

# Tax Representation



**TAXREP 82/08**

**TAX LAW REWRITE: BILLS 6 (CORPORATION TAX) AND 7**

**FACTORING OF INCOME ETC (CORPORATION TAX PROVISIONS, WITH A SCHEDULE OF INCOME TAX PROVISIONS)**

*Memorandum submitted in November 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)42 issued in September 2008 by HMRC Tax Law Rewrite Team*

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# TAX LAW REWRITE: BILLS 6 (CORPORATION TAX) AND 7

## FACTORING OF INCOME ETC

### INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)42 (Bill 6: Factoring of income etc) issued on 18 September 2008 at <http://www.hmrc.gov.uk/rewrite/index.htm>.
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 COMMENTS

3. The gathering together of the anti-avoidance provisions dealing with the factoring of income etc in two Chapters, and for the separate purposes of income tax and corporation tax, rather than being scattered within ICTA, improves the accessibility of these complex provisions. The detailed drafting of the draft clauses is also generally more concise and clear than in the source legislation.
4. We note that consequentials, savings and repeals will be drafted in due course and that it remains to be seen what implications for the draft clauses the anti-avoidance simplification review will have.

### ANSWERS TO QUESTIONS

5. **Bill 6 - Q1** The structure of Chapter 1 (Finance arrangements) is logical and the distinguishing of types 1-3 finance arrangements adds clarity as compared with the drafting of the source legislation introduced by FA 2006.
6. **Bill 6 - Q2** We are also content with the structure of Chapter 2 (Other provisions). The bringing together of clauses 19-22, 23 and 24-26 in a single Chapter is helpful. The separation of clauses 19 and 20, depending upon whether or not the owner of the clauses is beneficially entitled to them, is further helpful.
7. **Bill 6 - Q3 [Bill 7 – Q1]** We support the proposal to give the information power in clause 21 to officers of Revenue and Customs.
8. **Bill 6 - Q4 [Bill 7 – Q2]** We support the proposal to impose the criterion of reasonableness in clause 21 (Power to obtain information).
9. **Bill 6 - Q5 [Bill 7 – Q3]** We support the proposal to allow at least 30 days for information to be provided under clause 21.

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

TAXREP 82/08

Tax Law Rewrite: Bills 6 (Corporation Tax) and 7

Factoring of income etc (corporation tax provisions, with a schedule of income tax provisions)

## **SPECIFIC COMMENT ON DRAFT LEGISLATION**

### **Bill 7 s 681FF Certain payments treated as yearly interest**

10. Is the use of the label “yearly interest” appropriate?

## **DETAILED COMMENTS ON DRAFTING**

### **Bill 6 cl 5 Type 2 finance arrangements defined**

11. **(1)** In Bill 6 Explanatory Notes paragraph 40, the reference should be to a ‘type 2’ finance arrangement, Similarly in Bill 7 Explanatory Notes paragraph 41.

### **Bill 6 cl 19 Transfer of right to distribution on shares**

12. **(1)** Is there any reason why the order of sub-clauses 19(1)(b) and (c) is the reverse of sub-clauses 20(1)(b) and (c)?
13. **(4)** As in sub-clause 20(4)(b), should “(sales of foreign dividend coupons).” be appended?

### **Bill 7 Loan or credit transaction defined**

14. **s 681FE** In Bill 7 Explanatory Notes paragraph 97, in the third line, the reference should be to clause [24] of Bill 6 and not to clause 25.

TJH/PCB  
12.11.08

## 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>.