

TAXREP 26/05

FINANCE BILL OF SUMMER 2005

*Memorandum submitted in June 2005 to the Paymaster General
by the Tax Faculty of the Institute of Chartered
Accountants in England and Wales*

CONTENTS

	Paragraph
INTRODUCTION	1-2
DETAILED COMMENTS	3-8
	Annex
WHO WE ARE	A
TEN TENETS FOR A BETTER TAX SYSTEM	B

Tax Representation

THIRD FINANCE BILL OF 2005

INTRODUCTION

1. This memorandum sets out our comments on those portions of the Finance Bill published on 26 May 2005 which are to be debated by a Committee of the Whole House on 13 June 2005. Our remaining comments will be submitted in due course, in time for the Standing Committee debates.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty and how to contact us are set out in Annex A.

DETAILED COMMENTS

PART 2

CHAPTER 1 Personal Taxation

Gift aid

Clause 11: Donations to charity by individuals

3. New clause 25(5H)(b) provides that charities have to calculate a 'notional' admission fee to check the 10% test. We would welcome clarification of how would an individual would be expected to know that this had been done correctly in order correctly to self assess a gift aid donation.

CHAPTER 6 Miscellaneous

Financing of companies etc

Clause 40 and Schedule 8: Transfer pricing and loan relationships

4. We regret the introduction of this clause. It is untargeted, and as such is likely to damage the financial markets and hence the desirability of the UK as a centre in which to raise capital. We are concerned that the proposed legislation will not only distort the efficient working of the private equity market but is likely to have wider implications than those that we imagine have been anticipated, for example it is likely to cause collateral damage to the private financing initiative (for example the St Pancras Channel Tunnel project costing over £5billion).
5. Such wide-ranging legislation needs to be the subject of thorough scrutiny and debate to ensure that if there is a mischief which needs to be eliminated then the legislation is properly targeted and proportionate, and accords with our Ten Tenets for a Better Tax System outlined in Annex B.

Tax Representation

6. The very wide definition of persons acting together in relation to financing arrangements in new paragraph 4A (paragraph 1(3), Schedule 8) would seem to catch not only private equity houses but also banks and other lenders and bring them all within the proposed new 'transfer pricing' rules which are designed to limit tax deductions on the financing costs of management buy-outs.
7. In paragraph 4 of Schedule 8 we welcome the grandfathering until 1 April 2007 as announced on 4 March 2005 for arrangements in place on that day, but we would reiterate our view expressed in a meeting on 20 May with HM Revenue and Customs and HM Treasury that the grandfathering should be extended indefinitely, not least because otherwise it is likely prove contrary to the European Union doctrines of legal certainty and preservation of legitimate expectations.
8. Grandfathering comes to an end when a contract is 'varied' after 4 March 2005 (paragraphs 4(2) and (3), Schedule 8). It will be very difficult in practice to know how to apply this. We would welcome clarification of the tests that should be applied to ascertain whether a debtor relationship is 'varied' after 4 March

PCB
9.6.05

ICAEW AND THE TAX FACULTY: WHO WE ARE

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.

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.

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 11,000 members of the ICAEW who pay an additional subscription.

To contact us, telephone 020 7920 8646 or email tdtf@icaew.co.uk.

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/taxfac/index.cfm?AUB=TB2I_43160,MNXI_43160.