



TAXREP 30/12
(ICAEW REP 106/12)

ICAEW TAX REPRESENTATION

FINANCE (No 4) BILL 2012 - BRIEFING

GIFTS TO THE NATION - CLAUSE 49 AND SCHEDULE 14

Briefing submitted in June 2012 by ICAEW Tax Faculty in relation to the Gifts to the Nation provisions in Finance Bill 2012

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INTRODUCTION

1. ICAEW submitted Briefings to the Public Bill Committee on various clauses in Finance (No 4) Bill 2012. The present TAXREP reproduces the content of the Briefing on the provisions in clause 49 and Schedule 14 relating to Gifts to the Nation.

WHO WE ARE

2. 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 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
3. 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.
4. 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.

BRIEFING

GIFTS TO THE NATION (Clause 49 and Schedule 14)

Clause 49 and Schedule 14 introduce a new relief when pre-eminent objects and works of art are gifted to the nation, and are part of the Government's measures to encourage charitable giving.

These measures were announced in Budget 2011 and were the subject of consultation last summer. We commented on them in [TAXREP 51/11](#). A summary of responses to the consultation and draft legislation were issued in December 2011. We commented on these in [TAXREP 4/12](#).

Our key points:

- Para 33, Schedule 14 contains a fundamental change to a measure announced in the Summary of Responses to the consultation and confirmed in the Explanatory Notes to the draft legislation;
- **This change undermines the attractiveness of the scheme.** It will deter a number of individuals who were considering gifting objects to the nation from so doing; and
- This change was not announced, but was included in the list of measures on Budget Day described as 'Measures unchanged following consultation'.

The change announced in December 2011 was to remove the charge to Estate Duty, which had previously been deferred, when an object was gifted to the nation, but the donor would not receive a tax reduction under the scheme. Paragraph 33, Sch 14 now restricts the amount of Estate Duty to be relieved to the prevailing rate of Inheritance Tax (40%) and allows a tax reduction of 30%. This is not a 'small technical amendment' but a fundamental change. In some cases the Estate Duty becoming payable on a gift to the nation will be in excess of 90%. The maximum relief

available at current rates will be 70%, a charge will thus arise. We consider that **this will deter potential donors who would not expect to pay tax when gifting an object to the nation**

We also consider it wrong in principle to make changes to previously announced measures under the cover of measures which are described as those 'where draft legislation has been published for consultation and no changes were made as a result or small, technical amendments have been made to the final legislation to be introduced in Finance Bill 2012'. **This undermines confidence in the integrity of HMRC and HM Treasury.**

We would be happy to provide further information or meet to discuss these issues in more detail. For further information please contact Tax Faculty head [Frank Haskeew](#) on 020 7920 8618 or [Sarah Buckley](#), Public Affairs Manager, on 020 7920 8694.

What should be done?

We consider that the provisions in FB 2012 should be amended to those that were previously announced. This may enable objects of greater pre-eminence to come into public ownership.

Background

This scheme, known as the Cultural Gifts Scheme, seeks to encourage the gifting of pre-eminent objects and works of art to the nation through the incentive of a tax reduction, such tax reduction being 30% of the value of an object being given by an individual. A tax reduction of 20% applies to gifts by companies.

When the scheme was originally announced concern was expressed that the requirement that Inheritance Tax or Estate Duty on an object, currently deferred under a conditional exemption, would become payable when the object was gifted was a major flaw in the proposals. This requirement would undermine the scheme's attractiveness as the capital tax liability may outweigh the tax relief offered under the scheme. If an object/work of art is being given to the nation there will be an expectation that there should be no charge to tax.

This was particularly relevant where Estate Duty had been deferred. Estate Duty would be charged on the current value of the object gifted at the marginal rate prevailing at the time of death, which in some circumstances will be in excess of 90%.

The Government listened and in the response to the consultation announced:

'Where an object is subject to a deferred Estate Duty charge and is given to the nation under this scheme the Estate Duty that would otherwise become due will not be payable. However, because the rates of Estate Duty were high, in order to ensure there is a significant element of philanthropy in relation to such a gift, the donor will not receive a tax reduction.' (para 2.5)

Although this change was not in the draft legislation issued in December 2011, para 40 of the Explanatory Notes accompanying the legislation confirmed the intention to include in the Finance Bill the change to the scheme as outlined in the summary of responses stating:

'Paragraphs 23 to 26 of the Schedule provide for exemption from inheritance tax where an object that is conditionally exempt from inheritance tax is given under the scheme. **It is intended to make similar provisions for objects that are conditionally exempt from estate duty. However gifts of such objects will not be eligible for the tax reduction set out in parts 1 and 2 of the Schedule.**' (our emphasis)

Finance Bill 2012

Paragraph 33, Schedule 14 sets out the proposed relief for Inheritance Tax and Estate Duty previously deferred.

The Explanatory Note reads as follows:

'50. Paragraph 33 of the Schedule provides an exemption from Estate Duty and Inheritance Tax (IHT) conditional exemption which would otherwise have become chargeable under Schedule 5 of IHTA on a gift of property under the scheme. The amount of the exemption is the maximum rate of inheritance tax at the time when the gift is accepted which is currently 40%.

51. Where the rate of tax on the disposal is higher than the maximum rate of inheritance tax the donor will need to pay the difference. This provision ensures that the incentive to donate an item which either has an estate duty charge attached to it or where the item is conditionally exempt is broadly similar to that where inheritance tax has been held over.

52. If a credit is due against the estate duty or IHT payable under Section 33(7) of IHTA this credit is set against the balance of the tax due after the exemption is given. Unused credit is not repayable.'

The underlining is in the text and is presumed to serve as an indication that there has been a change of policy. This is, in our view, inadequate notification. A proper announcement should have been made.

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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 icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)