



## **INHERITANCE TAX: SIMPLIFYING CHARGES ON TRUSTS AND NEW RULES TO TARGET AVOIDANCE THROUGH THE USE OF MULTIPLE TRUSTS**

ICAEW welcomes the opportunity to comment on the draft legislation on *Inheritance tax: simplifying charges on trusts and new rules to target avoidance through the use of multiple trusts* published by HM Revenue & Customs on 10 December 2014.

This response of 4 February 2015 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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## MAJOR POINTS

### Introduction

1. We welcome the opportunity to comment on the draft clauses of the Finance Bill 2015 published by HM Revenue & Customs (HMRC) on 10 December 2014.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

### Key point summary

3. We are pleased that HMRC have persisted in trying to simplify this area of inheritance tax and that the proposed complication of a settlement nil rate band has been abandoned.
4. The removal of the requirement to include non-relevant property when calculating the ten year charge and exit charge should simplify the calculation for some trustees and is welcomed.
5. The proposals in the consultation on trust simplification published on 6 June 2014 were trying to stop multiple trusts and in our response to that consultation, [TAXrep 40/14](#) we said:

*In respect of HMRC's stated aim of tackling 'Rysaffe' planning, (which it announced during the second consultation rather than being an objective of the original consultation), we believe these proposals are still disproportionate and unnecessarily complex. We still recommend that if steps are to be introduced to tackle this planning, it should be through targeted anti-avoidance legislation, instead of penalising other tax payers in the process and we are happy to work with HMRC to see how this can best be introduced.*

The draft legislation now published is targeted at multiple trust planning and is preferable to the original proposal.

6. In order for grandfathering to occur as per clause 62, in the context of protected settlements, Condition A requires that there must be no transfer of value by the settlor on or after 10 December 2014 as a result of which the value of the property in the trust has increased. In the case of a number of pilot settlements they will hold relatively little value, to the extent that where costs are incurred by the trustees these will frequently be reimbursed by the settlor. Where this is the case please confirm:
  - i) confirm that such payments will not be treated as infringing Condition A, or
  - ii) confirm that an interest free loan from the settlor to the trustees will not be treated as causing a transfer of value to take place, or
  - iii) if this is not possible we request that the terms of the draft clause are amended so that payments of trust expenses by the settlor are ignored when establishing whether the provisions of condition A are satisfied.
7. We are pleased to see that the terms of s144 IHTA 1984 are to be amended. These provisions deal with distributions from property settled by will, and contained a trap for the unwary as shown by the decision in the case of [Frankland v Inland Revenue Commissioners \[1997\] STC 1450](#). Whilst we welcome this change, it is unfortunate it has taken such a long time to legislate.
8. We note the terms of s80 IHTA 1984 are to be amended to make it clear that following the changes made by FA 2006 that the provisions of s80 IHTA 1984 are only triggered where a *qualifying* interest in possession is involved, as distinct from an interest in possession that does not fulfil this description. The fact that the legislation is being amended some eight years or so after the introduction of the FA 2006 changes indicates there is still continuing uncertainty as to what the terms of the inheritance tax rules mean in practice. This is very unfortunate, and it indicates it would be helpful if HMRC could liaise with the Tax Faculty of the ICAEW and other interested parties with a view to identifying all such areas of uncertainty with a view to their clarification and where possible resolution. This is a process the tax Faculty

would enthusiastically embrace, given the inheritance tax simplification consultations have now come to an end and are to be completed through the enactment of the statutory provisions set out in the consultation draft.

9. Other than where noted above the draft legislation appears to achieve the stated aims.

## 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>).