Editorial

Golden Handshakes

There has been much concern expressed regarding a very large termination payment to be made to a departing director by Associated Communications Corporation. The suggestion has been made that there should be some form of Authority established which would monitor and police the amount of termination payments made by public companies. We would not support such suggestions since they represent yet another disguised attempt to undermine the tradition of self-regulation on the United Kingdom securities markets.

Under the Companies Acts director's termination payments are, of course, subject to shareholders' approval (except to the extent that they represent a contractual entitlement). However, the problem in the case of ACC is that the shares held by the Institutions and the investing public are non-voting shares whereas the voting shares are controlled either by those close to the present management or by another party who is bidding for control of the company. Accordingly, most of the company's investing shareholders are disenfranchised and thus unable to vote against the proposed payment. There is nothing in the Stock Exchange "admission of securities to listing" rules which prevents the listing of non-voting shares although this particular case should, in our view, make the Stock Exchange reconsider whether it is appropriate for non-voting shares to be granted a listing in future. In modern conditions it is no doubt unlikely that a public issue of non-voting shares would be well received although the problem remains of listed shares which have already been issued. Earlier Companies Bills have contained proposals to the effect that listed shares may not be issued on a "non-voting" basis — this would, however, seem very problematical as regards shares already in issue.

A more fruitful approach might be for the Stock Exchange to consider whether further rules on the lines of those laid down in chapter 4 of the "Yellow Book" could cover this problem. At present material transactions with directors (class 4 transactions) are subject to full disclosure to members and approval in general meeting, when interested parties may be required to abstain from voting. The chapter does not, however, cover transactions of a revenue nature and in a case of the kind mentioned above, would still not give the bulk of investing shareholders and Institutions the opportunity to vote on the matter. Provisions on the lines of those in chapter 4 should be extended to include substantial revenue transactions and some provision should be made for the grant of at least limited voting rights to all shareholders on matters on which members' approval is required by the Stock Exchange.

The proposed payment is in fact being challenged by various institutional shareholders under s 75 of the Companies Act 1980 (relief for members unfairly prejudiced), the first action to be brought under the new section, and this will at least enable the working of the new provision to be given practical clarification.

Corporate Tax Rethink

Major corporation tax changes are under consideration. The Revenue have published draft clauses to counter international tax avoidance. These would involve repeal of s 482 of the 1970 Taxes Act, redefinition of corporate residence to emphasise the question of where the company's business as a whole is managed and taxing companies which accumulate money in tax havens. The present tax advantages available where an overseas subsidiary remits profits to its UK parent company in the form of an "upstream loan" instead of a dividend would also be removed. Comments on the clauses are requested by February 26 and appropriate clauses are likely to appear in this year's Finance Bill.

The anticipated Green Paper on Corporation Tax has also now been published (Cmnd 8456. HMSO. £7.10) — comments are invited by the end of September. This looks to be very much a long term project and while the document clearly analyses many of the problems of the present system it contains little in the way of specific proposals.