

## TAXREP 48/04

### REWRITE OF LEGISLATION IN FINANCE ACT 2004: TAX LAW REWRITE: BILL 3

*Memorandum submitted in October 2004 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in September 2004 by the Inland Revenue Tax Law Rewrite Team*

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# Tax Representation

## REWRITE OF LEGISLATION IN FINANCE ACT 2004: TAX LAW REWRITE: BILL 3

### A INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(04)14 (Rewrite in Bill 3 of legislation introduced in Finance Act 2004) containing draft clauses for Bill 3 concerning immediate needs annuities and interest and royalties exemption rewritten from Finance Act 2004, published on 10 September by the Revenue at <http://www.inlandrevenue.gov.uk/rewrite/cc-04-14-rewriteofleginfa2004.pdf>.

### B KEY POINT SUMMARY

2. We are satisfied with the rewrite clauses, subject to the minor points noted in Section E below, but must express our concern about the extent of redrafting needed by the Rewrite Team to bring the Finance Act legislation up to rewrite standard.

### C WHO WE ARE

3. 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.
4. 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.
5. 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.

### D. GENERAL COMMENTS

6. Section 580C ICTA (Relief from tax on annual payments under immediate needs annuities) is now rewritten in a materially changed format in clauses 720 (Annual payments under immediate needs annuities) and 721 (Meaning of 'care provider'). This is in part to integrate it into Part 6, Chapter 7 of the Income Tax (Trading and Other Income) Bill, in particular the omission of s 580C(2) (which defined 'relevant annual payment') as being no longer necessary; but in the main the changes are made to accord with rewrite style, and in particular to tighten up the drafting as with the treatment now of the definition of 'care provider' in the separate clause 721. This

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again illustrates the potential for Finance Bill drafting still to move more towards that in the tax law rewrite.

7. The text of the rewritten clauses 720 and 721 is in order, by reference to the original legislation introduced by s 147 Finance Act 2004 (Immediate needs annuities). We agree the reference now to 'purchased' life annuity in clause 720(2) and note that the use of 'country or territory' in clause 721(5) in accordance with ITTOIA practice is under consideration.
8. No other comments arise on the rewritten draft clauses covering immediate needs annuities.
9. A number of drafting changes are also evident in draft Bill Part 6 Chapter 9 (Exempt income – Other income – Interest and royalty payments) as compared with the original legislation in Chapter 6 Part 3 Finance Act 2004 (Exemption from Income Tax for certain interest and royalty payments).
10. Clause 1 (Introductory) is in the now standard and clearer tax law rewrite introductory format. The tax law rewrite alphabetical labelling of Conditions in clause 2 (Exemption for certain interest and royalty payments) was also not adopted in s 98 Finance Act 2004 (Exemption from income tax for certain interest and royalty payments).
11. Otherwise, as is to be expected, the draft Bill Part 6 Chapter 9 clauses follow the same order as the sections in Chapter 6 Part 3 Finance Act 2004, but with the interpretation s 97(2) Finance Act 2004 now relocated from the first section in Chapter 6 to the penultimate clause in draft Bill Chapter 9. Sections 97, 99 and 103 are also each now fragmented into a number of separate draft clauses in the interest of improved clarity.
12. Whilst clearly affected by time pressure and choice of style, with a view to the future consistency of new legislation it is nevertheless a cause for some concern that such changes as those above become necessary in the rewrite, and that the now relatively well-established tax law rewrite drafting in these respects had not already been adopted by the Finance Bill draftsmen.

## **E. DETAILED COMMENTS ON DRAFTING**

### **Clause 6**

13. 2(j) Should the word 'making', within the brackets, be 'cancellation' as in s 100(2)(j) Finance Act 2004?
14. 2(k) In the introductory words should 'case' be 'cases'?

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TJH/PCB  
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