

# Tax Representation



**TAXREP 66/08**

**TAX LAW REWRITE: BILL 5: CORPORATION TAX**

**INTELLECTUAL PROPERTY: KNOW-HOW AND PATENTS**

*Memorandum submitted in September 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(08)26 issued in June 2008 by HMRC Tax Law Rewrite Team*

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The Tax Faculty of the Institute of Chartered Accountants in England and Wales  
**TAXREP 66/08**  
Tax Law Rewrite: Bill 5: Corporation Tax  
Intellectual property: know-how and patents

# TAX LAW REWRITE: BILL 5: CORPORATION TAX

## INTELLECTUAL PROPERTY: KNOW-HOW AND PATENTS

### INTRODUCTION

1. We welcome the opportunity to comment on the draft clauses in Paper CC/SC(08)26 (Bill 5: Intellectual property: know-how and patents) issued on 19 June 2008 at [www.hmrc.gov.uk/rewrite/index.htm](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. Apart from minor comments below, we are content with the drafting of Part 1 (Intellectual Property: Know-how and Patents) in Paper CC/SC(08)26.

### SPECIFIC COMMENTS ON DRAFT LEGISLATION

#### **cl 10 Non-UK resident companies: election for spreading**

4. (5) It would be helpful if the explanatory notes could explain how clause 10(5) has effect in practice. Clause 10(5) refers to the spreading election only applying to accounting periods of the company during which it is 'within the charge to corporation tax in respect of any proceeds of *the* sale not consisting of a capital sum', whereas clause 10 appears to deal with proceeds of sale which are not received in instalments and hence presumably arise once only in a particular accounting period and presumably as a capital sum rather than otherwise.
5. We appreciate that clause 10(5) accurately rewrites the relevant part of the source s 524(6) ICTA; but it is not readily apparent how this provision applies in practice.

#### **cl 11 Non-UK resident companies: spreading where proceeds of sale received in instalments**

6. (5) It would be helpful if the explanatory notes could explain how clause 11(5) has effect in practice.
7. As Explanatory Notes paragraph 31 explains, clause 11 deals with how non-UK resident companies are taxed on capital sums from the sale of parent rights which are received in instalments, whereas clause 11(5) states as a prerequisite for a spreading election that proceeds of *the* sale not consisting of a capital sum should arise.
8. We appreciate that clause 11(5) accurately rewrites the relevant part of the source s 524(6) ICTA; but it is not readily apparent how this provision applies in practice.

### **Sch 1 Minor and consequential amendments**

9. **para 6** In paragraph 6 in Part 1 of Schedule 1, should '531(4) to (8)' read '531(4) to (5) and (7) to (8)' as s 531(6) ICTA 1988 was repealed by ITTOIA 2005? This similarly affects the Repeals schedule.

### **Sch 2 Repeals**

10. As provisions applicable to trades are rewritten in Chapter 12, Part 3 of Bill 5 we assume that it is intentional to wholly repeal paragraph 202 in Schedule 1 to ITTOIA 2005 which includes amendments to s 525(4) ICTA relating to trading aspects and which is not rewritten in the Paper CC/SC(08)26 draft clauses.
11. Similarly, we assume that it is intentional to wholly repeal paragraph 207 in Schedule 1 to ITTOIA 2005 which includes amendments affecting subsections 531(1)-(3A) ICTA relating to trading aspects and which are not rewritten in the Paper CC/SC(08)26 draft clauses.

## **DETAILED COMMENT**

### **cl 1 Overview of Part**

12. In Explanatory Notes paragraph 7, in the second sentence, 'asserts' should be 'assets'.

TJH/PCB  
3.9.08

## 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>.