

Tax Representation



TAXREP 50/08 – Taxation of Foreign Company Profits

TEXTS OF LETTER SUBMITTED TO THE CHANCELLOR OF THE EXCHEQUER ON 18 APRIL 2008 AND LETTER SUBMITTED ON 4 JULY 2008 TO THE FINANCIAL SECRETARY TO THE TREASURY.

BOTH LETTERS CONCERN THE CONSULTATION ON THE TAXATION OF FOREIGN COMPANY PROFITS. THE SECOND LETTER WAS SUBMITTED JOINTLY WITH THE CHARTERED INSTITUTE OF TAXATION.

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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 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.
3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute.

18 April 2008

Rt Hon Alistair Darling MP
Chancellor of the Exchequer
HM Treasury
1 Horse Guards Road
LONDON SW1A 2HQ

By email: ministers@hm-treasury.gsi.gov.uk

Dear Chancellor

Taxation of Foreign Company Profits

I am writing regarding the widespread concern in the business community about the need to make progress as soon as possible on the consultation on the Taxation of the Foreign Profits of Companies.

There is a growing concern that publication of this document may be delayed beyond the early summer. This concern is damaging the reputation of the UK tax system as a competitive environment for large multinational business.

Background

We have welcomed previously the Government's decision to consult on this issue. A number of informal consultations took place during 2006 and 2007 and some are continuing. A public discussion draft was issued on 21 June 2007 and the ICAEW Tax Faculty submitted its response in September 2007 (TAXREP 61/07).

At the time of the Pre-Budget Report in October 2007 it was announced (paragraph 4.64 of the Pre-Budget Book) that

‘the Government will now develop a more detailed, broadly revenue neutral package of proposals to improve the competitiveness of the UK's corporate tax system in relation to foreign profits.’

At a meeting organised by the Oxford University Centre for Business Taxation in December 2007 a senior official from HM Treasury indicated that the consultation was still on track and it was anticipated that a more detailed consultation document, reflecting the undertaking made at the time of the Pre-Budget Report, would be published at the time of Budget 2008.

In the event, paragraph 3.14 of the 2008 Budget Book stated that the consultation document would be published ‘before the summer’. We have been led to understand that publication may now be further delayed until later in the summer.

Our concerns

Whilst we welcome the Government's willingness to consult on this issue with business and the professions, this needs to be balanced against the pressing need for the UK to move this consultation to a conclusion and formulate detailed policy proposals. As representatives of the largest organisation of business advisers, we are concerned that the delay in formulating a clear strategy and detailed proposals is creating a climate of uncertainty and concern amongst large multinational businesses.

This uncertainty about the eventual outcome of the consultation is preventing businesses from taking strategic business decisions. We are concerned that this uncertainty makes the UK a less attractive investment destination and that it will encourage multinational businesses to locate investment outside the UK.

Our recommendation

We appreciate that this consultation raises a number of key policy issues and that the issues need detailed consideration. Nevertheless, this needs to be balanced against the need to restore confidence in the UK as an attractive location for international investment. If the Government is not yet in a position to set out its detailed proposals in a consultation document before the summer begins, then we recommend that it should publish a paper as soon as possible setting out the policy principles which will underpin the detailed proposals.

We would welcome an early resolution to this issue and if it would be helpful we would be happy to meet with you to discuss these concerns.

Yours sincerely

Paul Aplin
Chairman, ICAEW Tax Faculty



TAX
FACULTY



4 July 2008

The Rt Hon Jane Kennedy MP PC
Financial Secretary to the Treasury
HM Treasury
1 Horse Guards Road
London SW1A 2HQ

via e-mail: Cerys.Morgan@hm-treasury.gsi.gov.uk

Dear Ms Kennedy

Taxation of Foreign Profits

We are aware that HM Treasury has been soliciting views on how best to proceed with its Consultation on the Taxation of Foreign Profits, and so we are writing to set out our views.

We consider there is great advantage in engaging in a wider strategic discussion about the UK corporate tax system, which should be broadened beyond the current focus on foreign profits. The Multinational Forum which you chair will be a valuable contributor to that debate. However, it is clear that there are some current imperatives which lead us to recommend that the Government's reform 'package' be split into two parts.

Accordingly, we suggest that the Government should introduce, with effect from 1 April 2009, the long-awaited dividend exemption, together with, if considered absolutely necessary, the worldwide interest restrictions included in the June 2007 Discussion Document, as developed during the consultation process. This would bring:

- A dividend exemption for shareholdings over 10% which, in our view, would be largely self-financing through repatriation of cash to the UK;
- A dividend exemption for portfolio holdings, which is one of the possible outcomes required by the judgment of the European Court of Justice in December 2006, in the *Franked Investment Income* group litigation order; and
- A limited cap on UK deductions for interest expense, by reference to total worldwide external financing costs.

Taxation of Foreign Profits: Comments of the CIOT and the Tax Faculty

We recommend that the Government do not introduce a dividend exemption with transitional restrictions, as this would limit the benefit to the UK of repatriation and cause major compliance problems.

We further recommend that, as a separate exercise, the Government conduct a wide-ranging Consultation in respect of the UK tax base – and announce this as soon as possible.

We believe it is important that such a Consultation is not simply limited to the rules in respect of foreign profits, for three reasons of principle:

Firstly, it is important to ensure that any tax reforms take account of the interests of all UK businesses and not just those carrying on international activities.

Secondly, there are multiple ways of protecting the UK tax base. A difficulty with the discussions to date is that they have focused exclusively on a single area, being the taxation of overseas passive income. We would like to encourage the Government to consider a wider range of options and seek input from business and practitioners.

Thirdly, we consider that the UK tax system needs to recognise the economic value to the UK of UK-headquartered activities, without acting to the detriment of other forms of ownership. Again, the current discussions appear not to have reflected this.

In addition, this Consultation should be broadened to cover the position of groups which carry on business through branches. Consideration of this important business form – which is especially important to the sectors which contribute most corporation tax (banking, insurance and oil and gas) - had been left out of the original debate.

We also hope that a wider consultation could consider potential incentives to encourage multinationals to conduct business in the UK. Other EU Member States have introduced incentives successfully – and seen economic benefits from them.

We hope that this wide-ranging consultation could be conducted in an open manner with business, economists and professional advisers, including the CIOT. We regret that the discussions following the June 2007 document largely ignored the important work done by the CIOT, other professional bodies and firms of advisers. It is also important that there is some discussion about the short and medium term financial impacts of reform for the Exchequer and for business.

Yours sincerely



Ian Menzies-Conacher
Chairman, Technical Committee, CIOT



Paul Aplin
Chairman, ICAEW Tax Faculty