



ICAEW REPRESENTATION 62/16

TAX REPRESENTATION

TREATY RESIDENCE OF PENSION FUNDS

ICAEW welcomes the opportunity to comment on the Public Discussion Draft [Treaty Residence of Pension Funds](#) published by OECD on 29 February 2016.

This response of 30 March 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.

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OUR COMMENTS

1. We are writing to request that the proposed definition of “recognised pension fund” should be extended to specifically include pension funds established by international organisations, and that such pension funds should be treated as resident in the state in which they are established or principally administered.
2. Although these pension funds do not always meet all the local regulatory or tax requirements in the state in which they are established or administered, they are frequently run as a practical matter in accordance with those requirements. See for example, the UK Upper Tribunal decision last year in [Macklin v HMRC \[2015\] UKUT 39](#) (TCC) which examined the World Bank Staff Retirement Plan that is administered in accordance with United States Internal Revenue Code rules relating to qualifying pension plans.
3. The controls exercised over these pension funds and the legal rules they operate under mean they are established and run to provide retirement benefits and do not facilitate tax avoidance.
4. The treatment of these pension funds is not clear in some countries and to include them specifically in the definition of “recognised pension funds” would be a helpful clarification for both the funds themselves and their employees and the employees’ dependants.

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>).