



TAXREP 20/13

(ICAEW REP 24/13)

ICAEW TAX REPRESENTATION

FINANCE BILL 2013 DRAFT CLAUSES: DISINCORPORATION RELIEF

Comments submitted in February 2013 by ICAEW Tax Faculty to HMRC in response to the draft legislation published on 11 December 2012.

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the draft legislation, *Disincorporation relief*, published by HMRC on 11 December 2012 with a Tax Information and Impact Note at http://www.hm-treasury.gov.uk/d/disincorporation_relief.pdf
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. We have previously commented on these proposals in TAXREP 65/11, submitted in response to a 2011 discussion paper from the Office of Tax Simplification (OTS), and in TAXREP 42/12, in response to the June 2012 *Consultation on a disincorporation relief*.
4. 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

5. 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.
6. 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.
7. 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.

KEY POINT SUMMARY

8. We welcome the proposal for a disincorporation relief. We support the work of the OTS in its efforts to simplify the tax system for the smallest businesses and are pleased that HM Treasury has taken forward its work on a possible disincorporation relief. We consider that entrepreneurs should be able to operate in the most commercially efficient and appropriate way for their businesses and tax should not be a disincentive to an appropriate disincorporation.
9. There are two aspects of the draft legislation which we think are too restrictive and should be amended:
 - The £100,000 asset limit is too low.
 - The relief should not be introduced just for a five year period.

COMMENTS ON THE DRAFT LEGISLATION

Limit on total asset value

10. We appreciate that the relief is aimed at small businesses and agree that setting an upper limit on the market value of qualifying assets will achieve this.

11. However, the £100,000 maximum is very low. Many smaller companies which could benefit from the relief could have goodwill and/or interests in land with a total value in excess of this. The EU definition of a micro-company is one with annual turnover or balance sheet total not exceeding €2m. We recommend that the limit should be set in line with this definition. It should certainly be at least £500,000.

Five year limitation

12. Clause 1(1)(c) provides that the relief will be available for five years from 1 April 2013.
13. We do not agree with this time limitation. The relief should be a permanent part of company tax legislation. There will always be a need a disincorporation relief – there are a whole range of reasons why disincorporation may be sensible and desirable for a company. The reliefs for incorporation are not time-limited and the disincorporation relief should mirror that.
14. We are aware that the OTS suggested a five-year term for the relief, so that it could be reviewed to see if it is useful and effective. We support the proposal to review new legislation, but this can be done without placing a time limit in statute.
15. We are concerned that unless the government reviews the relief and announces its intentions well in advance of the 31 March 2018 end-date, the situation will create uncertainty for small companies. Some may disincorporate without considering if this is the best option, in order to make use of the relief while it is available

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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)