

FB 2017: Partial surrender of life insurance policies (clause 13)

Personal tax

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Discretionary treatment of partial surrender of life insurance policies should be backed up by safeguards in the legislation.

Draft clause 13 of the intended provisions for inclusion in Finance Bill 2017 introduces new sections 507A and 512A into Income Tax (Trading and other Income) Act (ITTOIA) 2005 and would have effect from 6 April 2017. The amendments provide for an application process by which policyholders who have part surrendered their life insurance policies, and in doing so generated a wholly disproportionate tax charge, can apply to HMRC to have their gain recalculated on a just and reasonable basis. The CIOT's view is that this discretionary solution should be backed by safeguards; most importantly a statutory right of appeal to the First-tier Tribunal on the officer's decision of what constitutes a just and reasonable basis of recalculation and any other ground relevant to the operation of the provision (for example whether the chargeable event gain is 'wholly disproportionate' or whether an extension of time for making the application should be granted).

The draft legislation does not include these safeguards. It is recognised that HMRC's intention is to produce comprehensive guidance on the operation of this discretionary remedy. However, the danger of guidance alone as a safeguard is that guidance can be changed or withdrawn. Also its rationale can be lost in the passage of time and as a result of inevitable changes in personnel. The CIOT has therefore expressed its preference for legislative provision for the right of appeal to the First-tier Tribunal in respect of this discretionary remedy