

TAXREP 63/05

TRANSACTIONS IN LAND

TAX LAW REWRITE: BILL 4

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

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)33 published on 22 September 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. We agree that rewriting section 776 ICTA, with its supporting sections 777 and 778, as a number of shorter clauses and arranging these clauses in a way which helps the reader to understand them, responds effectively to the criticism of the source legislation that its length and complexity tend to obscure its meaning and effect.
4. We note that s 777(11) ICTA will be rewritten, as a consequential amendment, when work on the main clauses is further advanced.

ANSWERS TO QUESTIONS

5. **Q1** For the reasons set out in Explanatory Notes paragraph 7, we agree that it is appropriate to rewrite both sections 775 and 776 ICTA in Bill 4 with s 776 ICTA and its related provisions also being consequentially amended to confine them to corporation tax. We also agree the rewriting of those income tax provisions of sections 777 and 778 which apply for the purposes of both sections 775 and 776 ICTA separately in both the “transactions in land” Chapter and the “sales of occupation income” Chapter despite the duplication involved. We note, however, that the possibility of rewriting s 778 ICTA in one place for the purposes of both Chapters is being kept under review.
6. **Q2** We are content with the ordering of the draft clauses on transactions in land.
7. **Q3** We welcome the clarification of the territorial scope of s 776 ICTA, as explained in Change {jc 501} in Annex 1, in that s 776(14) ICTA is not regarded as over-riding s 827A(3) ICTA, which provides that an amount arising to a non-UK resident is chargeable to income tax only if it is from a source in the United Kingdom, so that a non-UK resident is only chargeable on the gain attributable to the land located in the United Kingdom.
8. **Q4** With reference to Change {jc 500} in Annex 1, and in particular to the comments of Goff L J in *Yuill v Wilson* 52 TC 674, we have no objection to the

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omission of the words “an opportunity of realising a gain” in s 776(8) ICTA when rewriting clause 7(5).

9. **Q5** We agree the inclusion of the proposed “tie-breaker” rule in clause 16(7). We note that the situation predicated is unlikely to arise but that, if it did, HMRC would resolve it by a just and reasonable apportionment under s 777(6)(a) ICTA. The use of this approach in clause 16(7) is sensible and appropriate.
10. **Q6** We agree that it is appropriate for clause 18 to refer to “an officer of Revenue and Customs”. We note that in practice all working cases will continue to be referred within HMRC to Business Tax (Technical) before any direction is made under clause 18(2) (Directions for payments received by non-UK residents to be treated as annual payments).
11. **Q7** We support the proposal to make it explicit, in clause 20(1), that the particulars that an officer of Revenue and Customs may require to be provided (under s 778 ICTA) are limited to those particulars which the officer may ‘reasonably require’. This imposes a more objective test than the ‘as (they) think necessary’ in the source legislation.
12. **Q8** As the Interpretation Act 1978 refers to “buildings *and other structures*” [our italics] it follows logically that the definition includes structures which are not buildings, whereas s 776(13)(a) ICTA refers to “buildings” only. We note HMRC’s view, in the first bullet point in Explanatory Notes paragraph 72, that case law makes it clear that virtually any kind of structure is capable of being a building. This is not a conclusive demonstration that *all* structures are buildings. In theory therefore the Interpretation Act 1978 definition extends the definition of “buildings” in s 776(13)(a) ICTA. This may make no difference in practice, but strictly the narrower definition in the second limb of s 776(13)(a) ICTA ought to be rewritten. However, on the basis that including non-buildings structures within the scope of the Chapter will have no practical effect, we would have no objection to this second limb being omitted, but as a change in the law to be brought to the Joint Committee’s attention and not on the basis that it can be omitted as redundant.
13. **Q9** On the basis that the case predicated in Explanatory Notes paragraph 81 is not possible, we agree that it is appropriate to omit the explanation of “receivable” (s 777(13) ICTA) from the “transactions in land” Chapter.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

14. **cl 9 Transactions, arrangements, sales and realisations relevant for this Chapter (3)(c), (d)** As with clause 9(3)(e), should the words ‘affecting the disposition of any property or right’ also be included in clause 9(3)(c) after the word ‘option’ and in clause 9(3)(d) after the word ‘consent’, when rewriting s 777(3)(c) ICTA?
15. **cl 21 General interpretation (1)** Should the proviso ‘apart from this Chapter’ be inserted after ‘and’ in the second line of the definition of ‘capital’.

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DETAILED COMMENTS ON DRAFTING

Overview

16. In Explanatory Notes paragraph 3, in the first line, insert ‘has’ before ‘been’.
17. **cl 5 Income treated as arising where gains obtained from certain land disposals**
(2) Is the origin in s 777(3) rather than in s 776(1)?
18. With reference to Explanatory Notes paragraph 75, as regards the proposal to omit s 777(4) ICTA as redundant, its omission will remove the existing (limited) explicit guidance in the source legislation as to what demonstrates a person’s intention. It may well be true that s 777(4) ICTA merely declares what the courts would hold anyway; but, if it is now excluded from the rewrite, certainty on this particular aspect is removed. It would also then appear to become more difficult for a taxpayer to contend that his/her intention as documented was not conclusive, in the admittedly unlikely situation that the need to do so might arise. For these reasons we would prefer to rewrite s 777(4) ICTA, within clause 21 (General interpretation).

TJH/PCB
18.11.05

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.