

## TAXREP 70/08

### TAX LAW REWRITE: BILL 6: CORPORATION TAX

### LOSS RELIEF: SUPPLEMENTARY CLAUSES

*Memorandum submitted in September 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)33 issued in September 2008 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 Law Rewrite: Bill 6: Corporation Tax  
Loss relief: supplementary clauses

# TAX LAW REWRITE: BILL 6: CORPORATION TAX

## LOSS RELIEF: SUPPLEMENTARY CLAUSES

### INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)33 Bill 6: Loss Relief: Supplementary Clauses) issued on 2 September 2008 at [www.hmrc.gov.uk/rewrite/index.htm](http://www.hmrc.gov.uk/rewrite/index.htm).
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 are content with the drafting of clause 1 (Registered industrial and provident societies) and note that this will be located immediately after Paper CC/SC(07)38 clause 16 (Use of trade-related interest and dividends if insufficient trade profits).
4. We are also content with the drafting of clause 2 (Non-UK resident company: receipts of interest, dividends or royalties) and note that this will be located immediately after Paper CC/SC(07)38 clause 17 (relating to leasing contracts and company reconstructions). As regards the related drafting of new section 436C to be inserted in ICTA, the drafting of section 436C(2) is not quite as clear as sub-clauses 2(2) and (3) which are its equivalent in clause 2.

### ANSWER TO QUESTION

5. **Q1** We support the proposal to enact ESC C5 as clause 1 (Regional industrial and provident societies), in accordance with the explanation in Change 667 in Annex 1.
6. Sub-clause 1(2) with (3) is more prescriptive than ESC C5, but appears to comprehensively cover all amounts assessable under the predecessor Schedule D Case V.

### SPECIFIC COMMENT ON DRAFT LEGISLATION

#### **cl 1 Registered industrial and provident societies**

7. **(4)** We note that the section 486(12) ICTA definition of industrial and provident society in clause 1(4) may be removed if a Bill-wide definition of industrial and provident society is instead finally adopted.

### DETAILED COMMENT ON DRAFTING

#### **Sch 1 Consequential amendments (Loss relief) – ICTA**

8. In the section 436C heading, 'dividend' should be 'dividends'.

TJH/PCB  
8.9.08

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## 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](mailto: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>.