

HM Revenue & Customs

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### Response to Consultation on the Taxation of Trusts

I am responding to this consultation as someone who is settlor of a simple UK-resident beneficial trust. Here are some more general comments first:

In general I consider the whole area of trust law and the taxation of trusts to be over-complicated and overdue for simplification. This means that trustees have to take specialist and expensive advice on them, and employ professional accountants to do the necessary tax returns.

You suggest that it is “unfair” that the expense of preparing trust accounts and tax returns are deductible which does not apply to personal tax returns. I would suggest it is more a case that the latter is unfair. If HMRC creates a taxation system that is over-complicated and beyond the capability of any ordinary person to understand then people should be permitted to allow the cost of professional assistance in preparation of the necessary returns. That applies just as much to personal taxation as trust accounts as the former has become more and more complex in recent years. It also seems unlikely to me that reform of trust taxation will be so simplified as to avoid the need for professional assistance.

As regards the Government’s concerns about the transparency of trusts, it certainly seems that foreign registered trusts create possible problems with tax avoidance. Is there any good reason why UK residents should be permitted to create or benefit from such trusts? There are valid and sound reasons for the creation of trusts resident in the UK but are there any specific reasons why foreign trusts should be used? Perhaps there should be higher taxation rates applied to such trusts and on income received from them by UK residents to discourage their use.

Answers to detail questions:

- 1) The government seeks views on whether the principles of transparency, fairness and neutrality, and simplicity constitute a reasonable approach to ensure an effective trust taxation system; including views on how to balance fairness with simplicity where the two principles could lead to different outcomes.**

Answer: I support the principles laid down in Section 3.10 of the consultation paper, but I would emphasise the need for “simplicity” even if that might prejudice “fairness” to some extent. However, any change to the trust regime could have large potential impact on existing trusts when these have been set up originally based on long-term planning by the trust settlors. Changes might effectively be retrospectively altering the principles which applied at the time the trusts were set up to the disadvantage of the trust beneficiaries and settlors. In addition if the changes result in negative impacts to the taxation of trusts then this could undermine the principle of neutrality between personal and trust taxation.

**Questions 2 to 5:** I have no comments in response to those questions, other than those given above.

**6) The government seeks views and evidence on the case for and against targeted reform to the Inheritance Tax regime as it applies to trusts; and broad suggestions as to what any reform should look like and how it would meet the fairness and neutrality principle.**

Answer: As the taxation of trusts is now relatively neutral in comparison with personal income taxes, indeed it can be viewed as potentially more onerous because of the 6% ten-yearly charge on assets held, there seems no good reason why there should be any charges on transfers of assets into a trust. The same rule that applies to potentially exempt transfers under IHT should apply to transfers to trusts.

**7) The government seeks views and evidence on:**

- a. the case for and against targeted reform in relation to any of the possible exceptions to the principle of fairness and neutrality detailed at paragraph 5.6;**
- b. any other areas of trust taxation not mentioned there that would benefit from reform in line with the fairness and neutrality principle.**

Answer: As already indicated above, as regards Trust Management Expenses there is no justification for dropping the allowability of expenses in relation to the making of tax returns.

**Question 8 and 9:** These questions merely emphasise the importance of simplifying the rules and taxation that relate to trusts.

Yours sincerely

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Managing Director