

# Tax Representation



**TAXREP 14/08**

## **TAX LAW REWRITE: BILL 6: CORPORATION TAX**

### **RELIEF AGAINST INCOME FOR LOSSES ON THE DISPOSAL OF SHARES**

*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(08)04 issued in January 2008 by HMRC Tax Law Rewrite Team*

#### **Contents**

	<b>Paragraph</b>
Introduction	1-2
General comments	3
Answers to questions	4-16
Specific comments on draft legislation	17-19

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 <a href="http://www.icaew.com/taxfac">www.icaew.com/taxfac</a>	T +44 (0)20 7920 8646 F +44 (0)20 7920 8780 E <a href="mailto:taxfac@icaew.com">taxfac@icaew.com</a>
--	--

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

**TAXREP 14/08**

Tax Law Rewrite: Bill 6: Corporation Tax

Relief against Income for Losses on the Disposal of Shares

# **TAX LAW REWRITE: BILL 6: CORPORATION TAX**

## **RELIEF AGAINST INCOME FOR LOSSES ON THE DISPOSAL OF SHARES**

### **INTRODUCTION**

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)04 (Bill 6: Relief against income for losses on the disposal of shares) which was published on 9 January 2008 at <http://www.hmrc.gov.uk/rewrite/index.htm#40>.
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. We earlier commented on the corresponding draft income tax clauses which are now rewritten in Chapter 6 of Part 4 of ITA 2007, and only minor comments now arise in respect of the draft corporation tax clauses. We comment specifically on Changes 639 and 647 in our replies respectively to Questions 6 and 12.

### **ANSWERS TO QUESTIONS**

4. **Q1** We support the proposal to omit the words “for full consideration” from clause 1(2)(a).
5. **Q2** We support the proposal to legislate for share loss relief to be available in respect of corresponding bonus shares.
6. **Q3** We support the proposal to refine the provisions of section 576(1) of ICTA set out in Change 636 in Annex 1.
7. **Q4** We support the proposal to define a mixed holding as one which includes shares that are not capable of being qualifying shares and other shares.
8. **Q5** We support the proposal to apply clause 9(2) for the purpose of determining which of any qualifying shares are disposed of.
9. **Q6** We support the proposal, in accordance with an approach of ensuring that the identification rules for share loss relief are wholly consistent with the identification rules for corporation tax on chargeable gains, to apply the identification rules in sections 105 and 107 of TCGA, in clause 9(4), so far as those rules serve conclusively to identify whether and to what extent shares disposed of out of a mixed holding are qualifying shares.

10. **Q7** We support the proposal to legislate in clause 9(7) that questions not capable of being determined in accordance with the specific provisions of clause 9 (Disposal of shares forming part of mixed holding) are to be determined on a just and reasonable basis.
11. **Q8** We support the addition of clause 10(1) relating to the time of acquisition for the purposes of clause 9 of shares issued in a reorganisation within the meaning of section 126 of TCGA to which section 127 of that Act applies.
12. **Q9** We support the addition of clause 10(2) relating to shares held by nominees and bare trustees.
13. **Q10** We support the inclusion of clause 20(3)(a).
14. **Q11** We support the addition of clause 22 relating to the time of issue of corresponding bonus shares for certain purposes.
15. **Q12** Having regard to the explanation in Change 647 in Annex 1, we do not object to the omission of references to savings banks and banks for savings in the definition of “investment company” in clause 23 and in section 151 of ITA 2007.
16. **Q13** We support the proposal to specify in clause 23(7) the time at which the disposal occurs, as being the time when the disposal is made or treated as made for the purposes of corporation tax on chargeable gains.

## **SPECIFIC COMMENTS ON DRAFT LEGISLATION**

### **cl 2 Eligibility conditions**

17. **(1)** Sub-clause 2(1) is a little ponderous in its drafting.
18. **(2), (3)** As Chapter 5 applies to investment companies only, to make this point more prominently should Condition B be relabelled ‘Condition A’ (and vice versa for existing Condition A) and refer to “the subscribing company (“the investor”)” in place of “the investor” (with a converse adjustment in existing Condition A)?

### **cl 14 The control and independence requirement**

19. **(4)** Why has s 576D(4)(b) ICTA (definition of ‘control’ in s 576D(2)(a) to be in accordance with s 840 ICTA, rather than s 416(2)-(6) ICTA) not been rewritten?

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](mailto: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>.