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Dear Lisa

**Trusts (Capital and Income) Bill**

The ICAEW is pleased to respond to your request for comments on the draft Trusts (Capital and Income) Bill.

Please contact me should you wish to discuss any of the points raised in the attached response.

Yours sincerely

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## ICAEW REPRESENTATION

### TRUSTS (CAPITAL AND INCOME) BILL

Memorandum of comment submitted in June 2010 by the ICAEW in response to the Ministry of Justice consultation paper *Trusts (Capital and Income) Bill* published on 22 March 2010

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# TRUSTS (CAPITAL AND INCOME) BILL

## INTRODUCTION

1. The ICAEW welcomes the opportunity to comment on the consultation paper *Draft Trusts (Capital and Income) Bill* published by The Ministry of Justice on 22 March 2010 at <http://www.justice.gov.uk/consultations/trusts-capital-income-consult.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. We were represented on the Law Commission's working party in which forum we were able to put forward our recommendations.
4. We comment not only from a trust law point of view specifically, but also on the interrelationship with the tax law. Information about the ICAEW and its Tax Faculty is given below. We have also set out, in the Appendix, the Tax Faculty's ten tenets for a better tax system, by which we benchmark proposals to change the tax system.

## WHO WE ARE

5. The ICAEW 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, we provide 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. We are a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
6. 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. We ensure these skills are constantly developed, recognised and valued.
7. 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.

## COMMENTS

8. We are content with the three proposals, subject to the following.
9. We should welcome clarification of whether Clause 1(1) of the draft Bill means that the new treatment applies to any new trusts that come into being, say, by an advance or under a power of appointment.
10. Clause 2 of the draft Bill uses section 213 Income & Corporation Taxes Act 1988 as a reference point. However, s.213 deals only with distributions from a company that is trading and UK resident (s.213(6)). We question the need for this provision to limit itself and, on the grounds of simplicity and to obviate the need for a subsequent amending Order, recommend that Clause 2 contains no restriction on the type of company to which it applies, whether trading or investment, or UK or non-UK resident.

11. We request confirmation that a distribution to a beneficiary as provided in Clause 3 will be treated by HMRC as a distribution of income both for the trustees and for the beneficiary. There will be capital gains tax issues as well and it would help trustees and beneficiaries – and be in line with our Ten Tenets for a Better Tax System (summarised in the Appendix) – if the tax position were to be explained and put beyond doubt by way of a statement on the lines of HMRC's Statement of Practice 4/94 on enhanced stock dividends.
12. As using Orders rather than primary legislation to amend Acts curtails the opportunity for public debate in Parliament, as in, for example, Clauses 2 and 4, we should welcome an undertaking that any proposed changes will be subject to public consultation before being presented to Parliament.
13. In Clause 5, we should welcome clarification of why the Secretary of State is to be given the power to delay, potentially indefinitely, the coming into effect of this Bill.

PCB

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14.6.10

### 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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