

Tax Representation



TAXREP 53/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

SURRENDER OF TAX REFUND WITHIN GROUP

Memorandum submitted in July 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)18 issued in May 2008 by HMRC Tax Law Rewrite Team

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

TAXREP 53/08

Tax Law Rewrite: Bill 6: Corporation Tax
Surrender of tax refund within group

TAX LAW REWRITE: BILL 6: CORPORATION TAX

SURRENDER OF TAX REFUND WITHIN GROUP

INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)18 (Bill 6: Surrender of tax refund within group) published on 21 May 2008 at <http://www.hmrc.gov.uk/rewrite/>.
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 are content with the rewrite of s 102 FA 1989 (surrender of tax refund within group), subject only to minor specific comments arising (please see paragraphs 5 and 6 below).
4. We note that regulation 9 of SI 1998/3175 (Corporation Tax (Instalment Payments) Regulations 1998) has not been incorporated into the rewrite. As that regulation for the most part contains detailed amendments to s 102 FA 1989 in relation to a refund of instalment corporation tax, and will require amendment anyway to refer to Bill 6, it may be more user friendly to now incorporate it in the rewrite, with the signpost to the rest of the above regulations being in a rewritten s 102(3)(d) FA 1989. Alternatively, a signpost from clause 1(3) (definition of “tax refund”) to these regulations may be appropriate.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 3 Definitions etc

5. (3) Would it be clearer to replace ‘There is’ by ‘Sub-section (4) sets out’ (an exception....)? It can be inferred that the exception referred to is dealt with in sub-section (4), but this might be more conclusively stated.

cl 4 Payments for surrendered tax refunds

6. (2)(a) The source legislation in s 102(7)(a) FA 1989 refers to “profits or losses” of either company for corporation tax purposes. Will it be clear in the final structure of Bill 6 that “income and chargeable gains” has the same scope?

TJH/PCB
17.7.08

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>.