



ICAEW REPRESENTATION 14/17

TAX REPRESENTATION

TRADING AND PROPERTY ALLOWANCES

DRAFT FINANCE BILL 2017 LEGISLATION: CLAUSE 19 & SCHEDULE 5

ICAEW welcomes the opportunity to comment on the [draft Finance Bill 2017 legislation](#) published by HMRC on 5 December 2016.

This response of 1 February 2017 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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1. SPECIFIC COMMENTS

Background

Clause 19 introduces two new allowances for individuals of £1,000 each for trading and property income. From 6 April 2017 individuals with small amounts of income from the provision of goods, property or services or the sharing of assets will no longer be required to declare the income they earn nor pay tax on it, provided it does not exceed £1,000. If the income exceeds £1,000 the individual can elect to deduct the allowance from their receipts or, if no election is made, deduct actual expenses in the usual way. This measure was introduced at Budget 2016 and draft legislation was published on 5 December 2016.

Our concern

As currently drafted, the legislation does not deny the use of either allowance where a shareholder provides goods, services, property or assets to a company in which they have an interest. In such situations the company would be entitled to a deduction for corporation tax purposes (assuming the expense was incurred wholly and exclusively for the purposes of the trade) and the income would be exempt in the hands of the individual. We believe this is an unintended consequence of the draft legislation.

Our view

A change to the legislation is needed in order to prevent shareholders benefitting from the allowances where the income is paid from a company in which they have an interest but are not employed by.

Our recommendation

The draft clause should be amended to provide an exclusion similar to that introduced by new sections 783P and 783Z6. For simplicity we would suggest that the exclusion is drafted to deny the use of either allowance where an individual is a participator (or an associate of a participator) in a close company, as defined in Part 10, Corporation Tax Act 2010. Although this will not close the door completely it will prevent the bulk of casual mischief.

APPENDIX 1

ICAEW 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 via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).