



TAXREP 8/13

(ICAEW REP 12/13)

ICAEW TAX REPRESENTATION

UK GROUP RELIEF RULES - AMENDMENTS

Comments submitted on 6 February 2013 by ICAEW Tax Faculty in response to Finance Bill 2013 draft clauses and Technical Note on UK group relief rules - amendments published on 11 December 2012

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the Finance Bill 2013 draft clauses and Technical Note published by HM Revenue & Customs (HMRC) on 11 December 2012.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

4. ICAEW is a professional membership organisation, supporting over 140,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.
5. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.
6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

OUR COMMENTS

7. The proposed amendments to s107 CTA 2010 are in response to the decision of the Court of Justice of the European Union (CJEU) in the case of Philips Electronics UK Ltd (C-18/11). We are concerned that the proposed changes are not sufficient to fully implement this decision.
8. Section 107 CTA 2010 currently restricts group relief for losses of UK permanent establishments (PEs) of non-UK resident companies, but only if certain conditions are met. Condition C (s107(5) and (6)) effectively requires that the loss is not deductible for foreign tax purposes in any period. This means that group relief is not available if losses are potentially deductible overseas, even if no overseas deduction is claimed. The proposed amendment removes this restriction for UK PEs of EEA companies, and replaces it with a different condition which effectively requires that the loss is not deducted for foreign tax purposes in any period.
9. The change means that the provision should operate more proportionately (so that relief is only restricted to the extent that a loss is actually deducted overseas), but we do not consider that this goes far enough to address the CJEU decision in Philips Electronics. The issue of proportionality only arises in circumstances where a measure which restricts a fundamental freedom can be justified; in which case the measure must nonetheless be proportionate. However, in the Philips Electronics case the CJEU concluded that s403D(1)(c) ICTA 1988 (now rewritten to s107(5) and (6) CTA 2010) is a restriction on the freedom of establishment which cannot be justified by overriding reasons in the public interest, and that the provision should be disapplied.
10. We therefore consider that it would be more appropriate to remove Condition C for UK PEs of EEA companies, without imposing any further conditions for those companies.

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APPENDIX 1

ICAEW 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 [icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](https://www.icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx))