and in certain circumstances up to six years.
- 10 The detailed steps for calculating the full amount of adjustment income are set out in section 231, ITTOIA 2005. If a change in basis resulted in profits being overstated, this will result in an ‘adjustment expense’ and this will reduce the ‘adjustment income’. For individual taxpayers who usually pay tax on their profits at the basic or lower rate, the additional charge may result in some income being taxed at a higher rate.

### **Example**

*Let us assume that Mr A, a sole trader service provider with a year end of 31 December will earn taxable profits for 2005 of £60,000 before any adjustment for UITF 40. His expenses are minimal and he does not record any WIP in accordance with paragraph 29 of TAX 30/98. He usually has about two to three months’ worth of uncompleted work at the year end. Note that in practice the value of the ‘right to consideration’ as defined in UITF 40 is not necessarily equal to the selling price, but the latter is used to illustrate the impact.*

*The accounts for the year ended 31 December 2005 will be subject to the rules of UITF 40. Mr A should accrue in his accounts the value of the right to receive*

*consideration in respect of uncompleted work. Mr A undertakes an analysis of his outstanding work at 31 December 2005 and determines that the value of the outstanding work at selling price was £15,000.. He now undertakes a similar exercise in respect of the year to 31 December 2004. The value of uncompleted work at the end of 31 December 2004 was determined to be £12,000.*

*The prior year adjustment under UITF 40 is £12,000 and this is the adjustment income under section 231, ITTOIA 2005. The difference between the two figures as at 31 December 2005 and 31 December 2004 respectively is included in trading profits for the year ended 31 December 2005. The final figures for tax purposes are therefore:*

|   |                |
|---|----------------|
| <i>Adjustment income</i>                    | <i>£12,000</i> |
| <i>Profits for the y/e 31 December 2005</i> | <i>£63,000</i> |

*It is only the adjustment income figure of £12,000 that can be spread under Schedule 15 of the 2006 Finance Bill.*

### **Payment of tax on adjustment income**

- 11 Adjustment income (whether or not subject to spreading relief – see below) will not be included in the calculation of the interim payments on account of tax for the year in which the change occurred because the interim payments are calculated by reference to the taxable profits for the previous year. The amount will be included in the final balancing payment due on 31 January following the end of the tax year in which the change in basis occurred.

### **Example**

*Let us assume that a service provider has a year end of 30 September. The first accounting period affected by UITF 40 is the year to 30 September 2005. For tax purposes, any uplift in profit arising as a result of applying UITF 40 will be treated as arising on the last day of the first accounting period affected, namely 30 September 2005. This accounting period will form the basis for the tax charge in the year 2005/06. The increased element of the tax charge will be taxed as adjustment income and will be due on 31 January 2007, the due date for submission of the self assessment return for 2005/06 and the date of payment of any final tax liability for that year.*

- 12 The above date (31 January 2007) will also have applied to all firms with a year end falling from after the start date of UITF 40 up until 5 April 2006. For service providers with year ends after 5 April 2006 but before 22 June 2006, any adjustment income will arise in the year 2006/07 and the tax charge will be payable on 31 January 2008.
- 13 Note that this is a permanent advancement of taxable profits not just a timing difference that reverses the following year.

### **Payments on account for the following years**

- 14 The interim payments for the next tax year will be based upon the total amount charged to income tax for the year of the change. This will include any adjustment income charge (subject to spreading relief – see below). Where spreading applies

there will also be adjustment income in years two and three (and in certain circumstances into years four to six), so that interim payments in those later years will need to reflect the higher level of taxable profits.

## **SPREADING RELIEF**

15 All references below in this guidance note are to paragraph numbers in Schedule 15 of the Finance Act 2006 [The House of Lords Bill was available at the time this guidance note was finalised and there will be no changes to the paragraph numbering before enactment.]

### **Spreading relief for UITF 40 adjustment income**

16 Following representations, the Government announced in the 2005 Pre Budget Report a spreading relief for those service providers facing an adjustment income charge. Full details of the spreading relief are set out in Schedule 15 to the 2006 Finance Bill. Paragraph 2 provides that any adjustment income will be spread over three years but in certain circumstances the spreading may be extended to six years.

### **Start date**

17 Paragraph 1(1) states that spreading relief is only available to businesses in respect of changes brought about by UITF 40 in the accounting period which includes the date 22 June 2005.

18 Spreading will therefore not be available:

- where businesses adopted UITF 40 earlier than its official start date of 22 June 2005 (ie. in the period from publication of UITF 40 on 10 March 2005); or
- in respect of any changes caused by the adoption of Application Note G; or
- where businesses deferred the adoption of UITF 40 because they believed that the FRSSE 2005 allowed them to do so (although this interpretation of the FRSSE has not been accepted either by the ICAEW or HMRC).

19 The first two of these categories are known as the 'early adopter' problem. Although we have made representations to Government to allow spreading relief in these circumstances, Government has not acceded to our request.

### **How the relief is calculated**

20 Paragraph 2 states that the adjustment income that is treated as arising and chargeable to tax in the first three years is the lower of:

- One-third of the adjustment income; and
- One-sixth of the profits of the business, *before* capital allowances and any other reductions in profit reflecting other changes in accounting policy.

21 If the adjustment income is more than 50 per cent of business profits (assuming for the purpose of illustration that the profits remain unchanged throughout the three year period) then all the adjustment income will not be taxed in the first three years and will then be spread into year four and if necessary into years five and six. In the fourth

and fifth years the same two tests are applied as in years one to three, but the adjustment income that is taxed in these years is limited to the remaining adjustment income that is so far untaxed. In year six all the residual adjustment income is taxed.

- 22 The amount is subject to the taxpayer electing to bring forward some or all of the adjustment income (see below).

**Example**

*A business has profits each year of £60,000 and adjustment income of £75,000. What will be the spreading relief available?*

*The one sixth profit test is £10,000. This is less than one third of adjustment income, £25,000, so £10,000 of adjustment income is taxed in years one to three. At the end of year 3, £45,000 of adjustment income remains to be taxed and in years 4 and 5 this is still subject to the one-sixth of business profits limit of £10,000. At the end of year 5 £50,000 of adjustment income has been taxed leaving £25,000 untaxed and all that amount is taxed in year 6.*

**Table of adjustment income levels and associated tax charges, pre and post spreading**

- 23 Set out below is a table of the impact of the spreading relief for a variety of levels of adjustment income. It assumes a service provider has annual profits in future years of 100 and pays tax at 40%.

| Adjustment income | Tax – no spreading | Adjustment income and tax charge (%) with spreading |        |        |        |        |        |
|-------------------|--------------------|---|--------|--------|--------|--------|--------|
|                   |                    | Year 1  | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 |
|                   | %                  |   |        |        |        |        |        |
| Nil               | 40                 |   |        |        |        |        |        |
| 10                | 44                 | 3.3   | 3.3    | 3.4    |        |        |        |
|                   |                    | 41.3%   | 41.3%  | 41.4%  |        |        |        |
| 20                | 48                 | 6.7   | 6.7    | 6.6    |        |        |        |
|                   |                    | 42.7%   | 42.7%  | 42.6%  |        |        |        |
| 30                | 52                 | 10  | 10     | 10     |        |        |        |
|                   |                    | 44%   | 44%    | 44%    |        |        |        |
| 40                | 56                 | 13.3  | 13.3   | 13.4   |        |        |        |
|                   |                    | 45.3%   | 45.3%  | 45.4%  |        |        |        |
| 50                | 60                 | 16.7  | 16.7   | 16.6   |        |        |        |
|                   |                    | 46.7%   | 46.7%  | 46.6%  |        |        |        |
| 60                | 64                 | 16.7  | 16.7   | 16.6   | 10     |        |        |
|                   |                    | 46.7%   | 46.7%  | 46.6%  | 44%    |        |        |
| 70                | 68                 | 16.7  | 16.7   | 16.6   | 16.7   | 3.3    |        |
|                   |                    | 46.7%   | 46.7%  | 46.6%  | 46.7%  | 1.3%   |        |
| 80                | 72                 | 16.7  | 16.7   | 16.6   | 16.7   | 13.3   |        |
|                   |                    | 46.7%   | 46.7%  | 46.6%  | 46.7%  | 45.3%  |        |
| 90                | 76                 | 16.7  | 16.7   | 16.6   | 16.7   | 16.7   | 6.7    |
|                   |                    | 46.7%   | 46.7%  | 46.6%  | 46.7%  | 46.7%  | 42.6%  |
| 100               | 80                 | 16.7  | 16.7   | 16.6   | 16.7   | 16.7   | 16.7   |
|                   |                    | 46.7%   | 46.7%  | 46.6%  | 46.7%  | 46.7%  | 46.6%  |

|     |     |       |       |       |       |       |       |
|-----|-----|-------|-------|-------|-------|-------|-------|
| 150 | 100 | 16.7  | 16.7  | 16.6  | 16.7  | 16.7  | 66.7  |
|     |     | 46.7% | 46.7% | 46.6% | 46.7% | 46.7% | 66.6% |
| 200 | 120 | 16.7  | 16.7  | 16.6  | 16.7  | 16.7  | 116.7 |
|     |     | 46.7% | 46.7% | 46.6% | 46.7% | 46.7% | 86.6% |

- 24 Note that that the one sixth limit is by reference to the trading profits of that year and not the year in which the UITF 40 adjustment arose, In the above example, we have assumed that profits will remain constant. Where profits increase, the one sixth limit will increase with the result that the spreading adjustment will increase.

### **Spreading applies automatically**

- 25 The spreading relief set out in Schedule 15 applies automatically where the conditions are satisfied. There is no need to make a claim for spreading. The only time a claim is in point is if a taxpayer wants to accelerate any charge due under the spreading relief rules.

### **Election to accelerate the spread adjustment income charge**

- 26 The amount taxed can be increased to any amount the taxpayer chooses up to the amount of the adjustment income not brought into tax so far. The original amount of adjustment income is then reduced by the additional amount brought into tax.

#### **Example**

*Continuing with the facts of the example in paragraph 22 above (How the relief is calculated), the taxpayer may have decided in year 2 to be taxed on adjustment income of £35,000. The original amount of adjustment income, £75,000, is reduced by that amount to £40,000. In year 3, one-sixth of profits is £10,000 and one-third of the amended adjustment income, £40,000, is £13,333 so £10,000 is again taxed in year 3. The total amount of adjustment income untaxed is now £20,000. In years 4 and 5 £10,000 of adjustment income is again taxed, representing one-sixth of profits, but at the end of year 5 all the adjustment income has been taxed and there is no additional tax in year 6.*

- 27 Any election to advance any adjustment income must be made on or before the first anniversary of the normal self assessment filing date for that tax year.

### **Spreading relief on the cessation of the business**

- 28 If the business ceases permanently, the balance of adjustment income not taxed so far is still spread but the one-sixth of profits rule is no longer applicable. As a result one third of the adjustment income is taxed in the remaining periods, subject to the amounts taxed so far.

#### **Example**

*Continuing with the previous example and ignoring the election to accelerate the charge, assume that the business ceased permanently at the end of the first year. In year 1 the one-sixth rule applied and £10,000 of adjustment income was charged leaving £65,000. After the cessation, in years 2 and 3 the one-third rule applies and £25,000 is charged in each year which together with the charge in year 1 means that £60,000 has been brought into charge. This leaves £15,000 to be brought into charge and as it is less than one-third of the original adjustment income it is fully charged in year 4.*



## **PARTNERSHIPS**

### **Adjustment income**

- 29 The same general rules for calculating adjustment income as described above apply also for partnerships. However, when the calculated adjustment income is then allocated to the partners, the basic rule is that it is allocated between the partners in the profit sharing arrangements applying in the 12 months *preceding* the period of change (s 860(4) ITTOIA 2005). One effect of this rule is that partners leaving the firm will have to bear tax on adjustment income, even though it falls into tax in the fiscal year after they have ceased to be a partner in the firm.

### **Spreading relief**

- 30 The above rule for allocating adjustment income to partners is further modified where the adjustment income is spread in accordance with paragraph 7(3) of Schedule 15. The allocation rule for the first year that the income is spread follows that set out in ITTOIA, ie it is based on the profit sharing ratios in the 12 months *preceding* the period of change. For subsequent years, the adjustment income is then spread in accordance with the profit sharing ratio of the year following the year that was used to determine the person's share for that year. In other words, adjustment income for the following year will be allocated in accordance with the profit sharing arrangements for the previous year, and so on in later years where there is adjustment income that has to be allocated to partners.
- 31 The result of this modified rule is that, for retiring partners, they will only be taxed on a share of the adjustment income in that first year, because adjustment income for future years will be allocated in accordance with the profit sharing ratios after that person had ceased to be a partner.
- 32 The above rules apply in full to partnerships whether they are LLPs or unlimited partnerships. The cessation rules described above only apply if the partnership as a whole ceases trading and not if there is a change in the membership.

### **Example**

*In the first year in which UITF 40 is adopted the amount of adjustment income chargeable on the partnership is shared between the partners in their profit sharing ratios for the twelve months immediately before the date on which the change of accounting practice was adopted. So, if UITF 40 is adopted for the accounts ended 30 September 2005 the amount charged will be shared between the partners based on their profit sharing ratios in the year to 30 September 2004.*

*In the following year the amount chargeable on the partnership is shared by reference to the profit sharing ratios in the twelve months immediately following that used to determine the shares in the previous year i.e. in year 2 in accordance with the profit sharing ratios in the year to 30 September 2005.*

### **Remaining problems with spreading**

- 33 There may still be problems for partnerships where retiring partners, or partners whose profit shares go down, have to pay tax on more income than they receive,



although if spreading applies any amounts allocated will be, at maximum, one third of the original calculated adjustment income. It may be sensible for partnerships to consider introducing tax indemnity clauses into partnership agreements particularly in respect of exiting partners who are taxable on profits which they did not receive.

## **COMPANIES**

### **Provision of services through a company**

34 The cash basis only applied to professional firms. For tax purposes, the profits of professional services carried out through, say, a company, have always had to be computed using GAAP. The guidance in TAX 30/98 only applied to professional services firms rather than professional services companies.

35 However, given that UITF 40 for the first time sets out how revenue should be recognised, the adoption of UITF 40 will also mean that many incorporated service providers will also have a change of accounting basis in respect of how revenue is recognised.

### **Adjustment income**

36 As noted in para 7 above, companies remain subject to the rules set out in section 64, FA 2002, as amended by section 81, FA 2005. Any adjustment income arising as a result of a change in the accounting basis that has not already been brought into account for tax purposes will be subject to a charge to corporation tax as a trading receipt. The detailed steps for the calculations are set out in Schedule 22 of the FA 2002. The charge was treated as arising on the last day of the first period for which the new basis is adopted. However, section 81, FA 2005 amended this rule so that for accounting periods beginning on or after 1 January 2005, the charge is now treated as arising on the *first day* of an accounting period.

### **Spreading relief**

37 For corporation tax, paragraph 9 sets out a similar spreading provision to that set out above for income tax purposes. The one-sixth limitation is by reference to the profits of the business for that period, being the profits of the trade concerned.

### **Accounting periods of less than twelve months**

38 Where a company changes its accounting date or goes into administration and there is an accounting period of less than twelve months, the spreading relief is modified. Paragraph 11 states that the 'one third' adjustment will be reduced by the proportion that the short period bears to twelve months. This adjusted figure will then be compared to one sixth of the business profits for that period.

### **Election to accelerate the spread adjustment income charge**

39 Companies may also elect to accelerate any spreading relief. Any election must specify the amount to be included in that period and the election must be made on or before the first anniversary of the filing date for the company's tax return.

### **Spreading relief where company ends or ceases business**

40 If an accounting period ends by reason of the company ceasing to be within the charge to corporation tax or winding up proceedings are commenced, then the

remaining part of any adjustment income not yet brought into charge will be brought into charge.

- 41 Where a company ceases to carry on the business but the accounting period is not brought to an end for one of the above reasons, spreading will continue but the one sixth limit will not apply.

## **OTHER POINTS**

### **Set off of adjustment income against losses**

- 42 For the purposes of loss relief, adjustment income is treated as profits of the trade and losses can be set against the adjustment income in the same way as if the adjustment income was normal trading income. For example, for income tax purposes the adjustment income may be set against brought forward trading losses under section 385, ICTA 1988.

### **National Insurance contributions**

- 43 The adjustment income charge is not subject to Class 4 NICs. This is because such a liability arises only in respect of profits chargeable to income tax as profits of a trade.

### **Pensions**

- 44 An adjustment income charge is treated as income for pension purposes.

### **Tax credits**

- 45 An adjustment income charge will be part of miscellaneous income (not trading income) for tax credits purposes. Miscellaneous income is the category which sweeps up all other income. The charge may result in recipients of tax credits having received more tax credits than they are entitled to, when their awards are revised to reflect actual income after the end of the year. This would only apply if the current year income, including the adjustment income, had increased by more than the income disregard, which was increased from £2,500 to £25,000 for 2006/07.
- 46 For the following year, the payments may be too low as they will be based on the prior year's income which included the adjustment charge. It may be advisable to notify the Tax Credits office of the change in income so that awards can be recalculated in-year.

## **DISCLOSURE ON THE TAX RETURN**

### **Individuals**

- 47 There is no specific box for total adjustment income before spreading so it is recommended that this total amount is entered in the 'white space' relating to the self employed pages or, alternatively, in the white space at the end of the return.
- 48 The amount taxed in the year, after spreading relief, is entered in box 3.82 of the self employment pages. If an election is made to increase the amount charged then the full amount taxable should be recorded in box 3.82 with details again provided in the white spaces so that the subsequent spreading calculations can be justified.

### **Partnerships**

49 The adjustment income chargeable on the partnership after spreading relief is entered on box 3.82 of the partnership return. This amount is then transferred to box 11 A of the partnership statement from where it is allocated to the partners who will bear tax individually on the amount treated as chargeable to tax, using the required profit sharing rule.

### **Companies**

50 As any adjustment is treated as a trading receipt, for corporation tax there is no separate adjustment income. There is no separate box on the CT 600, the adjustment income will merely be a component of trading profit once spreading relief has been calculated. If a change in basis resulted in profits being overstated, the decrease in profits is deducted from the trading profits.

## **THE FUTURE**

### **The status of TAX 30/98**

51 As noted above, UITF 40 is likely to change the way that many professional service providers recognise revenue on uncompleted contracts. Where revenue is recognised on uncompleted contracts, it will obviate the need to calculate work-in-progress in respect of those contracts. Now that UITF 40 is in force, much of TAX 30/98 is superseded. At the time of writing (14 July 2006), we are considering with HMRC what further guidance should be issued in this area to replace TAX 30/98 and we will advise further in due course.

### **Helpsheet 238**

52 HMRC has published a Helpsheet designed primarily to assist unrepresented taxpayers apply UITF 40. Following the publication of the further ICAEW guidance on UITF 40 published in April 2006, Helpsheet 238 is likely to need some revisions. It is our intention to pick up these points with HMRC when we discuss updating TAX 30/98 with them and we will advise members further on this in due course.

### **Amendment of earlier returns**

53 Concerns was expressed shortly after the publication of UITF 40 that any change should be backdated to the original date of the amendment to FRS 5 in November 2003. This is not the case and HMRC confirmed to us that it will accept accounts prepared in accordance with UITF 40 from the date it comes into force (22 June 2005) and that it will not seek to amend the accounts for earlier years that were prepared in accordance with the provisions of TAX 30/98.

54 If service providers adopt UITF 40 from an earlier date, then this will of course be acceptable but it will advance any adjustment income charge and as noted in para 18 above, no spreading will be available. Similar considerations apply to those who have changed their accounting policy in this area as a result of the issue of the earlier Application Note G in November 2003.

55 Where service providers have prepared accounts and tax returns in accordance with UITF 40 principles, but before 22 June 2005, as noted above spreading will not be

available. Is there anything that can be done to obtain the benefit of spreading? One suggestion is that taxpayers are entitled, under section 9ZA TMA 1970, to amend a return within twelve months of the filing date.

**Example**

*A taxpayer has a year end of 31 March and adopted UITF 40 on publication, the accounts to 31 March 2005 would include any UITF 40 adjustments and the profits for that year would be subject to tax in the year 2004/05. The tax return was submitted on 30 November 2005. The filing date was 31 January 2006 and the taxpayer has twelve months from that date in which to amend his tax return, ie. any amended return must be submitted by 31 January 2007. He could consider amending his 2004/05 return to reverse the UITF 40 adjustment and instead include it in the accounts to 31 March 2006, which will form the basis period for 2005/06, the return for which will also be due on 31 January 2007. This would enable the taxpayer to benefit from the spreading relief set out in Schedule 15.*

- 56 Technically the amendment rule would appear to allow taxpayers to amend their returns in this way. However, it appears that HMRC disagree with this interpretation of section 9ZA although it is not easy to see what are the grounds for this approach.
- 57 If the return is capable of being amended in this way, one consequence is that the enquiry window will be extended to the quarter day next following the anniversary of the day that the amendment was made. Thus in the above example, if an amended return for 2004/05 was submitted on 10 October 2006, the enquiry window would run from that date until 31 October 2007.
- 58 Where taxpayers adopted the principles of UITF 40 in a period prior to the accounting period before that in which UITF 40 came into force, then taxpayers would have to rely on the error or mistake relief set out in section 33 TMA 1970. This might arise, for example, if a taxpayer adopted such principles on the basis of Application Note G, which was published on 30 November 2003. If the taxpayer's year end was 31 December, this would mean that the accounts for 31 December 2003 would include the relevant adjustments and it would be included in the profits for the tax year 2003/04 rather than 2004/05 as set out in the above example.
- 59 It is doubtful if in these circumstances the taxpayer has made an error as the accounting treatment they adopted was not wrong. In addition, at the time the return was submitted, no mistake had been made. Error or mistake claims are likely to be resisted by HMRC, and are probably unlikely to succeed.

**What should you do now?**

- 60 The precise impact of UITF 40 will vary according to the particular circumstances of the service provider. The following actions should be considered:
- Given that this change applies to all service contracts, firms and their clients providing services need to identify the impact of UITF 40 on their businesses and the tax implications of any UITF 40 adjustments.

- Service providers need to estimate their likely charge, taking into account any spreading, and the dates on which any adjustment income charges will fall, so as to ensure that there are sufficient funds available to settle the tax due. For most service providers, this will mean planning to meet the first additional liability on 31 January 2007.
- Service providers should seek to maximise their cash flow to meet any charge. They should seek to bill work as soon as commercially practicable and ensure that cash is reserved to meet a projected adjustment income charge and any potential increase in the payments on account.
- For the future, service providers will need to review their contractual arrangements and should seek to align as far as possible their cash flows with the recognition of revenue for accounting purposes.

### **Further help**

61 Readers should also refer to the practice management material produced by the ICAEW's Member Services team and available from the ICAEW. A CCH Tax Digest on UITF 40 written by Rebecca Benneyworth will be available shortly.

*The above provides general guidance and do not purport to deal with all possible questions and issues that may arise in any given situation. Primary source material should always be consulted. No responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this guidance can be accepted by the authors or Institute.*

**ICAEW Tax Faculty**  
**14 July 2006**