



TAXREP 09/14

(ICAEW REP 17/14)

ICAEW TAX REPRESENTATION

DRAFT LEGISLATION FINANCE BILL 2014

Comments submitted on 4 February 2014 by ICAEW Tax Faculty in response to HM Revenue & Customs draft legislation *Inheritance tax: simplifying charges on trusts* published on 10 December 2013

Contents

	Paragraph
Introduction	1-3
Who we are	4-6
Major points	7-12
Ten Tenets for a Better Tax System	Appendix 1

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the draft legislation [Inheritance tax: simplifying charges on trusts](#) published by HM Revenue & Customs (HMRC) on 10 December 2013.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

4. ICAEW is a world leading professional membership organisation that promotes, develops and supports over 142,000 chartered accountants worldwide. We provide qualifications and professional development, share our knowledge, insight and technical expertise, and protect the quality and integrity of the accountancy and finance profession.
5. As leaders in accountancy, finance and business our members have the knowledge, skills and commitment to maintain the highest professional standards and integrity. Together we contribute to the success of individuals, organisations, communities and economies around the world.
6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

MAJOR POINTS

Delivery of account and payment of tax

7. The proposal to align the filing date and payment date is welcomed but we would have preferred the 12 month time limit to the six month time limit. For some large and complex estates a six month filing date is particularly tight and now the interest charge on inheritance tax (IHT) paid late has been aligned the resulting interest could be quite draconian.

Ten year anniversary charge

8. 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.
9. It is stated that the changes are intended as simplifications not tax raising measures. In our view that is disingenuous as by 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 extra revenue will be raised. The explanation given is that it makes record keeping easier but it also ensures that more tax is payable. 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 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.

10. It seems that the periodic charge will be applied to all income arising from relevant property in the trust more than five years before the charge not just the income arising in the first five years after the previous periodic charge. This would appear to be a revenue raiser.
11. We reiterate the points made in our comments on the consultation last year, [TAXrep 39/13](#), in particular 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.
12. 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.

E sue.moore@icaew.com

Copyright © ICAEW 2014
All rights reserved.

This document may be reproduced without specific permission, in whole or part, free of charge and in any format or medium, subject to the conditions that:

- it is appropriately attributed, replicated accurately and is not used in a misleading context;
- the source of the extract or document is acknowledged and the title and ICAEW reference number are quoted.

Where third-party copyright material has been identified application for permission must be made to the copyright holder.

icaew.com/taxfac

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](https://www.icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx))