

TAXREP 34/05

POST-CESSATION EXPENSES

TAX LAW REWRITE: BILL 4

Memorandum submitted in July 2005 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in May 2005 by HMRC Tax Law Rewrite Team

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)12 published on 4 May 2005 by HMRC Tax Law Rewrite Team at <http://www.hmrc.gov.uk/rewrite/exposure/menu.htm>.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in the Annex.

GENERAL COMMENTS

3. We do not agree with the inclusion of clause 2(5)(b) (Meaning of “qualifying payment”), as referred to in our response to Question 1; but we are otherwise satisfied with the draft clauses, subject to minor comments below.
4. We note that the clauses will be located in the Loss Relief Part of Bill 4, the post-cessation trade relief clauses in Chapter 2 (Trade losses) and the post-cessation property relief clauses in Chapter 3 (Losses from Property businesses) and agree that this is appropriate.
5. The structure and drafting of the clauses is in particular more readily intelligible than the source legislation in s 109A ICTA (as amended by ITTOIA 2005). The separation and similar drafting of the post-cessation trade relief clauses 1-6 and the post-cessation property relief clauses 7 and 8 is also helpful to the user.

ANSWERS TO QUESTIONS

6. **Q1** The source legislation in s 109A(2)(d) ICTA covers payments to collect both a debt where the payer is entitled to the benefit of the debt and where the payer is reimbursed by the person who is entitled to that benefit. If Change {jc 482} is made to introduce clause 2(5)(b), requiring the payer to be entitled to the benefit of the debt, then this will exclude from relief payments where the payer is not entitled to that benefit but is reimbursed by the person who is so entitled. The references to s 109A(4) and (4A) ICTA in Explanatory Notes paragraph 13, as regards debts released or proving to be bad, are misleading in this context as they refer to deemed payments rather than the actual payments with which s 109A(2)(d) is concerned. We accordingly do not agree to the inclusion of clause 2(5)(b).
7. **Q2** We have no objection to clause 3(2)(c) defining ‘statutory insolvency arrangement’ by reference to s 259 ITTOIA 2005.
8. **Q3** We welcome the proposal to allow a claim for CGT relief for post-cessation expenses to be made in circumstances where the taxpayer has no income and has not made a claim for income tax relief.

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SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 1 Post-cessation trade relief

9. (1) After 'trade', in the second line, is it appropriate to add '(whether carried on alone or in partnership) -' as in clause 7(1) (Post-cessation property relief)?

cl 3 Meaning of "qualifying event" etc

10. (2)(4) We agree that it is appropriate that the qualifying event should be explicitly specified as occurring (in clause 3(2)) when the debt is released, and that the relevant tax year (in clause 3(4)) is that in which the debt is released, on the basis that the payment treated as made in s 109A(4A) ICTA implicitly arises on the release and is then treated as a s 109A(1) payment made in the tax year in which the release occurs.
11. (5) We also agree that it is appropriate to state explicitly that a qualifying event occurs when a debt proves to be bad, as being implicit in s 109A(4A) ICTA.

Schedule 1 Consequential amendments

12. Para 2 As a minor point, in s 261C(2) would it be preferable to relocate the bracketed '(“the relevant amount”)' after 'deducted' in the third line? In its present location it might be misinterpreted as referring to the entire 'amount' in the second line.

DETAILED COMMENTS ON DRAFTING

cl 3 Meaning of "qualifying interest" etc

13. In Explanatory Notes paragraph 16 the reference to subsection (2)(b) should be to subsection (2)(c).

cl 4 Reduction of relief for unpaid trade expenses

14. (2) We agree the explicit bracketed reference to the relief not being reduced below nil, as implicit in the concept of reduction in s 109A(5)(a) ICTA.
15. The inclusion now of the clause 4(2)(b) reference to the trade being carried on in partnership is also appropriate.

Annex 1 – Change {jc 483}

16. The spacing between Changes {jc 482} and {jc 483} has gone awry. The latter needs to be more clearly distinguished from the former.

TJH/PCB
26.7.05

Tax Representation

ANNEX

WHO WE ARE

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.

The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry 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, including taxation.

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 11,000 members of the ICAEW who pay an additional subscription.