These notes refer to the Taxation (International and Other Provisions) Act 2010 (c.8) which received Royal Assent on 18 March 2010

TAXATION (INTERNATIONAL AND OTHER PROVISIONS) ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Double taxation relief

Chapter 2: Double taxation relief by way of credit

Section 41: Amount of limit

125. This section restricts the total credit which may be allowed against income tax and capital gains tax. It is based on sections 790(3) and 796(3) of ICTA and section 277(1) of TCGA.

126. In applying the limit, *subsection (2)* takes the person's income tax and capital gains tax liabilities together. This minor change brings the law into line with practice. See *Change 6* in Annex 1.

127. The reference to section 414 of ITA (gift aid) in the definition of "A" in subsection (2) includes by implication a reference to section 426 of that Act (election by donor: gift treated as made in previous tax year).

128. Section 796(3) of ICTA refers to "total income tax" and, as applied by section 277(1) of TCGA, to "total capital gains tax". Attempting to spell out the meaning of these expressions could change their scope, with repercussions which could be difficult to predict. Accordingly, subsection (2) retains these expressions.

129. Also, persons other than individuals cannot make gift aid donations falling within section 414 of ITA. But the scope of "total income tax" and "total capital gains tax" in subsection (2) is not entirely clear. Accordingly, this section follows the source legislation in using "person" rather than "individual", to preserve the possibility that, in a case involving a person other than an individual, this section may set a limit on the amount of credit that is allowed in addition to the limits on credit that are set by sections 36 and 40.