

Tax Law Rewrite – Bill 6

Responses to Paper CC/SC (08) 22

Changes in company ownership and recovery of corporation tax

This document is available on the internet at:

<http://www.hmrc.gov.uk/rewrite>

December 2008

INTRODUCTION

1. In June 2008 we published on the HMRC internet website www.hmrc.gov.uk/rewrite Committee Paper CC/SC (08) 22 (changes in company ownership and recovery of corporation tax). The closing date for responses was 19 September 2008.

2. The purpose of this response document is to provide details of the substantive technical points made and to explain our analysis and proposals in respect of them. Minor points, such as suggestions to improve punctuation, are not covered but all comments received have been carefully considered.

*Bill 6 Response Document
Committee Papers CC/SC (08) 11 and CC/SC (08) 23
Company Distributions*

3. We received written responses from the following:
- The Chartered Institute of Taxation
 - The Confederation of British Industry
 - The Institute of Chartered Accountants in England and Wales
4. The following abbreviation for tax legislation is used in this response document:
- ICTA Income and Corporation Taxes Act 1988
5. We are grateful for all the comments made, many of which were detailed, and we appreciate the time and effort that went into them. We are sending each respondent a copy of this response document.

Part 1 (tax avoidance: changes in company ownership)

Question 1. We welcome comments on the structure of the Part.

All the respondents supported the restructuring of the legislation.

6. ***We will adopt the proposed structure for the Part.***

One respondent questioned whether it was appropriate for the title of Part 1 (tax avoidance: changes in company ownership) to refer to tax avoidance.

7. ***Since the source legislation is in the tax avoidance Part of ICTA, we consider that referring to tax avoidance in the title of this Part does no harm.***

One respondent suggested giving the Part a more illuminating title and locating it with (or near) the loss relief Part of the Bill.

8. We have given these suggestions careful thought. However, as this Part includes not only restrictions on loss relief but also a Chapter on recovery of unpaid corporation tax, the matter is not clear-cut.

9. ***We will keep the title of the Part under review. There will be an opportunity to see the Part in the context of the Bill as a whole when the draft Bill is published for consultation in Spring 2009.***

One respondent thought that the use of “must be” rather than “is” was not consistent with previous rewrite usage.

10. *The use of alternatives to “must be” is something we will look at in the course of preparing the draft Bill.*

Clause 2{j7768}: Introduction

One respondent thought that standardising the comparison periods would inadvertently change the law.

11. *On reflection, we agree. We will adjust the clause.*

One respondent suggested that translating “considerable” as “significant” in the present context would change the law.

12. We consider that translating “considerable” as “significant” in the present context is merely a drafting clarification. The respondent did not explain its reasons for holding the contrary view.

13. *We intend to present the clause on the basis that translating “considerable” as “significant” will not change the law.*

Clause 3{j7768m}: Disallowance of trading losses

One respondent thought that “the profits of a trade” would read more naturally than “profits of a trade” in clause 3{j7768m}(2).

14. *We will be happy to adjust the clause.*

One respondent asked whether the expression “profits of a trade” was used in an extended sense anywhere besides clause 3{j7768m}(6).

15. The extended definition of “profits of a trade” reflects the extended meaning that expression has for the purposes of clause {j4513rm} of Bill 6 as a result of clause {j4514rm} of that Bill. Clause {j4514rm} itself rewrites section 393(8) of ICTA. See clauses 15{j4513rm} and 16{j4514rm} in paper CC/SC (07) 38 (loss relief).

Clause 4{j7768za}: Disallowance of trading losses: calculation of balancing charges

A member of the Consultative Committee found clause 4{j7768za}(3) difficult to follow. One respondent found the drafting of clause 4{j7768za}(4) somewhat unnatural.

16. *We will review the drafting of these subsections when we publish the draft Bill.*

Chapter 3: Company with investment business: restrictions on relief: general provision

Question 2. We welcome comments on the structure of Chapter 3.

All the respondents supported the restructuring of the legislation.

17. ***We will adopt the proposed structure for Chapter 3.***

Clause 10{j7768E}: Restriction on relief for non-trading loss on intangible fixed assets

Question 3. We welcome comments on the proposal to clarify in clauses 10{j7768E} and 27{j7768Ea} the restriction imposed by section 768E(5) of ICTA (Change 655{j655}).

The respondents who commented on this proposal supported it.

18. ***We will make Change 655{j655} in clauses 10{j7768E} and 27{j7768Ea}.***

One respondent thought that the draft legislation did not cater for the case where the change of ownership happened to coincide with the end of an accounting period.

19. ***We think there may be some merit in this point but would like to consider it further. When we publish the draft Bill we will comment further and, if appropriate, revise the drafting.***

Clause 14{j728A6}: Apportionment of amounts

Question 4. We welcome comments on the proposal to rewrite paragraphs 6 and 7(1) of Schedule 28A to ICTA as a two-column table.

All the respondents welcomed the table.

20. ***We will adopt a tabular approach to rewriting paragraphs 6 and 7(1) of Schedule 28A to ICTA.***

One respondent noted that the tables in clauses 14{j728A6} and 31{j728A6a} were largely, but not entirely, duplicates. The respondent suggested laying out the rules so that the reader could see at a glance which were the same and which were different. The respondent observed that this could be done by (a) presenting the duplicate rules in a single table and (b) setting out explicitly in Chapters 3 and 4 those rules which differed.

21. ***We have considered this suggestion carefully. We acknowledge that the current approach involves a degree of duplication. However, the approach suggested***

by the respondent would oblige the reader to look in more than one place for the rules. It would also relegate the common rules to later in the provisions, which seems to us slightly illogical. We therefore think that the balance of convenience favours the current approach.

22. *We do not intend to adjust the clauses.*

One respondent noted that row 5 of the table in clause 14{j728A6} needed to exclude amounts within row 6.

23. *We think there may be some merit in this point but would like to consider it further. When we publish the draft Bill we will comment further and, if appropriate, revise the drafting.*

Clause 16{j7768Bf}: Adjustment to balancing charges if relief restricted

One respondent found the drafting of clause 16{j7768Bf}(6) somewhat unnatural.

24. *We will consider whether or not it will be appropriate to adjust the drafting of this subsection when we publish the draft Bill.*

Clause 20{j728A5}: Meaning of “amount of capital”

One respondent thought that, in clause 20{j728A5}(2)(b) to (d), “debts”, as in the source legislation, would read more naturally than “debt”.

25. *We agree and will adjust the clause.*

Chapter 4: Company with investment business: restrictions on relief: asset transferred within group

Question 5. We welcome comments on the structure of Chapter 4.

All the respondents were in favour of the proposed structure for Chapter 4.

26. *We will adopt the proposed structure for Chapter 4.*

Clause 27{j7768Ea}: Restriction on relief for non-trading loss on intangible fixed assets

Question 6. We welcome comments on the proposal to clarify in clause 27{j7768Ea} the restriction imposed in certain circumstances on relief for non-trading losses on intangible fixed assets (Change 656{j656}).

*Bill 6 Response Document
Committee Papers CC/SC (08) 11 and CC/SC (08) 23
Company Distributions*

No respondent objected to Change 656{j656} and one respondent supported it.

27. ***We will make Change 656{j656} in clause 27{j7768Ea}.***

One respondent observed that in clause 27{j7768Ea}(1) either the word “incurred” was redundant or it needed to be followed by wording such as “before the change of ownership”.

28. ***We agree and will adjust the clause.***

One respondent queried the drafting of clause 27{j7768Ea}(4).

29. ***We are considering this. When we publish the draft Bill we will comment further and, if appropriate, revise the drafting.***

Clause 29{j7768Dd}: Disallowance of UK property business losses

Question 7. We welcome comments on the proposal to clarify in clauses 29{j7768Dd} and 30{j7768Df} the restriction imposed in certain circumstances on relief for property losses (Change 656{j656}).

No respondent objected to Change 656{j656} and one respondent supported it.

30. ***We will make Change 656{j656} in clauses 29{j7768Dd} and 30{j7768Df}.***

Clause 31{j728A6a}: Apportionment of amounts

Question 8. We welcome comments on the proposal to rewrite paragraphs 13(1), 15 and 16 of Schedule 28A to ICTA as a two-column table.

All the respondents supported the tabular approach.

31. ***We will adopt a tabular approach to rewriting paragraphs 13(1), 15 and 16 of Schedule 28A to ICTA.***

One respondent thought that, in paragraph (2) of column 2 of row 1 of the table in clause 14{j728A6}, it would be more accurate to say that “an amount equal to” the relevant gain was apportioned to the second notional accounting period.

32. ***We agree and will adjust the clause.***

One respondent noted that row 6 of the table in clause 31{j728A6a} needed to exclude amounts within row 7.

*Bill 6 Response Document
Committee Papers CC/SC (08) 11 and CC/SC (08) 23
Company Distributions*

33. *We think there may be some merit in this point but would like to consider it further. When we publish the draft Bill we will comment further and, if appropriate, revise the drafting.*

One respondent observed that in clause 31{j728A6a} the reference should be to column 2.

34. *We are grateful for this correction.*

Clause 32{j728A7c}: Meaning of certain expressions in section 31{j728A6a}

One respondent observed that “adjusted” should be inserted before the first instance of “non-trading deficit” in clause 32{j728A7c}(3).

35. *We are grateful for this correction.*

Clauses 33{j7768Da} and 34{j7768Db}: Company carrying on UK property business; company carrying on overseas property business

One respondent thought that standardising the comparison periods would inadvertently change the law.

36. *On reflection, we agree. We will adjust the clauses.*

Clause 35{j7767Ad}: Meaning of “linked” person

A member of the Consultative Committee suggested that it would be helpful to state expressly that the companies mentioned in clause 35{j7767Ad}(2) and (3) were different.

37. *We are considering this. When we publish the draft Bill we will comment further and, if appropriate, revise the drafting.*

Clause 36{j7767Bb}: Meaning of “control”

One respondent thought that the drafting of clause 36{j7767Bb}(5) might inadvertently change the law.

38. *On reflection, we agree. We will adjust the clause.*

Clause 38{j7767Aj}: Meaning of “the relevant period”

One respondent found the drafting of clause 38{j7767Aj}(3) hard to follow.

39. *We are considering this. When we publish the draft Bill we will comment further and, if appropriate, revise the drafting.*

Clause 39{j7767Aa}: Recovery of corporation tax for accounting period beginning before change

Question 9. We welcome comments on the proposal to give officers of Revenue and Customs the function of making assessments under clause 39{j7767Aa} (Change 601{j601}).

One respondent supported the proposal. One respondent expressed concern that officers were being given increased powers.

40. As noted in the draft commentary, the administration of sections 767A to 767C of ICTA is in practice restricted to a specialist group of officers. Change 601{j601} will have no effect on this practice.

41. *We will make Change 601{j601} in clause 39{j7767Aa}.*

One respondent observed that the language of clauses 39{j7767Aa} and 42{j7767AAa} was not well suited to Self Assessment.

42. *As the respondent noted, addressing this would be outside the remit of the Tax Law Rewrite Project. We have passed the comment on to our policy colleagues.*

Clause 40{j7767Ab}: Conditions relating to company's trade or business

One respondent thought that, unlike the source legislation, clause 40{j7767Ab}(4)(c) did not appear to cover a case where the major change was attributable to the combined effect of two or more transfers but not to any one of them alone.

43. Taken with section 6(c) of the Interpretation Act 1978, clause 40{j7767Ab}(4)(c) will cover such a case.

44. *We do not intend to adjust the clause.*

Clause 41{j7767Bc}: Meaning of “a major change in the nature or conduct of a trade or business”

One respondent did not object to wording from section 245 of ICTA (repealed) being reinstated for the purposes of clause 41{j7767Bc}, but thought that this should be acknowledged as a possible change in the law.

45. For the reasons given in the draft commentary, the repeal of section 245 of ICTA did not by implication repeal section 767B(7) of that Act. The use of wording from section 245 of ICTA (repealed) in the rewrite of section 767B(7) of that Act is therefore merely a drafting clarification.

*Bill 6 Response Document
Committee Papers CC/SC (08) 11 and CC/SC (08) 23
Company Distributions*

46. ***We intend to present the clause on the basis that it will not change the law.***

One respondent thought that “trade” in clause 41{j7767Bc}(4) should be “trade or trades”.

47. There is nothing in the context under review to disapply section 6(c) of the Interpretation Act 1978.

48. ***We do not intend to adjust the clause.***

Clause 42{j7767AAa}: Recovery of unpaid corporation tax for period ending on or after change

Question 10. We welcome comments on the proposal to give officers of Revenue and Customs the function of making assessments under clause 42{j7767AAa} (Change 601{j601}).

One respondent supported the proposal. One respondent expressed concern that officers were being given increased powers.

49. As noted in the draft commentary, the administration of sections 767A to 767C of ICTA is in practice restricted to a specialist group of officers. Change 601{j601} will have no effect on this practice.

50. ***We will make Change 601{j601} in clause 42{j7767AAa}.***

Clause 47{j7767Cd}: Meaning of “associated company”

Two respondents had reservations about the compression of “person or persons” to “person” in clause 41{j7767Bc}(4)(c), notwithstanding section 6(c) of the Interpretation Act.

51. ***We will be content to restore “or persons”.***

Clause 48{j7769}: Meaning of “change in the ownership of a company”

One respondent thought it would be clearer to merge clause 48{j7769}(4) and (5), as in the source legislation.

52. ***We are considering this. When we publish the draft Bill we will comment further and, if appropriate, revise the drafting.***

Clauses 50{j7769k} and 51{j7769f}: Cases where things other than ordinary share capital may be taken into account for the purposes of Chapters 2 to 5;

*Bill 6 Response Document
Committee Papers CC/SC (08) 11 and CC/SC (08) 23
Company Distributions*

cases in which things other than ordinary share capital may be taken into account for the purposes of Chapter 5

One respondent recommended that clauses 50{j7769k} and 51{j7769f} were so similar that they should be merged.

53. As the respondent acknowledged, it would be necessary to preserve the distinction between the two conditions B.

54. *We will be happy to merge the provisions as suggested.*

Clause 59{j728A11}: Meaning of “relevant non-trading debit”

One respondent thought that the clause should make it clearer which company was meant by “the company”.

55. *We agree, and will adjust the clause.*

One respondent welcomed the division of the two arms of paragraph 11(1) of Schedule 28A into separate subsections (3) and (4) of clause 59{j728A11}, but thought that the reference in paragraph (c) of each of those subsections to all three of clauses 378, 416 and 418 of Bill 5 was an unnecessary complication. In the respondent’s view, only clauses 416 and 418 can be relevant to subsection (3) and only clause 378 can be relevant to subsection (4).

56. *We think there may be some merit in this point but would like to consider it further. When we publish the draft Bill we will comment further and, if appropriate, revise the drafting.*

Clause 64{j7283}: Notice requiring payment of unpaid tax

Question 11. We welcome comments on the proposal to give officers of Revenue and Customs the power to serve notices under clause 64{j7283} (Change 601{j601}).

One respondent supposed the proposal. One respondent expressed concern that officers were being given increased powers.

57. As noted in the draft commentary, this is a minor change in the law with no practical implications.

58. *We will make Change 601{j601} in clause 64{j7283}.*