

## TAXREP 46/08

### TAX LAW REWRITE: BILL 6: CORPORATION TAX DISTRIBUTIONS

*Memorandum submitted in June 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)11 issued in March 2008 by HMRC Tax Law Rewrite Team*

#### Contents

	Paragraph
Introduction	1-2
General comments	3-5
Answers to questions	6-8
Specific comments on draft legislation	9-17
Detailed comments on drafting	18-19
Annex 1 - Who we are	
Annex 2 - The Tax Faculty's Ten Tenets for a Better Tax System	

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# TAX LAW REWRITE: BILL 6: CORPORATION TAX

## DISTRIBUTIONS

### INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)11 (Bill 6: Distributions) issued on 31 March 2008 at <http://www.hmrc.gov.uk/rewrite/index.htm> .
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. The structure of Part 1 (Company distributions) is helpful to the user, distinguishing matters which are distributions (in Chapter 2) from matters which are not distributions (in Chapter 3) and then dealing separately with special rules for distributions made by certain companies (including close companies) and demergers.
4. Clause 4 (Meaning of “distribution”) and supporting clause 5 relating to the clause 4 list are particularly helpful.
5. We note that the clauses which provide a parallel income tax treatment where appropriate will be published at a later date (presumably for inclusion in Bill 7), as will the rewrite of related clauses of an administrative nature in Part 6 of ICTA involving returns or information,

### ANSWERS TO QUESTIONS

6. **Q1** The structure of the legislation in Part 1 (Company distributions) is appropriate. The clause 1(3) and (4) drafting of the Overview of Part is perhaps more precise than usual, but we have no objection to that.
7. **Q2** The table in clause 5 (Provisions related to paragraphs A to H of the section 4(1) list) is a useful aid to navigation through the company distributions provisions.
8. **Q3** Having regard to the explanation in Explanatory Notes paragraph 76 and in Change 648 in Annex 1, we do not object to the proposal to clarify the scope of the provision concerning premiums paid on the redemption of share capital, so that by means of clause 25 (Premiums paid on redemption of share capital) it now explicitly applies for the purposes of the distributions legislation only.

## SPECIFIC COMMENTS ON DRAFT LEGISLATION

### **cl 32 Distribution as part of a cross-border merger**

9. (1) Should 'not' be inserted before 'a distribution' in the final line? Section 209(1A) ICTA treats the type of distribution at issue as being 'a distribution in respect of share capital in a winding up' for the purposes of s 209(1) (Meaning of "distribution") which excludes such a distribution from references in the Corporation Tax Acts to distributions of a company.

### **cl 48 Sections 34 to 47: other interpretation**

10. (1) Why is the source s 229(1) ICTA definition of 'control' omitted?
11. Is the reference to the construction of "trading activities" in the source s 229(1) ICTA definition of 'trade' now considered superfluous (as it is not rewritten in clause 48(1))?
12. We note that in the source s 229(1) ICTA definition of "trading group", "group" is defined as meaning a company which has one or more 75% subsidiaries together with those subsidiaries. This part of the definition of "trading group" is not rewritten in clause 48, and "group" is defined (as in the source s 222(9) ICTA) in clause 47(1) by reference to a company and its 51% subsidiaries. What is the reason for this? As the purchase of own shares legislation applies to a trading company (or the unquoted holding company of a trading group) we assume that the s 222(9) ICTA definition of a 'group', as in effect relating to a trading group, clashes with the s 229(1) ICTA definition of 'trading group' and that the clause 48(1) definition of 'trading group' resolves this now in accordance with practice; but should this be subject to a Change note?

### **cl 64 Exception for certain transfers between UK resident companies**

13. (3) Are the bracketed words '(and only if)', which do not appear in the s 418(6) ICTA source legislation, necessary? Similar comments apply to clause 93(4) (Other definitions etc).

### **cl 65 Extension of references to close companies and participators**

14. (2) The drafting of clause 65(2) is somewhat cumbersome. May we instead suggest 'Each company is treated for the purposes of sections 62 to 64 as making the payment to the recipient who is a participator in it?'

### **cl 93 Other definitions etc**

15. (1) The definition of "member" does not refer to the source s 214(2)(a) ICTA exception (rewritten as clause 85(2)(b)).

### **cl 97 "New consideration"**

16. (5)(b) There appears to be no reason why 'or value' should not be included in clause 97(5)(b), but the source s 254(6)(b) ICTA refers to 'money received' only.

### **cl 99 Other interpretation**

17. (7) Should clause 99(7), or an equivalent separate sub-clause, also apply to securities (as in the source s 254(12) ICTA)?

## DETAILED COMMENTS ON DRAFTING

### **cl 10 The principal secured: non-commercial securities**

18. (1) The reference to 'section 99(5)' should be to 'section 99(6)'.

### **cl 56 Meaning of "UK agricultural or fishing co-operatives"**

19. In Explanatory Notes paragraph 144, in the second line, a space is required between '(4)' and 'as'.

TJH/PCB  
20.6.08

## 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](mailto: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>.