



## **PARTNERSHIP TAXATION: PROPOSALS TO CLARIFY TAX TREATMENT**

ICAEW welcomes the opportunity to comment on the [partnership taxation: proposals to clarify tax treatment](#) draft legislation published by the HMRC on 13 September 2017.

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## MAJOR POINTS

1. ICAEW welcomes the opportunity to comment on the [partnership taxation: proposals to clarify tax treatment](#) draft legislation published by the HMRC on 13 September 2017.
2. We responded to the original consultation last year in [ICAEW REP 170/16](#) in which we noted that the intention of the consultation was to address areas where HMRC feel the rules have become unclear or do not reflect commercial practice. We also noted in paragraph 1.3 of the consultation document itself that the proposals would “have no effect on the vast majority of partnerships.”
3. We are concerned that some of the measures to which the draft legislation relates will have unintended consequences for the many partnerships which is contrary to the original policy intention.
4. We strongly recommend that HMRC revisits the review of partnerships carried out by the Office of Tax Simplification in January 2015, and in particular, recommendation five of the report which focuses on specific expenditure.

## **CLAUSE 2: ALLOCATION OF FIRM'S PROFITS OR LOSSES BETWEEN PARTNERS**

5. Clause 2 (2) introduces new rules to clarify the allocation of profits or losses for tax purposes, and requires that taxable profits are allocated on the same basis as the accounting profits of the partnership.
6. There are a number of commercial reasons why taxable profits are not allocated in the same proportion as accounting profits, the most common example being disallowable expenditure, ie, private use of car adjustments which relate directly to a particular partner. In such cases the disallowable expenditure will be allocated to the specific partner rather than being adjusted for at the partnership level. Other instances where the allocation of profits might differ includes where there are fixed share partners – in this case the tax adjustments might be allocated to the variable share partners.
7. As currently drafted, the legislation will affect these commercial arrangements which we do not believe to be the original policy intention.
8. Clause 2 (4) deals with the position of corporate partners. Current practice is to allocate a share of accounting profit which is considered to be an appropriate return on capital. Under the new provisions the situation could arise where the taxable profits of the partnership are much higher than the accounting profit of the partnership. This would result in the corporate partner being taxed on a greater share of taxable profits which no longer reflects an appropriate return on capital. We understand that in this case the excess taxable profit could need to be reallocated to one or more of the individual partners. Is this an intended effect of the draft legislation?

## **CLAUSE 6: PARTNERSHIP RETURNS: SHARES OF PROFITS AND LOSSES**

9. Clause 6 (4) deals with a new mechanism to refer disputes in relation to allocated profits and losses to the Tribunal.
10. Clause 6 (4) states that a partner is unable to refer a dispute about the information in the partnership return to the Tribunal “to the extent that it is in substance about the amount (before sharing) of the partnership’s profits or losses for a period”. We are not clear why a partner’s ability to refer a dispute is restricted in this way.
11. It is not clear why, in clause 6 (11), a partnership return which has been subject of a referral to the Tribunal cannot be the subject of another referral (unless it is the first referral following an amendment to the return).