

Tax Representation



TAXREP 39/09

Finance Bill 2009: Part 7 excluding clauses 91 to 93

Parliamentary Briefing submitted on 22 June 2009 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales setting out concerns about the provisions arising out of the continuing review of HMRC's powers.

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Introduction

- 1 These clauses enact a variety of specific provisions arising out of the Review of HMRC's powers. Our comments below are in addition to those set out in our earlier representation on the Finance Bill 2009, which have been published as TAXREP 30/09. We have also submitted individual Parliamentary Briefings on clauses 91 to 93 (published as TAXREPs 36/09 to 38/09).
- 2 We noted during the passage of the HMRC powers provisions during the Finance Bill 2008 that the balance appeared to have been shifted in favour of HMRC and that we were concerned that the provisions contained insufficient safeguards for taxpayers. One of the outcomes of last year's debates was the agreement to establish a Powers implementation Forum. We welcome this development and are pleased to be represented on the Forum.
- 3 It remains the case that these powers have only recently been introduced and have bedded down in practice. A substantial number of amendments to Schedule 36 of FA 2008 (HMRC's new information and inspection powers) are made by this Bill. Further, the Schedule 36 rules, which in the FA 2008 extended only to income tax, capital gains tax, corporation tax and VAT, are now extended to cover a range of other taxes including inheritance tax and SDLT.
- 4 Whilst we understand the logic behind a unified set of information and inspection powers, given that the FA 2008 rules have not had chance to bed down in practice we think that the extension of the rules in the Finance Bill 2009 to cover all taxes is premature. We believe that the rules should not have been extended until the Oversight Forum had reviewed the implementation of the FA 2008 rules and concluded that the time was right to extend the FA 2008 rules.

Clause 94 and Schedule 47

Amendment of information and inspection powers

- 5 Clause 94(2) gives HM Treasury power to amend the provisions of primary legislation (Sch 36, FA 2008, and Sch 47 of this Bill). This power to make amendments is wide in scope. The explanatory notes say that HMRC will use this power to repeal provisions which are no longer required. This is a welcome statement of the intention of this provision but the clause as drafted does not confine the power to such repeals.

ICAEW recommendation

- We would like a government statement clarifying the intention of this provision and that it will only be used in such circumstances set out above..

Clause 95 and Schedule 48

Extension of information and inspection powers to further taxes

- 7 The information and inspection provisions in Schedule 36, FA 2008 are extended to include inheritance tax. We are concerned about the extension of these powers to inheritance tax. Many executors will be bereaved close family or friends of the deceased. They may also be elderly. Tracing all assets and lifetime gifts can be very difficult and particularly so for these people in the difficult circumstances they find

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themselves. We therefore consider that extending the information and inspection provisions in Schedule 36 to IHT in these circumstances.

8 **ICAEW recommendation**

- We would welcome a statement that these powers will be operated with a 'light touch' in relation to family executors etc.

Clause 100 and Schedule 53
Late payment interest on sums due to HMRC

The need for draft regulations

- 9 Draft regulations showing how interest will be calculated need to be published. It is still not known what will be the interest differential. Thus a key element of the provisions is missing and Committee members need this information available to them to help inform any debate.

Exclusion of corporation tax and petroleum revenue tax

- 10 The draft legislation published in December 2008 made all taxes subject to the rules except where overridden by regulations made by HM Treasury. At the time we understood that the stated intention was to exclude the quarterly payments of corporation tax from the proposed late interest rules.

- 11 The provision to exclude taxes by way of Treasury Order is still included (see clause 100((2)(c) but in addition both corporation tax and petroleum revenue tax have been excluded. We would welcome clarification as to why both of these taxes have been excluded.

Contract settlements

- 12 The December 2008 draft legislation included a reference (in brackets) to the inclusion of contract settlements within these rules. In the Finance Bill 2009 the references to the inclusion of contract settlements have been removed. We would welcome confirmation about the position of contract settlements.

PAYE

- 13 We would welcome clarity on how the proposed introduction of an interest charge on late paid PAYE is to operate.

- 14 Paragraph 6.4 of the Impact assessment published at the time of the 2009 Budget states:

In recognition of this and of concerns raised about the administrative burden of an expanded P35 required for this option, the intention is now to apply interest and penalties to late paid employers' PAYE on a risk basis, targeting the worst offenders, building on existing debt management activities. Furthermore, risk assessment will be carried out to identify those who appear to be seeking an unfair advantage by underpaying in the early part of the year and take steps to apply interest and penalties to these employers as well. It is envisaged that this targeted approach would result in an increase in on time payment as employers are made aware of the new potential consequences of late payment. Whilst implemented in this way, employers would not be required to submit the extended information on their P35 returns (monthly

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breakdowns of payment due to be made to HMRC) until the necessary IT support is introduced which is not envisaged before 2018/19.

15 We are not clear to what extent this proposal is implemented in this Finance Bill and would welcome further clarification.

16 **ICAEW recommendations**

- The draft regulations need to be published as soon as possible.
- We would welcome clarification on why corporation tax and petroleum revenue tax are excluded from the provisions.
- We would welcome clarification about why contract settlements are excluded.
- We would welcome clarification about the application of these provisions to late payment of PAYE.

Clause 101 and Schedule 54

Repayment interest on sums to be paid by HMRC

17 Similar comments apply here as per clause 100 above. It is necessary to see what regulations will be published and what the interest differential will be between underpaid and overpaid tax.

18 **ICAEW recommendations**

- The draft regulations need to be published as soon as possible.
- We would welcome clarification on why corporation tax and petroleum revenue tax are excluded from the provisions.
- We would welcome clarification about the application of these provisions to over payment of PAYE.

Section 105 and Schedule 55

Penalty for failure to make returns etc

Para 25 - penalties for failure to submit a partnership return

19 Paragraph 25 of Schedule 55 sets out the penalty position for late submission of partnership returns which is that the initial penalty is £100 *per partner*. We appreciate that this provision is similar to the existing penalty provision in s 93A, TMA 1970 but this per partner penalty is widely perceived to be rather harsh and potentially unfair, not least because individual partners are often then unable to estimate their partnership profit share and are thus likely to file their personal return late and incur a personal late filing penalty. Therefore, each partner is potentially being penalised twice for what is effectively a single late filing.

20 We consider that where an individual partner has been unable to submit his personal tax return due to the partnership tax return being filed late, it should be accepted by HMRC that the partner has a 'reasonable excuse' for the late filing (under para 23 of Schedule 55) and that they should not incur a penalty.

ICAEW recommendation

21 We would welcome a Ministerial statement to the effect that an individual taxpayer who is a member of a partnership will have a reasonable excuse for late submission

of is or her personal tax return where the late submission was as a result of the late submission of the partnership return of which that person was a member.

Further contact

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