Tax Representation

TAX FACULTY

TAXREP 58/09

DOUBLE TAXATION RELIEF: LIMIT OF CREDIT AGAINST INCOME TAX AND CAPITAL GAINS TAX: INTERACTION WITH GIFT AID

TAX LAW REWRITE: BILL 7: INTERNATIONAL AND OTHER PROVISIONS

Memorandum submitted in December 2009 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(09)20 published in October 2009 by HMRC

ICAEW Tax Faculty, Chartered Accountants' Hall,
PO Box 433, Moorgate Place, London EC2P 2BJ
www.icaew.com/taxfac

T +44 (0)20 7920 8646
F +44 (0)20 7920 8780
E taxfac@icaew.com

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INTRODUCTION

1. We welcome the opportunity to comment on the draft clause 40A in Paper CC/SC(09)20 (Bill 7: New clause in Chapter 2 of Part 2) issued on 12 October 2009 at http://www.hmrc.gov.uk/rewrite/ccsc0920-newclause.pdf.

2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

COMMENTS

3. We support proposed Change 789 (Double taxation relief: limit on total credit against income tax and capital gains tax: interaction with gift aid: section 40A), giving statutory effect on enactment of clause 40A of Bill 7 to the practice of taking a gift aid donor's income tax and capital gains tax liabilities together, less (as a single disallowance) the total of the tax treated as deducted under section 414 of ITA 2007 from gift aid donations made by the person in a tax year in applying the double taxation relief 'total credit' limit for that year as set by the source section 796(3) ICTA (as applied for capital gains tax purposes by section 277(1) TCGA 1992).

4. We agree that it is appropriate to retain the source legislation reference to 'person' in clause 40A, rather than 'individual', for the reason set out in paragraph 5 of the explanatory note to that clause.

5. We also agree with the fundamental view that the clear intention behind gift aid relief is that gift aid tax reclaims by charities are to covered by income tax and capital gains tax paid by donors; whilst appreciating that in practice it will rarely be the case that a person's entitlement to DTR will be affected by whether or not the person's capital gains tax liability is reduced by tax as deducted under section 414 of ITA 2007.

TJH/PCB
7.12.09

ANNEX A

ICAEW AND THE TAX FACULTY: WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales (ICAEW) is the largest accountancy body in Europe, with more than 130,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.

2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Innovation and Skills through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.

3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 10,000 members of the ICAEW who pay an additional subscription.

4. To find our more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at taxfac@icaew.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

ANNEX B

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.

4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99**; see www.icaew.co.uk/index.cfm?route=128518.