THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND & WALES

Tax Faculty

Tax Representation

TAXREP 21/05

INCOME TAX RELIEF FOR LOSSES ON SHARES
TAX LAW REWRITE: BILL 4

Memorandum submitted in April 2005 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in February 2005 by HMRC Tax Law Rewrite Team

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)05 dated 2 February 2005 published by the Revenue's Tax Law Rewrite team at http://www.hmrc.gov.uk/rewrite/exposure/menu.htm.

WHO WE ARE

2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in the Annex.

GENERAL COMMENTS

3. The structure of the Losses on Disposal of Shares Chapter, rewriting the provisions in ss 574-576 ICTA 1988 and subsuming s 305A ICTA (relating to shares to which Enterprise Investment Scheme (EIS) relief is attributable), is logical.

4. As the EIS Schedule is a Bill 4 Schedule (subject to confirmation of the final treatment of this material in Bill 4), we can appreciate the reason for defining an eligible trading company in clause 5 by reference to an EIS qualifying company. The presentation of the relevant material in clause 5, including the use of the Table, is more intelligible to the reader than the provisions in s 576 (4A) and (4B) supported by s 576(5) ICTA. However, clause 5(2) is not straightforward for a lay reader, because of the need to tackle the Table modifications; but, short of fully rewriting the material as appropriately amended for the purposes of share-loss relief only, there is no obvious other way of rewriting this clause interpreting clause 4 (Qualifying trading companies). Despite lengthening Bill 4, fully rewriting this material would nevertheless be preferable from the viewpoint of easier intelligibility, particularly as individual taxpayers may be more likely to refer to this legislation than to the EIS legislation.

ANWERS TO QUESTIONS

5. **Q1** We agree the proposal to include the provisions for relief for losses arising on the disposal of shares to which EIS relief is attributable in the share loss relief Chapter, as making clearer the application of share loss relief to EIS shares.

6. **Q2** The re-ordering of the material in ss 574-576 ICTA is logical and acceptable.

7. **Q3** We agree the proposal to omit the words 'for full consideration' from clause 1(3)(a) (Share loss relief).

8. **Q4** We agree that the changes made in clause 2(1)-(3) (Entitlement to Claim), specifying in the claim the tax year(s) to which loss relief relates, to make explicit what is implicit in the source legislation.

9. **Q5** We support the drafting of clause 3(1) (How relief works), making explicit that the whole amount of the loss must be deducted in calculating the income of the tax year specified in the claim and, if the claim is made in respect of two tax years, that only the amount of loss unrelieved in the specified year can be deducted from the income of the other year.

10. We note that consideration is being given to consolidating the priority rules as between different reliefs in one place.

11. **Q6** We support the inclusion of clause 4(5) (Qualifying trading companies) as determining the time of issue of shares transferred by a spouse, for the purposes of clause 4(4).

12. **Q7** We similarly support the inclusion of clause 4(6) as determining the time of issue of bonus shares for the purposes of clause 4(4).

13. **Q8** We agree the inclusion in the clause 5(2) Table (Qualifying trading companies: interpretation) of the new entry against paragraph 26 of the EIS Schedule (the gross assets requirement), to clarify that the time of issue of the shares is to be determined in the same way as it is for the purposes of the condition in clause 4(4).

14. **Q9** We welcome the proposal to extend clause 6(3)(a) (Subscriptions for shares) to cases where the transferor is treated as having subscribed for shares under the provisions relating to the issue of bonus shares or under an earlier application of clause 6(3).

15. **Q10** We agree the proposal to make explicit in clause 6(3)(c) that the relevant time at which the individual making the transfer (‘A’) and the recipient (‘B’) must be spouses living together is at the time of the transfer.

16. **Q11** We support the proposal to legislate for share loss relief to be available in respect of corresponding bonus shares, in clause 6(4), treating certain bonus shares issued in respect of shares which have been subscribed for as themselves having been subscribed for.

17. **Q12** We support Change {jc 449} to apply clause 8(2) (Disposal of shares forming part of mixed holding) to explicitly determine which of any qualifying shares are disposed of.

18. **Q13** We agree the inclusion of clause 8(6), as determining the time of acquisition of shares transferred by a spouse for the purposes of clause 8(2) and (4).

19. **Q14** We similarly agree the inclusion of clause 8(7), as determining the time of acquisition of corresponding bonus shares for the purposes of clause 8(2) and (4).

20. **Q15** We agree the inclusion of clause 8(9) clarifying, in accordance with practice, that shares held or disposed of by a nominee or bare trustee for an individual are part of the individual’s single holding for the purposes of clause 8 (Disposal of shares forming part of mixed holding).

21. **Q16** We agree the proposal to specify the time at which the disposal of shares resulting in an allowable loss for capital gains tax purposes occurs.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

Clause 1: Share loss relief

22. In clause (1)(a), with reference to Explanatory Notes paragraph 16, an appropriate signpost to s 16(2A) TCGA might be helpful to remind the reader of the fundamental point that a loss is normally only allowable for capital gains tax purposes if notice quantifying the amount of the loss has been given. We assume from the drafting of clause 1(1)(a) that such a notice still has to be given before share loss relief can apply. This aspect also affects the operation of clause 3(1) (How relief works) – please see our comments below.

Clause 3: How relief works

23. In 3(1), with reference to Explanatory Notes paragraph 30, can it be made clearer to the reader that any excess loss not available for share loss relief may be available as a deduction from the individual's total chargeable gains?

Clause 4: Qualifying trading companies

24. The first sentence of the third paragraph of Change {jc 442} is incorrect. Through the definition of 'relevant period' in s 576(5) ICTA the period during which the company must carry on its business wholly or mainly in the UK (s 576(4)(c) ICTA) begins with its incorporation or, if later, one year before the shares in respect of which share loss relief is claimed were issued.

DETAILED COMMENTS ON DRAFTING

Clause 3: How relief works

25. In Explanatory Notes paragraph 29, the second bullet point, in the first line, delete 'to' before 'in'.

Clause 5: Qualifying trading companies: interpretation

26. In the Table in clause 5(2), in column 2 against Paragraph 92(1) should the word 'so' within the quotation be omitted? It was not included in draft paragraph 92(1) in Paper CC(04)18.

27. In clause 5(6) in the definition of 'investment company' insert 'not' before 'include' in the second line.

Clause 10: Interpretation of Chapter

28. In the definition of 'shares', should (a) also refer to an exception for section 8(4)?

TJH/PCB
20.4.05

ANNEX

WHO WE ARE

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.

The Institute operates under a Royal Charter, working 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, including taxation.

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 11,000 members of the ICAEW who pay an additional subscription.