

TAXREP 40/05

GIFTS OF SHARES, SECURITIES AND REAL PROPERTY TO CHARITIES

TAX LAW REWRITE: BILL 4

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

CONTENTS

	Paragraph
INTRODUCTION	1-2
GENERAL COMMENTS	3
ANSWERS TO QUESTIONS	4-6
WHO WE ARE	Annex

Tax Representation

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC/SC(05)23 published on 30 June 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 are content with the rewrite of the provisions in sections 587B and 587C ICTA, so far as they give relief to individuals making gifts of shares, securities and real property to charities, or disposing of such assets to charities at undervalue, and note that the rewritten clauses will be included in a Part about 'Other Reliefs'. We also note the appropriate amendment of sections 587B and 587C ICTA, so that they will continue to provide tax relief for companies making such gifts or disposals.

ANSWERS TO QUESTIONS

4. **Q1** We have no objection to the proposal to deal with the provisions excluding this relief from computations for top-slicing relief by amending s 535 ITTOIA. The clear signpost from clause 1(3) will sufficiently alert the user to this. However, as the source legislation in s 587B(2) ICTA does make it immediately clearer to the user that the relief is not to apply in top-slicing computations, would the inclusion in clause 1(3) of the words "this section shall not apply" after "(top-slicing relief)" more accurately reflect this?
5. **Q2** We have no objection to the methods of computation in clause 4(1) and (2) being given through formulae.
6. **Q3** We consider that a reduction in the amount of cross-referencing through including in full, in draft rewritten clauses, relevant definitions imported from another Act, as in the cases of clauses 5 (Incidental costs of making disposal), 6 (Consideration) and 8 (Market value of qualifying investments), does assist users. The clause affected can then stand on its own, and the user is not obliged to refer to another Act to understand it. The disadvantage of increasing the length of a clause is outweighed by the greater concern for its improved and readier intelligibility. We appreciate that a rewrite judgement has to be made on a clause-by-clause basis, and

Tax Representation

that in more complex cases cross-referral will be unavoidable, but our preference is to include relevant definitions in full within the same Act where practicable (as in the cases of clauses 5, 6 and 8 here).

TJH/PCB
22.9.05

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.