



ICAEW TAX REPRESENTATION

Gifts of Pre-eminent Objects

Comments submitted on 8 February 2012 by ICAEW Tax Faculty in response to HM Treasury consultation on Finance Bill 2012 – draft clauses published on 6 December 2011

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the draft legislation *Gifts of Pre-eminent Objects* published by HM Treasury on 6 December 2011 at http://www.hm_treasury.gov.uk/d/gifts_pre_eminent_objects.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. Unfortunately we were not able to discuss our concerns on aspects of the draft legislation with HMRC before the deadline for submitting written comments.
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.

KEY POINT SUMMARY

8. We welcome the opportunity to comment on the draft legislation, although we are disappointed that we did not have the opportunity to discuss our concerns before submitting this TAXREP.
9. In connection with the draft legislation our key concerns are:
 - the scheme should be extended to allow donations by trustees and personal representatives;
 - a tax reduction should be available where an object is donated which is held under a bare trust arrangement;
 - there is no definition of what constitutes an individual's liability to income tax; and
 - the allocation of the tax reduction should be capable of revision by the donor.

GENERAL COMMENTS

10. We welcome the changes that have been made to the original scheme following the consultation last summer. In particular we welcome the increased annual limit, the extension of

the scheme to corporate donors, the increase of the tax reduction to 30% and the removal of a charge to Inheritance Tax or Estate Duty which has previously been deferred.

11. We also welcome the provisions enabling an individual donor to spread the tax reduction over a five year period. We are concerned, however, that the requirement to specify in the agreed terms the allocation of the tax reduction is inequitable and may undermine the attractiveness of the scheme.
12. We are disappointed that the scheme does not permit donations from trustees and personal representatives. There are a large number of objects held in trusts and the decision not to extend the scheme to these potential donors will reduce the pool of available objects.

DETAILED COMMENTS

Schedule 1 Part 1

13. Paragraph 1(2)(b) appears to deny the relief to an individual who is the sole beneficial owner of the object through a bare trust as the rules require that 'the person is legally and beneficially entitled to the property and the property is not owned jointly (or in common) with others'.
14. It is not clear to us why the existence of a different legal owner should prevent an individual claiming relief in this circumstance. The individual has an absolute entitlement to the object and the trust is effectively transparent for income tax and capital gains tax purposes, all income and capital gains in respect of the object are reported on the individual's tax return. We suggest that the legislation is amended to allow the relief for objects owned under a bare trust.

Schedule 1 Part 2

15. Paragraph 2(1) refers to 'an individual's liability to income tax and capital gains tax'. There is, however, no definition of what constitutes 'an individual's liability to income tax' in the draft legislation.
16. In the absence of a definition the logical definition would seem to be s 23, Income Tax Act 2007 (ITA 2007) where the calculation in this section results in 'the taxpayer's liability to income tax for the tax year'. Is it intended that the tax reduction under these provisions is to be included in Step 6 of the calculation in section 23? If that is the case we would expect an amendment to s 26, ITA 2007 but there is no amendment noted in the draft legislation.
17. It is not entirely clear, however, that s 23 ITA 2007 is the appropriate provision. Para 3(1) states that 'a portion of N's tax liability is to be treated as satisfied, as if N had paid that portion when it became due'. If N had PAYE sufficient to cover his entire income tax liability, and had no capital gains tax liability, there would be no amount becoming due for payment. We assume that in this situation that there would be a repayment of the PAYE deducted at source.
18. The legislation needs to include a definition of what constitutes 'an individual's liability to income tax'.
19. We welcome the fact that an individual donor is allowed to spread the tax reduction across five tax years. We do not, however, understand the requirement in para 3(3) that the allocation of the tax reduction is to be included in the agreed terms and that it cannot be subsequently revised, para 7(2).

20. We note from para 32 of the Guidance published by the Department for Culture, Media and Sport on 6 December 2011 that this is to allow the Panel to have certainty for future year commitments when managing the annual limit. This provision seems to us to be both inequitable to the donor and placing unnecessary constraints on the operation of the scheme.
21. A donor may be unable to accurately estimate their tax liabilities for the forthcoming five years; this is particularly the case where the donor is seeking a reduction in a future capital gains tax liability. It will not be unusual for a projected sale of an asset to be delayed, through no fault of the donor, to a later tax year.
22. In addition there does not appear to us to be any provision for unused amounts of the £30m annual limit to be carried forward. If all the donors in Years 1-3 agreed terms so that all the tax reductions would fall in Year 5 and these tax reductions total £30m it appears that the scheme would be closed for Year 5 as the annual limit had been reached. This would seem to be the case even if the annual limit had not been reached in earlier years.
23. In our view the scheme would be better served if the Panel was able to accept gifts, in conjunction with the Acceptance in Lieu scheme, to an annual limit of £30m, without the need to have regard to which tax years those reductions fall to be deducted. We also suggest that a donor should be able to amend the terms so as not to lose the tax reduction.

Epaula.clemett@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>).