

## **TAXREP 7/04**

### **FINANCE BILL 2004 – Implementation of EU Interest and Royalties Directive**

*Text of email submitted in February 2004 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales to Inland Revenue Inland Revenue Policy Division in response to the draft legislation and Regulations issued in December 2003 at the time of the Pre-Budget Report*

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## FINANCE BILL 2004 – Implementation of EU Interest and Royalties Directive

### INTRODUCTION

1. We welcome the opportunity to respond to the draft clauses and Regulations issued by the Inland Revenue in December 2003. These are intended to implement the Interest and Royalties Directive adopted by the Council of the European Union in June 2003 and which comes into force on 1 January 2004.

### WHO WE ARE

2. The Institute is the largest accountancy body in Europe, with more than 123,000 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.
3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry (DTI) through the Accountancy Foundation. 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 (which includes taxation).
4. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

### COMMENTS

5. We have four observations. These are in relation to clauses 5 and 6 and in relation to Regulations 3 and 4.
6. We believe that Clause 5(2) is unfair. If a company reasonably believes that a payee is entitled to receive payment gross and acts in good faith on that basis then the company should not be liable if it subsequently transpires that the payee was not entitled to be paid gross.
7. We also believe that Clause 6 may not have the effect that is intended.
8. Clause 6 allows a claim for relief (in effect for repayment) if tax has been withheld in circumstances where the interest or royalty is exempt under clause 2. However clause 2 only applies where all the conditions are satisfied. The fourth and final condition applies only to interest payments and requires that 'the Board has issued an exemption notice in accordance with regulations under section 4'.
9. Therefore clause 6, literally interpreted, does not allow for a claim in respect of interest payments in the commonest situation where it would be needed i.e. where

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all the first three, substantive, conditions for exemption are satisfied but for one reason or another an exemption notice has not been obtained.

10. Regulation 3(2) allows the Revenue a three month period in which to issue an exemption certificate following receipt of a request to that effect. We believe the period allowed is excessive and we recommend it should be reduced to 30 days.
11. Regulation 4 (2) requires the certificate to provide proof of the company's tax residence and, where necessary of the existence of a Permanent Establishment. First of all we believe it would be more appropriate to ask for proof to be attached to, rather than 'provided' by the certificate.
12. Secondly, and more importantly, we believe that 'proof' is too strong a test and the standard of proof which it implies differs according to the context.
13. In our view it would be much better to use the term 'evidence'.
14. However, if the term 'proof' is retained then there needs to be some clear indication in the Regulation, not in non-binding Revenue guidance, as to what forms of proof are acceptable.

IKY

10 February 2004