

TAXREP 63/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

DISTRIBUTIONS

Memorandum submitted in September 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)23 issued in June 2008 by HMRC Tax Law Rewrite Team

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INTRODUCTION

1. We welcome the opportunity to comment on the new draft clauses included in Paper CC/SC(08)23 (Bill 6: Distributions) issued on 19 June 2008 at <http://www.hmrc.gov.uk/rewrite/index.htm>. We earlier responded to the linked Paper CC/SC(08)11 (Bill 6: Distributions), issued on 31 March 2008, in TAXREP 46/08 dated 20 June 2008. We now note that the necessary corrections referred to in TAXREP 46/08 paragraphs 9 and 18 were made in the drafting of Paper CC/SC(08)23 clauses 33 and 10(1) respectively.
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 see the new clauses in the context of the distributions material as a whole and we have also noted the changes, where these have been made, to the March 2008 draft clauses.
4. We note the approach adopted as set out in Paper CC/SC(08)23 Introduction paragraphs 5-7. We agree that the treatment of those provisions of an administrative nature (paragraph 5) appears appropriate. We also agree that (whilst debateable) it is overall helpful for users to locate both income tax and corporation tax related distributions provisions in Bill 6 (paragraph 6) and that, where separate provision is needed for income tax purposes, that draft clauses should be inserted into ITTOIA (paragraph 7). We also support the two new proposed rewrite changes 608 and 670 in Paper CC/SC(08)23 Annex 1.
5. We are content with the drafting of the new clauses, and only minor comments arise.

ANSWERS TO QUESTIONS

6. **Q5** We support the proposal to introduce the term “reasonably requires” in the rewrite of paragraph 2 of Schedule 12 to FA 1989 in draft clause 109(2) and (7) (Non-qualifying distributions etc: additional information).
7. **Q6** Having regard to the explanation in Change 670 in Annex 1, we support the proposal to omit section 234A(6) of ICTA in drafting clause 112(4)-(6) (Meaning of “tax certificates” etc).

DETAILED COMMENTS ON DRAFTING

cl 19 Meaning of “equity note” in section 18

8. **(1)** The reference to ‘subsection (4)’ should be to ‘subsection (2)’.

cl 101 Chargeable payments etc: returns

9. **(3)(a)** Within the brackets, should ‘and’ (stamp duty land tax) be ‘or’?

cl 109 Non-qualifying distributions etc: additional information

10. **(4)(b)** Would it be clearer to refer to ‘person or persons’ on whose behalf the shares or loan capital are registered?

TJH/PCB

3.9.08

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>.