FINANCE BILL 2016: CLAUSE 77: EMPLOYEE SHAREHOLDER SHARES

Briefing for the Committee of the Whole House debates on Finance Bill 2016 submitted on 27 June 2016 by ICAEW Tax Faculty

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Internationally recognised as a source of expertise, ICAEW Tax 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.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 145,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.

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COMMITTEE OF WHOLE HOUSE BRIEFING

Employee shareholder shares: limit on exemption (Clause 77)

- **Measure:** Clause 77 of Finance Bill 2016 provides that in relation to employee shareholder shares (ESS) issued after 16 March 2016 for consideration for entering into employee shareholder agreements, there will be a new lifetime limit of £100,000 on the CGT exempt gains that can be made by an employee – any gains in excess of this will be subject to CGT. This will now apply alongside the existing limit, which is that any gains arising on ESS shares that have been acquired up to a value of £50,000 are exempt from CGT.

- **Background:** The Explanatory Notes explain that the measure is to ensure that the advantages of ESS are fair and proportionate and not open to abuse.

- **Our view:** We agree with the Government view that of ESS should be fair and proportionate and not open to abuse.

- **Our concern**: Even though the relief has been in place for only three years, the Government is now looking to scale it back while at the same time, for example, extending ER to long term investment in unlisted shares. This appears to be a confusing policy approach. Before legislating changes, we would have expected a review of ESS and its effectiveness in achieving the original policy objective to support any changes to it, particularly given that on the face of it the change will not raise a significant sum of money. In addition, the legislation for this relief is currently complicated and having two limits will make it more so.

- **Clarification required**: **<u>We should welcome clarification of the policy reason for the new lifetime cap on gains from ESS of £100,000.</u>**

FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest.
ICAEW offers impartial expert briefing on the Budget, the Finance Bill and ad hoc policy issues for MPs, Peers and parliamentary staff.

To request further information or a briefing from one of our Tax Faculty experts, please contact:
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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 via http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax).