

Tax Law Rewrite

Responses to papers CC/SC (08) 18 and 19

Surrender of tax refund within group

Use of different accounting practices within a group of companies

26 November 2008

Introduction

1. In May 2008 we published on the HMRC internet website www.hmrc.gov.uk/rewrite:

- Committee Paper CC/SC (08) 18 (surrender of tax refund within group); and
- Committee Paper CC/SC (08) 19 (use of different accounting practices within a group of companies).

2. In each case, the closing date for responses was 29 August 2008.

3. 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.

4. 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

5. The following abbreviation for tax legislation is used in this response document:

- FA Finance Act

6. 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.

Surrender of tax refund within group

General comments

One respondent recommended incorporating regulation 9 of SI 1998/3175 (the Corporation Tax (Instalment Payments) Regulations 1998) (“regulation 9”) into the rewrite. In the alternative, the respondent recommended giving a signpost from clause 1{jAS0950}(3) to regulation 9.

7. Section 102 of FA 1989 states the general rules. Regulation 9 provides for modifications of those rules in the case where either or both of the surrendering and receiving companies is a “large company” within the meaning of the regulations. The

modifications of section 102 are consequential on the regime for quarterly instalment payments of corporation tax by large companies (QIPs) that SI 1998/3175 introduces.

8. The QIPs regime is not being rewritten in Bill 6, as it is machinery legislation and does not affect companies' liabilities to corporation tax. It will therefore remain in subordinate legislation. Since the modifications made by regulation 9 are consequential on subordinate legislation, it would not be helpful to promote them to primary legislation.

9. Giving a signpost to regulation 9 in Bill 6 could give rise to difficulties if SI 1998/3175 was amended by statutory instrument and the signpost to it needed to be amended by Act of Parliament.

10. *We will give a signpost to regulation 9 in the Explanatory Notes.*

Clause 1{jAS0950}: Power to surrender tax refund and effects of doing so

Clause 1{jAS0950}(2)(b) used “beginning with the accounting period” to mean “beginning at the same time as the accounting period”. While acknowledging that this usage was well established in parliamentary drafting, one respondent commented that readers often had difficulty with it.

11. *We will expand the phrase to “beginning with the start of the accounting period”.*

A member of the Consultative Committee asked if the colourless label “relevant date” in clause 1{jAS0950}(4)(b) could be replaced by something more informative.

12. *We have considered this carefully, and intend to keep the phrase “relevant date”, in the absence of any convenient alternative.*

Clause 2{jAS0954}: Interest on tax overpaid or unpaid

A member of the Consultative Committee asked if the colourless label “relevant period” in clause 2{jAS0954}(1)(b) could be replaced by something more informative.

13. *We intend to use instead the informative label “interest-free period”.*

Clause 3{jAS0952}: Definitions etc.

14. One respondent found the drafting of clause 3{jAS0952}(3) obscure.

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

Clause 4{jAS0953}: Payments for surrendered tax refunds

On respondent was concerned that “[if] the surrendering company and the recipient company have an agreement between them” in clause 4{jAS0953}(1)(a) could be taken as meaning that the condition could only be satisfied if the two companies had a continuing, rather than an ad hoc, agreement.

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

One respondent queried whether “income and chargeable gains” in clause 4{jAS0953}(2)(a) had the same scope as “profits or losses” in the source legislation, section 102(7)(a) of FA 1989.

Two respondents thought that, assuming “income and chargeable gains” was correct, “income or chargeable gains” would be better English.

17. On reflection, we think it preferable to revert to “profits or losses”.

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

Use of different accounting practices within a group of companies

Clause 1{j9201}: Use of different accounting practices within a group of companies

One respondent suggested referring to “international financial reporting standards” in clause 1{j9201}(1)(a), on the ground that this expression was now more commonly used.

19. Section 50(2) of FA 2004 defines “international accounting standards” for the purposes of the Corporation Tax Acts by reference to Regulation (EC) No 1606/2002 of the European Parliament and the Council of 19 July 2002 on the application of international accounting standards. Regulation (EC) No 1606/2002 refers to “international accounting standards” rather than “international financial reporting standards”.

20. ***We will retain the expression “international accounting standards”.***

Two respondents thought that the move from “the Tax Acts” in section 51(2) of FA 2004 to “the Corporation Tax Acts” in clause 1{j9202}(2) might change the law.

21. ***We will revert to “the Tax Acts” for the sake of caution.***