

TAXREP 68/08

TAX LAW REWRITE: BILL 6: CORPORATION TAX

COMPANIES IN LIQUIDATION OR ADMINISTRATION

Memorandum submitted in September 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)28 issued in August 2008 by HMRC Tax Law Rewrite Team

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INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)28 (Bill 6: Companies in liquidation or administration) which were published on 22 August 2008 at 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 COMMENT

3. Subject to our comments below, we are content with the drafting of the Paper CC/SC(08)28 clauses. In particular, clauses 1-8 within Part 1 Chapter 1 rewrite sections 342 ICTA (Tax on company in liquidation) and 342A of ICTA (Tax on companies in administration) in a way which is more intelligible to the reader.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

Chpt 2 Banks in compulsory liquidation: taxation of receipts

4. We note that the Chapter 2 heading no longer includes the 'etc' included in the Schedule 12 F(No 2)A 1992 source heading. We assume that this is considered unnecessary in view of the clause 10(2) definition of 'a business of accepting deposits' as including only permitted EEA credit institutions in addition to 'banks' as defined and that such credit institutions are in practice banks.

cl 14 Election to carry back

5. (3) Paragraph 6(1) Schedule 16 F(No 2)A 1992 provides that an election to carry back may be made within 2 years after the end of the chargeable period in which a sum (now 'the winding up receipt') is received. Why does draft clause 14(3) provide that the election must be made before the end of the chargeable period in which the receipt is received?

DETAILED COMMENT ON DRAFTING

cl 5 Company in administration: corporation tax rates

6. (2) We note the use of 'the company's profits' rather than, as in clause 3(2), 'the profits of the company'.

TJH/PCB
3.9.08

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>.