

TAXREP 32/05

HERITAGE MAINTENANCE SETTLEMENTS

TAX LAW REWRITE: BILL 4

Memorandum submitted in July 2005 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in May 2005 by HMRC Tax Law Rewrite Team

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)10 published on 4 May 2005 by HMRC Tax Law Rewrite Team at <http://www.hmrc.gov.uk/rewrite/exposure/menu.htm>.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in the Annex.

GENERAL COMMENTS

3. Chapter 1 (Heritage Maintenance Settlements) rewrites ss 690-694 ICTA 1988. and the rewritten clauses are appropriate.
4. Clauses 5-8 (Application of property for non-heritage purposes: charge to tax) correctly rewrite the source legislation. As the rate applicable to trusts is currently the same as the higher rate of income tax, no actual income tax charge can arise under clause 5; but we appreciate that these rates will not necessarily continue the same, and that it is accordingly necessary to retain this legislation as rewritten should there be any future divergence. In the explanatory notes, it might however be helpful to draw attention to this earlier than in paragraph 39 – perhaps by including a reference to this in paragraph 29.

ANSWERS TO QUESTIONS

5. **Q1** As the definitions are essential to an understanding of the rules specifically relating to Heritage Maintenance Settlements (HMSs), it is helpful to the reader that they should appear early on, in clause 1 (Definitions and application of Chapter) of Chapter 1 (Heritage Maintenance Settlements). The integral signposts to Schedule 4 to IHTA 1984 (maintenance funds for historic buildings etc) are a drafting convenience and, whilst not affording ready understanding to the user of the definitions affected without necessary reference to Schedule 4 itself, in practice this approach appears unavoidable. It is reasonably to be expected that any user concerned with this particular legislation should not find any necessary reference to IHTA 1984 burdensome. As drafted we consider that the definitions do help to provide clarity in navigating the material.
6. **Q2** Agreed.
7. **Q3** We do not object to the proposal not to rewrite the words ‘(or would apart from the reimbursement be)’ in s 692(1) of ICTA. It is clear from clause 11(1)(b) as drafted that the expenditure (although reimbursed) is to be deducted in calculating the profits of the trade/UK property business, which is the intention of the words quoted from the source legislation.

Tax Representation

DETAILED COMMENTS ON DRAFTING

cl 4 Change of circumstances during a tax year

8. As a minor point, is there any reason why clause 4(3)(b) refers to income arising from ‘the heritage property’ and clause 4(4)(b) refers simply to income arising from ‘property’ when both references are to the same circumstances?

TJH/PCB
26.7.05

WHO WE ARE

The Institute of Chartered Accountants in England and Wales ('ICAEW') is the largest accountancy body in Europe, with more than 128,000 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.

The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. 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.

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 11,000 members of the ICAEW who pay an additional subscription.