

# Tax Representation



## TAXREP 5/07

### TAX LAW REWRITE: THE FUTURE

*Text of a letter sent on 17 January 2007 to HMRC, with a copy to the Paymaster General, by the Chairman of the Tax Faculty of the Institute of Chartered Accountants in England and Wales concerning the future of the Tax Law Rewrite Project*

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## TAX LAW REWRITE: THE FUTURE

**Text of a letter dated 17 January 2007 sent by Francesca Lagerberg, Chairman of the Tax Faculty, to Mark Nellthorp, Project Director, Tax Law Rewrite, HMRC, with a copy to the Paymaster General.**

### *Introduction*

- 1 In the light of concerns expressed in certain quarters about the future of the Tax Law Rewrite (TLR) and the intended acceleration of the consultative process, I am writing to express our support for the Tax Law Rewrite ('TLR') project. We consider that the project should be continued, at least until Corporation Tax and Capital Gains Tax have been rewritten.

### *Continuation of project*

- 2 We are aware that concerns have been expressed by some about the worth of the project, on the grounds that it has not led to policy changes or real tax simplification. The original thinking behind the lobbying that led to section 160 Finance Act 1995, which gave birth to the TLR project, was of course to simplify policy as well as language. Section 160 was framed in terms of tax simplification and, although we appreciate that simplification was placed beyond the TLR project's remit, the fact remains that at a fundamental level the TLR does not achieve the objective set out in the FA 1995. We fully support attempts to simplify our complicated tax system and believe that there is need to press ahead with a tax simplification programme.
- 13 Despite this restriction in the TLR project's remit, it has encouraged discussion of possible policy changes, and we welcome the new arrangement noted in the November 2006 Standing Committee minutes at item 7. This will encourage better communication of the issues raised by the TLR team on policy issues with a clear feedback on any outcomes.
- 4 We consider that overall the rewrite has succeeded in improving the quality of tax legislation. HMRC and professional body representatives have put a considerable amount of work into restructuring the legislation. In addition, through correcting errors and omissions, weeding out obsolete material, enacting Extra Statutory Concessions, generally clarifying the source legislation and adopting modern language and style, the end result is that the rewritten legislation is easier to understand and follow. The success of the rewrite approach has meant that Parliamentary Counsel are increasingly adopting the 'rewrite style' in drafting other legislation.
- 25 We accept that the rewrite is at the mercy of new legislation amending the rewritten legislation. However, tax law does not stand still and it is inevitable that amendments will be made, although of course the full benefits of the rewrite will only be retained if the amendments are also drafted in rewrite style.
- 6 In summary, we therefore support continuation of the rewrite project to cover the Corporation Tax and Capital Gains Tax Bills. Given its complexities, we think that

the Capital Gains Tax rules in particular will benefit from thorough review by the TLR project team.

*Acceleration of the rewrite process*

- 7 We are concerned about the impact of HMRC's intended acceleration of the consultative process. This is because we believe the project has benefited from allowing sufficient time for the provisions to be properly reviewed and scrutinised. A more rapid response will inevitably lead to reduced scrutiny of the draft legislation, which we believe will reduce its effectiveness.
- 8 We are concerned about the increased time commitment and resource implications that we, and we suspect other participants, will need to put into this project to cope with the acceleration. We were surprised that you did not consult with us and other participants about this before it was announced. Our TLR volunteer, Terry Hopes, has informed me that he has recently been approached by your colleague Brian Jones with a view to meeting to discuss how to ameliorate the effects of the acceleration. I agree with Terry's suggestion that a joint meeting with other coal-face representatives would be the most constructive way to proceed. One way forward might be to exclude the financial areas from the corporation tax rewrite. However, to leave out complex areas that would probably benefit the most from rewriting could be seen as compromising the rewrite principles.
- 9 If you would like to discuss this further, please contact Adam Broke, Terry Hopes or me.

Francesca Lagerberg  
Chairman, Tax Faculty of the Institute of Chartered Accountants in  
England and Wales

FCL/PCB  
17.1.07

### WHO WE ARE

1. The Institute of Chartered Accountants in England & Wales is a professional body representing some 128,000 members. The Institute operates under a Royal Charter with an obligation to act 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 (which includes taxation).
2. The Tax Faculty is the centre for excellence and an authoritative voice for the Institute on taxation matters. It is responsible for tax representations on behalf of the Institute as a whole and it also provides services to more than 11,000 Faculty members who pay an additional subscription.
3. Further information is available on the ICAEW website, [www.icaew.co.uk](http://www.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**