



TAXREP 15/13

(ICAEW REP 19/13)

ICAEW TAX REPRESENTATION

ENTERPRISE MANAGEMENT INCENTIVES: CGT ENTREPRENEURS' RELIEF: DRAFT FINANCE BILL 2013 LEGISLATION

Comments submitted on 6 February 2013 by ICAEW Tax Faculty in response to the HM Treasury/HM Revenue and Customs invitation to comment on draft Finance Bill 2013 legislation in the consultation draft *Enterprise management incentives: qualification for capital gains tax entrepreneurs' relief* published on 11 December 2012

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the draft Finance Bill 2013 legislation in the consultation draft *Enterprise management incentives: qualification for capital gains tax entrepreneurs' relief* published by HM Revenue & Customs (HMRC) on 11 December 2012.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

4. ICAEW is a professional membership organisation, supporting over 140,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.
5. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.
6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

KEY POINT SUMMARY

7. We welcome the policy decision to include the time that the option is held in the qualifying period.
8. However the legislation provides that the qualifying period is a year and a day. This creates a trap for the unwary and we consider that the legislation should be amended to make the period exactly a year to align with most people's general understanding.

GENERAL COMMENTS

9. We welcome the fact that the capital gains tax (CGT) entrepreneur relief (ER) qualifying period for relevant enterprise management incentive (EMI) scheme shares will under the draft legislation published on 11 December include the period for which the option was held.
10. We recommended this approach in our submission dated 4 October 2012 to HMRC and HM Treasury (TAXREP 48/12) so that the EMI regime could act as a real incentive by reflecting what happens in practice, namely investors exercise the options around the time the company is sold, and align with the way that the rules operated under the former taper relief regime.
11. The legislation achieves this by specifying that the shares qualify inter alia where 'the option grant date falls before the beginning of the period of 1 year ending with the cessation date' (new subsections 169I(7A) and (7B), Conditions C and D).

DETAILED COMMENTS ON THE DRAFT LEGISLATION

Paragraph 1(3): amended section 169I

12. New subsections 169I(7A) and (7B), Conditions C and D contain a trap for the unwary investor, as the wording of the legislation effectively makes the qualifying period a year and a day rather than 12 months.
13. As most people think that the qualifying period is one year, we recommend that these two conditions should be reworded so that the period is truly one year.
14. We therefore suggest the following amendments
 - In new section 7A(b), after the words ‘the option grant date falls’ insert the words ‘on or’.
 - In new section 7B(b), after the words ‘the option grant date falls’ insert the words ‘on or’.

Other draft legislation

15. We have are not commenting at this stage on the remainder of the draft legislation on this topic; if further comments do arise then we shall make them during the Finance Bill process.

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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 icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)