

TAXREP 28/04

PERSONAL RELIEFS: TAX LAW REWRITE BILL 4

Memorandum submitted in July 2004 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in April 2004 by the Inland Revenue Tax Law Rewrite Team

CONTENTS

	Paragraph
INTRODUCTION	1
WHO WE ARE	2-4
GENERAL COMMENTS	5-10
DETAILED COMMENTS ON DRAFT CLAUSES	11-18

Tax Representation

PERSONAL RELIEFS: TAX LAW REWRITE BILL 4

INTRODUCTION

1. We welcome the opportunity to comment on Paper CC/SC(04)06 (Bill 4: Personal Reliefs) published on 21 April 2004 by the Revenue's Tax Law Rewrite Team on the web at <http://www.inlandrevenue.gov.uk/rewrite/index.htm>

WHO WE ARE

2. 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.
3. 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.
4. 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.

GENERAL COMMENTS

5. It is helpful to see the illustrative sketch of the high level structure of the tax computation for individuals in Appendix 1 at this stage, and we support the proposed approach dealing with the computation of an individual's liability to tax. This is a matter of fundamental importance to taxpayers. We note that further work remains to be done before the necessary clause(s) are drafted. It would also be prudent to bear in mind any consequences for the calculation of the taxpayer's capital gains tax liability.
6. It is appropriate to bring the s 278 ICTA residence rules forward to clause 2 (Residence requirement for certain reliefs) and to group the residence-type tests in subsection (2) and the exemptions, based on the s 278(2) ICTA conditions not expressed in terms of residence, in subsection (3). We note that ESC 11 remains relevant to clause 2(2) in establishing the individual's residence status.
7. We agree the proposal not to rewrite s 278(8) ICTA. It is appropriate in accordance with the approach now adopted in the tax law rewrite generally that claims to personal reliefs be made to an officer of the Board, in accordance with current practice. We note also as a consequence of not rewriting s 278(8) ICTA that s 46C(1) TMA 1970 will no longer apply, to restrict appeals against decisions on claims to the Board to the

Tax Representation

Special Commissioners only; but that future appeals may be heard by General Commissioners or, on election (which places a new responsibility on the taxpayer), by the Special Commissioners.

8. We agree that it is preferable to put each age-related allowance in s 257 ICTA in a separate clause.
9. We note that clause 7 (Calculation of income before personal reliefs for the purposes of sections 5(2) and 6(2)) is drafted by reference to 'Step 2 income' drawn from the Appendix 1 illustrative sketch of the tax computation. We agree the provision for the deduction of the gross amount of a gift under the gift aid rules in clause 7(3)(a), and note that it is intended that the gift aid legislation will itself be rewritten in 'Bill 4'. We note also that clause 7(2)(c) and clause 7(3)(b) are subject to the enactment of clauses 181 Finance Bill 2004 (as printed on 23 March 2004).
10. We agree the proposal to legislate ESC A86 in clause 8(4) (Blind person's allowance).

DETAILED COMMENTS ON DRAFT CLAUSES

cl 2 Residence requirement for certain reliefs

11. **sc (3)** We agree that it does appear appropriate to include the words 'at some time in the tax year', which are absent from s 278 ICTA, as the taxpayer may qualify under any of subsections 2(3)(a) – (f) for part of a tax year only.
12. We also agree that the word 'employed' now included in clause 2(3)(e) and (f) is implicit before the words 'in the service' in s 278(2)(e) ICTA.

cl 3 Allowances under this Chapter

13. **sc (2)** Is clause 3(2), stating that allowances under sections 4 to 6 are known as personal allowances, necessary? This will be self-evident from clause 3(1) and the clause headings themselves.

cl 9 Transfer of part of blind person's allowance to spouse

14. **sc (4)** We note that the adjustment made by s 265(3)(c) ICTA has not yet been rewritten. A deduction for any payments to which s 593(2) or s 639(2) ICTA applies is disregarded in determining for the purposes of s 265(2)(b) ICTA the amount that is left of a person's total income for a tax year after other deductions have been made from it; so that this disregard will also need to be reflected in the drafting of clause 9(4). Is a PRC under consideration to allow such deductions, in line with the approach for pension contributions in clause 7(2)(c)?
15. It appears anomalous that no deduction is made for gift aid payments, as in the case of clause 7(2) which correctly applies s 25(9A) FA 1990 only to the age-related allowances.
16. Is any adjustment in respect of adding-back s 266 ICTA (life assurance premiums) necessary, as in clause 7(2)(d)?

Tax Representation

cl 14 Tax reduction where both spouses are under 75

17. **sc (1)** We note from explanatory notes paragraph 41 that nothing has yet been drafted to reflect the s 256(2)(b) ICTA general rule preventing the tax reduction exceeding the taxpayer's liability. It may be more directly helpful to the reader to include a reference to this in clause 14(1) (and similarly in clause 15(1)); but we agree that a signpost to relevant computational material applicable to all tax reducers is an alternative approach, and will await the drafting of such material.

cl 22 Transfer back of relief that wife cannot use

18. **sc (3)** Similarly to clause 21(4)(c), in the case of the transfer of relief to a wife, should there be a condition that 'he (the husband) meets, or is exempt from, the residence requirement'?

14-13-36
TJH/PCB
7.7.04