

# Tax Representation



**TAXREP 46/09**

## **TAX LAW REWRITE: BILL 7: INTERNATIONAL & OTHER PROVISIONS**

### **ALTERNATIVE FINANCE ARRANGEMENTS**

*Memorandum submitted in July 2009 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(09)12 issued in June 2009 by HMRC Tax Law Rewrite Team*

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The Tax Faculty of the Institute of Chartered Accountants in England and Wales  
TAXREP 46/09  
Tax Law Rewrite: Bill 7: International & Other Provisions  
Alternative finance arrangements

# TAX LAW REWRITE: BILL 7: INTERNATIONAL & OTHER PROVISIONS

## ALTERNATIVE FINANCE ARRANGEMENTS

### INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(09)12 (Bill 7: Alternative Finance Arrangements) issued on 11 May 2009 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. Subject to our minor comments below, as indicated in our response to Question 1 we are content with the rewrite of the rules covering alternative finance arrangements for the purposes of income tax and capital gains tax following the similar rewriting of these rules for corporation tax purposes in Chapter 6 of Part 6 of ITA 2009.
4. Having regard to the commentary in Explanatory Notes paragraphs 59 and 60, we agree that it is appropriate to insert new section 367A of ICTA (Alternative finance arrangements) immediately after section 367 ICTA.
5. We note that the draft provisions rewriting section 54A of FA 2005 (alternative finance return – community investment tax relief) are to be issued separately.

### ANSWER TO QUESTION

6. **Q1** The overall approach to the rewrite of the material in clauses 1 and 2 and in Schedule 1 (Alternative finance arrangements) appears appropriate. In particular, we are content with the rewrite now of the regulatory power in s 98 FA 2006 in a single stand alone clause in Bill 7 (being clause 2 in Paper CC/SC(09)12) for the reason set out in Explanatory Notes paragraph 3.

### SPECIFIC COMMENTS ON DRAFT LEGISLATION

7. **new s 564V ITA 2007 Exclusion of alternative finance return from consideration for sale of assets**  
In s 564V(4) ITA 2007, in paragraph 23 of Schedule 1, is it intended to refer to 'the Tax Acts'?

8. **new s 151T TCGA 1992 Investment bond arrangements are qualifying corporate bonds**  
Is there any good reason for referring in new s 151T(4) TCGA 1992 to 'the entitlement' rather than to 'an entitlement' in the source s 48B(4)(c) FA 2005. The latter appears more appropriate.
9. **s 47 FA 2005 Alternative finance arrangements: purchase and resale**  
In paragraph 18 of Schedule 2 (Minor and consequential amendments) should 'sections 46 and 47A,' read 'sections 46 to 47A' so as to also omit section 47 FA 2005? Similarly in Schedule 3 (Repeals and revocations).
10. **Sch 4 ITA 2007 Index of defined expressions**  
In paragraph 27 of Schedule 2 (Minor and consequential amendments) should 'In Part 2 of Schedule 4' read 'In Schedule 4'?
11. **s 849(4) ITA 2007 Interaction with other Income Tax Acts provisions**  
Having regard to the amendment to s 849(4) ITA 2007 in paragraph 26 of Schedule 2 (Minor and consequential amendments), why is s 849(4) ITA 2007 repealed in Schedule 3 (Repeals and revocations)?

#### **DETAILED COMMENTS ON DRAFTING**

12. **new s 564Q ITA 2007 Deduction of income tax at source under Part 15**  
In paragraph 18 of Schedule 1, in new section 564Q(3) ITA 2007, the reference to subsection '(3)' should be to subsection '(2)'
13. **new s 564R ITA 2007 Treatment of discount**  
In paragraph 19 of Schedule 1, in new section 564R(1) ITA 2007, 'alterenative' should be 'alternative'.
14. **new s 151T TCGA 1992 Investment bond arrangements are qualifying corporate bonds**  
In Explanatory Notes paragraph 56 the reference should be to 'Schedule 2' rather than to 'Schedule 1'.

TJH/PCB  
17.7.09

## 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 130,000 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, Innovation and Skills 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>.