

# Tax Representation



**TAXREP 5/08**

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

### **LOSS RELIEF**

***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)38 issued in November 2007 by HMRC Tax Law Rewrite Team***

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

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Loss relief

# TAX LAW REWRITE: BILL 6: CORPORATION TAX

## LOSS RELIEF

### INTRODUCTION

1. We welcome the opportunity to comment on Paper CC/SC(07)38 (Bill 6: Loss Relief) which was published on 6 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. It is helpful to bring together all of the clauses dealing with corporation tax loss relief in one Part, and we are content with its structure.
4. We note that the approach in Bill 6 to “profits” meaning commercial profits, and not intended to attract the “income and chargeable gains” definition in section 6(4) ICTA, has not yet been finally decided.

### ANSWERS TO QUESTIONS

5. **Q1** We support the approach of bringing the loss relief provisions together in one Part.
6. **Q2** We support the proposal to re-order the loss relief provisions, dealing first with the set-off against total profits and carry back and thereafter the carry forward of losses, as being more appropriate in practice.
7. **Q3** We support the proposal to carry Change 5 in ITA 2007 across to corporation tax.
8. **Q4** We support the approach of leaving the main clause 3 (Relief for trade losses against total profits) uncluttered by legislation of only limited application, through including the exceptions from it in the separate clauses 5 to 7.
9. **Q5** We support the proposal to carry Change 152 in ITA 2007 across to corporation tax.
10. **Q6** It is preferable to employ a Bill-wide definition of ‘arrangements’, where that term is similarly applicable to various clauses, and acceptable to draft the definition on a non-inclusive basis. At this stage it is clearly acceptable to incorporate sub-clause (4) in clause 14 (Dealings in commodity futures). The definition set out in clause 14(4) refers to specific matters within the meaning of ‘arrangements’ which ought not

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to give rise to controversy. In any final Bill-wide definition, it may also be appropriate to also include reference to the aspect that 'arrangements' can be in writing or not in writing.

11. **Q7** We support the proposal to carry Change 16 in ITA 2007 across to corporation tax.
12. **Q8** As indicated in our response to Q7, we support the proposal to carry Change 16 in ITA 2007 across to corporation tax in the case of clause 19(3) (Restrictions on reliefs for limited partners) as regards the reference now to a "contribution to the firm".
13. **Q9** As indicated in our response to Q7, we support the proposal to carry Change 16 in ITA 2007 across to corporation tax in the case of clause 19(6) (Restrictions on reliefs for limited partners) as regards the limitation of loss relief if the firm is carrying on more than one trade.
14. **Q10** We support the proposal to carry Change 16 in ITA 2007 across to corporation tax.
15. **Q11** We support the proposal to carry Change 17 in ITA 2007 across to corporation tax in clause 20(5) (Meaning of "contribution to the firm") so that the clause 20(4) reference to drawing out or receiving back an amount does not include such an amount which is chargeable to tax as profits of a trade because of being drawn out or received back (and hence continues to be taken into account in calculating the company's contribution to the firm).
16. **Q12** We do not object to the drafting of clause 21(4) (Meaning of "limited partner"), which is implicit in s 118(2)(c) ICTA and which enables references to the firm to be read as references to the relationship between the company and the other persons mentioned in clause 21(3)(a), but the cited source Change 620 (reproducing Change 16 in ITA 2007) does not obviously cover this aspect. Clause 21(4) is, of course, the corporation tax counterpart of s 106(4) ITA 2007.
17. **Q13** As indicated in our response to Q9, we support the proposal to carry Change 16 in ITA 2007 across to corporation tax, in this instance in the case of clause 22(6) (Restrictions on relief for members of LLPs) as regards the limitation of loss relief if the firm is carrying on more than one trade.
18. **Q14** We support the proposal to carry Change 16 in ITA 2007 across to corporation tax in clause 23(3), making explicit the fact that capitalised undrawn profits are to be included in a company's contribution.
19. **Q15** We support the proposal to carry Change 17 in ITA 2007 across to corporation tax in clause 23(6) (Meaning of "contribution to the LLP") so that the clause 23(5) reference to drawing out or receiving back an amount does not include such an amount which is chargeable to tax as profits of a trade because of being drawn out or received back (and hence continues to be taken into account in calculating the company's contribution to the LLP).
20. **Q16** We support the proposal to carry Change 152 in ITA 2007 across to corporation tax.

21. **Q17** We support the proposal to carry Change 152 in ITA 2007 across to corporation tax.
22. **Q18** We support the proposal to extend the scope of clause 30(1)(b), applying clause 29 (relief for losses made in overseas property business), to an overseas property business carried on in the exercise of functions conferred by or under the law of a territory outside the United Kingdom.

## **SPECIFIC COMMENTS ON DRAFT LEGISLATION**

### **cl 19 Restrictions on reliefs for limited partners**

23. **(1)(a)** In clause 19(1)(a) it may be clearer to refer to ‘at any time’ rather than to ‘at a time’, in accord with the s 118(2) ICTA definition of “relevant accounting period” and to possibly avoid any confusion with the requirements of clause 19(5). It is, of course, a requirement that the company must carry on a trade as a limited partner in a firm as at the applicable clause 19(5) date, so that clause 19(1)(a) is thereby satisfied; but clause 19(1)(a) relates to any time in the loss-making period. Similar comments apply to clause 22(1)(a) (Restriction on relief for members of LLPs).
24. **(4)** In clause 19(4) the reference to the ‘time during which’ appears less than wholly appropriate where that time is a single date, as defined in clause 19(5). Similar comments apply to clause 22(4).

### **cl 20 Meaning of “contribution to the firm”**

25. **(10)** The reference to ‘the relevant trade or any of the other trades’ is confusing, as it may point to an alternative situation, whereas the profits/losses at issue relate to the aggregate profits/losses of the relevant trade and any other trade(s) carried on by the firm. Would it be clearer to redraft clause 20(10) to refer to “... references to the profits or losses of the relevant trade were references to the aggregate of the profits or losses of the relevant trade and of the other trades”?
26. Changes 618 and 620 have a material impact on the drafting of clause 20 and we agree that this is appropriate.

### **cl 25 Relief for losses made in UK property business**

27. As drafted, the effect of clause 25(1)-(5) is that a property business loss can be carried forward through any number of accounting periods until it is relieved against that business’s ‘net profits’ which appear to comprise the property business profits together with any other income and gains arising (as Explanatory Notes paragraph 77). This is more liberal than the relief for trading losses under clause 15, which is against future trading profits only. Whilst this correctly rewrites the s 392A(1) and (2) ICTA relief against ‘total profits’ of however many accounting periods, until a Schedule A loss is relieved, is this different treatment intended? We note that loss relief under clause 29, in the case of an overseas property business, is against the profits from that business only (excluding any chargeable gains).

### **cl 26 Company with investment business ceasing to carry on UK property business**

28. **(2)(b)** Does it need to be made clear in clause 26(2)(b) that the unrelieved loss is treated as an expense of management deductible *only* in the accounting period next

after the one in which the UK property business ceases; or is it instead intended that 'the purposes of section 75 of ICTA' will also include s 75(9) ICTA, so that any loss still unrelieved in the period following the cessation could be further carried forward and relieved against total profits of later accounting periods throughout which the investment business is carried on until wholly relieved?

**cl 31 Relief for losses from miscellaneous transactions**

29. How is it intended to rewrite s 396(2) (Case VI losses) which disallows the source s 396(1) ICTA in the case of sections 34-36 ICTA or on a disposal to which Chapter 5 of Part 17 of ICTA applies?

**cl 34 Cases in which government investment is written off**

30. (1) We note that, in Case 3 within clause 34(1), it is no longer considered necessary to refer to a reduction as including reduction to nil.

**DETAILED COMMENTS ON DRAFTING**

31. In Change 620 in Annex 1, under '*Capitalised profits*', the reference should be to 'a company's contribution' rather than to 'an individual's contribution'.

**cl 22 Restriction on relief for members of LLPs**

32. (1)(a) Is there any reason for the difference in drafting of clause 22(1)(a) and clause 19(1)(a)?

**cl 23 Meaning of "contribution to the LLP"**

33. (1) Is there any reason for the difference in drafting of clause 23(1) and clause 20(1)?

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>.