

**TAXREP 32/09**

## **FINANCE BILL 2009: PENSIONS: SPECIAL ALLOWANCE CHARGE**

### **COMMITTEE STAGE BRIEFING ON CLAUSE 71 AND SCHEDULE 35**

*Parliamentary Briefing submitted on 9 June 2009 by the Institute of Chartered Accountants in England and Wales setting out concerns and suggested amendments on the anti-forestalling provisions being introduced prior to the introduction of new legislation limiting tax relief on pension contributions for high income individuals.*

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# FINANCE BILL 2009: COMMITTEE STAGE BRIEFING ON CLAUSE 71 AND SCHEDULE 35

## INTRODUCTION

1. Very broadly, under current legislation and subject to certain limits, individuals contributing to approved pension schemes obtain tax relief at their marginal rates of tax on those contributions. The current limits are a lifetime maximum of £1.75million and an annual maximum equal to the lower of earned income of the tax year and the 'annual allowance' of £245,000, subject to an over-riding minimum of £3,600. The detailed rules vary according to the type of pension scheme but the underlying principles remain.
2. The Chancellor stated in his 2009 Budget speech that 25% of all pension tax relief goes to the top 1.5% of pension savers and he announced that, from 2011, tax relief on pension contributions for those with incomes of over £150,000 will be reduced. In the intervening period 'anti-forestalling' provisions are being introduced to prevent those making additional contributions (as opposed to continuing with an existing level of contributions) before 2011 benefiting from higher rate tax relief.
3. These anti-forestalling measures are set out in Clause 71 and Schedule 35 of the Finance Bill 2009. We have a number of major concerns about them, in particular that these proposed measures:
  - are likely to discourage saving for retirement using a pension and thereby damage the pension industry;
  - accelerate for certain taxpayers the reduction in tax relief on pension inputs;
  - discriminate against the self employed who usually pay pension contributions once a year when they know how much profit they have made;
  - discriminate against individuals who change the provider to which they make regular pension contributions;
  - discriminate against those made redundant who top up their pension as part of any termination arrangements; and
  - are highly complicated and likely to impose considerable administrative burdens on taxpayers, employers and HMRC.
4. We have therefore prepared this briefing document for the Committee Stage discussions and include our detailed comments and our suggestions for amending the proposed provisions.
5. Information about the Tax Faculty and the ICAEW is in Annex A. We have also set out, in Annex B, the Tax Faculty's Ten Tenets for a Better Tax system, by which we benchmark proposals to change the tax system.

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

TAXREP 32/09

Finance Bill 2009: Pensions: special allowance charge  
Committee Stage Briefing on Clause 71 and Schedule 35

## PROPOSALS AS CURRENTLY DRAFTED

6. It is proposed that from April 2011 tax relief on pension contributions will be restricted for those on incomes of over £150,000. In his Budget speech the Chancellor said '... from April 2011, I will restrict pension tax relief for those with incomes over £150,000 so it is gradually tapered to the same 20 per cent rate the majority of people receive. We will consult on implementation.'
7. Details of how these proposals will be implemented are not expected to be announced until the PBR 2009. Given that the Chancellor has announced that there will be consultation on the 2011 provisions, we are disappointed that there was no consultation on the potentially wider-reaching anti-forestalling provisions included in this Finance Bill.
8. In the meantime, an anti-forestalling measure is being introduced. This is aimed at reducing tax relief for those:
  - with income of £150,000 and over in a tax year or in either of the preceding two tax years;
  - who make pension contributions in the period from 22 April 2009 to 5 April 2011 which exceed contributions made quarterly or more regularly previously;
  - and whose total contributions, including employer contributions, in the tax year exceed £20,000.
9. Schedule 35 enacts the anti-forestalling provision which will take effect by charging 20% tax on any pension contribution that exceeds the permitted amount.
10. We consider that there is a fundamental flaw in using the 20% charge method (see para 9 above) to give effect to the provisions. This is because where a taxpayer is within the provisions due to having a high income in previous years, but is not a higher rate taxpayer in the year in which the additional pension input is made, that individual will have a 20% charge on the additional pension input and thus lose all tax relief on this.
11. Furthermore, as drafted, the provisions effectively bring forward the restriction on tax relief for certain pension contributions by up to two years and, as noted above, discriminate against, inter alia:
  - the self employed, many of whom contribute annually to a pension fund but are not in a position to decide how much to pay until after their accounts have been prepared and profits calculated;
  - those in redundancy situations, because taxpayers may receive termination payments which significantly increase current year income and will often then pay larger than usual contributions to improve their pension provision; and
  - taxpayers whose income was £150,000 or more in one of two years before any announcement was made about these provisions and whose income is now much lower.
12. In our view the provisions are likely to affect far more taxpayers than those at which we are told they are targeted and the provisions can result in marginal rates of tax far in excess of 100%.

## RECOMMENDATIONS AND SUGGESTED AMENDMENTS

13. We strongly recommend that these provisions should be removed from the Bill and that there is full consultation of the proposals with a view to arriving at an alternative way of producing the required outcome which is less complex and less likely adversely or unfairly to affect those at whom it is not intended to be targeted.
14. The provisions are unnecessarily complicated and add a considerable amount of legislation to the statute. Furthermore, as illustrated by our examples below, they appear to operate far more harshly than we believe the arrangements from 2011 onwards will. Given this, and that the proposed provisions will be operative for less than two years, it is our recommendation that the introduction of any new provisions should be delayed until April 2010 but then, after detailed consultation with interested parties, more straightforward provisions be introduced which achieve the Chancellor's objectives. For example, consideration could be given to reducing the amount of the annual allowance (see paras 24 to 28).
15. If the provisions are not, as we recommend, removed from the Bill, they need to be changed so that they are less likely to penalise those at whom they are not intended to be targeted. We therefore propose the following amendments:

- At the very least, regular annual contributions should be treated in the same way as those made quarterly or more frequently (see paras 29 to 34)
- This should ideally be coupled with an increase in the Special Annual Allowance to a higher amount, say £50,000 (see paras 35 to 40)

These two changes would address most, but not all, of the issues that we have identified with the current proposals.

16. If the above recommendations are not implemented, we recommend that the following other changes are made to address some of the issues we raise:
  - Only income of the pension input year should be taken into account when ascertaining whether the £150,000 income level has been exceeded, rather than income for that year and for two previous tax years (see paras 41 to 50)
  - The provisions should apply only to those below a certain age so those close to retirement are less likely to be adversely affected. (see paras 51 to 54)
  - Some form of taper relief should be introduced so that the 'cliff-edge' effect is avoided (see paras 56 to 59).

The above three recommendations are listed in order of importance. Ideally they should be implemented in addition to those listed in paragraph 15.

17. Our final recommendation is that paragraphs 18(1) and 18(3) which give HM Treasury the power to vary by way of Regulations the rate of the special allowance charge and all the substantive provisions of the forestalling charge should be deleted. If any of the proposed legislation is enacted, this change should also be made.

## **GENERAL POINTS - INCLUDING DAMAGE TO THE PENSION INDUSTRY**

18. Significant changes were made to the pension rules in the FA 2004 and introduced on 6 April 2006. Comments made by the Government during the passage of the FA 2004 (reproduced in Appendix 1 of our [TAXREP 30/09](#)), outlined how the FA 2004 provisions would create a transparent, consistent and flexible system that was readily understood. Further, the regime would consist of only two key controls for the amount of tax-relieved savings that could be made: a lifetime allowance and an annual allowance. A generous annual limit was therefore introduced specifically to enable top up contributions to be made.
19. Only three years after taxpayers were promised certainty in their future pension planning, this certainty has evaporated. Significant complexity is being introduced and individuals' long term plans to increase pension contributions over a period of time to provide adequate income in retirement will now be thrown into disarray.
20. Moreover, as a result of this announcement, taxpayers will no longer have confidence that other disadvantageous changes will not be made to tax relief on their pension savings in the future.
21. As a result, and as noted in previous representations, it is our view that the proposals will discourage long-term saving using pensions and are likely further to damage consumer confidence in the UK pensions industry, which has already been hit by the drop in capital values as a result of stock market falls.
22. Furthermore, the proposed restriction on tax relief breaches the fundamental principle which underlies tax relief for pensions, which is that the individual receives tax relief at marginal rates of tax on pension contributions but is then taxed in full (including at higher rates of income tax, where applicable) when the amount is paid out as a pension.
23. It should be noted that taxpayers on incomes in excess of £150,000 a year are likely to draw pensions on retirement which will put them into higher rate tax bands of 40% or the proposed 50%. Many will conclude that, given the relative inflexibility of pension savings (particularly extracting money on retirement), the return on after-tax investment will be too low to make additional contributions worthwhile and will therefore stop saving for retirement using pensions.

## **COMPLEXITY – PROVISIONS SHOULD BE WITHDRAWN**

24. We are very concerned by the level of complexity of the provisions. One only has to look at the copious guidance which has already been issued to realise just how difficult are these proposals to interpret, particularly for unrepresented taxpayers.
25. We have been told on numerous occasions that the government is trying to reduce the costs for taxpayers of complying with legislation and for HMRC policing the regime. We have also been told of the significant cost of changing any legislation in terms of changes to tax returns, manuals, guidance and Contact Centre time. As we have stated on many other occasions, complex legislation leads to significant extra costs for HMRC as well as taxpayers, and the more complex the legislation the greater the costs associated with it.

26. As the anti-forestalling provisions are intended to apply for only two tax years – 2009/10 and 2010/11, introducing this amount of complexity and additional cost for a relatively short period seems unjustified.
27. It will be clear from the volume of legislation and accompanying guidance that the proposed approach brings multiple complexities, including the extra provisions required as a result of the announcement being made after the 2009/10 tax year had started. We therefore question whether the approach being used is the most appropriate way to achieve the stated tax relief reduction objectives. It is our view that the provisions should be dropped from the Bill and a simpler and more readily understood regime introduced which builds on current legislation. This could be done after consultation, perhaps from 2010.
28. One possibility which would build on the existing provisions and be simple to operate and understand would be to reduce the current annual allowance (which is £245,000 for 2009/10). This could be set at a level at which it is unlikely to adversely affect taxpayers whose income exceeds £150,000 for unusual reasons or who are making increased pension inputs which had been part of a long term plan put in place long before these changes were announced. There would of course be winners and losers and this would need to be factored into the revised proposals.

#### **ANTI-FORESTALLING – ONGOING REGULAR CONTRIBUTIONS**

29. The provisions apply to prevent higher rate tax relief for most pension contributions on or after 22 April 2009 other than where contributions 'are paid on a quarterly or more frequent basis' [see Schedule 35 paras 8 (3)(c), 9 (3)(c), 10 (3)(b), 10 (5)(a) and 11(2)(a)]. We are unclear about the rationale for ongoing regular contributions being limited to quarterly or more frequently and consider that this is far too restrictive. This discriminates in particular against the self-employed.
30. Pension contributions paid by self-employed individuals are commonly one-off or annual contributions, sometimes to a different institution each year, made once the likely level of profits for the tax year is known. As currently drafted, many self-employed who regularly make contributions annually face the possible immediate loss of higher rate relief on contributions in excess of £20,000 due to the way 'ongoing regular contributions' requires contributions to be made quarterly or more frequently and to the same pension arrangement.
31. We note that in his Ministerial Statement on 22 April 2009 the Financial Secretary to the Treasury stated that 'The Government recognise that those with less regular contribution patterns may be affected and would welcome views on whether there are ways of ensuring the contributions of this group are protected in the same way as those making more regular patterns, while continuing to meet the objectives above.'
32. We consider that individuals who make regular annual contributions should be treated in the same way as those making monthly or quarterly contributions. We

therefore suggest that the proposed rules should be amended to cater for annual contributions. This could be done a number of ways.

33. Our suggestion is to average contributions from two of the three preceding tax years and remove the requirement for the contributions to be made to the same pension fund. Averaging contributions in this way would allow for one missed contribution year. Averaging over a longer period could bring into the equation years before the current pattern was established and bring in pension payments made prior to 6 April 2006 when the new regime was introduced. We therefore consider a 'two from three year' average to be a reasonable compromise.

### **Recommendation – regular contributions should include annual contributions**

34. We recommend that regular annual contributions are treated in the same way as quarterly or more frequent contributions by introducing a further test for annual contributions and allowing contributions to be made to different pension funds. For money purchase schemes (paragraph 11 of Schedule 35), we suggest using the average of contributions in the highest two tax years out of the three tax years prior to the year of the contribution as the base level of annual contribution. For all other schemes we should like similar principles to apply but have not at this stage suggested amendments. The reason for this is that we believe that the number of individuals likely to be affected will be very much lower than for money purchase schemes but the required changes are likely to be more complex.

### **Suggested amendments - Schedule 35**

- i. page 286, line 31: replace 'the pension scheme' with 'a pension scheme'
- ii. page 286, line 32: 'the arrangement' with 'an arrangement'.
- iii. page 286, line 37: delete '(a)' and insert '(a)(i)'
- iv. page 286, line 40: delete '(b)' and insert '(a)(ii)'
- v. page 286, line 42 replace full stop with semi-colon followed by 'or' then insert new subparagraph as follows  
'(b) if paid less frequently than quarterly, half of the sum of the total contributions made in any two of the three tax years preceding the tax year in which the contribution is made and for these purposes if contributions were made in only one of those tax years, half of that amount and where contributions have been made in all three of those tax years, half the sum of the two highest annual totals.'
- vi. page 286, line 44, replace 'the pension scheme' with 'a pension scheme'.
- vii. page 289, line 20, replace words 'a quarterly' with 'an annual'.
- viii. page 290, line 3, after the word 'contributions' delete the words to the end of that sentence and insert 'which:  
(a) are paid on a quarterly or more frequent basis pursuant to an agreement for the payment of such contributions; or

(b) if paid less frequently than quarterly, half of the sum of the two highest contributions made in the periods 6 April to 21 April in each of the tax years 2006/07, 2007/08 and 2008/09 and for these purposes if only one such contribution has been made in those three periods, half of that amount.”

## **ANTI-FORESTALLING PROVISIONS – LEVEL OF SPECIAL ANNUAL ALLOWANCE**

35. The Special Annual Allowance is, broadly, the level of annual contribution which can be made by individuals with income of £150,000 or more without incurring the Special Annual Allowance Charge (which is effectively a clawback of tax relief). The Special Annual Allowance is set at £20,000 and applies to contributions made in excess of normal existing regular contributions.
36. We consider that this amount is set at too low a level and should be increased to a higher level. The current allowance level of £20,000 represents only 13% of income of £150,000. Prior to the FA 2004 changes, the minimum amount on which an individual could claim tax relief was 17.5% which would be £26,250 on earnings of £150,000. However, the percentage increased with age and at age 51 it was 30%, equal to £45,000 on earnings of £150,000.
37. If, as stated in his Budget Speech, the Chancellor truly considers that it is important that everyone is encouraged to save for their retirement, and given the changes made in FA 2004, we do not think that the Special Annual Allowance should be set at a lower level than the rates which applied under the pre FA 2004 rules.
38. Where total contributions made do not exceed the Special Annual Allowance, there will be no reduction in the tax relief due. It therefore follows that the higher the level at which the allowance is set, the less is the likelihood that a Special Annual Allowance charge will arise. Accordingly, those at whom the anti-forestalling provisions were not aimed are less likely to suffer as a consequence of the provisions.
39. We have previously suggested that the limit should be raised significantly and have suggested a level of £50,000. Increasing the allowance above £20,000 would take a number of individuals out of the anti-forestalling measures and thus help the provisions operate more fairly. It would also mean that a number of the anomalies and injustices mentioned elsewhere in this paper are less likely to occur.

## **Proposed amendment to the legislation – Schedule 35**

40. Page 279, line 18  
Page 279, line 24  
Page 279, line 25  
Page 280, line 25  
Replace ‘£20,000’ with ‘£50,000’.

## ANTI-FORESTALLING – INCOME THRESHOLD – THREE YEAR PERIOD

41. The anti-forestalling provisions are aimed at those whose income is £150,000 or higher who make increased pension contributions prior to 2011. However, the anti-forestalling provisions also apply if income exceeds £150,000 in either of the two previous tax years. Therefore, for the year 2009/10, if income was £150,000 or more in 2007/08 and 2008/09 then the anti-forestalling rules apply. Whilst we understand that this provision is designed to prevent subsequent manipulation of income and pension contributions to obtain higher rate tax relief, it results in outcomes which seem somewhat unfair in certain circumstances and appear in conflict with the policy objective of only withdrawing higher rate tax relief.
42. **Example 1:** Take the example of someone who has been made redundant and as a result of a termination package had income of more than £150,000 in 2008/09. As a result he will be subject to the anti-forestalling provisions. He finds alternative employment and earns £40,000 in salary in 2009/10. Having made no regular pension contributions since his redundancy, he is concerned about his retirement pension and therefore contributes £40,000 that he has saved into a pension scheme.
43. Before the FB2009, the individual would have received 20% tax relief at source on the £40,000 contribution. As a result of the anti-forestalling measures he will now receive **no** tax relief on £20,000 of that contribution even though he is only a basic rate taxpayer in 2009/10. This is because the 20% tax relief given at source will be clawed back by way of a 20% special allowance charge on the amount of the contribution which exceeded £20,000. The taxpayer will therefore receive no tax relief on half of his contribution. This would appear to be a fundamental flaw in the approach being used which arises from the combination of the 'look back' provisions and the use of a charge rather than a limitation in relief. The result is that those who are not higher rate taxpayers can lose all pension relief on certain contributions.
44. As illustrated above and in other examples in this document, it should be borne in mind that many individuals will be caught by the new charge due to circumstances outside their control which increase either their income or their pension inputs or both, rather than as a result of a deliberate attempt to forestall the 2011 regime.
45. It is our view that the scope for manipulation of income and pension contributions is not sufficiently high to warrant the three year approach which draws taxpayers at whom the provisions are not targeted into the provisions. Under existing legislation tax relief on pensions is limited to £3,600 or, if higher, earnings (note that this is earnings and not total income), provided that the existing annual (£245,000) and lifetime (£1.75 million) limits are not exceeded. These, together with the anti-forestalling provision in the year that income exceeds £150,000 should in our view be sufficient to limit tax relief.
46. We have been advised that only 230,000 individuals with incomes higher than £150,000 are expected potentially to be affected by these provisions. Many of these, probably the vast majority, do not have the opportunity to reduce their income level to below that figure because they are employed on fixed annual salaries.

47. If it is considered that the potential loss of revenue through additional tax relief will be high as a result of manipulation of earnings if income over a three year period is not taken into account, we believe that consideration should still be given to simplifying the anti-forestalling provisions coupled with, perhaps, bringing the 2011 provisions forward by a year to provide greater certainty in respect of future pension tax relief,
48. The three year period for reviewing income will particularly affect those whose incomes fluctuate considerably from year to year, for example, farmers. As noted above, pension inputs for individuals are limited to the amount of earned income (as opposed to total income) in a tax year so no contributions are possible in years of business losses. Ability to obtain full tax relief on 'top up' pension inputs will be very limited under these proposals for such individuals.

### **Proposed amendment – consider only income of year of contribution**

49. We propose that only income of the year of the contribution should be taken into account when considering whether the £150,000 income threshold has been reached. This would require the following amendments to Schedule 35, sub-section 2
50. page 280, line 36  
After the words "tax year", delete the rest of the sentence.  
page 280, line 39, delete sub-paragraph 2(2)  
Renumber sub-paragraph 2(3) to become 2(2) and so on.

### **OLDER TAXPAYERS**

51. The provisions target those on higher incomes and those who make larger pension contributions: in so doing they could be seen as indirectly discriminating against older taxpayers. This is because incomes typically increase with age and, as families grow and mortgages have been paid off, disposable incomes also increase and contributing larger amounts to pension schemes to provide for retirement becomes a higher priority.
52. In addition, the later an individual starts paying into a pension scheme the higher the amount that individual needs to contribute to achieve a specified level of income in retirement. For example, by the age of 50, typically retirement savings of about £25,000 p.a. would be required for 15 years to finance a retirement income of £30,000 p.a.
53. The combined effect of these factors is that the new provisions are likely to affect older taxpayers more than younger ones and the loss of higher rate tax relief will reduce their ability to save effectively for retirement.

## **Recommendation – anti-forestalling should not apply above certain age**

54. If the government is committed to making the proposed changes, in order not to discourage those closest to retirement from increasing pension savings, we believe that consideration should be given to not implementing the new measures where the individual is over a certain age.

## **Proposed amendment to the legislation Schedule 35, sub-section 20**

55. On page 291, line 7

After the words in brackets insert “but this Schedule shall not apply where the individual concerned is 50 or over at some time in the tax years 2009/10 and 2010/11.

## **ANTI-FORESTALLING – CLIFF EDGE**

56. The structure of the anti-forestalling charge produces a ‘cliff-edge effect’ and potentially high marginal tax rates. This is because if the £150,000 income threshold is breached, then the 20% charge applies in full to any pension input over £20,000. It is best explained by an example.
57. **Example 2:** Two individuals have virtually the same income. A has income of £169,995 and B of £170,000. The proposals mean that B, who has only £5 more income than A will, if they both pay an additional pension contribution of £30,000, pay £2,000 more in tax than A. This is because after deduction of the £20,000 Special Annual Allowance to which they are both entitled, A will be below the £150,000 income threshold whereas B will not. As a result, B will incur the Special Annual Allowance Charge of 20% on £10,000 of his contribution, producing a marginal rate of tax of several thousand percent. At the time of paying the contribution, it is unlikely that either A or B would be certain of their income to the last £5 for the tax year. .
58. The premise that the anti-forestalling rules will not increase tax take seems to be based on the assumption that taxpayers with relevant incomes of £150,000 or more will choose not to increase pension inputs and therefore no charges will be made. As illustrated in our two examples, this ignores those who fall within the provisions as a result of increases in income in any one of three tax years who may not have had any control over their increased earnings or have made additional pension contributions as part of a long-established plan.

## **Recommendation**

59. Consideration should be given to introducing tapering provisions so that the ‘cliff edge’ effect is less marked. Such tapering relief would need to be given careful thought so that it is both appropriate and relatively easy to apply. As an alternative to the inevitable complexity that tapering would bring to the legislation, it should be noted that our suggestion above about increasing the level of the special annual allowance would mean that fewer taxpayers are likely to be affected by this cliff edge effect so tapering relief would not be so critical.

## **INAPPROPRIATE USE OF REGULATIONS**

60. We are very concerned that Para 18(1) gives HM Treasury the power to vary by way of Regulations the rate of the special allowance charge. Para 18(3) allows HM Treasury by way of Regulations to amend any of the preceding 17 paragraphs, ie the substantive provisions of the forestalling charge. The net effect is that the provisions could be completely revised without full parliamentary process. We strongly believe that it is wrong in principle to enable provisions to be, in effect, rewritten at a later date without full debate.

### **Proposed amendment to the legislation – Schedule 35, sub-section 18**

61. On page 290, delete lines 20 to 34.

## **ADDITIONAL COMPLIANCE COSTS AND OTHER MATTERS**

62. The inclusion of pension contributions made by employers in pension inputs (as defined for this purpose) not only increases complexity (see below) but is also likely to result in additional costs for employers who will now need to provide this information to employees in response to or in anticipation of their queries (although it should be noted that the provisions do not oblige employers to do so, or to do so within a specified time limit).
63. Employees who make additional pension contributions personally may not be aware that they need to take account of employer contributions when considering whether the £20,000 special allowance has been exceeded. They may erroneously assume that they only need to consider their own contributions when assessing whether they have exceeded the £20,000 allowance.
64. Finally, the wording of various clauses needs to be addressed to give certainty of interpretation and we shall be raising some of our concerns directly with HMRC.

AW  
9.6.09

**THE 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 11,000 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 +44 (0)20 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.com/index.cfm?route=128518>).