



TAXREP 29/14 (ICAEW REPRESENTATION 70/14)

FINANCE BILL 2014: CLAUSE 110 SCHEDULE 21: INHERITANCE TAX ACT

ICAEW welcomes the opportunity to comment on the [Finance Bill](#) published on 27 March.

This briefing has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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For more information, please contact ICAEW Tax Faculty: taxfac@icaew.com

icaew.com

SUMMARY OF MAIN POINTS

1. This schedule makes a few changes to the inheritance tax (IHT) legislation; this briefing is just concerned with one of the changes, the provision to treat undistributed income arising in a relevant property trust which remains undistributed for five years or more as part of the trust capital when calculating the ten year anniversary charge.

WHAT THE CLAUSES ARE INTENDED TO DO

2. Currently undistributed income that has not been formally accumulated by the trustees is not treated as capital and so is not liable to the IHT charge at the ten year anniversary.

WHAT ICAEW IS CONCERNED ABOUT

3. We are concerned that the rule deeming undistributed income to be capital is yet another mismatch between trust law and tax law. Trusts are frequently set up with the intention that income is retained by the trustees until needed by a beneficiary at some time in the future. There is never any intention to permanently retain the income but the distribution has to be made at the appropriate time not just because HMRC is about to levy a tax charge.
4. We are not persuaded that there is any real need for these provisions. It is unclear what the real mischief is that these provisions are aimed at. A very large number of the total number of relevant property trusts do not pay inheritance tax because they are nil rate band trusts. In the case of more substantial trusts, trustees often make a conscious decision as to how retained income is to be dealt with in the future. These new provisions will simply make that process more complex. These provisions have a feel about of them of change for changes sake rather than dealing with specific mischief,
5. Charging IHT on income that arose more than five years before the ten-year charge without reduction for the period it has been part of the trust is contrary to the general rule for added capital and is unjust. The explanation given for there being no reduction is that it makes record keeping easier. There should be a choice, trustees should be able to elect to keep detailed records and carry out the calculations giving the proportionate deduction etc. Alternatively, if it is deemed that the income has accrued evenly then the full charge could be reduced by say 40% to give a flat charge that reflects the fact that some of the accumulated income has only been in the trust for five years, some for six etc.
6. There could be an additional administrative burden on trustees to calculate the accumulated income deemed as relevant property as accounts are normally drawn up to 5 April but the periodic charge will rarely fall on that date.

RECOMMENDATIONS

7. In our view if there is to be a specified period when income is deemed to be accumulated it should be 21 years and the issue should be looked at holistically across all the taxes and not just income tax.
8. If undistributed income is deemed to be accumulated under these provisions then any future distributions under a specific trust power to apply accumulations as income should carry an income tax credit in the same way as a distribution of current income.

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)