

# **Tax Law Rewrite.**

## **Bill 6**

### **Response to Paper CC/SC (07) 42**

#### **Community investment tax relief**

This document is available on the internet at:

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

15 April 2008

## **Community investment tax relief**

### **Introduction**

1. We published Committee Paper CC/SC (07) 42 on 8 November 2007 on the HMRC internet website [www.hmrc.gov.uk/rewrite](http://www.hmrc.gov.uk/rewrite). The closing date for responses was 8 February 2008. The draft clauses rewrite the provisions relating to community investment tax relief for corporation tax purposes in Schedule 16 to FA 2002.

2. The purpose of this response document is to provide details of the substantive 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.

3. We received written responses from the following:

- The Institute of Chartered Accountants in England and Wales
- The Chartered Institute of Taxation and
- Francis Sandison.

4. We are very grateful for all the comments made, many of which were detailed and we appreciate the time and effort that went into them. We have sent each respondent a copy of this response document.

5. A number of minor changes were proposed in the Committee Papers. Where no mention is made of these in this response document, they either received approval or were not mentioned in responses.

6. The following abbreviations for tax legislation are used:

- FA 2002           the Finance Act 2002
- ITA                the Income Tax Act 2007.

### **Clause 3: Form and amount of CITR**

*A respondent considered that it was not obvious that the maximum amount of the relief was 25% of the invested amount.*

7. We consider that the meaning is clear when subsections (1), (2) and (3) are read together, but we propose to reinforce the point by expanding the explanatory note on clause 3.

8. *We propose to add a paragraph to the Explanatory Notes on clause 3 making clear that the maximum relief is 25% available at the rate of up to 5% of the invested amount for each of five consecutive accounting periods.*

**Clause 13: No pre-arranged protection against risks**

*A respondent questioned whether section 349(3) of ITA should not be consequentially amended by adding the additional words that have been included in clause 13(3).*

9. As mentioned in the explanatory notes to this clause, it is intended to use a common definition of “arrangements” in Bill 6, but the common definition does not alter the scope of the term as used in the source legislation. There is no intention to amend ITA by substituting a common definition in that Act.

10. *We do not propose to amend section 349(3) of ITA.*

**Clause 21: No claim after loss of accreditation by the CDFI**

Q3. *We welcome comments on the proposal to unpack paragraph 24(2) of Schedule 16 to FA 2002 and section 356(2) of ITA.*

*The respondents who mentioned this question both preferred the revised version and welcomed the decision to reflect this change by amending ITA consequentially. One of them wondered, however, whether subsection (2) could open slightly more conventionally for example along the lines of “Subsections (3) and (4) determine the relevant accounting period ...”.*

11. We consider that the drafting of subsection (2), although unconventional, is clear and direct.

12. *We do not propose to adopt this suggestion.*

**Clause 22: Accreditation of investor**

Q4. *We welcome comments on the proposal to unpack paragraph 25(2) of Schedule 16 to FA 2002.*

*The respondents who mentioned this question both preferred the revised version. One of them wondered, however, whether subsection (3) could open slightly more conventionally for example along the lines of “Subsections (4) and (5) determine the relevant accounting period ...”.*

13. We consider that the drafting of subsection (3), although unconventional, is clear and direct.

14. *We do not propose to adopt this suggestion.*

**Clause 26: Disposal of loan during 5 year period**

*A respondent suggested that it might be helpful to have a signpost in this clause to the definition of disposal in clause 45.*

15. Clause 45(1) not only defines “disposal” but also provides that related expressions, such as “dispose”, are read accordingly. There are many references to disposal and related expressions in the Part, the first of which is in clause 19. It is not appropriate to include signposts in some places but not others. We do not consider it would be practical, or improve the Part, to include signposts in every place.

16. *We do not propose to adopt this suggestion.*

**Clause 29: Value received by investor during 6 year period: loans**

*A respondent observed that it was not easy to find the provision that interest on a loan at a reasonable rate did not constitute the receipt of value.*

17. The provision is to be found in paragraph (b) of the definition of “qualifying payment” in clause 32(6).

18. *We are considering whether to include signposts in clauses 29, 30 and 31 to make clear that the provisions of clause 32 apply for the purposes of those clauses.*

**Clause 32: When value is received**

*A respondent asked what would happen if a dividend, not exceeding a normal return, was paid in specie.*

19. We are satisfied that any dividend, including a dividend in specie, is to be treated as a payment within paragraph 35(1)(g) of Schedule 16 to FA 2002 and not as the transfer of an asset for no consideration within paragraph 35(1)(e). Accordingly paragraph (c) of the definition of “qualifying payment” in paragraph 35(5) applies to prevent a dividend not exceeding a normal return being a receipt of value whether the dividend is satisfied in cash or in specie.

20. *We do not propose to make any amendment to this clause.*

**Clause 33: The amount of value received**

*Q7. We welcome comments on the proposal to permit, in a case falling within clause 32(1)(d)(ii), the deduction of consideration given by a director or employee or an associate of a director or employee for a benefit or facility provided by the CDFI.*

*One respondent, while welcoming the extension of the relief, considered that subsection (2) ought to be split into two subsections and that this could be*

*facilitated by splitting clause 32(1)(d)(ii) and the corresponding entries in the table in subsection (1).*

21. ***We are considering these helpful drafting suggestions.***

*Another respondent pointed out that the origin to this clause is incorrect.*

22. We are grateful to the respondent for drawing this error to our attention.

23. ***We will correct the origin to refer to paragraph 36 of Schedule 16 to FA 2002.***

**Clause 48: Minor definitions etc**

*O9. We welcome comments on the proposed substitution in clause 48(2).*

*One respondent was unclear why this clause had not adopted the approach taken by the equivalent provision for income tax purposes in section 382 of ITA (as amended by Schedule 26 to FA 2007). Another considered that the justification for the drafting of clause 48(2) in paragraphs 109 and 110 of the Explanatory Notes was persuasive; but that the effect was that clause 48(2) was more restrictively drafted than section 382 of ITA which, by referring to “a recognised stock exchange”, had a wider coverage than the London Stock Exchange only. The respondent asked whether this was intended.*

24. We consider that the substituted words in clause 48(2) more accurately reproduce the reference in the source legislation to “the Stock Exchange” than the amendment made to section 382(2) of ITA by FA 2007. As a result of the designation of additional stock exchanges under the revised definition of recognised stock exchange in section 1005 of ITA, the test in section 382(2) of ITA may be capable of being satisfied in relation to the rules of one recognised stock exchange but not of another. Clause 48(2) provides a clear and simple test, but we appreciate that, as well as section 382(2) of ITA, other provisions to similar effect elsewhere in the Taxes Acts refer to shares being dealt in or dealt with on a recognised stock exchange.

25. ***We will keep this point under review.***

**Paragraph 52 of Schedule 16 to FA 2002: Index of defined expressions**

*A respondent asked whether it was intended to include an index of defined expressions in this Part or whether the treatment of definitions would be as in ITA.*

26. ***We do not intend to include separate indexes to Parts, but expressions which are used widely within Parts will be included in the Schedule to Bill 6 containing expressions defined for the purposes of the Bill.***

**Section 356 of ITA: No claim after loss of accreditation by the CDFI**

*A respondent pointed out that the words “the investment date falls” in the new subsection (3) proposed to be inserted in section 356 of ITA by paragraph 14(3) of Schedule 1 are inconsistent with the words “the investment date fell” in clause 21(3).*

27. We are grateful to the respondent for drawing this error in the new section 356(3) of ITA to our attention.

28. ***We will correct the amendment to section 356 of ITA.***