

TAXREP 48/08

TAX LAW REWRITE: BILL 7: INTERNATIONAL & OTHER PROVISIONS

UK REPRESENTATIVES OF NON-UK RESIDENTS

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)12 issued in April 2008 by HMRC Tax Law Rewrite Team

Contents

	Paragraph
Introduction	1-2
General comments	3-5
Answers to questions	6-12
Specific comments on draft legislation	13-14
Detailed comments on drafting	15-19

Annex 1 - Who we are

Annex 2 - The Tax Faculty's Ten Tenets for a Better Tax System

ICAEW Tax Faculty, Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ www.icaew.com/taxfac	T +44 (0)20 7920 8646 F +44 (0)20 7920 8780 E taxfac@icaew.com
--	--

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

TAXREP 48/07

Tax Law Rewrite: Bill 7: International & other provisions
UK representatives of non-UK residents

TAX LAW REWRITE: BILL 7: INTERNATIONAL & OTHER PROVISIONS

UK REPRESENTATIVES OF NON-UK RESIDENTS

INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)12 (Bill 7: UK representatives of non-UK residents) issued on 15 April 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. Our comments are by reference to the Parts, Chapters and sections of ITA and TCGA proposed to be inserted or amended by Schedule 1.
4. We note that the minor and consequential amendments in Part 3 of Schedule 1 (UK Representatives of non-UK residents) may be removed to the Schedule to Bill 7 containing minor and consequential amendments.
5. We also note that draft section 828H (Persons acting under alternative finance arrangements) does not yet anticipate the proposed amendments in Explanatory Notes paragraph 37 and that draft section 828K(7) is for the time being retained, although FB 2008 will omit the condition to which it refers in the source section 127(3)(f) FA 1995.

ANSWERS TO QUESTIONS

6. **Q1** As the proposed new Management Act is not to be proceeded with, it appears more user-friendly to now rewrite otherwise orphan provisions (in FA 1995) of an administrative nature with the ITA income tax or TCGA capital gains tax legislation to which they relate rather than inserting them in TMA.
7. **Q2** We agree that it is clearer to include s 828L (Investment managers: the 20% rule), notwithstanding that it is in identical terms to s 819(1)-(3) ITA 2007, rather than to apply s 819 ITA 2007 by cross-reference.
8. **Q3** We agree that it is clearer to include the definitions of “qualifying period”, “relevant disregarded income” and “beneficial entitlement” in full in section 828M rather than applying, with modification, the definitions in sections 820, 821 and 822 ITA 2007 by cross-reference.
9. **Q4** We support the use of “the total of the non-UK resident’s income” in s 828M(3) in relation to the meaning of “relevant disregarded income”.

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

TAXREP 48/07

Tax Law Rewrite: Bill 7: International & other provisions
UK representatives of non-UK residents

10. **Q5** We support the inclusion of s 828N (Treatment of transactions where requirements of 20% rule not met) rather than applying s 823 ITA 2007, with modification, by cross-reference.
11. **Q6** We support the inclusion of s 828O (Application of 20% rule to collective investment schemes) rather than applying s 824 ITA 2007, with modification, by cross-reference.
12. **Q7** Having regard to Explanatory Notes paragraphs 85-90, we agree the proposal to provide in s 271B of TCGA 1992 that a non-UK resident's UK representative for capital gains tax purposes is the same person as is the non-UK resident's UK representative for income tax purposes.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

s 828O ITA Application of 20% rule to collective investment schemes

13. **(1),(2)** Does it need to be made clearer that the amounts in s 828O(1) arise or accrue from the transaction referred to in s 828O(2), as is the case in the source s 127(9) FA 1995?

s 271F TCGA Obligations and liabilities of UK representative

14. We note that ss 271F(1) and (4) are drafted differently from the counterpart income tax provisions in s 828S(1) and in particular (4), although based on the same source legislation.

DETAILED COMMENTS ON DRAFTING

s 828C ITA Branch or agency treated as UK representative

15. In Explanatory Notes paragraph 22, the reference to 'Rule 2' should be to 'Rule 1'.

s 828L ITA Investment managers: the 20% rule

16. In Explanatory Notes paragraph 46, in the fourth line, for 'section 821' substitute 'section 820'.

s 828N ITA Treatment of transactions where requirements of 20% rule not met

17. In Explanatory Notes paragraph 59, each of the two references to 'section 818' should be to 'sections 819'.

s 828O ITA Application of 20% rule to collective investment schemes

18. In Explanatory Notes paragraph 66, each of the two references to 'section 818' should be to 'sections 819'.

s 271B TCGA Branch or agency treated as UK representative

19. In Explanatory Notes paragraph 91, the reference to 'Rule 2' should be to 'Rule 1'.

TJH/PCB
24.6.08

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>.