

TAXREP 1/05

COMMUNITY INVESTMENT TAX RELIEF (CITR)

TAX LAW REWRITE: BILL 4

*Memorandum submitted in January 2005 by the Tax Faculty of the
Institute of Chartered Accountants in England and Wales in
response to an invitation to comment issued in November
2004 by the Inland Revenue Tax Law Rewrite Team*

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(04)17 Bill 4: Community Investment Tax Relief (CITR) dated 10 November 2004, published by the Revenue's Tax Law Rewrite team at <http://www.inlandrevenue.gov.uk/rewrite/exposure/menu.htm>.

WHO WE ARE

2. 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.
3. 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.
4. 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.

GENERAL COMMENTS

5. We confirm that we found the provision of origins within the draft paragraphs, rather than separately, to be helpful in reviewing the material. This caused no difficulty in understanding the Explanatory Notes.
6. It is appropriate as an introduction, in paragraph 1, to indicate what community investment tax relief (CITR) is, and in particular to now label it as an entitlement to an income tax reduction in accordance with the Annex A Appendix 1 illustrative sketch of the high level structure of the income tax computation for individuals.
7. We agree that the rewrite approach adopted is appropriate to the continued application of CITR for corporation tax purposes, as explained particularly in Explanatory Notes – Overview paragraphs 5-7. We also agree the approach to the rewriting of CITR as concerns income tax, as explained in Explanatory Notes – Overview paragraph 8.

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8. As explained in Explanatory Notes paragraphs 57-59 and 64, we appreciate that the drafting of paragraph 19 (Entitlement to tax reduction) is affected by the material to be drafted dealing with the computation of an individual's tax liability and, in this context, note the omission of FA 2002 Schedule 16 paragraph 19(2)(b) (CITR restricted to reducing the taxpayer's liability to zero) and the possible future exclusion of paragraph 19(6) (rewriting FA 2002 Schedule 16 paragraph 19(6)).

QUESTIONS

9. **Q1.** We agree that the inclusion of paragraph 11(3) is appropriate, aligning the conditions to be met in relation to securities with those to be met in relation to shares and in accordance with practice. This does, however, appear to be a change in the law as the equivalent of paragraph 11(3) is not explicitly included in FA 2002 Schedule 16 paragraph 10(1).
10. **Q2.** Agreed.
11. **Q3.** We have no objection to the omission of the words "wholly or partly" in Schedule 16 FA 2002 paragraph 12(6) from the rewritten paragraph 13(8).
12. **Q4.** The inclusion of paragraph 26 as an introductory paragraph, signposting those paragraphs which withdraw or reduce CITR, is appropriate. We have no objection to the revised order of the following paragraphs in Part 6.
13. **Q5.** We agree the proposal to omit the words "for full consideration" from paragraph 28(4)(a) in defining 'qualifying disposal'.

SPECIFIC COMMENTS ON DRAFT PARAGRAPHS

14. para 5 *Application and criteria for accreditation*
(2) In FA 2002 Schedule 16 paragraph 4(2), the Secretary of State 'shall' accredit a community development finance institution ('CDFI') if satisfied. The words now used are 'is to' (accredit). If the intention is to bring out more the compulsory exercise of accreditation, we suggest that it might be preferable to instead use the word 'must'.
15. para 15 *No control of CDFI by investor*
(2) It might assist the reader's understanding of paragraph 15(5) if paragraph 15(2) were stated to be subject to paragraph 15(5). As a partner in the CDFI, the investor would be connected with the other partners in the CDFI partnership but for paragraph 15(5).
16. para 49 *Meaning of 'disposal'*
(2)(b) The cross-reference to s 137(1) TCGA 1992 refers to 'genuine' reconstructions. As a cross-reference to original legislation not yet rewritten, should this reference instead remain as being to 'bona fide' reconstructions, the term used in both s 137 TCGA 1992 and FA 2002 Schedule 16 paragraph 48(2)(b)?

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DETAILED COMMENTS ON EXPLANATORY NOTES

17. para 10 *Conditions to be met in relation to loans*
In Explanatory Notes paragraph 29 should the reference to ‘Sub-paragraph (3)’ be to ‘Sub-paragraph (4)’?
18. Part 4 *General conditions*
In Explanatory Notes paragraph 49, the two references to ‘Part 2’ should be to ‘Part 4’ (of the original and rewritten legislation).
19. para 29 *Repayment of loan capital*
In the first sentence of Explanatory Notes paragraph 93 should it be made clearer that paragraph 29 provides that *all* CITR attributable to a loan must be withdrawn if the average capital balance of the loan outstanding during *any* (rather than each, as implying all) of the last 3 years of the 5 year period is less than the specified percentage of the average capital balance (unless the shortfall is insignificant)?
20. para 37 *Receipts of value by or from connected persons*
With reference to Explanatory Notes paragraph 114 and to paragraph 37 of the Schedule, are the intended words ‘if the context so admits’ or ‘if the context permits’ (the Explanatory Note differs from the draft legislation)?

14-13-36
TJH/PCB
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