

TAXREP 46/05

TRANSFER OF ASSETS ABROAD

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 July 2005 by HMRC Tax Law Rewrite Team

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INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)25 published on 5 July 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. The four related clauses in the Introduction are a particularly helpful guide to the three separate charges, each subsequently supported by their separate sets of clauses, and as introducing the key definition of 'relevant transfer'. The structure of the Introduction is commendably neat.
4. The distinguishing of the three separate charges in clauses 5-12 (power to enjoy income) in clauses 13-17 (capital sums received) and in clauses 18-24 (benefit received) makes understanding of this legislation easier to the user, and the necessary degree of repetition in clauses 5, 13 and 18 is an acceptable consequence of this.
5. We note that further thought is being given to the structure of clauses 20-22, to see if they can be improved upon. At the least, although intelligible, the use of the acronyms in clauses 21 and 22 is a little intimidating and we query whether separate clauses are indeed needed (please see our later comments on these clauses).
6. The General provisions and Supplementary clauses are appropriately ordered.
7. Altogether, the rewritten Part is a considerable improvement on source legislation which is very compressed and difficult to understand. It is encouraging that such complex anti-avoidance legislation can be rewritten in a way which makes it easier to understand, without unacceptably altering its incidence (having due regard also to relevant case law).
8. We note also that clause 28 (rates of tax applicable to income charged under sections 5 and 13 etc) is provisional at this stage, that s 746 ICTA (persons resident in the Republic of Ireland) is obsolete, that s 742(9)(c) ICTA (meaning of 'benefit') is considered redundant, and that the consequential, saving and transitional amendments will be addressed when the main clauses are nearer finality.
9. The Consultative Committee at its meeting on 12 July raised a number of points as noted in para 22 of the official Minutes. As the TLR project team undertook to look further at these where appropriate, we have not included them in this response.

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ANSWERS TO QUESTIONS

10. **Q1** We agree the proposal to rewrite the charges in s 739(2) and (3) ICTA, imposing different charges, in three separate groups of clauses. This is fundamental to an ‘unpacking’ of the complex source legislation, directed at enhancing the user’s understanding of it.
11. **Q2** We agree that clause 6(1)(a) does define appropriately the individual to whom income is treated as arising, by leaving open the question whether s 739 ICTA was potentially capable of applying to both an individual who transfers assets and to anyone else procuring the transfer of assets. The same comments apply to clause 14(1)(a).
12. **Q3** We support the proposal that clause 15 should make it clear that there is no liability under s 739(3) ICTA if the taxpayer’s entitlement to receive a capital sum has ceased.
13. **Q4** We support the proposal, in clause 19(1)(c), to make it clear that the exclusion from liability to income tax under s 740 ICTA for those who are liable to income tax under s 739 ICTA on deemed income in respect of the same transfer extends to those who would be liable under s 739 apart from falling within the exception in s 743(3) ICTA for non-domiciled individuals taxed on the remittance basis.
14. **Q5** We support the drafting of clauses 20-22 to make clear that surplus relevant income is carried forward year by year (if it continues to be available to provide a benefit) until extinguished by a benefit or benefits, in line with practice; and to also clarify the treatment of multiple benefits. We query, however, the need for clause 21 – please see our separate comments on clauses 21 and 22.
15. **Q6** We do not object to the use of the references in clauses 25, 27 and 30 to ‘an officer of Revenue and Customs’.
16. **Q7** We support the proposal to make it explicit, in clause 30(1), that the particulars that an officer of Revenue and Customs may require to be provided (under s 745 (1) ICTA) are limited to those particulars which the officer may ‘reasonably require’. This imposes a more objective test than the ‘as they [the Board] think necessary’ in the source legislation.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

- cl 4 Meaning of ‘associated operation’**
17. We note that clause 4 gives the term ‘associated operation’ a Chapter-wide definition, although the s 742(1) ICTA definition is expressed to apply for the purposes of ss 739-741 ICTA only. In the absence of any alternative definition being included in the

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source legislation, we agree that it is reasonable to assume that the term ‘associated operation’ bears the same meaning in ss 742 and 745 ICTA.

cl 5 Charge to tax on income treated as arising under section 6

18. The charge in clause 5 (and in clauses 13 and 18) is on the arising basis. Whilst this basis is not as explicitly adopted in Chapter 111 of Part XVII of ICTA, the references to ‘income becoming payable’ in s 739(1) and s 740(1) ICTA support its application in accordance with existing practice (as Revenue Interpretation 201).

cl 10 Benefit charged in year of receipt subject to relief

19. Sub-clause 10(3) might be dispensed with if sub-clause 10(4) began with ‘But’.

cl 11 Reduction in amount charged where controlled foreign company involved

20. Is it appropriate to refer to ‘section 747A’ (special rules for computing chargeable profits) following its repeal by FA 2005?

cl 13 Charge to tax on income treated as arising under section 14

21. We note the inclusion of the words ‘that is’ in the first line, these words being omitted from the similarly drafted clauses 5(1) and 18(1).

cl 14 Individuals receiving capital sums as a result of relevant transfers abroad

22. (1)(c) Is there any reason for the differences in drafting between clause 14(1)(c) and clause 6(1)(c)?

cl 21 Income charged under section 18 where single benefit received &

cl 22 Income charged under section 18 where two or more benefits received

23. Is clause 21 necessary? Clause 22 covers both an initial (including a single) benefit as well as all subsequent benefits. If clause 21 is retained, as applicable to a single benefit, it could not be assumed that no further benefit(s) would be received in a later tax year. Clause 22 would then have to be applied to the subsequent benefit(s) received, taking account of the earlier (first) receipt. It would seem preferable to adapt clause 22 as a single provision applicable to all benefit receipts, both single and multiple, with appropriate amendments also to clause 23.

24. We note that the s 740(7) ICTA exclusion for relevant income arising before 10 March 1981 will be retained in the transitional provisions.

cl 31 Restrictions on particulars to be provided by solicitors

25. (1)(a) Should the s 745(3) ICTA reference to ‘is or was acting’ be retained?

cl 33 General interpretation

26. Section 742(8) ICTA refers to ‘any body corporate incorporated outside the United Kingdom’. We do not consider that it is within the remit of the rewrite to ‘forestall arguments’ in a tax avoidance context, without an appropriate PRC, and that the reference to ‘UK resident’ (body corporate) in clause 33(2) should be deleted.

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DETAILED COMMENTS ON DRAFTING

27. Change {jc 490}: In the fourth paragraph on page 15, in the third line, ‘an’ should be ‘and’.
28. In the first line of text on page 16, ‘22’ should be inserted after the first ‘to’.
29. In the third paragraph on page 16, in the penultimate line, ‘22’ should be inserted after ‘Clause’

TJH/PCB
29.9.05

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.