

CITY OF WESTMINSTER AND HOLBORN LAW SOCIETY
Revenue Committee

Please reply to:

Vairao House
3 Airlie Road
Winchester
SO22 4NQ

01962 844440

Basil Rajamanie Esq
Tax Law Rewrite Project
Room 826, South West Wing,
Bush House
Strand
London WC2B 4RD

e-mail: basil.rajamanie@ir.gsi.gov.uk

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Dear Mr Rajamanie

Draft Income Tax Bill

A great deal of work has obviously gone into this Bill, the early enactment of which is, furthermore, urgently required by practitioners because of the difficulties which are being encountering reconciling ITTOIA 2005 with the unrepealed parts of ICTA 1988 and subsequent legislation.

Nonetheless, the fact that, out of 141 changes, 43 have been conceded to be capable of affecting some taxpayers adversely must give rise to concern as to whether at least some of these should not be enacted through the normal (and constitutionally proper) Finance Bill procedures. This is even though:

- (a) Para 19 of the draft RIA indicates that these changes are “minor” and accord with official practice.
 - ◆ But in the case of both change 97 and change 106, it seems clear (not least from the terms of the final paragraph of the former) that what is being sought are changes in complex anti-avoidance legislation where the text is not what HMRC would prefer it to have been.
 - ◆ **In these instances quite clearly the amendments postulated ought to be introduced (and subjected to scrutiny) through the normal Finance Bill procedures.**

- ◆ Indeed, in the context of the former, it is difficult to understand why changes 97-100 (which include some which are favourable to taxpayers) have not been incorporated with the amendments to the ss.739-740 code published at the time of the Pre-Budget Report.
- (b) On the other hand, it is clearly fair to acknowledge that there are:
- ◆ changes in the taxpayer's favour,
 - ◆ including those eliminating wording considered in the Courts to be near gibberish (change 103), and
 - ◆ that amendments are reasonable if they are designed to bring the statutory text in line with case law (changes 84 and 110),
 - ◆ eliminate lacunae created by splitting Rewrite Bills 3 and 4 (change 71), or
 - ◆ to give accord to common sense (changes 49 and 74), or
 - ◆ to abolish the surtax era tax deduction method of relief (changes 76, 77 and 123), or
 - ◆ to bring the text more fully into the self-assessment era (changes 61 and 139), or
 - ◆ may be seen as de minimis (changes 111 and 134).
- (c) But there remain – in addition to those referred to in para (a) above – a number of areas in which it would also be appropriate for the Finance Bill procedures to be used:
- (1) The changes to the EIS and VCT codes in changes 22-48 and 51-60 include 16 which have been identified as potentially adverse to taxpayers.
- As these codes are extremely complex and include provisions which can involve relief originally given being withdrawn by reason of later events, it is plainly essential that there should be no question of this type of amendment taking effect in relation to past years when the investment in question qualified for relief under the historic text.
 - **This point is mentioned because it is by no means clear whether the rewritten provision is intended to override its predecessor if the disqualifying event takes place during a year when the rewrite has taken effect.**
 - If it is considered that this is the case, then the preceding Finance Bill will need to contain provisions preserving the historic text for these occasions.

- If, on the other hand, it is considered that it is not, then the general Explanatory Notes (and the specific ones have been prepared to a very high standard) should both say so and explain why.
 - In any event, once taxpayers have made these investments, their future compliance tends to be organised through small accountancy and IFA firms. And it is the poor percolation in this sector of the possibility of “minor” changes being made in rewrite Bills which will need to be addressed by appropriate publicity.
 - This should not be seen as a criticism of the four volumes which have been published, and the preceding exposure drafts, but reflects the reality that very few practitioners know very much about the rewrite project, let alone the end product.
 - Indeed it is fair to say, in this context, that the quality of the work in the four volumes is of a very high standard and that the explanations for each change are both thorough and very fair.
- (2) The same observations could be made, albeit to a lesser extent, to changes 71-73, relating to Gift Aid.
- (3) Furthermore, in the case of charities (to which changes 85-94 will apply), tax compliance will often be the responsibility of voluntary officers and HMRC will clearly need to carry out a very extensive publicity campaign in order to achieve taxpayer comprehension of these changes, even though the majority of them will be favourable to most charities.
- (4) The content of change 11 (FA 1991, s.72) is entirely fair and would be unexceptionable were this legislation being drafted from scratch, but this is, unfortunately, not the position.
- The original section was very far from perfect and subsequent changes to the capital gains tax code have made it rather like a sieve.
 - But taxpayers have made claims made on the present legislation and are entitled to expect that changes to it be made under the Finance Bill procedure.
- (5) Changes 7 and 8 involve the realignment of qualifying periods from the fiscal year to the accounting period finishing within it.
- This could put some taxpayers in double jeopardy in the last year of the old text and the first of the new.
 - A transitional regime might therefore be thought appropriate and this would clearly have to be done under the Finance Bill procedure.

- (6) The same observations could be made both in the case of changes 12 (the introduction of the concept of “contribution to the firm”) and 61-66 (qualifying loans).

In closing, reference should be made to the 93 Questions which have been posed in the Documentation. Were the draft legislation to take effect de novo, positive answers would have been returned to all these questions and it is not therefore thought appropriate to take up space responding to each one. Nonetheless:

- Q84: the concept of a “slip rule” and limiting its operation in the manner suggested – and in particular limiting it in time to 2010 – is fully supported; and
- Q93: clarifying the status of income distributed from an executorship is very much to be welcomed since Probate practitioners have found that beneficiaries’ accountants are not au fait with the present legislation; but
- (to introduce a single slightly discordant note), as the intention of the rewrite is to make tax legislation easier to understand, as income tax practitioners may not be all that conversant with the compliance provisions of IHTA 1984, it is suggested that there should be added at the end of clause 402(2) “before applying for a Grant of representation in the estate”.

Yours sincerely

W J de Souza
Chairman