

TAXREP 23/04

Finance Bill of 2004 Pension Schemes etc

Text of letter submitted on 1 June 2004 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales (ICAEW) to the Members of Standing Committee A in response to Pensions Schemes provisions in the Finance Bill of 2004

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INTRODUCTION

1. We have submitted previously our representations (TAXREP 19/04) on the 2004 Finance Bill. Given the length of the Bill and the short time for consideration, we did not comment in that representation on the specific pension provisions in the Bill.
2. In our general comments on the pensions provisions, we welcomed the Government's commitment to pensions reform and the commitment to the consultation process.
3. We have commented previously, TAXREP 13/04, on the proposals in the earlier Consultation Document, *Simplifying the taxation of pensions: the government's proposals* issued in December 2003 and also commented, TAXREP 11/03, on the original proposals for pension scheme simplification outlined in the Consultation Document, *Simplifying the taxation of pensions increasing choice and flexibility for all* issued in December 2002. We were pleased to see that many of the proposals and suggestions which we and the other representative bodies have made have been incorporated in the Finance Bill provisions.
4. On 1 June 2004 we wrote to all members of Standing Committee A who are considering the Finance Bill with some further general and specific concerns in relation to the pension scheme provisions contained in clauses 139 to 270 and Schedules 28 to 34 of Finance Bill 2004. The substantive part of our letter is reproduced below.

THE TEXT OF OUR LETTER

General comments

Beneficial changes in current Finance Bill clauses

5. We welcome the deferral of the start date of the new rules by a year, so that they will now come into force on 6 April 2006 rather than 6 April 2005.

Drafting

6. We welcome the drafting of the provisions in the Tax Law Rewrite (TLR) style and the extensive use of formulas. However, whilst we appreciate that the TLR style approach to writing formulas is intended to be helpful and intelligible, we think that the style adopted has the opposite effect: For example, in clause 186(9), the denominator to the fraction is DCCP (the number of days in the current chargeable period) and the numerator is DPCP (the number of days in the previous chargeable period). Such lengthy and at first sight similar expressions will result in confusion.

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7. As this is a stand-alone provision, we think the expressions used could be simplified to DC/DP or even x/y. Similar comments apply throughout this Bill and we believe that the method of presenting formulas needs to be reconsidered.

Simplification

8. Concerns have been expressed by various people as to whether this can be real simplification when the legislation runs to 150 pages or so. We understand that the total amount of primary and secondary legislation which it will replace totals about 500 pages. We appreciate that the repeals in primary legislation are listed in Schedule 40 but it would assist the Government's case that this is real simplification if it quantified the total number of pages of legislation which will be replaced.

Specific comments

Clause 179 – Annual limit for relief

9. We believe these proposals will put the self employed at a serious disadvantage as compared to the employed and that this will undermine the Government's overall objective in relation to pension reform which is 'to reduce complexity and introduce more flexibility for those saving, or wishing to save towards their retirement.'
10. Clause 179 currently provides that a self employed person may pay the greater of the basic amount, which is currently £3,600, or an amount equal to their relevant UK earnings into a pension scheme. This is subject to a maximum annual allowance fixed in clause 217: initially fixed at an amount of £215,000.
11. In practice, most of the self employed will not know the likely level of their relevant UK earnings until after the end of the tax year in question. They will therefore be unaware of the maximum amount that they would be entitled to have paid in that particular year. The rule does not provide the necessary certainty which is required for financial planning.
12. Of equal, if not more, importance will be the position of those individuals whose relevant UK earnings fluctuate and which may be zero in a specific year, perhaps because they have made a loss in that year. For example, it could be that the profits for the year are eliminated by the bad debt even though the taxpayer has made some contributions into a pension above the basic amount calculated by reference to relevant earnings in earlier years.
13. The current system accommodates for these fluctuations and uncertainties by allowing individuals to nominate that any single year's relevant earnings can count for that year, and the next five years' of assessment. In addition a payment made by the 31 January following the tax year or, if earlier, the date the tax return is filed can be treated as if it had been paid in the previous year of assessment.
14. We believe that both these existing measures provide considerable flexibility and certainty to the self employed and think that the rules in the Finance Bill should be amended. We recognise that that the new limit of contributions of an amount

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equal to a person's relevant earnings rather than a percentage of new relevant earnings is more generous than the current rules and that the Government may not wish to allow net earnings for a year to be nominated for the next five years. Our suggestion is that the rules should be amended so that taxpayers to elect to treat a payment made by 31 January in the following tax year as made in the previous tax year.

IY/FH

26 May 2004