

Bill 6: Distributions

Introduction

1. This paper, which is linked with paper CC/SC (08) 11, presents draft clauses which rewrite Part 6 and section 418 of ICTA. These provisions provide the rules to determine what is and what is not a distribution for tax purposes, together with the rules for demergers and certain special types of distribution.

2. The paper contains:

- the draft clauses, with origins;
- draft explanatory notes; and
- three draft notes outlining proposed changes in the law.

3. The clauses originally issued with paper CC/SC (08) 11 did not include the clauses that provide a parallel income tax treatment where appropriate, nor the rewrite of related clauses of an administrative nature in Part 6 of ICTA, such as those involving returns or information. We undertook to publish these clauses at a later date.

4. These clauses are now published with this paper. However, rather than issue them in isolation we decided that it would be better for users to see them in the context of the distributions material as a whole and we are therefore reissuing all of the clauses released at the end of March 2008 together with these new clauses. Most of the material is unchanged, but where there are changes the explanatory notes provide details of what has been added or amended. Some key points are set out below.

5. First, the clauses released in March 2008 did not contain the rewrite of provisions of an administrative nature. These provisions, which are set out in detail in the explanatory notes, are rewritten in the clauses now issued. We have adopted the following approach to these provisions. Those relating to specific aspects of distributions have been located alongside the provisions to which they relate. More general provisions about returns and information are in Chapter 6.

6. Second, the clauses contain material that is relevant to income tax. We have looked carefully at this. We have concluded that income tax related distributions provisions as well as the corporation tax ones fall within the scope of Bill 6 and that it is helpful for users to have all of this material in one place. The explanatory notes set out our thinking on this, and the consequences, and invite the views of users.

7. Third, where separate provision is needed for income tax draft clauses are inserted into ITTOIA. These are noted and explained in the relevant places.

8. Fourth, there are now three proposed rewrite changes, rather than the single change proposed when the clauses were first issued. The first new change relates to an administrative provision. It proposes the introduction of the criterion of reasonableness and so benefits taxpayers. It brings the provision concerned in line with the way in which HMRC exercise the power in practice – this change will also affect other provisions in Bill 6. The second new change clarifies the scope of a provision that requires a company to provide information to the recipient when the company makes a distribution. This also benefits taxpayers by removing a possible penalty that could fall on companies on one interpretation of the source legislation.

Questions for the committee

9. We would be grateful for any comments you may have on these draft clauses and also on the three proposed changes.

Closing date for comments

10. Comments on the clauses originally issued were requested by 27 June 2008 and we should be grateful if you would send these in as requested despite the reissue of those clauses. We would welcome any comments by 19 September 2008 on the amended and additional material which we have highlighted. If possible, they should be sent by e-mail to:

jackie.bartlett@hmrc.gsi.gov.uk

Written comments should be sent to:

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11. Please note that the names of respondents may be published unless they ask for their comments to be treated in confidence.

19 June2008