

TAXREP 20/06

CHARITABLE TRUSTS

TAX LAW REWRITE: BILL 4

FINANCE ACT 2006 MATERIAL

Memorandum submitted in August 2006 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment on Paper CC/SC(06)10 issued in July 2006 by HMRC Tax Law Rewrite Team

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(06)10 published on 7 July 2006 by HMRC's Tax Law Rewrite team at <http://www.hmrc.gov.uk/rewrite/exposure/menu.htm>.
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.

GENERAL COMMENTS

3. We are satisfied that the Part 1 (Special rules about charitable trusts etc) clauses now appropriately reflect the clauses 54-56 Finance (No 2) Bill 2006 provisions, affecting the draft clauses in Part 10 of draft Bill 4 (published in February 2006) ('Bill 4') and incorporating the new material about transactions with substantial donors.
4. In particular, the method of quantifying "the non-exempt amount", for the purpose of restricting the application of available exemptions, by reference to "non-charitable expenditure" and "attributable income and gains" is more straightforward than the method previously adopted in Bill 4 clause 525.
5. Only minor comments now arise on the Paper CC(06)10 draft clauses.
6. We note that the rules for charitable companies will be rewritten in the rewrite of corporation tax, and that Bill 4 accordingly makes appropriate consequential amendments to the rules relating to charitable companies.

ANSWERS TO QUESTIONS

7. **Q1** We agree the drafting of clause 26(1)(a)(ii) (Meaning of "non-charitable expenditure") to include losses sustained in small trades, fund-raising events and lotteries where a profit would not be exempt under one of the exemptions in clauses 9, 12 or 13.
8. **Q2** Agreed.

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SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 42 Securities which are approved charitable investments

9. **(3)** We note that “open-ended investment company” is now to be read in accordance with section 468A(2)-(4) ICTA, replacing the definition in draft Bill 4 (February 2006) clause 535(3).

DETAILED COMMENTS ON DRAFTING

cl 8 Meaning of “charitable trade”

10. In Explanatory Notes paragraph 3, in the second line, we assume that ‘charitable trust’ should read as ‘charitable trade’.

cl 37 Transactions: exceptions

11. The origin of clause 37(1) is ICTA s 506B(1) and not 505B(1).

Sch 2 Transitionals and savings

12. **para 4(1)** In paragraph 4(1), in the first line, the reference to ‘sections 46 to 48’ should be to ‘sections 45 to 47’.

TJH/PCB
9.8.06

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ANNEX

WHO WE ARE

The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 128,000 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.

The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. 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.

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 11,000 members of the ICAEW who pay an additional subscription.

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

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 http://www.icaew.co.uk/taxfac/index.cfm?AUB=TB2I_43160,MNXI_43160.