



ICAEW REPRESENTATION 17/17

TAX REPRESENTATION

TERMINATION PAYMENTS ETC: AMOUNTS CHARGEABLE TO TAX ON EMPLOYMENT INCOME

DRAFT FINANCE BILL 2017 LEGISLATION: CLAUSE 9

ICAEW welcomes the opportunity to comment on the [draft Finance Bill 2017 legislation](#) published by HMRC on 5 December 2016

This response of 1 February 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 and to take part in all further consultations on this area.

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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.

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GENERAL COMMENTS

Introduction

We reiterate our comments made in our response to the summer consultation [ICAEW REP 149/16](#) that the measure will complicate, rather than, as intended, simplify, termination payments.

Our concern

We believe that the proposed legislation is so complicated (contrary to the third and fourth of our *Ten Tenets for a Better Tax System* summarised in Appendix 1, namely Simple and Easy to collect and to calculate) that the average employer will find it more difficult than currently correctly to calculate the taxable and untaxable elements of termination payments without having to seek professional advice.

Our recommendation

We urge the government to provide a detailed policy objective for the proposed changes so that consideration can be given to whether the draft legislation is the best method of achieving that objective or whether a targeted approach would better meet that objective.

Our concern

As noted above, we welcome the opportunity to help make the legislation better, but being asked to do this during the period leading up to the self assessment deadline means that many of our members who normally contribute to our representations are busy ensuring that their clients' tax returns are submitted on time and therefore are unable to spend time on non-remunerated work.

We would mention that we expressed similar concerns about timing in our response to the summer consultation [ICAEW REP 149/16](#).

Our recommendation

We suggest that personal including employment taxes consultations that extend over the 31 January self assessment deadline have response deadlines set in mid-February at the earliest, rather than, as in this case, 1 February.

SPECIFIC COMMENTS

Our concern

The calculation of non-contractual payments in lieu of notice will be very complicated, and differ across employers, inasmuch as some may include pensions and others benefits-in-kind. In particular, ascertaining 'basic pay' in new s402D is likely to cause difficulties, as it will be necessary to dissect the pay package to distinguish different elements, such as contractual overtime, contractual pay in lieu of notice and contractual bonuses, from discretionary elements as well as deferred elements of pay, which are common in the financial services sector.

In new s412A, it is unclear whether employers need to apportion earnings before the time stated, whether employers can use treaties, the position where the employee has worked partly in and partly outside the UK, and what employers should do if there is no treaty or the country in which the employee worked no longer exists.

Our recommendation

These points need to be clarified in clear legislation, failing which in simple guidance, to help employers get it right.

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>).