

## ICAEW TAX FACULTY REPRESENTATION

### TAXREP 37/10

### EU CROSS-BORDER INHERITANCE TAX OBSTACLES

***Comments submitted on 24 September 2010 by the Tax Faculty of the Institute of Chartered Accountants in England & Wales in response to the consultation paper 'Possible Approaches to tackling cross-border inheritance tax obstacles within the EU' issued on 25 June 2010 by the European Commission***

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# EU CROSS-BORDER INHERITANCE TAX OBSTACLES

## INTRODUCTION

1. In this document we present the response of the Tax Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW) to the consultation paper *'Possible Approaches to tackling cross-border inheritance tax obstacles within the EU'* ('the condoc') published by the European Commission on 25 June 2010 at [http://ec.europa.eu/taxation\\_customs/common/consultations/tax/2010\\_06\\_inheritance\\_en.htm](http://ec.europa.eu/taxation_customs/common/consultations/tax/2010_06_inheritance_en.htm)
2. We are pleased to have the opportunity to respond to this consultation. We would 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 the 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. The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
5. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.
6. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 11,000 members of the Institute who pay an additional subscription, and a free weekly newswire.

## MAIN POINTS

7. We think that the European Commission should encourage Member States to adopt mechanisms to eliminate double taxation of inheritances. It may be more practical to focus first on domestic mechanisms rather than a full network of treaties.

## COMMENTS AND REPLIES TO SPECIFIC QUESTIONS

- 1) *Have you any information on cross-border inheritance tax problems in the EU that you would like to provide?*
8. We agree that such issues will continue to increase. More individuals own assets in several countries and family networks become more complex with unmarried parents, divorces and successive marriages.

9. We are aware of difficulties with the interaction between UK Inheritance Tax ('IHT') and other countries taxes such as Ireland's Capital Acquisitions Tax. This is because IHT is based on the donor, whereas the Irish tax is based on the donee
- 2) *Which or which combination of the above outlined approaches do you consider as most appropriate to tackle any cross-border inheritance problems that exist? Why do you prefer that option?*
10. We think that both options A (EU guidance on principles that should govern design of Member States' IHT based on interpretation of EU case law) and B (encourage Member States to adopt mechanisms to eliminate double taxation) would help to reduce cross-border IHT problems.
11. For A, we think that a set of principles would be helpful even though there have been only eight cases which have had to be resolved by the European Court. Given the variety of legal systems and ways in which estates/gifts/wealth is taxed in different Member States, we think that the guidance should be high level, ie strategic, rather than detailed. It would also have to take account of succession rules. As noted in the condoc, this is an evolving area. Consequently, drafting guidance is likely to be a long term project. If such principles or guidance is drafted, then we should welcome the opportunity to comment.
12. We think that B is the way forward in the short term. The UK, for example, has an active tax treaty negotiation programme, and whereas for taxes on income and gains it has one of the most comprehensive networks of treaties of any country, it has fallen significantly behind in its double taxation agreements for estate duties/gift taxes/IHT. So far as we are aware, the UK has treaties only with the following EU countries: France (1963), Italy (1968), Ireland (1978), Netherlands (1996) and Sweden (1989).
13. These treaties are very useful and we think that it would be sensible for the EU to encourage bilateral treaties, which can take account of the peculiarities of each individual system in the countries concerned. This would cover inter alia differing views as to the meaning of words such as 'domicile', the various deeming provisions that the various Member States have on liability on a world-wide basis following emigration, the extent to which countries categorise assets as belonging to their country (shares in companies holding property for example) and taxes in respect of assets where relief should be given whether the tax is a donor- or a donee-based tax on the same asset when it passes to someone in a different country
- 3) *Would you prefer a completely different solution and if so what solution do you suggest?*
14. As the pace of treaty negotiation is inevitably slow, and the limited resources available tend not to get used on estate tax treaties, we think it will be helpful to give priority to encouraging Member States to improve their domestic mechanisms to eliminate double taxation in cross-border situations. Such improved mechanisms can subsequently incorporated into comprehensive treaties.
- 4) *What, if anything, else do you think could be done at European level to overcome any difficulties that exist in the area of inheritance taxes?*
15. We consider that it is unlikely that the EU can come up with an overall IHT system in view of the very different approaches between different Member States. In large part, these reflect different succession laws.
- 5) *Do you have knowledge of cross-border inheritance tax problems faced by SMEs and, if so, do you think that the above-mentioned or different solutions are needed for any such problems?*
16. We doubt that there are many particularly difficult issues that the UK faces in relation to trading SME's because of its IHT Business Property Relief which gives 100% exemption in many cases,

although there may be issues in relation to the goodwill of professional firms when a partner of a partnership which carries on business in both the UK and another Member State dies.

6) *Do you have any other comment or thoughts to share as regards cross-border inheritance tax issues?*

17. No.

PCB

24.9.10

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### THE 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/index.cfm?route=128518>).

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