

Tax Representation



TAXREP 45/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

PERMANENT ESTABLISHMENTS AND UK REPRESENTATIVES

Memorandum submitted in June 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)10 issued in March 2008 by HMRC Tax Law Rewrite Team

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The Tax Faculty of the Institute of Chartered Accountants in England and Wales

TAXREP 45/07

Tax Law Rewrite: Bill 6: Corporation Tax
Permanent establishments and UK representatives

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PERMANENT ESTABLISHMENTS AND UK REPRESENTATIVES

INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)10 (Bill 6: Permanent establishments and UK representatives) issued on 31 March 2008 at <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. The merging of sections 148 and 152 of and Schedule 26 to FA 2003, in Chapter 1 (Permanent establishments), adds clarity and improves the accessibility of this part of the corporation tax legislation determining what constitutes a permanent establishment of a company in a territory.
4. We note that the final version of clause 4 (Alternative finance arrangements) will reflect the consequential amendments made to the source section 148(5A) and (5B) of FA 2003 when Bill 5 is enacted and dispenses with the term “profit share return”.
5. We note from Explanatory Notes paragraph 21 that clause 6(8) (The independent investment manager conditions) retains Condition F at this stage, although the source legislation in paragraph 3(2)(f) of Schedule 26 to FA 2003 is omitted by paragraph 9(2) of Schedule 16 to the Finance Bill 2008. We also note from Explanatory Notes paragraph 33 that the retention of clause 9 (Treatment of transitions if requirements of 20% rule are not met) is temporary pending enactment of Finance Bill 2008.
6. We note from Explanatory Notes paragraph 51 that, in clause 14(4) (Introduction) the reference to s 11(2A) ICTA in the source legislation will be consequentially amended by Bill 5 to refer to the rewritten provision (clause 19 of Bill 5).
7. We also note from Explanatory Notes paragraph 56 that, in clause 17 (Interpretation of Chapter) the final definition of “trade” or “carrying on a trade” will reflect any consequential amendments made to the source section 150(7) FA 2003 when Bill 5 is enacted.

ANSWERS TO QUESTIONS

8. **Q1** We support the proposal to add the words “(apart from this subsection)” in clause 5(6) (The independent broker conditions).
9. **Q2** We support the use of “the total of the non-UK resident company’s income” in clause 8(3) (Section 7: Interpretation).

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10. **Q3** As Chapter 2 deals with the provisions for the collection etc of tax from UK representatives of *non*-UK resident companies only and a non-resident company's 'permanent establishment' is its UK representative, there is a case on grounds of ease of reference for including these provisions in Bill 6 together with the provisions defining 'permanent establishment' within the Bill 6 Part relating to non-UK resident companies. Although administrative provisions, there appears to be no supervening advantage in including them instead within the separate TMA (via Bill 7). We accordingly agree that it is preferable to keep the Chapter 2 administrative provisions with the Chapter 1 interpretation provisions within a Non-UK resident companies Part in Bill 6, as in the source legislation. This is also more likely to assist non-residents in accessing these administrative provisions, rather than their having to refer to TMA.

SPECIFIC COMMENT ON DRAFT LEGISLATION

cl 11 Meaning of “investment manager” and “investment transaction”

11. We note the comments in Explanatory Notes paragraph 41 but, with reference to paragraph 3(3)(c) Schedule 26 FA 2003, will it still be made by statutory instrument which is subject to annulment in pursuance of a resolution of the House of Commons?

TJH/PCB
20.6.08

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>.