

TAXREP 64/05

SALES OF OCCUPATION INCOME

TAX LAW REWRITE: BILL 4

Memorandum submitted in November 2005 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment issued in September 2005 by HMRC Tax Law Rewrite Team

CONTENTS

	Paragraph
INTRODUCTION	1-2
GENERAL COMMENTS	3-5
ANSWERS TO QUESTIONS	6-12
SPECIFIC COMMENTS ON DRAFT LEGISLATION	13-18
DETAILED COMMENTS ON DRAFTING	19-23
WHO WE ARE	Annex

Tax Representation

SALES OF OCCUPATION INCOME

TAX LAW REWRITE: BILL 4

INTRODUCTION

1. We welcome the opportunity to comment on Paper CC(05)34 published on 22 September 2005 by HMRC Tax Law Rewrite Team at <http://www.hmrc.gov.uk/rewrite/exposure/menu.htm>.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are in the Annex.

GENERAL COMMENTS

3. We agree that the rewriting of the anti-provision in s 775 ICTA, with its supplementary sections 777 and 778, as a number of shorter clauses and arranging these clauses in a way which helps the reader to understand them is an improvement on the source legislation.
4. We note that other consequential amendments remain to be drafted when work on the main clauses is further advanced.
5. The rewrite of s 775 ICTA is further encouragement that the anti-avoidance provisions are proving susceptible to rewrite treatment. This is an important benefit to the taxpayer at a time when there is an emphasis on countering tax avoidance, enabling the individual to better understand what are often complex provisions supported also by their accompanying case law. The Tax Law Rewrite team's success to date in rewriting these provisions without changing their application, other than through approved PRCs, is to be commended.

ANSWERS TO QUESTIONS

6. **Q1** For the reasons set out in Explanatory Notes paragraph 4, we agree that it is appropriate to rewrite both sections 775 and 776 ICTA in Bill 4 with s 776 ICTA and its related provisions being consequentially amended to confine them to corporation tax. We also agree the rewriting of those income tax provisions of sections 777 and 778 ICTA which apply for the purposes of both sections 775 and 776 ICTA separately in both the "transactions in land" Chapter and the "sales of occupation income" Chapter despite the duplication involved. We note, however, that the possibility of rewriting s 778 ICTA in one place for the purposes of both Chapters is being kept under review.
7. **Q2** We are content with the ordering of the draft clauses on sales of occupation income.

Tax Representation

8. **Q3** We welcome the clarification of the territorial scope of s 775 ICTA, as explained in Change {jc 501} in Annex 1, in that s 775(9) ICTA is not regarded as over-riding s 827A(3) ICTA, which provides that an amount arising to a non-UK resident is chargeable to income tax only if it is from a source in the United Kingdom, so that a non-UK resident is only chargeable on the capital amount attributable to that part of the occupation carried on in the United Kingdom.
9. **Q4** We agree the rewriting of s 775(5) ICTA in clause 12 (Restriction on exemption: sales of future earnings) on the basis that s 775(3)(b) applies to it.
10. **Q5** We agree the inclusion of the proposed “tie-breaker” rule in clause 13(7). We note that the situation predicated is unlikely to arise but that, if it did, HMRC would resolve it by a just and reasonable apportionment under s 777(6)(a) ICTA. The use of this approach in clause 13(7) is sensible and appropriate.
11. **Q6** We agree that it is appropriate for clause 15 to refer to “an officer of Revenue and Customs”. We note that in practice all working cases will continue to be referred within HMRC to Business Tax (Technical) before any direction is made under clause 15(2) (Directions for payments received by non-UK residents to be treated as annual payments).
12. **Q7** We support the proposal to make it explicit, in clause 16(1), that the particulars that an officer of Revenue and Customs may require to be provided (under s 778 ICTA) are limited to those particulars which the officer may ‘reasonably require’. This imposes a more objective test than the ‘as (they) think necessary’ in the source legislation.

SPECIFIC COMMENTS ON DRAFT LEGISLATION

cl 5 Income arising where capital amount other than derivative property or right obtained for occupation income

13. (1)(b)(i) We note that “. . . profits or gains or other income, or of the receipts . . .” is now rewritten as “the income or receipts”. We assume that this is on the basis that “profits or gains” are construed as species of income.

cl 5 Income arising where capital amount other than derivative property or right obtained for occupation income

14. (1)(d) It might be helpful to include a signpost to the effect that, where the condition in clause 5(1)(d) is not met, the user should refer to clause 6 as being applicable instead of clause 5. The subjecting of clause 5 to clause 6 in the appropriate circumstances is not as well made in the rewrite as in the prominent introductory “Subject to subsection (7) below . . .” in s775(1) ICTA.

cl 6 Income arising where derivative property or right obtained for occupation income

15. (2)(b) The drafting of clause 6(2) is confusing. Rather than referring to clause 5 applying on one or more occasions, the focus should instead be on the receipt of a capital amount within clause 6(1)(a) on one or more occasions, as in s 775(7) ICTA.

Tax Representation

The s 775(7) ICTA direction that tax should not be charged on any such occasion, but instead when the property or right is sold or otherwise realised, also needs to be more clearly made, perhaps through introducing a new sub-clause to that effect following clause 6(2) amended as suggested above. The existing sub-clauses (3) and (4) would then follow, renumbered accordingly.

cl 12 Restriction on exemption: sales of future earnings

16. (3) Clause 12(3) is not easily understood. The intention of the legislation appears to be that if, on a sale of a going concern, its value is derived to a material extent from the vendor individual's prospective earnings from his/her activities in the occupation, then if the capital amount obtained by the vendor on the sale wholly or in part relates to those future earnings it will remain to that extent chargeable to income tax under clause 4, and is not exempted under clause 11, unless the future earnings condition in clause 12(3) is met.
17. Presumably the future earnings condition in clause 12(3) means that the individual must be fully recompensed post-sale for all his/her post-sale activities in the occupation, and chargeable to income tax on such earnings, regardless of whatever capital amounts are paid to him/her on the sale. In such circumstances, the capital amounts paid on the sale might reasonably be expected not to relate to any future earnings; but, in the unlikely situation that they did, the future earnings condition might still be met if the individual is to be fully paid for his/her post-sale activities in the occupation. However, if this interpretation is correct, the use of the words "will have received" (in the past) and "prospective income" (in the future) in clause 12(3) confuses the user's understanding.
18. Can clause 12(3) be more clearly drafted if the above comments are a correct interpretation of the intention of clause 12?

DETAILED COMMENTS ON DRAFTING

cl 1 Introduction

19. In Explanatory Notes paragraph 9, the reference in the bold heading and in the first sentence should be to 'Clause 1' and not to 'Clause 6'.
20. In the italicised heading preceding clause 7, should 'relating' read as 'relevant'? It is not clear why the wording differs from the use of 'relevant' in the italicised heading preceding clause 9 in Paper CC/SC(05)33 (Bill 4: Transactions in Land).

cl 12 Restriction on exemption: sales of future earnings

21. In Explanatory Notes paragraph 33, in the third line, delete 'to' after 'transferring'.

cl 16 Power to obtain information

22. (1) In the third line, should 'purpose' be 'purposes' as in the identical clause 20(1) in Paper CC/SC(05)33 (Bill 4: Transactions in Land)?

Tax Representation

cl 17 Minor definitions

23. In Explanatory Notes paragraph 51, the reference in the bold heading, and at the start of the only sentence, should be to 'Clause 17' and not to 'Clause 6'.
23. With reference to Explanatory Notes paragraph 54, as regards the proposal to omit s 777(4) ICTA as redundant, its omission will remove the existing (limited) explicit guidance in the source legislation as to what demonstrates a person's intention. It may well be true that s 777(4) ICTA merely declares what the courts would hold anyway, but, if it is now excluded from the rewrite, certainty on this particular aspect is removed. It would also then appear to become more difficult for a taxpayer to contend that his/her intention as documented was not conclusive, in the admittedly unlikely situation that the need to do so might arise. For these reasons we would prefer to rewrite s 777(4) ICTA, as an Interpretation clause.

TJH/PCB
18.11.05

WHO WE ARE

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.

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.

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.