

TAXREP 89/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

LONG FUNDING LEASES OF PLANT OR MACHINERY

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)54 issued in November 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)54 (Bill 6: Long funding leases of plant or machinery) issued on 7 November 2008 at <http://www.hmrc.gov.uk/rewrite/index.htm#bill6>.
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 COMMENT

3. Subject to our detailed comments on clauses 3 and 8-10, we are content with the drafting of the clauses in Chapter 2 (Long funding leases of plant or machinery). In particular, as indicated in our response to the Questions, we agree that the revised structure in clauses 5-11 of the calculations required in relation to lessors do improve the accessibility of the source legislation in sections 502E to 502G of ICTA. The inclusion of the various signposts in clause 22 (Interpretation of Chapter) is also helpful to the user

ANSWERS TO QUESTIONS

4. **Q1** It is easier to understand the calculation of the allowable deduction applying clauses 5-7 than by applying the source s 502E of ICTA. The latter is comprehensible, but it requires greater mental effort. The use now of clauses 6 and 7 as supporting clauses to clause 5 enables the latter to more clearly express the essential calculation method. The use of the label “starting value” is also more self-explanatory and helpful as compared with “relevant value”. Rewriting s 502E(4)(e) as the separate clause 7, where the lessor incurred expenditure on the provision of plant or machinery otherwise than for a qualifying purpose, is particularly helpful in improving clarity; as is the inclusion now within clauses 6 and 7 of the definitions of the particular terms relevant to them.
5. As Explanatory Notes paragraph 29 indicates the calculation required is now presented in clauses 5-7 in a substantially different way from the denser presentation in s 502E of ICTA. As clearly improved drafting, if resources permit it must be preferable to amend the structure of the equivalent income tax section 148D of ITTOIA to conform with the structure of clauses 5-7; but, whilst desirable, this cannot be regarded as a necessity as s 148D of ITTOIA is intelligible as it stands, albeit demanding greater mental effort.
6. **Q2** Similar to our response to Q1, subject to our comments on clauses 9(3) and 10(4) we consider that clauses 8-10 are more clearly drafted than the source legislation in s 502F of ICTA. The latter is comprehensible, but the drafting of s 502F(5) and (6) tests the user with the need to refer to the various acronyms in

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comprehending their effect. It is helpful to clarify the source legislation by now rewriting it in three clauses, and in particular separating out in clause 10 the basis of calculation required where the lessor has previously incurred additional expenditure.

7. As regards any similar amendment of the equivalent income tax section 148E of ITTOIA, as with s 148D of ITTOIA in Q1 above we regard this as desirable but it cannot be regarded as essential.
8. **Q3** The revised presentation of the calculation adopted in clause 11 is certainly more user friendly than the source s 502G of ICTA where the use of acronyms and the Step drafting adopted again tests the user, albeit s 502G is intelligible applying sufficient mental effort.
9. As regards any amendment of the equivalent income tax section 148F of ITTOIA, similarly to our responses to Qs 1 and 2, we regard this as desirable but it cannot be regarded as essential.

SPECIFIC COMMENT ON DRAFT LEGISLATION

cl 3 Lessor under long funding lease: exceptional items

10. **(2)(a)** We note the inclusion now of '(or would fall)' in clause 3(2)(a). Is the exclusion of this proviso from the source s 502C(2)(b) ICTA legislation considered to be an omission in error?

DETAILED COMMENTS ON DRAFTING

cl 8 Long funding operating lease: lessor's additional expenditure

11. **(4)** Would it be helpful to first introduce '(“RRV”)' in clause 8(4) after 'remaining residual value', even if it is also retained in clause 9(1)?

cl 9 Determination of remaining residual value resulting from lessor's first additional expenditure

12. **(1)** If retained in clause 9(1), would it be preferable to relocate '(“RRV”)' to immediately following the preceding reference to 'remaining residual value'?
13. **(3)** In clause 9(3), isn't RRV (resulting from the lessor's first additional expenditure) the whole of the excess, or is the intention of the legislation to apportion RRV between the original expenditure and the first additional expenditure as at the later time when the first additional expenditure is incurred? If this complication is not intended, should clause 9(3) be truncated to refer to the excess as being RRV for the purposes of clause 9?

cl 10 Determination of remaining residual value resulting from lessor's further additional expenditure

14. **(4)** In clause 10(4), isn't RRV (resulting from the further additional expenditure) the whole of the excess, or is the intention of the legislation to apportion RRV between the original expenditure and each amount of additional expenditure to take account of increases in the RRV of the original expenditure and each prior amount of additional expenditure as at the later time when the further additional expenditure at issue in clause 10 is incurred? If this complication is not intended, should clause 10(4) be truncated to refer to the excess as being RRV for the purposes of clause 10?

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- cl 21 Meaning of “starting value” in section 20**
15. (4) The origin of clause 21(4) is ICTA s 502K(4).

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>.