

Tax Representation



TAXREP 7/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

COMMUNITY INVESTMENT TAX RELIEF

Memorandum submitted in January 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(07)42 issued in November 2007 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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INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(07)42 (Bill 6: Community Investment Tax Relief) which were published on 7 November 2007 at <http://www.hmrc.gov.uk/rewrite/index.htm#34>.
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. Having regard to paragraph 13 in the Explanatory Notes, we note the need to refer from clause 2(1)(a) (Eligibility for CITR) to the provisions in Chapter 2 of part 7 of ITA 2007 relating to accredited community development finance institutions. Despite any small inconvenience, it does appear sensible that there should be only one set of provisions relating to accreditation of CDFIs for both income tax and corporation tax purposes, rather than duplicating these provisions for the latter purposes in Part 6 (Community Investment Tax Relief).
4. As regards Change 625 we support its application to the corporate venturing scheme, having regard to the explanation in paragraphs 11-13 of Paper CC/SC(07)42, through the proposed amendment to paragraph 46(2)(a) of Schedule 15 to FA 2000 (omission of “for full consideration”).

ANSWERS TO QUESTIONS

5. **Q1** We support the proposal to include clause 10(3) in relation to securities in similar terms to clause 11(3) in relation to shares.
6. **Q2** We support the proposal to omit the words “wholly or partly” (in paragraph 12(6) of Schedule 16 to FA 2002) from clause 12(8), as being unnecessary.
7. **Q3** We support the proposal to unpack paragraph 24(2) of Schedule 16 to FA 2002, in clause 21(2)-(4) (No claim after loss of accreditation by the CDFI), and section 356(2) ITA 2007.
8. **Q4** We support the proposal to unpack paragraph 25(2) of Schedule 16 to FA 2002, in clause 22(3)-(4) (Accreditation of investor).
9. **Q5** We support the proposal to omit the words “for full consideration” in clause 27(4)(a) (Disposal of securities or shares during 5 year period).

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10. **Q6** We do not object to the addition of sub-clause (8) to clause 31 (Receipts of insignificant value to be added together) and to the equivalent income tax section 365 ITA 2007.
11. **Q7** We support the proposal to permit, in a case falling within clause 32(1)(d)(ii), the deduction of consideration given by a director or employee or an associate of a director or employee for a benefit or facility provided by the CDFI (in addition to consideration given by the investor or any associate of the investor).
12. **Q8** We do not object to the addition of sub-clause (5) to clause 35 (Effect of receipt of value on future claims for CITR) and to the equivalent income tax section 369 ITA 2007.
13. **Q9** As regards the drafting of clause 48(2) (Minor definitions etc), the justification of this in Explanatory Notes paragraphs 109 and 110 is persuasive; but the effect is that the clause 48(2) is more restrictively drafted than the equivalent income tax s 382 ITA 2007, which refers to 'a recognised stock exchange' which has a wider coverage than the London Stock Exchange only. Is this intended?
14. **Q10** We support the proposal to omit the words "for full consideration" from paragraph 46(2)(a) of Schedule 15 to FA 2000 (The corporate venturing scheme – withdrawal of investment relief).

SPECIFIC COMMENT ON DRAFT LEGISLATION

cl 13 No pre-arranged protection against risks

15. Unless considered insignificant, should s 349(3) ITA 2007 be consequentially amended to align with clause 13(3) (Explanatory Notes paragraphs 36 and 37 refer)?

DETAILED COMMENTS ON DRAFTING

cl 21 No claim after loss of accreditation by the CDFI

16. **(3)** In clause 21(3) should 'fell' read 'falls', consistent with the Schedule 1 paragraph 14(3) insertion of new s 356(3) ITA 2007? Or should s 356(3) ITA 2007 refer to 'fell'?

cl 33 The amount of value received

17. **(1)** The origin of clause 33(1) is FA 2002 Schedule 16 paragraph 36 rather than paragraph 35(5), as amended by Annex 1, Change [jc 650].
18. Is any Index of defined expressions intended, or will the treatment of definitions be as for ITA 2007?

Sch 1 Consequential amendments (CITR)

19. **para 8** In paragraph 13 of *Questions for the committee* in Paper CC/SC(07)42 the reference to 'FA 2002' should be to 'FA 2000'.

TJH/PCB
25.1.08

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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>.