

# Tax Representation



**TAXREP 14/10**

## **INTEREST – WORKING TOWARDS A HARMONISED REGIME**

### **DRAFT LEGISLATION AND COMMENTARY FOR CORPORATION TAX AND PETROLEUM REVENUE TAX**

*Memorandum submitted on 3 March 2010 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to a consultation document and draft legislation published on 9 December 2009 by HMRC.*

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## **INTEREST – WORKING TOWARDS A HARMONISED REGIME**

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#### **INTRODUCTION**

1. We welcome the opportunity to comment on the proposals published by HMRC on 9 December 2009 at <http://www.hmrc.gov.uk/pbr2009/venture-capital-1260.pdf>.
2. We also welcomed the opportunity for us to discuss these proposals with HMRC.
3. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

#### **BACKGROUND TO THE DRAFT LEGISLATION**

4. When the FA 2009 rules were introduced (see ss 101 to 105 and Schs 53 and 54), corporation tax and PRT were excluded from the harmonised rules but it was stated at the time that they would be included in the Finance Act 2010. This consultation document sets out draft legislation that would include corporation tax and petroleum revenue tax into the harmonised interest regime set out in FA 2009 except that the corporation tax quarterly interest payments rules are not affected and these rules therefore continue unchanged.

#### **GENERAL COMMENTS**

5. Whilst we appreciate that paras 7 and 10 referred to below mirror the existing rules in this area, far from the new rules providing a 'harmonised regime' as suggested in the title of this consultation document, these rules merely perpetuate the existing differences between the interest rules where losses are carried back and offset against profits of an earlier period. Under these rules, where losses are carried back against profits and where additional corporation tax would be due, interest will run from nine months after the end of the first accounting period. However, in cases where losses are carried back resulting in a repayment of corporation tax, repayment interest will only run from nine months after the end of the later period.
6. We would have expected that in a genuinely harmonised regime, late paid interest and interest on overpaid tax would run from the same date.

#### **SPECIFIC COMMENTS ON SCHEDULE 1 INTEREST: CORPORATION TAX**

7. *Paragraph 7, inserting new 2A/B into Sch 53 of FA 2009 (Late payment interest)*  
Where a company has a profit in an earlier period and a loss/non-trading deficit on loan relationships in a later period that is carried back, interest on the earlier period profits will continue to accrue if in the absence of a claim late paid CT would have been due (up to nine months after the end of the later period). We would welcome confirmation that this mirrors the existing rules.

*Para 10, inserting New Part A1 of Sch 54 of FA 2009 (Repayment interest)*

8. These are the opposite provisions to those in new 2A/B above. Again, please confirm that our understanding that the new rules mirror the existing rules.

*Para 11*

9. As per above, please confirm our understanding that these special rules (eg franked investment income, loans to participators) mirror the existing provisions.

*Para 12*

10. This inserts a new Sch 54A and makes two further changes to the general rules that were introduced in the FA 2009.

*New paras 1 and 2*

11. Subject to certain conditions HMRC can recover as late payment interest amounts of repayment interest that have been paid, but which ought not to have been paid. However, this provision does not apply in cases where the whole or part was a result of HMRC error. At our meeting, HMRC clarified that paras 1 and 2 above rewrite existing analogous provisions currently set out in s 826(8A), s 826(8B), s 826(BA) and s 826(8C) of ICTA 1988.
12. Please confirm that it is intended that these new paras will have the same effect as those currently in ICTA 1988 and that the latter provisions will be repealed when these new rules come into force?

*New paras 3 and 4*

13. Where there is an underpayment of corporation tax for one accounting period and an overpayment of corporation tax for another accounting period, neither late payment interest nor repayment interest will arise during a common period. We understand that this provision is intended to give statutory effect to HMRC's existing practice but we would welcome confirmation.

FJH

3 March 2010

## ICAEW AND THE TAX FACULTY: WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales (ICAEW) is the largest accountancy body in Europe, with more than 130,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Innovation and Skills through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.
3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 10,000 members of the ICAEW who pay an additional subscription.
4. To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at [taxfac@icaew.com](mailto:taxfac@icaew.com) or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

## THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

***These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99; see [www.icaew.co.uk/index.cfm?route=128518](http://www.icaew.co.uk/index.cfm?route=128518).***