



TAXREP 41/13

(ICAEW REP 115/13)

ICAEW TAX REPRESENTATION

PENSIONS TAX RELIEF - INDIVIDUAL PROTECTION FROM THE LIFETIME ALLOWANCE CHARGE

Comments submitted on 28 August 2013 by ICAEW Tax Faculty in response to HM Revenue & Custom consultation document *Pensions Tax Relief - Individual Protection from the Lifetime Allowance Charge* published on 10 June 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document [Pensions Tax Relief - Individual Protection from the Lifetime Allowance Charge](#) published by HM Revenue & Customs (HMRC) on 10 June 2013.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

4. ICAEW is a professional membership organisation, supporting over 140,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.
5. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.
6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

KEY POINT SUMMARY

7. We are disappointed that there is yet another amendment to the taxation and pensions legislation; A-day was promoted as being a simplification and consolidation of all the existing legislation at that time but we now have even more complexity and traps even for the well advised than necessitated A-day.
8. The frequent changes to the legislation and the regular reduction in the allowances all serve to discourage individuals from pension saving which is contrary to government policy of encouraging pension saving.
9. The majority of taxation regimes worldwide either tax the input to pension schemes or tax the output; these proposals seek to tax both input and output.
10. There is no provision for those individuals with a pension pot in excess of the new lifetime allowance (LTA) limit of £1.25m to continue their pension saving with tax relief in the last few years that they are earning when perhaps they are most able to increase their pension savings. Some individuals will have a contractual obligation to make contributions and without the tax relief built into the planned savings will face financial difficulties making the contributions. The fixed protection 2014 (FP14) forbids further contributions and the individual protection 2014 (IP14) will not allow tax relief for contributions taking the pension savings in excess of the protected limit.

RESPONSES TO CONSULTATION QUESTIONS

Q1: Are there particular difficulties for scheme administrators in allowing individuals to hold both fixed protection (FP12 or FP14) and IP14?

11. No comments.

Q2: Do you agree that individuals with enhanced protection should be excluded from applying for enhanced (*sic*) protection? If not, please give the reasons why you think there is a case for allowing individuals with enhanced protection to apply for IP14 and set out any difficulties or issues this might create.

12. As the enhanced protection places the individual in a better position than IP14 we do not envisage any difficulties in excluding such individuals from applying for IP14.

Q3: Would monitoring an individual's personalised LTA for the purposes of the tax free lump sum limit, be likely to create difficulties for scheme administrators?

13. No comments.

Q4: Are these valuation methods fair and appropriate?

14. The valuation of pre A-day pensions in payment assumes that the individual took a tax free lump sum; our view is that the valuation should vary according to whether or not a lump sum was taken.

15. The factor of 25 used in the valuation of pre A-day pensions in payment seems high given the rate for annuities prior to 2006 and in our view will inflate the value of the pension pot to significantly more than it was in reality.

16. We welcome the use of existing valuation methods where possible.

Q5: Are there any issues or additional burdens associated with these valuation methods?

17. No comments.

Q6: Should be some form of revaluation of the pension debit for IP14 to take into account the change in the value of the individual's pension rights since 5 April 2014 and if so, on what basis this should be done?

18. Yes there should be some form of revaluation of the pension debit and the simplest way would be to calculate the reduction in the LTA using a percentage basis rather than an absolute basis.

19. Under the proposals an individual liable to a pension splitting order on divorce will potentially be able to accrue more tax relieved pension savings than an individual who remains married and provides for a widows/widowers pension.

Q7: Are there any particular reasons why a scheme pays adjustment should not be deducted from an individual's personalised LTA, and in particular are there any specific administrative burdens that this might lead to?

20. Administratively the record keeping could be quite onerous if the LTA is amended for every scheme pay adjustment.

Q8: What would be the impact if a deduction was also applied to individuals with primary protection whose pension savings are subject to a scheme pays adjustment?

21. No comments.

Q9: Are there any other circumstances when an individual's personalised LTA under IP14 should be adjusted?

22. No comments.

Q10: Is a three year window for IP14 applications about the right timeframe, and are there any issues associated with this?

23. Three years seems to be an adequate time span to obtain valuations and consider the decision.

Q11: Are there any difficulties and issues that may arise if individuals cannot apply for IP14 until summer 2014?

24. It is unlikely that the inability to apply before summer 2014 will cause difficulties for most people. However anybody with a benefit crystallisation event in excess of £1.25m before the IP14 certificate is available may have practical problems as a lifetime allowance charge will be imposed. HMRC should give priority to the repayment of these charges as soon as the certificates are available.

Question 12: If you have any comments on the draft legislation at Annex B, please include these as part of your response.

25. No comments.

Q13: Does the Tax Information and Impact Note at Annex C capture correctly the impacts and burdens associated with the introduction of IP14?

26. No comments.

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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 icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)