

Tax Representation



TAXREP 4/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

OTHER MISCELLANEOUS RULES

Memorandum submitted in January 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(07)37 issued in November 2007 by HMRC Tax Law Rewrite Team

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TAX LAW REWRITE: BILL 6: CORPORATION TAX

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC/SC(07)37 (Bill 6: Other Miscellaneous Rules) which were published on 6 November 2007 at <http://www.hmrc.gov.uk/rewrite/index.htm#34>.
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.

ANSWERS TO QUESTIONS

3. **Q1** We have no objection to the approach of separating the clauses dealing with exemptions for charitable companies from the clauses that deal with other exemptions and exceptions, and including these instead with the rules for charitable companies etc in Part [8] of [Bill 6].
4. **Q2** We support the proposal to carry Change 93 in ITA 2007 across to corporation tax, such that necessary apportionment under clause 12(4) (Harbour reorganisation schemes: transfer of part of trade) should be made on a just and reasonable basis.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 6 Issue departments of the Reserve Bank of India and the State Bank of Pakistan

5. We note that 'profits or income' in s 517 ICTA has been rewritten as 'income'. We assume that this reflects the similar approach taken in the rewriting of 'profits and gains' as 'gains' only in draft clause 1(1) in Paper CC/SC(07)18 (Bill 5: Loan relationships).

cl 17 Agricultural societies

6. **(1)** We note that 'profits or gains' in the source section 510(1) ICTA is rewritten as 'profits' in clause 7(1), whereas in the rewritten loan relationships provisions the similar term 'profits and gains' is rewritten as 'gains' which appears inconsistent.
7. **(2)(d)** Having regard to the case law cited in the Explanatory Notes paragraph 16, should the clause 17(2)(d) reference be to 'the breeding of any kind of animal or bird'?

cl 8 European Economic Interest Groupings

8. **(1)** Why is the limitation to 'in respect of income' introduced in respect of 'charging corporation tax'? Would it be preferable to omit this, and simply refer to 'the purposes of charging corporation tax'?

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

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Tax Law Rewrite: Bill 6: Corporation Tax
Other miscellaneous rules

cl 10 Harbour reorganisation schemes: CAA 2001

9. (1) Is it considered unnecessary to qualify the reference to CAA 2001 as including enactments which are to be treated as contained in that Act, as in the source section 518(4) ICTA?

DETAILED COMMENT ON DRAFTING

cl 11 Harbour reorganisation schemes: chargeable gains

10. In Explanatory Notes paragraph 23, it may be clearer if 'loss relief against' were inserted immediately before 'chargeable gains'.

TJH/PCB
24.1.08

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>.