



**Faculty of Taxation**

## **TAXREP 48/03**

### **TAX LAW REWRITE: SETTLEMENTS**

*Memorandum submitted in December 2003 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to Paper CC/SC(03)16 on Settlements issued in October 2003 by the Inland Revenue*

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## **TAX LAW REWRITE: PAPER CC/SC(03)16 SETTLEMENTS**

### **A GENERAL COMMENTS**

1. We welcome the opportunity to comment on Paper CC/SC(03)16 published on 24 October 2003 on the Revenue's website at <http://www.inlandrevenue.gov.uk/rewrite/index.htm>.
2. Part XV, Chapters 1A and 1B, have been rewritten with a fairly light touch, and the rewrite amounts to little more than some reorganisation of the clauses and improvements to their language and layout. We appreciate the concern, in the case of anti-avoidance provisions, to ensure that the scope of the legislation is not affected; but the rewritten clauses in consequence read somewhat ponderously in parts. Can this be further improved, without affecting the intended scope of the clauses?
3. We note that clauses 571 – 583 are currently within Part 5, Miscellaneous income, but will be moved into any new Part for trusts if it is decided that it is preferable to establish such a Part.
4. Clause 575 rewrites s 660A ICTA (Income arising under settlement where settlor retains an interest). Following publication of the 64<sup>th</sup> Tax Bulletin, the Inland Revenue's interpretation of the possible application of this section to certain situations involving the income of spouses has given rise to controversy. Whilst it is regrettable that the uncertainty of the application of this legislation in such circumstances cannot be resolved through the rewrite now, the resolving of the current disagreement as to the application of the legislation has to await the outcome of the appeal process through the courts. For this reason, and in the light of the announcement at paragraph 5.91 of the December 2003 Pre-Budget Report Cm 6042 that the taxation of owner-managed companies is under review, we have not commented on this clause save to cover a specific point.
5. As regards the clause 576 rewrite of s 660B ICTA (Payments to unmarried minor children of settlor) we assume that consideration has been given to enacting extra-statutory concession (ESC) A93 (Payments from offshore trusts to minor, unmarried child of settlor: Claim by settlor for credit of tax paid by trustees), by means of a PRC; and a decision taken not to proceed with this. In principle, we prefer the enactment of ESCs where appropriate. In the case of ESC A93 its terms are clear, and the only disadvantage of enacting it would appear to be the increase in length of cl 576 and possibly too large a part of the clause becoming taken up with this aspect. If ESC A93 could be incorporated into cl 576 shortly and with clarity we would be in favour of that.

## **B RESPONSE TO QUESTIONS**

**Q1: cl 580:** *Change 184 rewrites “the Board” as “the Inland Revenue”. We welcome comments on this change.*

6. We are content with this proposal.

## **C SPECIFIC COMMENTS**

### ***cl 571 Charge to tax***

7. Would it be clearer to add ‘within subsection 571(1)(a)’ after ‘treated’?

### ***cl 575 Income arising under a settlement where settlor retains an interest (5)(c)***

8. S 660A(4)(c) provides for the death of both parties to the marriage *and* of all or any of the children of the marriage. It does not provide in the alternative as cl 575(5)(c) is now drafted. With reference to the Commentary in paragraph 26, it is not clear that it is either the death of both parties to the marriage or all or some of the children that is at issue. It is rather to be expected that the settlor would not benefit from a marriage settlement until after the deaths of both spouses, but might then conceivably acquire an interest despite the survival of one or more children of the marriage, this being the basis on which s 660A(4)(c) is drafted. As drafted cl 575(5)(c) widens the scope of cl 575(2), and this appears unwarranted in a rewrite context (there being no proposed rewrite change).

### ***cl 576 Income paid to unmarried minor children of settlor (3)(b)***

9. Why are the words ‘or otherwise treated as the income of’ (a beneficiary) in s 660B(3)(b) omitted in the rewrite? In the context of an anti-avoidance section, they must have been considered by the s 660B draftsman to have a relevance additional to ‘to or for the benefit of’ (a beneficiary). They are still included in s 576(7)(a). To exclude them from the rewrite is in principle adverse to the taxpayer, as potentially increasing the ‘available retained or accumulated’ income and should be retained in the absence of a convincing PRC to exclude them.

### ***(3)(c)***

10. S 660B(3)(bb) uses the word ‘or’ when referring to the three tax years, whereas the rewrite uses the word ‘and’. We agree with this, in view of the retention of the word ‘any’ (of the tax years 1995-96, 1996-97 and 1997-98) which still enables one or two only of the years to be taken into account where only one or two of these years is relevant.

### ***cl 577 Capital sum paid to settlor by trustees of settlement***

11. We note that s 677(2)(c), (d), (e), (f), (g) and (h)(ii), which relate to income treated as the settlor’s in years before 1995-96 under provisions which have been repealed, are rewritten in Schedule 3 (Transitionals and savings) to Bill 3. These repealed provisions remain transitionally relevant up to and including the tax year 2004-05, in determining the amount of income available up to the end of any tax year when applying s 677 ICTA. This will not be readily apparent to the reader when applying

cl 577, and in particular cl 577(3). A signpost to Schedule 3 in this respect would appear to be helpful.

***cl 582 Meaning of “settlement” and related expressions***

12. As cl 582(6) applies only for the purposes of cl 578 (Capital sum paid by body connected with settlement), there is a case for including it within cl 578 itself as then being more readily accessible to the reader.

**D DETAILED COMMENTS ON DRAFTING**

***cl 577 Capital sum paid to settlor by trustees of settlement***

13. Is Commentary paragraph 48 correct? The amount treated as the settlor’s income under cl 577(8) is the ‘grossed-up’ equivalent of the capital sum.

***10)(a)***

14. The reference to ‘subsection (9)’ should be to ‘subsection (11)’.
15. The reference to ‘section 575(4)’ should be to ‘section 575(5)’.
16. The reference to ‘section 575(5)’ should be to ‘section 575(6)’.

***cl 579 Application to settlements by two or more settlors***

17. In the table of origins, the origin should be shown as ‘ICTA s 660E(6)’ and not ‘s 600E(6)’.

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