

Tax Representation



TAXREP 11/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

TAX ARBITRAGE

Memorandum submitted in February 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)01 issued in December 2007 by HMRC Tax Law Rewrite Team

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The Tax Faculty of the Institute of Chartered Accountants in England and Wales

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Tax Arbitrage

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INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)01 (Bill 6: Tax arbitrage) which were published on 13 December 2007 at <http://www.hmrc.gov.uk/rewrite/index.htm#38>.
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. We support the TLR approach of incorporating source legislation Schedules as sections in a rewritten Act, being the approach adopted in Paper CC/SC(08)01 in rewriting F(No 2)A 2005 Schedule 3.
4. We note that the opportunity has also been taken to restructure the provisions to make them easier for users to understand. Nevertheless, as the source legislation is of recent origin, it is a little surprising to note the extent of the detailed drafting changes made, particularly in draft clauses 6-12 (Deduction schemes). Also, the change of focus by reference now to the seven deduction schemes, dropping the F(No 2)A 2005 Schedule 3 tripartite categorisation of Schemes involving hybrid entities, Schemes involving hybrid effect and Schemes involving hybrid effect and connected persons, may not be entirely welcome to users of this legislation who will now need to accustom themselves to the rewritten approach. However, the rewritten approach is clearer and, in view of the recentness of the source legislation, this is unlikely to cause difficulty in practice.
5. Similar comments apply to the rewriting of section 26 F(No 2)A 2005 in four clauses (20-23) and the replacement of conditions A to E by conditions A to D.
6. We note that savings provisions arising from the rewrite of the tax arbitrage provisions will be published as part of draft Bill 6.

ANSWERS TO QUESTIONS

7. **Q1** The structure of the Chapter, as introduced by clause 1 (Overview) and incorporating F(No 2)A 2005 Schedule 3 in clauses 3 and 6-12 (with 'Qualifying scheme' now labelled as 'Deduction scheme'), is logical and clear. The earlier inclusion of source sub-sections 30(2)-(4) F(No 2)A 2005 now as clause 4 (Meaning of schemes achieving UK tax advantage for a company), relating to clause 3 (The deduction scheme conditions), is appropriate as is the sharper drafting of the clauses, in particular clauses 2-5 (relating to Deduction notices) and 6-12 (relating to

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deduction schemes), and the rewriting of section 26 F(No 2)A 2005 in four new clauses.

8. **Q2** We support the proposal in clauses 2, 5, 25 and 26 to give officers of Revenue and Customs the function of giving deduction notices.
9. **Q3** We support the proposal to clarify section 25(8) F(No 2)A 2005 through the drafting of clause 16(1) (Cases where payee not treated as not liable as a result of scheme) so that Condition C is not satisfied if the payee is in principle liable to tax in respect of a payment or payments but such liability is extinguished by some form of tax relief which is not connected with the scheme.
10. **Q4** We support the proposal in clauses 19, 22, 25 and 26 to give officers of Revenue and Customs the function of giving receipt notices.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 16 Cases where payee not treated as not liable as a result of scheme

11. **(3)(a)** It may be clearer to retain the source s 25(10)(a) F(No 2)A 2005 reference to gains 'of one or more person' rather than 'of another person'.

cl 21 Amounts within corporation tax

12. In order to avoid any confusion with clauses 20(2) and (3), which respectively refer to Conditions A and B, it may be clearer to replace 'condition A or B' in clause 21(1) with 'subsection (2) or (4) below'.

DETAILED COMMENT ON DRAFTING

cl 27 Amendments, closure notices and discovery assessments where section 26 applies

13. **(7)** Should clause 27(7) refer to 'Subsection (2)' rather than to 'Subsection (6)'?

TJH/PCB
15.2.08

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>.