

Tax Representation



TAXREP 13/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

SMALL COMPANIES' RELIEF

Memorandum submitted in February 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(07)05 issued in January 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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Tax Law Rewrite: Bill 6: Corporation Tax
Small Companies' Relief

TAX LAW REWRITE: BILL 6: CORPORATION TAX

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INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)03 (Bill 6: Small companies' relief) issued in January 2008 at <http://www.hmrc.gov.uk/rewrite/index.htm#38>.
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. Whilst the drafting now of clause 4 for the purposes of clauses 2 and 3 by reference to 'the small companies rate limit' and 'the upper limit' is a change from the more familiar lower and upper relevant maximum amounts in s 13 ICTA (Small companies' relief), it appears unobjectionable.
4. Similarly the use now of the expression "candidate company" in clause 12, to describe the company which is being considered to determine whether or not it is a close investment-holding company, whilst a little unusual is also effective.
5. We note that it not proposed to legislate paragraph 5 of ESC C9, pending the review announced in Autumn 2007 of the associated companies rules.
6. We also note that the treatment in clauses 7-9 will also apply to the monetary limit for long-life assets in s 99 CAA 2001, in accordance with HMRC practice.
7. The opportunity is not being taken to codify the treatment confirmed in CCAB Technical Release 500 paragraph 15 (10 March 1983) which gives UK branches of non-resident companies access to small companies' relief in the circumstances specified. Why is this?

ANSWERS TO QUESTIONS

8. **Q1** We support the proposal to drop the requirement for a claim for small companies' relief
9. **Q2** We support the proposal to drop the requirement for a claim for marginal small companies' relief.
10. **Q3** We support the proposal to enact SP 5/94 in clause 6 (Section 5(3): treatment of certain holding companies). SP 5/94 required any dividends received by the holding company to be 'distributed in full to its shareholders' without specifying a time within

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which such distribution is to be made. Clause 6(4) now requires dividends received in an accounting period to be paid out to its shareholders *within* the same period. Is this more restrictive requirement intended? It will oblige groups to pay careful attention to the timing of dividend payments from subsidiaries into the holding company and out again by the holding company to its shareholders, particularly where the receipts arose late in the accounting period.

11. SP5/94 also refers to dividends received 'which are, *or could be*. franked investment income received'. Do the italicised words (our italics) have any significance, as they are not included in clause 6(3)(c)(ii)?
12. **Q4** We support the proposal to enact paragraph 2 of ESC C9 in clause 7(1) (Associated companies: fixed-rate preference shares). We also agree the use of the s 313(7) ITA 2007 definition of "fixed-rate preference shares" in clause 7(2) and (3).
13. **Q5** Subject to our specific comments in paragraph 15, we support the proposal to enact paragraph 3 of ESC C9 in clause 8 (Association through a loan creditor), so that certain loan creditors are ignored in determining whether one company controls another.
14. **Q6** We support the proposal to enact paragraph 4 of ESC C9 in clause 9 (Association through a trustee).

SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 6 Section 5(3): treatment of certain holding companies

15. **(3)(e)** How is the holding company to meet the requirement in clause 3(c) if it meets such necessary costs as its audit and Companies House filing fees? This ought not to prejudice its status as a passive holding company (and similarly where it recharges any appropriate share of such fees to its subsidiaries).

cl 8 Association through a loan creditor

16. As drafted clause 8, through sub-clause 8(4), does not take into account as a loan creditor any person carrying on a business of banking. As s 417(9) ICTA has to expressly prevent such a person from being deemed to be a loan creditor, the inference (reflecting reality) is that such a person is otherwise a loan creditor. As such in reality *for the purposes of clause 5(4)* such a loan creditor remains to be taken into account in determining control of a debtor company, which is not what ESC C9 provides. If this analysis is correct, clause 8 needs to still expressly provide for a loan creditor who is a bona fide commercial loan creditor to be ignored when determining control (as is the case in paragraph 3 of ESC C9).

TJH/PCB
15.2.08

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>.