

ICAEW TAX FACULTY REPRESENTATION

TAXREP 15/11

DRAFT FINANCE BILL 2011: PENSIONS ANNUITISATION

Comments submitted on 9 February 2011 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales on the proposed legislation on 'Pensions annuitisation' published as part of the draft Finance Bill 2011 on 9 December 2010.

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INTRODUCTION

1. This document sets out the comments of the Tax Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW) on the proposed legislation on **Pensions annuitisation** published as part of the draft Finance Bill 2011 on 9 December 2010.
2. These comments were sent to the HMRC officer responsible for this topic on 9 February 2011.
3. They are also included in our comprehensive response to the draft Finance Bill 2011, which is published as TAXREP 5/11 and was submitted to the Exchequer Secretary to the Treasury and to the Permanent Secretary for Tax at HMRC on 9 February 2011.
4. Information about the Tax Faculty and the 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

5. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 132,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
6. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.
7. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions 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 Institute who pay an additional subscription, and a free weekly newswire.

KEY POINTS

8. We are concerned that there are annuities, such as partnership and some life annuities, which may not rank towards the minimum income requirement. In addition transfers to another pension provider may affect the maximum income drawdown

COMMENTS ON THE DRAFT PROVISIONS

Unsecured and alternatively secured pension to be replaced by drawdown pension

Paragraph 13, inserting new paragraph 14A(3) of Schedule 28 FA 2004: Minimum income requirement and non-surrenderable partnership retirement annuities

9. We are concerned that partnership annuities such as those covered in paragraph 8 of Statement of Practice D12 are not covered within the categories cited in new paragraph 14A(3) of Schedule 28 FA 2004 where the annuity is payable for life. We recognise Government's wish to ensure that those who draw down their pension pots do not subsequently become a burden on the state, but we think that those who have partnership

retirement annuities of amounts that would, if they were relevant income as currently defined, enable them to meet the minimum income requirements are unlikely to have any need to fall back on state assistance, and where the payments represent payments in reasonable recognition of the past contribution of work and effort by the partner the former partner is unlikely of his own volition to forego these.

10. Similarly, where a life annuity is purchased in a non-surrender policy then that means that the contract cannot be reopened to amend the duration or amount of payment which means that it will be a guaranteed, life-long, income. We suspect that purchased life annuities are not included in the draft legislation as qualifying for the minimum income requirement because they operate under a tax regime different from that governing annuities purchased using pension fund monies but given that purchased life annuities in a non-surrender policy are payable for life and cannot be changed, we see no reason for excluding them.
11. We therefore consider that an additional category to cover annuities paid as in reasonable recognition of the past contribution of work and effort by a former partner and non-surrenderable purchased life annuities should be inserted into new paragraph 14A(3).

Drawdown pension year and basis amount for drawdown pension year

Paragraph 86

12. We are concerned that the provisions of draft paragraph 86(4)(b) of Schedule 1 will prejudice a member of a pension scheme in drawdown who is currently receiving income of between 100% and 120% of GAD and effects a transfer to another pension provider after 5 April 2011. This will trigger a new reference period which means that the drawdown income from the new provider will be limited to 100% of GAD whereas if that person had remained with the original pension provider the current reference period would just continue for the original 5 year term.
13. This effectively amounts to a penalty for transferring to a new provider from the existing provider. This is unfair, particularly as at present a transfer to a new SIPP provider does not trigger any requirement for a new reference period. We should welcome clarification as to why the draft legislation should impose this change penalizing individuals who move their pension 'pot' from one provider to another.
14. In addition to the unfairness it is very concerning from an administrative burden. It is very difficult to determine in practice the precise date of the transfer of a pension arrangement from one provider to another. Some providers regard the effective date as the date they receive confirmation of what the current level of benefits are. Others do not regard the transfer as complete until all the investments of the fund have been transferred into their name, which, particularly if there are any foreign investments, can take months. The exact date of the completion of the transfer of a client's pension arrangement has never been critical before; but under the proposed legislation it is now. It will make it very difficult, if not impossible, for SIPP administrators over the next two months to cope with transfers that are in progress. How can anyone know whether they will be completed before 6 April? If they are not, and the level of pension is critical to the client, the process will somehow have to be unravelled which may not be possible if some of the pension fund assets have already been reregistered in the name of the new scheme provider.

15. We therefore recommend that paragraph 4(b) should:

- be framed by reference to when the transfer process is started (which in practical terms will simply be when the client first instructs the pension provider to transfer his pension scheme); and
- include an exception for those already in drawdown who transfer to another SIPP provider where the transfer process had been started on the date that the draft legislation comes into force, i.e. 6 April 2011, to enable drawdown to continue for the remaining part of the five years at the same rate with the new SIPP provider as under the previous SIPP provider.

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APPENDIX 1

THE 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.