

# Tax Representation



**TAXREP 6/08**

## **TAX LAW REWRITE: BILL 6: CORPORATION TAX**

### **COMPANY RECONSTRUCTIONS WITHOUT A CHANGE OF OWNERSHIP**

*Memorandum submitted in January 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(07)40 issued in November 2007 by HMRC Tax Law Rewrite Team*

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Annex 2 - The Tax Faculty's Ten Tenets for a Better Tax System

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The Tax Faculty of the Institute of Chartered Accountants in England and Wales

**TAXREP 6/08**

Tax Law Rewrite: Bill 6: Corporation Tax  
Company reconstructions without a change of ownership

# **TAX LAW REWRITE: BILL 6: CORPORATION TAX**

## **COMPANY RECONSTRUCTIONS WITHOUT A CHANGE OF OWNERSHIP**

### **INTRODUCTION**

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(07)40 (Bill 6: Company reconstructions without a change of ownership) which were published on 7 November 2007 at <http://www.hmrc.gov.uk/rewrite/index.htm#34>.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in Annex 1. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex 2.

### **GENERAL COMMENTS**

3. As indicated in our response to Question 1, we are content with the radical restructuring in the rewritten clauses.
4. We note at this stage the comments in Explanatory Notes paragraph 59, as regards the Schedule 2 transitionals and savings etc, and in paragraphs 60-61 as regards the Schedule 3 repeals and revocations.

### **ANSWERS TO QUESTIONS**

5. **Q1** The structure of the Chapter appears appropriate. It is logical to identify the relevant transfers of trade, the conditions to be met for the Chapter to apply, the effect of the Chapter in the case of applicable transfers and the supplementary provisions concerning apportionment and the application of the Chapter to further transfers in that order.
6. **Q2** We support the proposal to make it explicit in clause 14(2) (Apportionment if part of trade treated as separate trade) that apportionments are to be reasonable as well as just.
7. **Q3** We do not object to the replacement of 'the Board' by 'an officer of Revenue and Customs' in clause 14(6) (Apportionment if part of trade treated as separate trade), as having power to direct which bodies of General Commissioners are to determine an apportionment within clause 14(1) and (2) where the companies affected do not agree that it is to be determined by the Special Commissioners and are not under the jurisdiction of the same body of General Commissioners.

## **SPECIFIC COMMENTS ON DRAFT LEGISLATION**

### **Chpt 1 Company reconstructions without a change of ownership**

8. We note the comments in paragraph 10 of the Explanatory Notes, and agree that it is appropriate to retain the familiar title “Company reconstructions without a change of ownership”.

#### **cl 3 The ownership condition**

9. We note the comments in paragraphs 16-18 of the Explanatory Notes and we are content with these.

#### **cl 8 “L”**

10. **(5)** We agree that it is appropriate to make explicit in clause 8(5) that, if there has been an apportionment, only the liabilities apportioned to the transferred trade are to be taken into account in calculating “L”. Similarly with regard to the apportioned assets in clause 10(8) (“A”).

#### **cl 9 Treatment of predecessor’s capital in calculating “L”**

11. **(6)(a)** We note the comments in paragraph 41 of the Explanatory Notes, in favour of the use of the phrase “issued or otherwise originated”, but the word ‘arose’ in s 344(9) ICTA appears already sufficient.
12. We are content with clause 9(6)(a) making explicit for the purposes of clause 9(1) that s 344(9) ICTA is broad enough to cover a series of conversions of capital.

#### **cl 10 “A”**

13. **(3)** With reference to paragraph 44 of the Explanatory Notes, for the avoidance of any doubt it may be preferable to retain the s 344(7)(a) ICTA qualification ‘(other than money)’.

#### **cl 12 Transfers of trades involving business of leasing plant or machinery**

14. We note that clause 12 may be revised as work on the rewrite of Schedule 10 to FA 2006 progresses.

#### **cl 15 Application of Chapter to further transfers of transferred trade**

15. The drafting of clause 15 is a clear improvement on that in the source s 343(7) ICTA.

## **DETAILED COMMENTS ON DRAFTING**

### **cl 6 Modified application of Chapter 2 of Part [ ] [j4901 Arm]**

16. In sub-clauses 6(2) and 6(3) should (in relation to) ‘loss’ read ‘a loss’?

#### **cl 8 “L”**

17. The short letter only title of this clause looks odd. It might be preferable to use a title such as ‘Liabilities retained’.

#### **cl 9 Treatment of predecessor’s capital in calculating “L”**

18. In paragraph 38 of the Explanatory Notes, the reference to ‘clause 9’ should be to ‘clause 8’.

**cl 10 “A”**

19. The short letter only title of this clause looks odd. It might be preferable to use a title such as ‘Assets retained’.

TJH/PCB  
25.1.08

## 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 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.
2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Enterprise and Regulatory Reform 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 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 [taxfac@icaew.com](mailto:taxfac@icaew.com) 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/index.cfm?route=128518>.