

Tax Representation



TAXREP 55/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

MANUFACTURED PAYMENTS AND REPOS

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)20 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

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Manufactured payments and repos

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INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)20 (Bill 6: Manufactured payments and repos) issued on 22 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 drafting of the clauses.
4. We note that the rewritten draft clauses are subject to the outcome of the anti-avoidance simplification review.
5. We note that sub-clause 10(8) refers to sections 12F and 12H of TMA which will be inserted in TMA as consequential amendments to be included in draft Bill 6 when published in Spring 2009.
6. We also note, from Explanatory Notes paragraph 56, that the appropriate location in Bill 6 of the Chapter 3 (Tax Credits: Stock lending arrangements and repos) clauses will be kept under review as work on the Bill advances.

ANSWER TO QUESTION

7. **Q1** Having regard to the explanation in Change 609 in Annex 1, subject to any possible objection from specialist users of the manufactured payments and repos legislation we do not object to the proposal to use the same definition of “manufactured interest” in the “manufactured payments and repos” Part of Bill 6 as is being used in the “loan relationships” Part of Bill 5.

SPECIFIC COMMENT ON DRAFT LEGISLATION

cl 31 Meaning of “quasi-stock lending arrangement” and “quasi-cash collateral”

8. **(5)(b)** We assume that the section 839 ICTA definition of ‘connected person’ will be applied to clause 31(5)(b), as in the source section 736D(9) ICTA, through a general Bill 6 application.

TJH/PCB
18.7.08

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

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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>.