

TAXREP 49/09

TAX LAW REWRITE: BILL 7: INTERNATIONAL AND OTHER PROVISIONS

SECTION 59(3) of ICTA 1988

Memorandum submitted in August 2009 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(09)14 issued in July 2009 by HMRC Tax Law Rewrite Team

Contents

	Paragraph
Introduction	1-2
General comments	3
Answers to question	4-5
Specific comments on draft legislation	6-7

Annex 1 - Who we are

Annex 2 - The Tax Faculty's Ten Tenets for a Better Tax System

ICAEW Tax Faculty, Chartered Accountants' Hall,
PO Box 433, Moorgate Place, London EC2P 2BJ
www.icaew.com/taxfac

T +44 (0)20 7920 8646
F +44 (0)20 7920 8780
E taxfac@icaew.com

TAX LAW REWRITE: BILL 7: INTERNATIONAL AND OTHER PROVISIONS

SECTION 59(3) of ICTA 1988

INTRODUCTION

1. We welcome the opportunity to comment on the question raised in Paper CC/SC(09)14 (Bill 7: Section 59(3) of ICTA: (person answerable for tax charged in accordance with section 12 of ITTOIA 2005 on profits of markets or fairs, or on tolls, fisheries or other profits not distrainable) issued on 1 July 2009 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 COMMENT

3. As indicated in our response to Question 1, we support the proposal to repeal subsections 59(3) and (4) of ICTA 1988 without rewriting them.

ANSWER TO QUESTION

4. **Q1** We support the proposal not to rewrite section 59(3) of ICTA,
5. Having regard to the third and fifth paragraphs of Annex 1 Change 747, contrasting where s 59(3) ICTA applies in addition to or instead of section 8 of ITTOIA, we agree that there are unlikely to be owners or occupiers who are neither in receipt of nor entitled to profits, or persons who are entitled to profits but who are not owners or occupiers and are not in receipt of the profits (other than by avoidable choice). In the first case, the proposed change would in principle be favourable to taxpayers. In the second case the proposed change would in principle be adverse to taxpayers. As regards the second case, where s 59(3) ICTA would not apply, we assume that the third sentence in the fifth paragraph of Change 747 is simply a general statement that s 59(3) ICTA (where it might apply) has not recently been relied on.

SPECIFIC COMMENT ON DRAFT LEGISLATION

- . **Bill 7 Sch 6 Part 8
ICTA 1988**
6. Should the proposed omission of section 59(4) also be specifically referred to?
7. Appropriate entries are also presumably required in Schedule 8 (Repeals and revocations)?

TJH/PCB
7.8.09

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 130,000 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, Innovation and Skills 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 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>.