

TAXREP 19/05

GIFT AID: TAX LAW REWRITE: BILL 4

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

CONTENTS

	Paragraph
INTRODUCTION	1
WHO WE ARE	2
GENERAL COMMENTS	3-5
ANSWERS TO QUESTIONS	6-11
SPECIFIC COMMENTS ON DRAFT LEGISLATION	12-14
DETAILED COMMENTS ON DRAFTING	15
WHO WE ARE	Annex

Tax Representation

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)03 published on 2 February 2005 by HMRC Tax Law Rewrite Team at <http://www.hmrc.gov.uk/rewrite/exposure/menu.htm>.

WHO WE ARE

2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in the Annex.

GENERAL COMMENTS

3. The structure of the rewritten Gift Aid Chapter appropriately rewrites the majority of s 25 FA 1990 (Donations to charity by individuals) and now incorporates s 98 FA 2002 (Gift Aid: election to be treated as if gift made in previous tax year) in clause 11. We support the three Proposed Rewrite Changes.
4. As indicated in paragraph 6 of the Summary, we assume that s 25(9A) FA 1990 will be rewritten with the rules concerning the calculation of an individual's overall tax liability, including the interaction of the Gift Aid provisions. We note that s 25(10) FA 1990 is rewritten in the provisions regarding charities (Paper CC(05)04) and we also note that s 25(11) FA 1990, the application of the s 839 ICTA 'connected persons' definition, will be replaced by the application of this definition generally for the purposes of Bill 4.
5. We note further that clause 6 (Disregard of certain admission rights), in rewriting subsections 25(5E)-(5G) FA 1990, does not yet take account of the consultation on replacement subsections to provide for a revised exemption from the benefit rules to view the property of a charity and that this will be addressed as necessary at a later stage.

ANSWERS TO QUESTIONS

6. **Q1** We agree that it is more appropriate to retain the basic approach to gift aid, of extending the basic rate limit, rather than relief as a deduction from income.
7. **Q2** We agree the proposed rewriting of s 25(2)(i)(ii), in clause 7(3) (Gifts by non-residents), to refer to the grossed up amount of any gifts being 'less than or equal to' the amount of the individual's charged income and capital gains for the tax year rather than being payable out of profits or gains brought into charge to income tax or capital gains tax.
8. **Q3** We welcome the proposal to allow a non-resident donor to specify which gifts are to count as qualifying donations, where these exceed the limit of the amount of income and capital gains in charge, in clause 7(4) and (5) (Gifts by non-residents). We note from Annex 1 Change {jc 453} that this choice is to operate by reference to whole gifts. This could result in the total of gifts chosen being less than the limit, where the specification of a further whole gift would cause the limit to be exceeded. This situation might be resolved if the individual were allowed

Tax Representation

to specify the further gifts as comprising two notional gifts, one specified as falling within the limit and the other without. We appreciate that the recipient's tax recovery situation would also be affected, but any difficulty arising might not be insuperable.

9. **Q4** We have no objection to clause 9(4) (Charge to tax where donor's liability is insufficient) operating directly in terms of tax, rather than charging the donor with basic rate income tax on so much of the gift as is necessary to recover an amount of tax equal to the deficit.
10. **Q5** We agree that s 25(9)(c) FA 1990 is anomalous, and need not be rewritten.
11. **Q6** We welcome the clarification in clause 12 (Calculation of charged income and gains) through Change {jc 456} of the method of dealing with adjustments that have their origins in a later year and are within Schedule 1B TMA, by explicitly disregarding them when calculating for the purposes of clauses 7 and 11 the amount of an individual's charged income (and gains) for a tax year.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

Clause 8: Restriction of certain reliefs

12. In (2)(b), it might help the reader if the words "in accordance with section 10" were inserted after "income tax". This would align with the similar direction in clause 9(3)(b) for the purposes of clause 9, and draw the reader's attention to the underlying relevance of clause 10 (which we agree is best dealt with as a supplementary section).

Clause 9: Charge to tax where donor's liability is insufficient

13. Is it made sufficiently clear by clause 9(3)(a) that where an income tax charge arises under clause 19 there will presumably also be a charge under clause 8 (by reference to the extinguishing of the reliefs in clause 8(4)? S 8 increases the s 10 liability, and this increased liability then becomes the 'amount C' deduction from 'amount A' (the total amount of the tax treated as deducted from the qualifying gift aid donations) in the clause 9(3) calculation. Perhaps clause 9(1) might include introductory wording such as "In addition to the liability under clause 8, further income tax is charged under this section if . . .", or something similar. The reader needs to understand that clause 10 underpins clause 8, and clause 9 takes clause 10 as amended by clause 8 as its base.

Clause 11: Election by donor: gift treated as made in previous tax year

14. In 11(6), it might be clearer to simply state that the recipient of the gift receives it in the year of its actual payment.

DETAILED COMMENTS ON DRAFTING

15. In Explanatory Notes paragraph 51 in the second line, insert 'in' before 'step'.

TJH/PCB
20.4.05

Tax Representation

ANNEX

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.