



DOMICILE: INCOME TAX AND CAPITAL GAINS TAX

ICAEW welcomes the opportunity to comment on the draft legislation on [Domicile:Income Tax and Capital Gains Tax](#) published by HM Revenue & Customs on 2 February 2016.

This response of 26 February 2016 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.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

We were represented at meetings with HM Treasury and HMRC jointly with other professional bodies in which we were able to put forward some key comments and concerns and discuss aspects of the proposals and our notes of those meetings can be found in [TAXGUIDE 8/15](#) and [TAXGUIDE 12/15](#).

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

icaew.com

MAJOR POINTS

Key point summary

1. We are very disappointed that the exceptions relating to offshore trusts settled by a long term UK resident before becoming deemed domiciled promised in the summer 2015 Budget are not included within this draft legislation but will be in the draft legislation for Finance Bill 2017. As it currently stands the draft legislation is wider than is intended and this will be enacted before the exceptions are enacted, in our view this is an unacceptable approach to law making.
2. An individual born in the UK to UK domiciled parents but taken abroad to live as a baby will be treated as UK domiciled in the first year they are resident in the UK even if they have lived abroad for say 50 years which could result in some harsh outcomes.

General comments

3. Example of when the returning UK domiciliary rules act unfairly include:
 - An individual is born in the UK to parents who are married and the father has a UK domicile of origin. A year later the family emigrates to New Zealand. The individual becomes a citizen of New Zealand and lives there for 50 years. She only returns to the UK as an aunt has become very unwell and needs nursing. She does not envisage being in the UK for much longer than one tax year. The new provisions will mean that she cannot access the Remittance Basis. She will have a year of grace before she is treated as UK domiciled under the proposed inheritance tax (IHT) changes.
 - An individual is born in the UK to parents who are married and the father has a UK domicile of origin. A year later the family emigrates to Canada. The individual becomes a Canadian citizen and lives in Canada for 40 years. He gets seconded to London for a 24 month period at the end of which he expects to return to Canada. The new provisions will mean that he cannot access the Remittance Basis (including not being able to benefit from Overseas Workday Relief) and should he die his worldwide estate will be subject to IHT.

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 via <http://www.icaew.com/en/about-icaew/what-we-do/technical-releases/tax>).