



# ICAEW REPRESENTATION 12/17

## TAX REPRESENTATION

### **DRAFT CLAUSES FOR FINANCE BILL 2017: CLAUSE 13: LIFE INSURANCE POLICIES: RECALCULATING GAINS ON PART SURRENDERS ETC**

ICAEW welcomes the opportunity to comment on the [draft Finance Bill 2017 legislation](#) published by HMRC on 5 December 2016.

This response of 26 January 2017 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

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## DRAFT FINANCE BILL 2017 CLAUSES

### Life insurance policies: recalculating gains on part surrenders etc (Clause 13)

#### Background

The clause introduces a process whereby taxpayers who have been taxed on a disproportionate gain on the partial surrender or assignment of their life insurance policies can have the gain recalculated on a just and reasonable basis. It follows on from the [Lobler](#) case: Mr Lobler made a partial surrender of his life insurance policies giving rise to a significant chargeable event and a substantial tax liability. He was taxed on the excess received over and above the 5% withdrawal for each year the policy had been held. When he surrendered the remaining balance of the policies he made a loss for which deficiency relief was available but he had insufficient income to utilise the relief. A [consultation](#) was issued in April 2016 and the Tax Faculty response was published as [ICAEW Representation 106/16](#).

- **Measure:**  
An application can be made to an officer of Revenue and Customs for a review of their tax calculation on the grounds that the gain arising from the partial surrender or assignment of a policy is wholly disproportionate.
- **Our concerns:**  
The term “wholly disproportionate” is very subjective, no guidance is given in the explanatory notes as to what degree of loss would be acceptable for a reworking of the tax charge. Also the loss may not be apparent within the two years allowed for a claim so the taxpayer will be at the mercy of the officer as to whether the time limit can be extended.
- **Our view:**  
A change to the legislation is needed in order to prevent cases like the Lobler case occurring again, many taxpayers affected would not have the resources to go to the courts for rectification and although their loss may be smaller in absolute terms than Mr Lobler’s it may still be life changing.
- **Our recommendation:**  
Our preferred option is to retain the existing legislation but amend the rules for deficiency relief such that the loss can be carried back to the earlier year when a gain was taxed. This has the advantage of simplicity, and like the proposed measure will not require wholesale changes by the life insurance industry. The actual gain will be taxed and it will not be a subjective decision at the whim of the officer of the Revenue and Customs. There is already legislation in place to deal with a similar situation on earn outs in TCGA s279A – 279D.  
  
If the draft clause is to be enacted it would be preferable to change the term “wholly disproportionate” to simply “disproportionate” or even “excessive”.
- **Our suggested amendment:**  
Adapt the earn out legislation in TCGA s279A -279D allowing the carry back of “losses” on an earn out to the legislation for deficiency relief.

## APPENDIX 1

### ICAEW 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 <http://www.icaew.com/-/media/corporate/files/technical/tax/tax-news/taxguides/taxguide-0499.ashx>).