Tax Representation

ICAEW TAX FACULTY

TAXREP 83/08

DRAFT TAX REGULATIONS FOR DORMANT BANK AND BUILDING SOCIETY ACCOUNTS

Memorandum submitted on 24 November 2008 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to a consultation document published on 20 October 2008 by HMRC

Contents **Paragraph**

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DRAFT TAX REGULATIONS FOR DORMANT BANK AND BUILDING SOCIETY ACCOUNTS

INTRODUCTION

1 This is the text of a letter to HMRC on the first draft of tax regulations published by HM Revenue & Customs on 20 October 2008, which aim to facilitate the smooth introduction and operation of the Unclaimed Assets Scheme that will be introduced by Dormant Bank and Building Society Accounts Bill.

2 HMRC states that the purpose of the provisions is to put the dormant account customer in the same position for tax as they would have been without the scheme. We do not consider that as currently drafted the regulations achieve this.

3 We identify three areas of concern:

3.1 The confusion likely to arise as a result of the use of the word 'paid' in the regulations when the legislation uses the word 'arising.

3.2 The lack of top slicing relief.

3.3 The lack of relieving provisions where the account has been inherited and tax would have been paid at a lower rate by the original owner.

4 Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

5 The text submitted was as follows.

Comments on first draft tax regulations for dormant bank and building society accounts

You have requested comments on the first draft of tax regulations published by HM Revenue & Customs on 20 October 2008, which aim to facilitate the smooth introduction and operation of the Unclaimed Assets Scheme that will be introduced by Dormant Bank and Building Society Accounts Bill.

We are commenting only on clause 8 of the regulations, being the only one which affects individuals. HMRC state that the purpose of the provisions is to put the dormant account customer in the same position for tax as they would have been without the scheme. We do not consider that as currently drafted the regulations achieve this.

When does the interest 'arise' and what relevance is 'paid'?

Clause 8 states: 'For the purposes of Chapter 2 of Part 4 of The Income Tax (Trading and Other Income) Act 2005, interest arising in respect of a relevant dormant account shall be treated as **paid** at the time (if any) at which the balance of the account is paid out following a repayment claim.' However, S 370 ITTOIA (which is in Chapter 2 Part 4) states that tax is charged on the full amount [of interest] '**arising**' in the year. The word "arising" has been the subject of a number of tax cases and includes 'received' and also 'credited to a bank account' (*Parkside Leasing v Smith*, (1984) 58TC282). However, "arising" also has a wider meaning, for example, it was held in *Dunmore v McGowan*, (1978) 52TC307CA to include the "swelling of a person's assets", even where the person had no immediate right of access to the income.

As currently drafted, the legislation would appear to be deficient because it refers to interest treated as being 'paid' but the legislation to which is refers uses the term 'arising' in respect of bank and building society accounts. This would appear to require the word 'paid' being replaced by 'arising' in the draft regulations.

However, a further issue arises. As noted above, the word 'arising' may be interpreted in different ways in these particular circumstances. For example, has the interest on the account arisen over a number of years (in which case it is taxable in each of those years) or only in the year in which the funds in the account are repaid to the taxpayer? In order to avoid uncertainty, the regulations should clarify precisely in which tax year the interest paid (as part of the repayment of the dormant account) will be taxed.

Taxpayers suffering higher marginal rates of tax

If the regulations are intended to tax, in the year of receipt, all interest on the account, the taxpayer may be pushed into higher marginal rates of tax than if they had received the interest annually. The effect is likely to be more marked for those on lower incomes who might otherwise have been able to claim repayment of tax credits each year and also for pensioners who may lose age allowance as a result. We are particularly concerned that the regulations as drafted are likely to result in elderly taxpayers, who are arguably the most likely to forget about accounts, paying more tax than they would have done if the account had not been treated as dormant.

It is likely to be very onerous to identify the marginal rate(s) of tax which would have applied to all relevant years (15 years or more) if the taxpayer had not forgotten about the account. We therefore propose by way of compromise that top slicing relief should be available based the marginal tax rates of the last six years only.

Situations where the ownership of the account has changed

Where the dormant account has been inherited, either in whole or in part, from another person the interest will be taxed on the person to whom the monies are paid. This could result in an unjust outcome. Take the example of an elderly couple where a joint account only comes to light on the winding up of the Estate of one of them; the surviving spouse may suffer far more tax than if the joint interest had been paid out to them jointly before the death. Similarly, a parent may die leaving all assets to a child who is a higher rate taxpayer. Again, the dormant account may only come to light as a result of winding up the Estate. If the parent was a non taxpayer or basic rate taxpayer more tax will be collected than if the account had come to light before the death.

We believe that in these circumstances, the taxable interest should be apportioned to the pre and post death periods and the tax charge calculated accordingly. We do accept that this would result in complicated legislation but this is required in the interest of fairness.

AW
24.11.08

ANNEX A

ICAEW AND THE TAX FACULTY: WHO WE ARE

1. 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.

2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Enterprise and Regulatory Reform through the Financial Reporting Council. 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.

3. 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 10,000 members of the ICAEW who pay an additional subscription.

4. To find our more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at taxfac@icaew.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

ANNEX B

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**; see http://www.icaew.co.uk/index.cfm?route=128518.