ICAEW
REPRESENTATION 90/23

DRAFT FINANCE BILL: ABOLISHING THE PENSIONS LIFETIME ALLOWANCE

Issued 12 September 2023

ICAEW welcomes the opportunity to comment on the Abolishing the pensions lifetime allowance policy paper published by HMRC on 18 July 2023, a copy of which is available from this link.

For questions on this response please contact us at taxfac@icaew.com quoting REP 90/23.

This response of 12 September 2023 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 166,000 chartered accountant members in over 146 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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KEY POINTS

1. The government seeks to encourage workers to continue in employment, or retired workers to rejoin the employment market, by removing tax charges on high value pensions (ie, those that exceed the lifetime allowance). The lifetime allowance (LTA) charge has no longer been applied since 6 April 2023, with the proposed measure abolishing the lifetime allowance.
2. Constant change to the taxation of pensions undermines the certainty that taxpayers desire when saving for retirement. Both the introduction of the measure and the drafting of the measure run contrary to the government's stated commitment to embed tax simplification in HMRC and HMT. We suggest that any changes to pensions must be thoroughly assessed to ensure that the uncertainty and complexity of change is entirely justified by the estimated impact of the measure.
3. The proposed measure is complex in its drafting, requiring 41 pages of legislation. It introduces new terminology and computations rather than streamlining existing pension tax rules. We consider that the objectives could be achieved in a much simpler way than the proposed measure.
4. We suggest that further changes to pensions, including changes to the taxation of benefits under BCE 5C and 5D, should not be made without announcement at a fiscal event, and with sufficient time for consultation on the proposed measures.

THE MEASURE

5. This measure removes the LTA for the purposes of taxation of pensions. Provisions allowing an individual to access 25% of their pension tax free up to the LTA threshold of £1,073,100 are replaced a computation of a new 'permitted maximum' figure. Income in excess of the 'permitted maximum' figure is subject to income tax at the individual's marginal rate.

OUR CONCERN

6. Constant changes to pension legislation undermines taxpayers' trust in the certainty of the tax provisions, which is key when considering long-term savings such as pensions. We have heard feedback from members that clients are less likely to make use of the measure due to uncertainty that it will be reversed in future years. We suggest that further tinkering with the taxation of pensions should be avoided unless the impact of the change substantially outweighs the costs, uncertainties and complexities of the change.
7. The measure as drafted introduces more complexity into the pension legislation. The provisions regarding the LTA are replaced with complex amendments regarding a new 'permitted maximum' figure. As an alternative, the LTA in force until 5 April 2023 of £1,073,100 could easily be replaced with a higher figure, sufficiently high that pensions would not be at risk of exceeding it. Given that the measure is, for the most part, amending existing legislation, time and costs could have been reduced for respondents to the consultation if a tracked changes version of the document had been made available. Publishing a tracked changes version of proposed legislation in future consultations would assist in useful feedback and identification of any issues.
8. In s637A(3)b the 'lump sum allowance' is set at £268,275. We understand that this is because it is 25% of the LTA that was in force up to 5 April 2023, and so gives the same maximum tax-free lump sum (where there are no LTA protections in place). However, it would be simpler if the lump sum allowance were instead set at a round number, (eg. £270,000 or £300,000). This would make it easier for people to understand the measure and calculate its impact on their pension.
9. The policy document setting out the measure includes proposed revisions regarding benefit crystallisation events (BCEs) and charges, suggesting that changes will be made to the

taxation of benefits received under BCE 5C and 5D (relevant unused uncrystallised funds applied for drawdown or annuity following a death before the age of 75). This would result in beneficiaries of pensions belonging to members who died before the age of 75 becoming subject to marginal rate income tax under s579CZA, ITEPA 2003 with effect from 6 April 2024. This proposed revision was not previously mentioned in announcements or discussions regarding the abolition of the LTA. Although the draft legislation does not include this proposed revision, we are concerned that the government is trying to make additional changes to the taxation of pensions outside the scope of expected changes. Other changes to the taxation of pensions should be announced at a fiscal event and subject to due consultation.

OUR RECOMMENDATION

10. A round figure should be chosen for the ‘lump sum allowance’.
11. Alternatively, the existing legislation could be retained, and the LTA replaced with a higher figure.
12. Proposed changes to the taxation of the taxation of benefits received under BCE 5C and 5D should be set out in further detail at a fiscal event and should be subject to consultation.

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 https://goo.gl/x6UjJ5).