



## ICAEW TAX REPRESENTATION

### INHERITANCE TAX: GIFTS TO CHARITIES ETC

### FINANCE BILL 2012 – DRAFT LEGISLATION

Comments submitted on 8 February 2012 by ICAEW Tax Faculty in response to an invitation to comment on draft Finance Bill legislation *Inheritance Tax: Gifts to Charities etc* published on 6 December by HM Treasury and HM Revenue & Customs

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## INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the draft Finance Bill 2012 legislation *Inheritance Tax: Gifts to Charities etc* published by HM Treasury and HM Revenue & Customs (HMRC) on 6 December 2011 at [http://www.hm-treasury.gov.uk/d/reduced\\_iht\\_charities.pdf](http://www.hm-treasury.gov.uk/d/reduced_iht_charities.pdf).
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. On 2 February we attended a meeting with HMRC in which we were able to put forward some key comments and concerns and discuss aspects of the draft legislation.
4. Information about the Tax Faculty and 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. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
6. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
7. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

## COMMENTS

### Policy

8. We are disappointed that the legislation is not based on the alternative regime that we proposed in our response TAXREP 47/11 (see via <http://www.ion.icaew.com/TaxFaculty/22879>) to HMRC's June 2011 consultation document. In that we suggested that IHT at 40% should be reduced by a 'tax credit' of 3.6% of the gross chargeable estate, ie the estate before deducting the charitable legacy but after deducting the nil rate band. Our suggestion would be relatively more generous to the residuary legatee where charitable etc legacies are greater than the minimum 10%, thereby providing a greater incentive to make such legacies. In our opinion, this would better meet the Government's objective of encouraging gifts to charity.

### Legislation

9. On the draft legislation on the relief as it stands, we welcome that:
  - the relief is being extended to registered community amateur sports clubs ;
  - the calculations work as described in the accompanying notes;
  - the elections procedure in new para 9 new Sch 1A provides a longer deadline (an extra month) for withdrawing than for making an election; and

- in para 9 under consequential amendments HMRC has adopted our recommendation that where such legacies are made by Instrument of Variation rather than through a Will, the beneficiary charities or registered clubs must be notified.

### Explanatory Notes

10. In the draft Explanatory Notes, we suggest that Para 1, which may be the only bit that some read, may be misleading as it gives the impression that the relief is based on 10% of the total estate as valued for probate. We therefore suggest that 'net' or a similar qualifying word be inserted before 'estate' in the third line. Whilst not providing the full message (which can be obtained from the background note for those who read on), it will alert the reader to the fact that the baseline against which eligibility for the relief is measured is less than the total estate value.

E [peter.bickley@icaew.com](mailto:peter.bickley@icaew.com)

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**ICAEW 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.com/~media/Files/Technical/Tax/Tax%20news/TaxGuides/taxguide-4-99-towards-a-better-tax-system.ashx> ).