

A CONSULTATION DOCUMENT ISSUED BY THE INLAND REVENUE

Comments are invited on the detailed workings of the income tax charge described in the attached document. Please send responses to reach us by **18 February 2004** either by post to:

Capital Taxes Policy Group,
Room 121, New Wing,
Somerset House,
Strand,
London
WC2R 1LB

or by e mail to

Alice.Wayte@ir.gsi.gov.uk

This consultation period is shorter than the 12 weeks recommended by the Cabinet Office in order to allow sufficient time for responses to be taken into account in advance of publication of the Finance Bill.

In accordance with the Inland Revenue's code of practice on consultation, once the outcome of the consultation is announced, we will make available, on request, responses to consultations, unless any respondent has asked for his or her comments to be treated as confidential. If you wish for the whole of your comments to be treated as confidential, please say so when responding.

This document is available on the Internet at
http://www.inlandrevenue.gov.uk/consult_new/index.htm

Published on 11 December 2003

TAX TREATMENT OF PRE-OWNED ASSETS

General

As part of its wider strategy to protect tax revenues the Government announced on 10 December 2003 that income tax will in future be charged on the benefit people enjoy when they have arranged free continuing use of major capital assets that they once owned. Arrangements like this are often made to get round the IHT gifts with reservation (GWR) rules. Essentially these GWR rules are intended to stop people from giving their assets away, so that for IHT purposes they are out of their estate when they die, while still continuing to enjoy the practical benefits of owning them during their lifetime.

Who is likely to be affected?

People who continue to enjoy the use of assets (free of charge, or at a below-market rent) which they formerly owned (or provided the funds to purchase).

General description of the measure

Legislation will be included in Finance Bill 2004 which will provide for:

- income tax to be charged each year (under Case VI of Schedule D) on the benefit of using an asset formerly owned by the user unless it has since been sold to an unconnected party in a bargain at arm's length;
- extensions to cover cases where one asset is replaced by another, or where the beneficiary originally provided cash to fund the purchase of an asset for their use (rather than providing an asset they already owned);
- rules for valuing the benefit: subject to points made in the consultation, Ministers envisage that this will be at market rent where market evidence allows (e.g. for real property) and at a specified percentage of capital value (e.g. calculated at the "official rate" of interest for benefit-in-kind purposes) in other cases (such as art or antiques);

This will be subject to:

- a set-off for any rent actually paid for the benefit;
- an exclusion for incidental use;
- an exclusion for cases where the donor has expressly reserved a right to continued occupation when making the gift;

- a substantial de minimis exclusion set at a cash amount which Ministers will determine in the light of this consultation;
- any other exclusions or modifications which seem appropriate, given Ministers' objective for the charge, in the light of this consultation;
- a power to make further exclusions by statutory instrument.

Operative date

The charge, will apply whenever a benefit is received in chargeable circumstances in or after the income tax year 2005-06. Arrangements which currently exist to provide benefits for former owners will not be chargeable if they have been dismantled, or the former owner starts to pay a full rent, by 6 April 2005.

Finance Bill 2004

The Income Tax (Earnings and Pensions) Act 2003 provides, broadly, that the benefit of the use of assets at no or low cost is subject to income tax when they are provided by reason of the employment. That charge is unaffected by the present proposal (to be included in Finance Bill 2004) for a new source of income falling under the rules of Case VI of schedule D of the Taxes Act 1988.

Code of practice on written consultation: consultation criteria

1. The timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.
2. It should be clear who is being consulted, about what questions, in what time-scale and for what purpose.
3. A Consultative Document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.
4. Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.
5. Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be standard minimum period for consultation.
6. Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.
7. Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

We confirm that, where possible, these consultation criteria have and will continue to be followed.

If you have any complaints about any element of the consultation process leading from the issue of this consultation, please contact:

Steve Webster, Inland Revenue, Room 34, New Wing Somerset House,
Strand, London, WC2R 1LB. Tel: 020 7438 6535, Fax: 020 7438 9191
E-mail: Steve.Webster@ir.gsi.gov.uk.

This paper is free of charge from the following address:

Inland Revenue Visitors Information Centre,
Ground Floor, South West Bush, Strand, London, WC2B 4RD

Internet access at: http://www.inlandrevenue.gov.uk/consult_new/index.htm