

Tax Representation



TAXREP 24/09

PENSIONS

Text of submission made in April 2009 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment on draft guidance published in February 2009 by HMRC

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PENSIONS

INTRODUCTION

1. We welcome the opportunity to comment on the draft guidance in the IHT Manual published by HMRC on 24 February 2009 at http://www.hmrc.gov.uk/cto/iht/iht_man_draft.htm.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

COMMENTS

3. We have not reviewed the guidance in detail, but have just one comment.
4. We regard the following statement in IHTM 17510 as controversial:

‘In this scenario the scheme member is the settlor for Inheritance Tax purposes. This applies with regard to:

 - Contributions made by himself as an individual and
 - Contributions made by his employer; here we rely on the principle established in *Parry v Cleaver* [169] [sic] 1AER 555 and amplified in *The Halcyon Skies* [1976] 1 AER 856 that contributions to a pension arrangement by both employer and on the employee’s behalf are “delayed remuneration for his current work”. .

‘In terms of s44 IHTA the scheme member has therefore provided funds “directly or indirectly” and is the settlor for IHT purposes. ‘
5. We understood that HMRC accept that their view that the employee is settlor for employer contributions is far from well-established and may be wrong. We consider that this should be acknowledged in the manual.
6. Moreover the manual does not appear to address consequences which appear to follow from HMRC's view for both IHT and other taxes.
7. The most important one for IHT is that a substantial employer contribution to what is now called an EFRBS is an immediately chargeable transfer potentially giving rise to an immediate liability to IHT on the employee, even though the value is unlikely to be great if the employee is in good health.
8. On HMRC's view employer contributions may be gifts with reservation by the employee and if so the relevant funds would be taxed as part of the employee's estate on his death.
9. It would also logically follow that funds contributed by an employer are settlor interested so far as the employee is concerned so income, and gains assuming that

the fund is non-UK resident, arising on the funds contributed by the employer are assessable on the employee year by year (assuming UK resident employee).

10. As a minimum we suggest that the manual should set out the consequences which follow from HMRC's view. At present it seems odd that the HMRC view is explained but the draft manual is silent on the consequences. One area where the approach is very relevant is where the employee is not UK domiciled but that is far from the only aspect.

PCB
30.4.09

ICAEW AND THE TAX FACULTY: WHO WE ARE

1. 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.
2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Enterprise and Regulatory Reform through the Financial Reporting Council. 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.
3. 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 10,000 members of the ICAEW who pay an additional subscription.
4. To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at taxfac@icaew.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99**; see www.icaew.co.uk/index.cfm?route=128518.