

TAXREP 62/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

CHANGES IN COMPANY OWNERSHIP AND RECOVERY OF CORPORATION TAX

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)22 issued in June 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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INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)22 (Bill 6: Changes in company ownership and recovery of corporation tax) issued in June 2008 at 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. The restructuring of the Part 1 (Tax avoidance: changes in company ownership) source legislation in sections 767A-769 of, and Schedule 28A to, ICTA does make it easier for users to navigate and the tables in draft clauses 14 and 31 are particularly helpful.
4. The structure of Schedule 28 to FA 2000 is essentially unchanged in the drafting of Part 2 Chapter 1 (recovery from a related company of unpaid corporation tax due from a non-UK resident company) and we are content with this.
5. We note the comments in Explanatory Notes paragraphs 5 and 6, relating to future amendments to the draft clauses and to any effect of the simplification review upon sections 768-769 ICTA.
6. With reference to Explanatory Notes paragraph 14, that s 767C of ICTA (Change in company ownership: information) would only be rewritten if not repealed by FA 2008, we further now note that s 767C of ICTA was repealed by FA 2008 (Schedule 36 paragraph 81).
6. We also note that repeals arising from the rewrite of the provisions about changes in company ownership and recovery of unpaid corporation tax will be published as part of draft Bill 6 and that the provisions in Explanatory Notes paragraphs 294-303 will be repealed without replacement (which treatment we agree with).
7. Having regard to the comments in Explanatory Notes paragraph 3, and in particular the bullet points, we are content with the drafting of the clauses subject to our minor comments in paragraphs 19-25 below.

ANSWERS TO QUESTIONS

8. **Q1** We are content with the structure of Part 1 (Tax avoidance: changes in company ownership).

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9. **Q2** We are content with the structure of Chapter 3 (Company with investment business: restrictions on relief: general provision).
10. **Q3** Having regard to the explanation in Change 655 in Annex 1, we support the proposal to clarify in clauses 10 and 27 the restriction imposed by s 768E(5) of ICTA.
11. **Q4** We welcome the proposal to rewrite paragraphs 6 and 7(1) of Schedule 28A to ICTA as a two-column table in draft clause 14 (Apportionment of amounts). The presentation is much clearer to the reader than the complex source legislation.
12. **Q5** We are content with the structure of Chapter 4 (Company with investment business: restrictions on relief: asset transferred within group).
13. **Q6** Having regard to the explanation in Change 656 in Annex 1, we support the proposal to clarify in clause 27(2) (Restriction on relief for non-trading loss on intangible fixed assets), by identifying the post-change in ownership profits against which property losses and non-trading losses on intangible fixed assets incurred pre-change cannot be relieved, the restriction imposed in certain circumstances on relief for non-trading losses on intangible fixed assets.
14. **Q7** We support the proposal to clarify in clauses 29 and 30 the restriction imposed in certain circumstances on relief for property losses.
15. **Q8** We welcome the proposal to rewrite paragraphs 13(1), 15 and 16(1) of Schedule 28A to ICTA as a two-column table in draft clause 31 (Apportionment of amounts).
16. **Q9** We support the proposal to give officers of Revenue and Customs the function of making assessments under clause 39 (Recovery of unpaid corporation tax for accounting period beginning before change).
17. **Q10** We support the proposal to give officers of Revenue and Customs the function of making assessments under clause 42 (Recovery of unpaid corporation tax for accounting period ending on or after change).
18. **Q11** We support the proposal to give officers of Revenue and Customs the power to serve notices under clause 64 (Notice requiring payment of unpaid tax).

SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 32 Meaning of certain expressions in section 31

19. **(3)** Should 'adjusted' be inserted before the first reference to 'non-trading deficit' (as in draft clause 15(2))?

cl 41 Meaning of "a major change in the nature or conduct of a trade or business"

20. **(4)** Should 'or trades' be inserted immediately after 'trade'?

cl 47 Meaning of "associated company"

21. **(2)(c)** Is it now considered sufficient to refer to 'person' in the singular as including the plural, whereas s 767AA(8)(c) ICTA refers to 'person or persons'?

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DETAILED COMMENTS ON DRAFTING

cl 11 Restriction on the deduction of expenses of management

22. Explanatory Notes paragraph 72 refers to a 'subsection (6)'. Where is this?

cl 42 Recovery of unpaid corporation tax for accounting period ending on or after change

23. It is not clear what Explanatory Notes paragraph 234 means. In which respect(s) is clause 42(1)(b) brought into line with clause 39(1)(b)?

cl 65 Time limit for giving notice

24. In Explanatory Notes paragraph 286, the reference should be to 'clause 64' rather than to 'clause 67'.

cl 66 Amount payable in consortium case

25. In Explanatory Notes paragraph 288, the reference should be to 'clause 64' rather than to 'clause 67'.

TJH/PCB
3.9.08

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>.