



ICAEW REPRESENTATION 141/17

TAX REPRESENTATION

FINANCE (No 2) BILL 2017-19 – HYBRIDS AND OTHER MISMATCHES

ICAEW welcomes the opportunity to comment on the Finance (No 2) Bill 2017-19 provisions in clause 23 and Schedule 7 in relation to Hybrids and other mismatches.

This submission by ICAEW was made on 20 December 2017 to the House of Commons Public Bill Committee in response to [invitation dated 14 December 2017 to “have your say”](#)

This representation of 20 December 2017 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty’s Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 147,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

Copyright © ICAEW 2017
All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

For more information, please contact ICAEW Tax Faculty: taxfac@icaew.com

icaew.com

PROPOSED ADDITION TO PARAGRAPH 14 SCHEDULE 7.

1. The explanatory notes explain the purpose of paragraph 14 as follows:

Paragraph 14 inserts new section 259ID, which defines “section 259ID income” by reference to conditions A to D.

- Condition A requires an investor to make a payment to the hybrid entity, and that the payment does not give rise to a tax deduction for the investor.
- Condition B is that the payment gives rise to (taxable) ordinary income for the hybrid entity.
- Condition C is that the payment is a direct consequence of a payment to the investor from an unrelated third party.
- Condition D is that the payment from that third party gives rise to (taxable) ordinary income for the investor.

The amount of section 259ID income is defined as the lesser of the payment made by the investor (condition A) and the payment received by the investor (condition C)

OUR RECOMMENDATION

2. We recommend that conditions C and D should be extended to include, alternatively, where the payment at conditions A and B (a payment by the investor which is ordinary income of the hybrid entity) is directly related to a payment made by the hybrid entity to an unrelated person.

AN EXAMPLE SETTING OUT WHY THE AMENDMENT IS NECESSARY

3. Consider a “checked” UK company (the hybrid entity) owned by a US investor (the investor) where the UK company has third party cost of 100 recharged to the US at 110.
4. In the absence of the proposed amendment, the UK company has income of 110 and a disallowed expense of 100 (i.e. taxable profit of 110)..
5. The UK company expense of 100 is disallowed (under Chapter 9 Taxation (International And other Provisions) Act 2010 in which section 591D will be inserted) because 100 is a double deduction (UK and US) with no “dual inclusion income”. The only income of the UK company is the 110 which is a disregarded expense in the US.

FURTHER INFORMATION

6. As part of our Royal Charter, we have a duty to inform policy in the public interest.

Contact details Ian Young ian.young@icaew.com

APPENDIX 1

ICAEW 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 <http://www.icaew.com/-/media/corporate/files/technical/tax/tax-news/taxguides/taxguide-0499.ashx>).