



## ICAEW REPRESENTATION

### INITIAL COMMENTS FROM THE ICAEW ON THE 2010 BUDGET

**Memorandum of comment submitted in March 2010 by the ICAEW Tax Faculty in response to the Chancellor's Budget on 24 March 2010**

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## **INTRODUCTION**

1. The ICAEW Tax Faculty welcomes the opportunity to comment on the Chancellor's Budget held on 24 March 2010.

## **WHO WE ARE**

2. The ICAEW operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
3. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. We ensure these skills are constantly developed, recognised and valued.
4. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter 'TAXline' to more than 11,000 members of the Institute who pay an additional subscription, and a free weekly newswire.

## **GENERAL COMMENT**

### **The need for detailed consideration**

5. We expect the Finance Bill to be published shortly. In view of the forthcoming general election, the generally accepted approach in these circumstances is for a considerably truncated Finance Bill to be passed before Parliament is dissolved which is restricted to setting the rates and allowances and any other uncontroversial measures that will be applicable from 6 April 2010.
6. Our first key principle of taxation is that *tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament*. We are concerned to ensure that large swathes of potentially complicated and poorly targeted and drafted legislation could be passed into law 'at a stroke'. We urge government and the opposition parties to ensure that this approach is not applied.
7. Only those provisions that have to be enacted immediately regarding rates and allowances to keep within the timetable of the Provisional Collection of Taxes Act 1968, or which are entirely uncontroversial, should be included in any Finance Bill passed before Parliament is dissolved. We are concerned particularly to ensure that the measures set out in the Budget Notes below (except for Budget Note 11 which will not be in the Finance Bill) are not passed into law before the dissolution of Parliament.

## **SPECIFIC COMMENTS**

### **Budget Note 11 Enhanced capital allowances for energy saving and water efficient technologies**

8. We do not object to the principles but are concerned that one category of technology (heat exchangers) together with one sub-technology have now been removed from the list. Whilst we accept that it is reasonable for the list to change over time, we are concerned about the need to preserve legitimate expectations. As a result of this change companies that have invested in

developing technologies and associated equipment to meet the requirements are likely to face a reduction in the demand for their products.

9. Paragraph 8 states that the lists will be amended later in 2010, so to that extent there is some element of transitional relief. However, we believe that given the likely substantial capital investment in developing such technologies, the product providers should be given greater certainty about how long their products will appear on the list. We think it would be reasonable to guarantee the tax treatment for a given period of time, say a minimum of five years although we think ten years would be a reasonable time period.

#### **Budget Note 41 Anti avoidance: transactions in securities**

10. Although we appreciate that these proposals follow on from an earlier consultation, paragraph 8 notes that 'This is a significant restructuring of the scope of the legislation'. It appears that the new legislation applies for transactions on or after 24 March 2010 so it is already in force even though full details of the new rules have not yet been released, which is fundamentally unfair and undemocratic, since taxpayers cannot know how to comply and HMRC cannot know what they are enforcing. We think that this provision should therefore be included in the first Finance Bill of the new Parliament.

#### **Budget Note 64 Disclosure of tax avoidance schemes**

11. We have consistently supported the disclosure of tax avoidance schemes (DOTAS) rules and have worked closely with HMRC since they were introduced in 2004 to ensure that they are proportionate and properly targeted. Whilst we do not object to the principle of further refinements to the DOTAS rules, we are concerned that any changes to the existing legislation are properly targeted and do not impose disproportionate burdens on businesses.
12. The current proposals are based on those set out in the consultation document published at the time of the 2009 PBR. Appendix 5 of the 2009 consultation document set out some draft legislation although many of the detailed DOTAS rules are set out in regulations. We presume that the draft legislation set out in Appendix 5 will be that included in the Finance Bill 2010.
13. In our response to those proposals, published as TAXREP 12/10, we thought that some of the proposed measures were too draconian and go further than is necessary to achieve the objectives outlined in the consultation document.
14. The existing £5,000 penalty will be replaced, it is proposed, with a daily £600 penalty. This £600 daily penalty was one of the two options set out in the consultation document but we preferred the option which provided for an increase in the penalty to the extent that there has been non-compliant behaviour by the promoter or user. We remain strongly of that view that this would be a better option.

#### **Budget Note 68 Tackling offshore tax evasion**

15. We do not condone tax evasion and will support any reasonable efforts to tackle it. However, we are concerned that these proposed measures need careful consideration and debate and therefore that they should not be included in any Finance Bill passed before the dissolution of Parliament.
16. These proposals follow on from a consultation document published at the time of the 2009 PBR, to which we responded as TAXREP 16/10. We were concerned that the proposals would place an unnecessary burden on the compliant majority while not necessarily catching the evaders. Whilst we are pleased to see that HMRC has taken some of our concerns on board, notably the shelving of the proposal to introduce an account notification requirement, we do not think that offshore non-compliance or evasion necessarily deserves tougher sanctions than the equivalent 'onshore' behaviour and that the level of penalty should depend on what sort of information exchange agreement the UK happens to have with the country where the offshore income or gains arise. What penalties would be applied where, say, the behaviour occurred

over a number of years and the exchange agreement with the other jurisdiction changed over time?

17. These proposals are stated as applying to tax periods commencing on or after 1 April 2011 but we are concerned that there may be an element of retrospection in respect of past liabilities. We suggest that there should be a de minimis where the offshore component is a relatively insignificant part of the whole settlement.

#### **Budget Note 70 Security for payment of PAYE**

18. We are disappointed with this proposal. First, we believe that this measure should have been subject to prior consultation. We have been engaged for some time in the continuing discussions with HMRC about the proposal to apply interest to late payments of PAYE, but at no stage was this proposal tabled for consideration. Paragraph 9 states that HMRC 'have consulted twice before on the greater use of securities' but we do not think that this is a fair reflection of the position nor the outcome of the consultation process, as we and we suspect many others were not in favour of it. The implication of agreement having been reached by a double consultation could almost be described as a gross distortion of the position. As far as we are aware at no stage since the November 2008 consultation has HMRC ever indicated that it was seriously considering introducing such powers for PAYE.
19. Whilst it is of course right for HMRC to ensure that PAYE is paid on time, HMRC has already included measures to counter this in the Finance Act 2009, namely the rules which will charge interest on late paid PAYE. These rules have only just come into force and we think that they should be given a chance to bed down and see if they are effective in ensuring that PAYE is paid on time rather than taking what is a draconian step which can result in a criminal offence if the security imposed is not paid.
20. In the tough financial climate, many businesses are facing cash-flow problems and it is inevitable that some may pay PAYE late. The new interest charge is intended to address that problem. We find this provision wholly at odds with the announcement in the Budget that the 'Time to pay' arrangements will be extended for the life of the next Parliament. We believe that there is an urgent need for HMRC to clarify the circumstances when such powers will be used, together with evidence of how many times HMRC is likely to request security. It seems to us that such a measure may well force many firms into liquidation at a time when HMRC should be seeking to help businesses who are struggling financially but where the underlying business is viable.
21. It is wrong in principle and undemocratic that HMRC can set a level of security and then impose a criminal penalty in the event that the security is not paid. Whilst we appreciate that the taxpayer may appeal against the imposition of the security and the amount, the grounds on which the taxpayer will be able to appeal are not specified. We believe that on the basis of the evidence provided so far, this penalty is disproportionate.
22. Although we appreciate that criminal powers have been included in Finance Bills in the past, we are not convinced that the Finance Bill is the right place for such provisions. Given that the House of Lords has little opportunity to scrutinise the Bill, we believe that these criminal powers will not be subject to a fundamental check of our Parliamentary process. As yet there are no details about, for example, the appeal rights, for how long HMRC may require such security, whether HMRC will pay interest on any security, or whether there are any other approaches that might be used to address the problem.

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