



Faculty of Taxation

TAX REP 33/03

TAX LAW REWRITE: GUARANTEED RETURNS ON FUTURES AND OPTIONS

Memorandum submitted in September 2003 to the Inland Revenue by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(03)09: Guaranteed Returns on Futures and Options issued in July 2003

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TAX LAW REWRITE: PAPER CC/SC(03)09

GUARANTEED RETURNS ON FUTURES AND OPTIONS

A GENERAL COMMENTS

1. We welcome the opportunity to comment on Paper CC/SC(03)09 published on 30 July by the Revenue on the web at www.inlandrevenu.gov.uk/rewrite/index.htm.
2. We note that, whilst at present rewritten in Chapter 13 of Part 4 of Bill 3, it may yet be found more appropriate to include rewritten Schedule 5AA to ICTA 1988 within Bill 4 along with other legislation dealing with avoidance and that this is a matter under consideration, together with consideration whether clause 484 (losses) may not be appropriate for Bill 3 and whether clauses 486-488 (dealing with capital gains) may be better dealt with in the consequential amendments Schedule to Bill 3.
3. It is to be expected that legislation enacted as recently as FA 1997, with amendments in FA 1998 and FA 2002, ought not to require any extensive rewriting, and we note that no changes of law or technical legal notes in fact arise from the rewrite.
4. We agree the minor reorganisation of the material in Schedule 5AA to ICTA 1988, as now rewritten in Chapter 15 of Part 4 of Bill 3, as following a logical sequence and improving the intelligibility of Schedule 5AA.
5. We include certain comments on the draft Explanatory Notes, in Section C, in the expectation that these will in due course be incorporated into the Explanatory Notes accompanying Bill 3.

B SPECIFIC COMMENTS

cl 478 The return from one or more disposals

(3) – (6)

6. Although the concern in Bill 3 is with income tax only, is it still necessary to reflect paragraph 5(3)(b) and (c) Schedule 5AA of ICTA 1988 (references to associated companies) in the rewritten clause 478 in order to cover situations where both individuals and companies share in the same guaranteed return? Paragraph 5(3) Schedule 5AA does however appear to be drafted on the basis that the persons sharing the return are either wholly non-corporate entities (paragraph 5(3)(a)) or wholly companies (paragraph 5(3)(b) and (c)).

cl 485 Special rule for certain income of trustees

(7)

7. We assume that the references in (a) and (b) respectively to ‘section 564’ and to ‘section 567(1)’ are to internal Bill 3 clauses prospectively to be enacted (and as currently numbered).

cl 486 General prohibition on double-counting of gains and losses

(1)

8. With reference to Explanatory Notes paragraph 80, it will not be obvious to the lay reader of clause 486(1) that there is no double charge for the purposes of income tax. A signpost to the boundary clause 290 (savings and investment income within more than one Chapter) might be helpful here.

C DETAILED COMMENTS ON DRAFTING

cl 478 The return from one or more disposals

(7)

9. Is it intended to refer to ‘scheme or arrangement’ rather than to ‘scheme or arrangements’ as used in clause 478(4) and (6)?

cl 479 When disposal of futures or options occur: general

(5)

10. In Explanatory Notes paragraph 41, in the fifth line, ‘a’ should be deleted before ‘disposals’.

cl 483 When transactions are related

11. In Explanatory Notes paragraph 62, in the third line, a gap is needed between ‘480’ and ‘and’.

cl 485 Special rule for certain income of trustees

12. In Explanatory Notes, paragraph 73, in the third line, ‘specials’ should be ‘special’.

cl 486 General prohibition on double-counting of gains and losses

13. In Explanatory Notes paragraph 79, in the fourth line, the reference should be to ‘clause 488’ and not to ‘clause 487’.

cl 487 Deemed disposals at a gain under section 481(4): treatment for capital gains tax

14. In Explanatory Notes paragraph 85, in the second line, should ‘for the acquisition’ be inserted after ‘consideration’?

15. In Explanatory Notes paragraph 88, in the third line, the reference should be to ‘subsections (3) to (5)’ and not to ‘subsections (4) to (6)’.

cl 488 Deemed disposals at a loss under section 481(4): treatment for capital gains tax

(1)

16. In the second line, the word ‘from’ is duplicated.

(2)

17. Is there any reason why the reference is to ‘by virtue of’ (section 37 or 39 of TCGA 1992) as compared with ‘as a result of’ used in clause 487(2)?

18. In Explanatory Notes paragraph 94, in the third line, should the reference be to ‘subsections (4) and (5)’ rather than to ‘subsections (4) to (6)’?

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TJH/PCB
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