

Tax Representation



TAXREP 43/09

TAX LAW REWRITE: BILL 6: CORPORATION TAX

INVESTMENT TRUSTS

Memorandum submitted in July 2009 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(09)08 issued in May 2009 by HMRC Tax Law Rewrite Team

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

TAXREP 43/09

Tax Law Rewrite: Bill 6: Corporation Tax
Investment Trusts

TAX LAW REWRITE: BILL 6: CORPORATION TAX

INVESTMENT TRUSTS

INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(09)08 (Bill 6: Investment Trusts) which were published on 7 May 2009 at <http://www.hmrc.gov.uk/rewrite/index.htm#bill6>.
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 drafting of the clauses, which rewrite section 842 of ICTA (Investment Trusts).
4. We agree that it is a reasonable interpretation of s 842(1) ICTA to make explicit in clause 1(b) (Meaning of "investment trust") that the requirement that the company is not a close company relates to the whole of the accounting period for which approval is sought.
5. We also agree that it is implicit in s 842(1) ICTA that Conditions A, B and E relate to the whole accounting period, as is now made clear in clause 2(1) (Conditions for approval).
6. We are also content with the drafting of Condition C in clause 2(1), although in this context the reference to section 842(1)(c) ICTA in Explanatory Notes paragraph 4 should be to section 842(1)(a) ICTA.

ANSWERS TO QUESTIONS

7. **Q1** Whilst s 842(2D) ICTA was inserted by CTA 2009 (Schedule 1 paragraph 277(4)), s 842(3A) ICTA was inserted by S 57(3) FA 2007. We agree that they are both expressed to apply to s 842 ICTA as a whole. We also agree that both subsections presuppose a tax-based measure of income and that their application is accordingly limited to the purposes for which s 842(1AB) applies. It follows that we are content with the rewritten clause 3(3) and (4) (Calculation of income) as applicable for the purposes of Conditions C and D in clause 2 and for the purposes of clause 4(2)(a) (The income retention condition: exceptions).
8. **Q2** We welcome the sub-clause 5(4) legislation for HMRC's practice with regard to the disposal of shares or securities from a holding, as regards exception from the 15% holding limit, as explained in Change 684 in Annex 1.

TJH/PCB
17.7.09

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 130,000 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, Innovation and Skills 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>.