



TAXREP 12/14

(ICAEW REP 25/14)

ICAEW TAX REPRESENTATION

DRAFT LEGISLATION FINANCE BILL 2014

Comments submitted on 5 February 2014 by ICAEW Tax Faculty in response to HM Revenue & Customs draft legislation *Trusts with vulnerable beneficiary* published on 10 December 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the draft legislation [Trusts with vulnerable beneficiary](#) 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

7. We welcome the proposed changes, but in our view there is much more that needs to be done. As expressed in our [TAXREP 13/13](#) and [TAXREP 57/12](#) a complete review of the vulnerable beneficiary tax regime is needed.
8. The tax system for vulnerable beneficiaries is not generous, indeed due to the inadequacy of the current provisions the beneficiary is frequently in a worse position tax-wise compared to when the assets are held personally. We cannot see any justifiable reasons for this; the restrictions already imposed on how the trust property is used mean that such trusts can only be used for protecting vulnerable individuals.
9. Trusts for vulnerable beneficiaries should be wholly transparent for all tax purposes. A vulnerable person should be treated in the same way by the tax system whether assets are held personally or via a qualifying trust. The existence of a qualifying trust (interest in possession or discretionary trusts should be possible) or sub-trust should be ignored for tax calculation purposes such that the vulnerable beneficiary is taxed as if he or she holds the assets directly. The tax due should be paid by the Trustee from the trust property.
10. The definition of vulnerable beneficiaries should be widened. For example, a category to cover anyone over the age of 65 should be included. While not all over 65s will be vulnerable many will be (or have the potential to be if targeted by unscrupulous individuals), so they should be protected. In addition, closer consultation by HM Treasury and HMRC with the mental health charities, such as Rethink Mental Illness whose response we included as an Appendix to [TAXREP 57/12](#) to

ensure that the definition of vulnerable person caters adequately for those with fluctuating capacity is necessary.

11. HMRC does not provide software for trust self assessment forms SA900 so this could give rise to additional expense for the trustees if they have to purchase commercial software. If the trusts were totally transparent and the income and gains were entered on the self assessment of the vulnerable beneficiary this could save costs for HMRC and the trustees.

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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))