

TAXREP 87/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

LEASING PLANT OR MACHINERY: TAX AVOIDANCE

Memorandum submitted in December 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)46 issued in October 2008 by HMRC Tax Law Rewrite Team

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INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)46 (Bill 6: Leasing plant or machinery: Tax avoidance) issued on 22 October 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. Subject to our minor comments on clause 1(6), we are content with the drafting of clauses 1 and 2. We agree that their restructuring of the provisions in sections 785ZA and 785ZB of ICTA does improve accessibility. As compared with the source legislation, clause 1 now focuses more clearly on the key point that the restrictions on use of losses in a leasing partnership apply only if the company's interest in the leasing business is *not* determined on an allowable basis, whilst clause 2 following sets out more clearly separately what those restrictions are.
4. We are also content with the drafting of clauses 3 to 7, rewriting sections 785B to 785E of ICTA.
5. In rewriting s 785C of ICTA, we support its being rewritten in the two clauses 4 and 5 in order to give precedence to the principal terms (our response to Question 1 refers) as the main element in the restructuring of sections 785B to 785E of ICTA in the Paper CC/SC(08)46 rewritten clauses.

ANSWER TO QUESTION

6. **Q1** We agree that it is clearer to distinguish the primary terms in clause 4 (Meaning of "capital payment", "relevant capital payment" etc) from the other defined terms in clause 5 (Further interpretation of section 3 etc) in rewriting section of 785C of ICTA (Section 785B: interpretation) as the major element of restructuring sections 785B to 785E of ICTA.
7. In accordance with TLR practice to date in splitting income tax and corporation tax provisions, it is clearly preferable to also restructure sections 809ZA to 809ZD of ITA in the same manner on the basis that the structure of the corporation tax clauses is considered superior. Nevertheless, this cannot be regarded as imperative as the main section involved s 809ZB of ITA (Section 809ZA: interpretation), is intelligible to users as it stands even though it is less clearly presented than Paper CC/SC(08)46 clauses 4 and 5. Accordingly if the project does not have the resources to similarly restructure the equivalent income tax sections, then we consider that their present structure in ITA 2007 remains acceptable. It is questionable, however, whether

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provision of the extra resource to effect a fairly straightforward alignment with the rewritten corporation tax provisions is an unduly onerous matter.

8. We note from Explanatory Notes paragraph 28 that s 809ZC(3) of ITA will in any event be amended to align with clause 6(3) by the substitution for “is chargeable” of “would be chargeable”.

SPECIFIC COMMENT ON DRAFT LEGISLATION

cl 1 When restrictions on leasing partnership losses apply

9. **(6)** It does appear preferable to include the definition of “lease”, as fundamental to a leasing business, in clause 1(6) but it does not in fact occur in clause 1 itself.
10. In the definition of “notional business”, in (b), should the first reference to ‘for those purposes’ instead be ‘under that provision’ in accordance with s 785ZB(4)(b) of ICTA? The source reference is strictly to s 114(2) of ICTA rather than for the purposes of the charge to corporation tax.

TJH/PCB
17.12.08

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 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>.