



ICAEW TAX REPRESENTATION

HIGH-RISK AREAS OF THE TAX CODE: THE TAXATION OF UNAUTHORISED UNIT TRUSTS

Comments submitted in October 2011 by ICAEW Tax Faculty in response to an HMRC consultation *High-risk areas of the tax code: The taxation of unauthorised unit trusts* published in June 2011

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THE TAXATION OF UNAUTHORISED UNIT TRUSTS

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation paper *High-risk areas of the tax code: The taxation of unauthorised unit trusts* published by HMRC on 30 June 2011 at http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_031408
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 accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
5. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
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. The Tax Faculty supports the Government's desire to counter tax avoidance. One of the Tax Faculty's key principles, however, is that tax avoidance legislation should be narrowly targeted. As is noted at para 1.2 HMRC accepts that the vast majority of investors use unauthorised unit trusts (UUTs) for normal commercial reasons
8. We also welcome the Government's aim to simplify the taxation of UUTs and reduce the current administrative burdens.
9. Therefore, if any changes are to be made as a result of this consultation they should focus on the need for administrative simplicity while narrowly targeting anti-avoidance legislation at specific abuses.
10. Our members who have commented on this consultation most commonly encounter UUTs in complex private client investment and joint venture structures which inadvertently fall within the

rules of UUTs rather than creating specific UUT structures. Our comments in the main address the consultation from this narrower perspective.

11. Any changes will need to retain clarity on what constitutes a UUT and the treatment of an arrangement if it is within the UUT rules. Without such clarity, in addition to seeking further advice, clearances may need to be sought under Code of Practice 10. Any uncertainty is thus likely to be onerous for both HMRC and the taxpayer.
12. Our members have commented that the current definition of a 'unit trust scheme', s 1007, Income Tax Act 2007 (ITA 2007), which defines a scheme by reference to s 237, Financial Services and Markets Act 2000 (FSMA) is unhelpful. It is frequently necessary to seek FSMA advice from lawyers who may not be experienced in considering the issues for tax purposes. It would be simpler for the definition to be set out in ITA 2007.
13. As the vast majority of UUTs are set up for legitimate investment and commercial purposes any anti-avoidance measures introduced need to be properly targeted at specific abuses.
14. We note the perceived abuses noted at paras 3.10-3.14. We would have expected that the existing tax legislation would have prevented most of these abuses. The starting point should therefore be to ascertain whether the existing rules are being applied effectively. If anti-avoidance legislation is required, then the rules need to be properly targeted and should not add to the complexity of the rules, as is noted occurred when measures were introduced to deal with the receipt of foreign income in UUTs.
15. Where the current rules result in unintended consequences, as noted in para 3.14, it seems to us that these rules should be amended rather than yet more legislation being introduced. However, any changes should not delay unnecessarily a legitimate repayment.

RESPONSES TO SPECIFIC QUESTIONS

16. We have no comments on the specific questions raised by the consultation document. As stated in para 10 our members usually encounter inadvertent UUTs rather than creating specific UUTs, as such we are unable to provide the generic responses requested.

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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/~media/Files/Technical/Tax/Tax%20news/TaxGuides/taxguide-4-99-towards-a-better-tax-system.ashx>).