

Tax Law Rewrite – Bill 6

Response to Papers CC/SC(08) 28 and 33

Companies in liquidation

Loss relief: supplementary clauses

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INTRODUCTION

1. We published Committee Papers CC/SC(08)28 and CC/SC(08)33 in August and September 2008 on the HMRC internet website www.hmrc.gov.uk/rewrite. The closing dates for responses were 14 November 2008 and 28 November 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 Institute of Chartered Accountants in England and Wales
- The CBI

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.

Companies in liquidation

Chapter 2 Banks in compulsory liquidation: taxation of receipts

The Chapter 2 heading no longer includes the 'etc' included in the Schedule 12 F(No 2)A 1992 source heading. It is assumed that this is considered unnecessary in view of the clause 10(2) definition of 'a business of accepting deposits' as including only permitted EEA credit institutions in addition to 'banks' as defined and that such credit institutions are in practice banks.

7. A permitted EEA credit institution is an EEA firm of the kind mentioned in paragraph 5(b) of Schedule 3 to FISMA 2000. Paragraph 5(b) refers to a credit institution (as defined in Article 4.1 of the banking consolidation directive) which is authorised (within the meaning of Article 4.2) by its home state regulator. For the purposes of FISMA the banking consolidation directive is directive 2006/48/EC. Article 4.1 reads:

(1) 'credit institution' means:

(a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or

(b) an electronic money institution within the meaning of Directive 2000/46/EC;

8. To cover the possibility that all such credit institutions might not be banks we intend re-instating “etc” in the Chapter title.

9. ***We propose to amend the Chapter heading to meet this point.***

Clause 2: Meaning of “rate of corporation tax” in case of small companies

Sub clause (1) refers to “corporation tax chargeable on profits of a company ... at the small companies’ rate”. However, according to the terminology used in paper CC/SC (08) 03 the SCR is charged on the net profits of a company, and it would be best to be consistent in this respect.

10. We are considering the point.

11. ***We will consider amending the clause to meet this point.***

As noted in the Consultative Committee meeting on 30 September, the references to “small companies’ rate” will need to be replaced by “small profits rate” if that is the final choice of name.

12. The bill currently refers to the “small profits rate” and the clause will be amended accordingly.

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

Clause 3: Company in liquidation: corporation tax rates

Although there may be some contexts in which it is possible to use “shall” or “may” interchangeably, clause 3(7) appears to be a case where what is meant is definitely “shall”. The same applies to clause 5(7).

14. We agree that there is no discretion over the rate to be used. We will replace “may” with “is to”.

15. ***We propose to amend the clauses to meet this point.***

Clause 5: Company in administration: corporation tax rates

Sub clause (2) refers to “the company’s profits” whereas clause 3(2) refers to “the profits of the company”.

16. Clause 5 will be amended to read “the profits of the company”.

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

Clause 14: Election to carry back

Paragraph 6(1) Schedule 16 F(No 2)A 1992 provides that an election to carry back may be made within 2 years after the end of the chargeable period in which a sum (now ‘the winding up receipt’) is received. Why does draft clause 14(3) provide that the election must be made before the end of the chargeable period in which the receipt is received?

18. The time limit stipulated in the clause for making an election is incorrect.

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

We do not agree with HMRC’s view that “the Corporation Tax Acts” includes all the legislation relevant to companies which are chargeable to income tax, and that references in the source legislation to the Tax Acts can therefore be rewritten in this Bill as references to the Corporation Tax Acts without changing the meaning. This point is of relevance to clause 14(4).

20. We are considering the point.

21. ***We will consider amending the clause to meet this point.***

Loss relief: supplementary clauses

Q1. We welcome comments on the proposal to enact ESC C5.

We support the proposal to enact ESC C5 as clause 1 in accordance with the explanation in Change 667 in Annex 1.

Clause 1: Registered industrial and provident societies

22. Although no respondents commented specifically on this clause we are now considering whether the classes of income in sub clause (3) exceed the scope originally intended by the Extra Statutory Concession.

23. ***We will consider amending the clause.***

Clause 2: Non-UK resident company: receipts of interest etc.

While the proposed new section 436C of ICTA closely follows the source legislation, this clause takes a rather different drafting approach: compare draft section 436C(2) with sub-clause (3) of this clause. Although the version in this clause is clearer we think that it does not, unfortunately, produce the right result.

Since it simply requires the receipts in question to be included in the computation of the profits of the trade, clause 2(3) will not only disallow a loss but may convert it into a profit. At first sight this may not appear to matter, since it applies only for the purposes of two sections which are concerned only with the relief of losses. However if this clause does require the company to be deemed to have made a profit for the purposes of what is now section 393, that would require any trading loss which it may be carrying forward from some earlier year to be set against that notional profit. The loss would thus be wasted. This is not the effect of the existing legislation, and would clearly be inappropriate.

Sub-clause (3) therefore needs either to revert to something closer to the form of the source legislation, or to be redrafted so that the receipts are included in trading profits only to the extent necessary to eliminate the loss. We incline towards the former option, in the interests of consistency in approach between this clause and new section 436C.

24. We agree that as it stands the clause has the potential to incorrectly reduce losses brought forward.

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

Schedule 1 – Consequential amendments (Loss relief)

The drafting of section 436C(2) is not quite as clear as sub-clauses 2(2) and (3) which are its equivalent in clause 2.

26. In light of this response and also in response to comments from HMRC colleagues we have decided to add a reference to section 436A of ICTA to clause 2(2) rather than insert section 436C of ICTA.

27. *We propose to amend the Schedule to meet this point.*