Faculty of Taxation

Tax Repentation

TAXREP 8/04

Corporation Tax: Derivatives based on Property and Share Values

Text of an email submitted in February2004 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales to the Inland Revenue in response to the Note published in December 2003.

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Corporation Tax: Derivatives based on Property and Share Values

INTRODUCTION

1. We welcome the opportunity to respond to the Note issued by the Inland Revenue in December 2003. This note set out details of a possible new approach to the taxation of profits, gains and losses on derivatives held by companies which are currently excluded from the derivatives contract regime (Schedule 26 Finance Act 2002).

WHO WE ARE

2. The Institute 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.

3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry (DTI) 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).

4. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the ICAEW who pay an additional subscription.

COMMENTS

5. It is proposed to deal with the amendments to the existing legislation by way of statutory instrument rather than primary legislation. We are not in favour of introducing major changes in this way. We feel the right approach is to introduce primary legislation which is open to full scrutiny by Parliament.

6. The proposal is that unrealised gains on derivatives are to be taxed over the life of the contract. If there is a subsequent loss on the derivative or on the eventual disposal of the physical asset then there should be provision for the carry back of such losses for set off against the earlier gains on the derivatives.

7. Under the transitional provisions we believe that there is the possibility of double counting.

8. Draft clause 15 is said in the explanatory notes to be closely modelled on the provisions in paragraph 4 Schedule 28 FA 2002. Paragraph 4(5) provides that there is a deemed disposal at 'commencement day' by reference to 'consideration equal to the value (if any) given to the contract in the accounts of the company' prior to the commencement of the new period. By contrast draft clause 15 provides that under the proposed transitional provisions the company is deemed to

dispose of the contract for a consideration equal to its market value for the purposes of corporation tax on chargeable gains immediately before its 'commencement day'.

IKY
10 February 2004