

Tax Law Rewrite – Bill 6

Response to Papers CC/SC(08) 32 and 34

Securitisation companies

Trade unions

This document is available on the internet at:

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

12 February 2008

INTRODUCTION

1. We published Committee Papers CC/SC(08)32 and CC/SC(08)34 in September 2008 on the HMRC internet website www.hmrc.gov.uk/rewrite. The closing dates for responses was 5 December 2008.

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 Chartered Institute of Taxation
- The Institute of Chartered Accountants in England and Wales
- The CBI
- One individual

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 are sending each respondent a copy of this response document.

5. The following abbreviations for tax legislation are used:

- FA Finance Act
- ICTA the Income and Corporation Taxes Act 1988

6. One question was raised in the ENs accompanying the draft clauses. The responses are dealt with in connection with the clause to which the question relates.

Securitisation Companies

Q1. We welcome comments on the decision not to rewrite section 83 of FA 2005.

We do not think it is necessary to rewrite Finance Act 2005 section 83. However, we suggest that a flag to it should be placed in the Corporation Tax Act 2010 so that someone who knows nothing about securitisations could more easily locate the provision. This is because the tax treatment can differ from a "follow the accounts" basis where section 83 applies. Under section 83, a securitisation company's taxable profits are determined by reference to UK GAAP, as it applied for periods of account (statutory accounting periods) ending on 31 December 2004, and not the profit as shown in its statutory accounts for the relevant accounting period. Section 83 will have ongoing relevance to existing securitisation companies which choose to remain in the temporary regime until at least 31 December 2016, and possibly beyond this date.

7. While the label "securitisation company" is used both in section 83 and section 84, the definition of that expression in the two sections is not the same.

8. This being so, we do not think it would be appropriate to include anything about section 83 of FA 2005 in the Chapter of Bill 6 that rewrites section 84 of that Act. It would be rather misleading to say that there was another provision about "securitisation companies" in section 83 of FA.2005 when that expression has a different meaning in that section from the meaning it has in that Chapter. We think it would be wrong to have a separate clause, with its own definition of "securitisation company", simply for the purpose of signposting the existence of a provision about such companies in another Act.

The juxtaposition of sections 83 (Application of accounting standards to securitisation companies) and 84 (Taxation of securitisation companies) in FA 2005 arguably draws the reader's attention more readily to the particular application of accounting standards to certain securitisation companies. The application of s 83 FA 2005 is capable of being extended beyond 31 December 2016 and it also applies to five varieties of securitisation companies, as set out in s 83(2) FA 2005. Accordingly, whilst s 83 FA 2005 does have a finite life and is of limited application its impact may not be insubstantial. Its accessibility to the reader would arguably be diminished if it were now to be isolated from the rewritten s 84 FA 2005. Whilst sections 83 and 84 FA 2005 do stand separately, and we have no strong objection if s 83 is not rewritten but instead left in FA 2005, if a sufficient number of companies are affected we consider that an adequate case can be made for also rewriting s 83 FA 2005 (perhaps following draft clause 3).

9. The fact that Bill 6 will have effect for corporation tax purposes in relation to accounting periods ending on or after 1 April 2010, means that we would not be rewriting the whole of section 83, some of which (i.e. its application in relation to

accounting periods ending before that date) will be of historical interest only so far as we are concerned. The application of section 83 in relation to the accounting periods with which Bill 6 is concerned depends entirely on the provision made by regulations under section 83(7A). That provision could be altered for the future by re-exercise of the regulation-making power. For example, it would be possible to substitute an end date earlier or later than 31 December 2016, or to provide different end dates for different descriptions of company. In these circumstances the most straightforward course is not to rewrite section 83.

10. Although the exact number of companies affected by section 83 is not known it is not thought to be significant. All such companies will have already taken advantage of the option offered by the section and no new companies will be entitled to make returns on the basis set out in that section. It should not therefore cause these existing companies any difficulties if section 83 remains where it is.

11. *We do not propose to rewrite section 83 Finance Act 2005 to meet the point.*

Clause 2: Power to make regulations etc.

Sub-clause (4) provides for adjustments to be required to the amounts brought into account in accordance with regulations under sub-clause (3). It would therefore not cover the case of a free-standing requirement for adjustments to be made to the amount brought into account for corporation tax purposes, where the basic amount is left to be determined under ordinary tax principles rather than specified by the regulations. The source legislation is not restricted in this way.

12. We agree that the rewritten clause differs from the source.

13. *We propose to amend the clause to meet the point*

Trade Unions

Clause 2: Qualifying income or gains

Although accurately rewriting section 467(2) of ICTA, the reference in clause 2(2)(a)(ii) to “an aged member” (which is undefined) appears a little archaic. In the absence of any definition of from what age a member is ‘aged’, we appreciate the drafting difficulty; but, if the original intention of this legislation was not to exclude non-aged members in receipt of superannuation, might this reference now be dropped though an appropriate Proposed Rewrite Change?

14. We agree that the word “aged” is somewhat archaic. However, we do not agree that the intention of the legislation is to treat all superannuation payments as provident benefits. We therefore propose amending the clause so that the reference to

“an aged member” is removed and the types of superannuation payments which are provident benefits are clearly set out. The proposed wording is as follows:

(ii) to a member by way of superannuation by reason of age, sickness or incapacity from personal injury,

15. ***We propose to amend the clause to partially meet this point.***

The reference in clause 2(2)(a)(iv) is to a member who ‘has lost tools’. We appreciate the gender difficulty with the section 467(2) of ICTA reference to ‘lost his tools’, but in consequence it would appear more strictly correct to refer to ‘lost his or her tools’ (rather than encompassing the loss of someone else’s tools as well).

16. We propose amending the clause so that it reads “to a member whose tools have been lost by fire or theft”.

17. ***We propose to amend the clause to meet this point.***