



ICAEW REPRESENTATION 25/17

TAX REPRESENTATION

Reforms to the taxation of non-domiciliaries and offshore trusts

ICAEW welcomes the opportunity to comment on the revised [draft Finance Bill 2017 legislation](#) published by HMRC on 26 January 2017. This representation will focus specifically on the cleansing of mixed fund rules.

This response of 23 February 2017 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.

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OUR COMMENTS

1. We accept that the revised 26 January 2017 legislation is an improvement on what was published on 5 December 2017. However we still have significant concerns.
2. When the relief was announced it was widely welcomed as it was felt that it would enable affected taxpayers to be able to clean up mixed accounts and result in significant funds being remitted to the UK to the benefit of the UK economy. That is it would be a win/win situation.
3. Whilst we still welcome the relief we understand that HMRC's interpretation of some key aspects of the legislation will significantly limit its usefulness. Specifically:
 - not accepting that pre 6 April 2008 foreign income and/or gains can be cleansed;
 - specifying that there has to be one single instruction to cleanse given to the bank albeit that it can cover transfers to numerous accounts (this is a practical issue as banks may not be amenable to receiving a single instruction covering more than one transfer and it is also likely to catch out foreign domiciliaries); and
 - not accepting that cleansing can take place where the mixed fund is in the name of a relevant person other than the taxpayer.
4. In addition the current draft legislation invalidates the cleansing exercise if an excessive nomination is made. This makes it impossible to take a pragmatic approach, which would be to over nominate in terms of foreign income and foreign gains to leave behind what you are sure will be clean capital. To not be caught it would be necessary to transfer a conservative estimate of the clean capital out (such that this will not result in a successive nomination. This is a potential trap that we feel does not have to be in the legislation. It would be better to remove the provision and give HMRC the power to challenge a nomination if it felt that the nomination would lead to an underpayment of tax.
5. We do not understand why such limitations and practical difficulties would be put on the use of a relief that we had hoped would be flexible and we would ask that the issues are reconsidered.

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 <http://www.icaew.com/-/media/corporate/files/technical/tax/tax-news/taxguides/taxguide-0499.ashx>).