

Tax Representation



TAXREP 78/07

TAX LAW REWRITE: BILL 5: CORPORATION TAX

INTANGIBLE FIXED ASSETS

Memorandum submitted in December 2007 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(07)32 issued in October 2007 by HMRC Tax Law Rewrite Team

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INTANGIBLE FIXED ASSETS

INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(07)32 (Bill 5: Intangible fixed assets), closely following the source legislation, which have been published at <http://www.hmrc.gov.uk/rewrite/index.htm> with an invitation to comment in the informal way agreed with the Consultative Committee in February 2007.
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. We note the proposed treatment of the various Other provisions listed on pages 44 and 45 of the Explanatory Notes and that work is not yet final on rewriting the intangible fixed asset provisions, but that any further changes are expected to be limited mainly to minor drafting matters and to the possible inclusion of some insurance-related provisions. We also note that there may be points relevant to this legislation that arise in the current consultation on the derivative contracts and loan relationships draft clauses, because all three regimes follow accountancy treatment of profits and losses for tax purposes.
4. As the source legislation, substantially in Schedule 29 to FA 2002, was drafted using rewrite techniques the rewritten clauses closely follow their source. We are content with those changes which have been made: aligning these provisions with others within Bill 5, making revisions to the key terminology, and making small structural changes.

ANSWERS TO QUESTIONS

5. **Q1** We support the proposal to replace references to “Inland Revenue” in the source legislation cited by an “officer of Revenue and Customs”,
6. **Q2** In drafting clause 154 (Delayed payment of employees’ remuneration: supplemental provisions) we support the proposal to drop the requirement, under the source paragraph 113(5)(b) Schedule 29 FA 2002, for a claim to effect the clause 154(5) adjustment.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

7. **cl 48 How the relief is given: general**
(1) Should ‘and claims’ be inserted after ‘entitled to’ in clause 48(1), so that clause 48(1) does not operate on an entitlement basis only.

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8. **(6)** In clause 48(6) would it be better to move the words ‘any other party’ in clause 48(6)(a) to follow ‘the treatment of’ in the first line, as being appropriate to both (a) and (b) in clause 48(6)?

cl 108 Application of sections 69 and 73 where transfer within section 107 occurs

9. The terms ‘society’ and ‘building society’ are variously used in clause 108 to mean the same thing. Should ‘society’ be used throughout?

cl 109 Amalgamation of, or transfer of engagements by, certain societies

10. **(3)(b)** In clause 109(3)(b) should there be a signpost to the meaning of ‘registered industrial and provident society’ in s486 ICTA?

cl 133 Transfers not at arm’s length

11. **(3)** We agree that the respective definitions of “the actual provision” and “the arm’s length provision” are those in paragraphs 1(1), 1(2) and 1(3) of Schedule 28AA to ICTA as the paragraph 92(3)(b) FA 2002 Schedule 29 source of clause 133(2)(b) clearly refers to Schedule 28AA of ICTA as regards its interpretation.

cl 153 Delayed payments and bad debts

12. **(1)** Apart from the explanation in Explanatory Notes paragraph 293, it will not be readily apparent to the reader why clauses 153, 154 and 155 appear in this Part. The key is the reference in each of them to an expense as ‘a loss’, on the basis that the expenditure on employees’ remuneration/pension contributions comes within the intangible fixed asset rules. Could this be made more obvious in these sections, perhaps by qualifying ‘a loss’ as being ‘for the purposes of this Part’?

cl 154 Delayed payment of employees’ remuneration: supplemental provisions

13. **(3)** Is the use of the term ‘an accounting loss’ appropriate if only part of the expense comes within the intangible fixed assets rules? As it is not appropriate to replace ‘loss’ by ‘debit’, as in the FA 2002 Schedule 29 paragraph 113(4) source legislation, it may be more helpful to refer to ‘an accounting expense’ here.
14. Similar comments apply to clause 155(4) (Delayed payment of pension contributions).

cl 184 Roll-over relief where pre-FA 2002 assets disposed of on or after 1 April 2002

15. **(3)** Following the repeal of s 10(3) TCGA 1992, is it now necessary to take account of s 10B TCGA 1992 when rewriting paragraph 130(3) Schedule 29 FA 2002 in clause 184(3)?

DETAILED COMMENTS ON DRAFTING

cl 103 Overview

16. **(1), (4)** In clauses 103(1)(c) and 103(4) should ‘Merger’ be ‘Mergers’?

cl 131 Overview of Chapter 13

17. **(3)** It might be clearer to replace ‘other such rules’, which is not particularly meaningful, with ‘other rules for certain transactions involving related parties’ as a signpost to clauses 137 and 138.

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cl 136 Transfers involving gifts of business assets

18. **(1)(b)** The reference in clause 136(1)(b) to section 165(2)(a) should be to section 165(4)(a) (of TCGA 1992).

cl 142 Further provision about regulations under section 141

19. **(4)** Within the brackets in clause 142(4) should 'as regards' be 'as respects', as in the italicised heading to clauses 96-99. As a general comment, however, the word 'regards' is a more familiar usage than 'respects' which is used also in clauses 96-99.
20. **(5)** In clause 142(5) is it the finance lessor who is liable to income tax, or the finance lessee? Paragraph 104(2)(e) of Schedule 29 to FA 2002 appears to refer to a trade or business carried on by the finance lessee.

cl 157 Assumptions for calculating chargeable profits of controlled foreign companies

21. **(5)** The reference to 'section 4(2)' should be to 'paragraph 4(2)'.

Chpt 16 Pre-FA 2002 assets etc

- 22.. In Explanatory Notes paragraph 320, in the second sentence, the word 'that' is unnecessarily duplicated.

TJH/PCB
13.12.07

WHO WE ARE

1. The Institute of Chartered Accountants in England & Wales is a professional body representing some 128,000 members. The Institute operates under a Royal Charter with an obligation to act 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 (which includes taxation).
2. The Tax Faculty is the centre for excellence and an authoritative voice for the Institute on taxation matters. It is responsible for tax representations on behalf of the Institute as a whole and it also provides services to more than 11,000 Faculty members who pay an additional subscription.
3. Further information is available on the ICAEW Tax Faculty website at www.icaew.com/taxfac or telephone 020 7920 8646.

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>.