

Tax Representation



TAXREP 21/08

FUNDING BOND LEGISLATION:

Written submission to HM Revenue & Customs in response to a technical note issued on 12 February 2008.

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Chartered Accountants' Hall PO Box 433 Moorgate Place London EC2P 2BJ www.icaew.com	T +44 (0)20 7920 8646 F +44 (0)20 7920 8780 DX DX 877 London/City
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FUNDING BOND LEGISLATION

INTRODUCTION

1. We are writing in response to the Technical Note of 12 February 2008 on proposed changes to the funding bond legislation.
2. The proposed changes would allow HMRC to settle a tax repayment in respect of income tax withheld from an interest payment made in the form of a funding bond by tendering the funding bond withheld in satisfaction of the repayment claim.
3. We are concerned that these proposals will be difficult to apply in practice and could add significantly to the administrative burdens of UK borrowers.

DETAILED COMMENTS

4. The proposals are described as a minor legislative change that will be of particular interest to insolvency practitioners. The note states that the number of companies issuing funding bonds is extremely small. We are concerned that the changes will have a wider impact than stated and that the proposed changes have the potential to increase significantly the administrative burden on UK borrowers.
5. HMRC will often only hold only one certificate whereas repayments may need to be made to in excess of 100 lenders resident in different jurisdictions with different reclaim rates. This will put a large administrative burden on the UK company if it has to reissue the bonds under HMRC instruction in a variety of different amounts.
6. The draft legislation seeks to override transfer restrictions. We would be grateful for clarification as to what happens to the rights inherent in the funding bonds if the transfer provisions are ignored?
7. Please clarify what is intended to happen to UK corporate lenders who currently either:

reclaim the tax withheld by setting the income tax suffered off against their tax liabilities; or

seek repayment in the corporation tax return?
8. HMRC will need a mechanism to identify those bonds that have been redeemed already, so as to ensure that overseas lenders making the withholding tax reclaims in respect of those bonds are paid in cash.
9. A number of these bonds will have been converted into other instruments if, for example, there has been a refinancing. HMRC will need to be able to track these other instruments so that the correct instruments are repaid to the lender. Please clarify what is proposed if it is not possible to transfer or split these other instruments in order to make a repayment?

10. It is already a lengthy process for a foreign lender (especially those investing into the UK through fund vehicles) to reclaim income tax suffered. The note on the expected impact suggests that these new proposals 'will facilitate such repayment claims', but in view of our comments above we question whether this will be the case. We are not convinced that the proposals will help to strengthen the UK's position as an attractive place in which to invest.
11. Please will you confirm that the proposed changes will not result in an extension of time needed to process reclaims?

IKY
11 March 2008

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.