

TAXREP 88/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

TAX AVOIDANCE: COMPANIES IN PARTNERSHIP

Memorandum submitted in December 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)48 issued in October 2008 by HMRC Tax Law Rewrite Team

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INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)48 (Bill 6: Tax avoidance: Companies in partnership) issued on 22 October 2008 at <http://www.hmrc.gov.uk/rewrite/index.htm>.
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. Although relatively recent legislation, introduced by Finance Act 2004, the rearrangement of sections 131 and 132 FA 2004 in clauses 1-4 does make for readier understanding of this anti-avoidance legislation. It is particularly helpful to separate the circumstances in which the charge arises, in clause 1 (Charge to tax where return of capital exceeds contribution), from the calculation of the amount chargeable, in clause 2 (The chargeable amount), with the interpretative and supplementary provisions following separately in clauses 3 and 4 respectively.
4. It is still very helpful and probably essential to most users to read the Overview notes in order to understand what mischief this legislation is directed at, but the proper aim of the legislation itself is of course to counter it and it is appropriately drafted in this context.
5. Subject to a query on the application of clause 7, we are also content with the drafting of clauses 5-9 (Interpretation of charge under section 1 with TCGA 1992) rewriting the single section 133 FA 2004 (Relationship with chargeable gains). The focus now on clause 5 as the main clause, supported by the exceptional situations dealt with in clauses 6 and 7 and the computational provisions in clauses 8 and 9, adds clarity compared with the all-encompassing section 133 FA 2004. The use of the descriptive term 'included disposal' as relating to a disposal of the asset(s) constituting the section 1 disposal and also giving rise to chargeable gain(s) in excess of allowable loss(es) is helpful to the user's understanding.
6. We have noted the comments in Paper CC/SC(09)01 dated 8 December including that there will be a further opportunity to comment on the clauses rewriting ss 131-133 FA 2004 once published as part of the second draft corporation tax Bill when the impact of the HM Treasury/HMRC consultation on disguised interest published on 24 November is clear.

ANSWER TO QUESTION

6. **Q1** Having regard to the explanations in Explanatory Notes paragraphs 6-8, we do not object to the proposal to use different labels from some of those used in the

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source legislation. As explained, the new labels should assist the user's understanding of the legislation and hence amount to an improvement although not an essential change to it.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 2 The chargeable amount

7. **(5)** In the three places where it appears should 'relevant profit' now read for consistency as 'relevant partnership profit'?

cl 7 Deductibility of allowable losses if deduction prevented by section 5

8. It would be helpful if Explanatory Notes paragraph 20 could explain more fully how clause 7(1) applies. The unused allowable loss at issue presumably arises from a disposal which is unrelated to the clause 1 transaction(s) (not being an 'included disposal'). On this presumption, is the clause intended to apply where this loss is otherwise 'stranded' in an accounting period, and without other sufficient chargeable gains to relieve it, because a net gain under clause 5(7) is 'removed' from that accounting period and instead relocated into an earlier accounting period in which the clause 5(2) receipt occurs? Is this what is meant in clause 7(1) by clause 5 'preventing' relief for the loss?

TJH/PCB
17.12.08

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 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>.