

Tax Representation



TAXREP 45/09

TAX LAW REWRITE: BILL 7: INTERNATIONAL & OTHER PROVISIONS

LEASING ARRANGEMENTS: FINANCE LEASES AND LOANS

Memorandum submitted in July 2009 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(09)13 issued in June 2009 by HMRC Tax Law Rewrite Team

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ICAEW Tax Faculty, Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ www.icaew.com/taxfac	T +44 (0)20 7920 8646 F +44 (0)20 7920 8780 E taxfac@icaew.com
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INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(09)13 (Bill 7: Leasing arrangements: finance leases and loans) issued on 11 June 2009 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 Annex 1. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex 2.

GENERAL COMMENTS

3. Subject to our minor comments below we are content with the drafting of new Part 11A of ITA 2007 and new section 37A of TCGA 1992, rewriting Schedule 12 to FA 1997 for the separate purposes of income tax and chargeable gains.
4. We note from the Explanatory Notes that various amendments, with which we are content, have been made in the draft clauses as compared with the equivalent clauses for corporation tax purposes in Part 10 of CTB 2 and that various associated amendments are also to be made to the clauses in Part 10 of CTB 2 (Explanatory Notes paragraphs 16, 29, 36, 50 (presumably), 58, 79, 82, 89, 101, 104, 114, 118 and 120 refer).
5. We note also from Explanatory Notes paragraph 6 that further amendment may be made to the Paper CC/SC(09)13 clauses when included in the updated draft of Bill 7 in late August 2009.

DETAILED COMMENTS ON DRAFTING

6. **s 614BM ITA 2007 Recovery of bad debts following reduction under section 614BL**
In Explanatory Notes paragraph 72, in the first sentence, insert 'debt' immediately after 'bad'.
7. **s 614 BV ITA 2007 Capital allowances deductions: films and sound recordings**
Why does clause 434 of CTB2 relate only to films, and not also to sound recordings?
8. **s 614DF ITA 2007 Assessments and adjustments**
The spacing of the words 'effect to this Part' has gone awry.

TJH/PCB
17.7.09

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 130,000 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, Innovation and Skills 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>.