

TAXREP 4/10

OECD DISCUSSION DRAFT ON THE APPLICATION OF TAX TREATIES TO STATE-OWNED ENTITIES, INCLUDING SOVEREIGN WEALTH FUNDS

Memorandum submitted on 22 January 2010 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to a consultation document published in November 2009 by OECD

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The Tax Faculty of the Institute of Chartered Accountants in England and Wales

TAXREP 4/10

OECD Discussion Draft on the application of Tax Treaties to State-Owned Entities, including Sovereign
Wealth Funds

OECD DISCUSSION DRAFT ON THE APPLICATION OF TAX TREATIES TO STATE-OWNED ENTITIES, INCLUDING SOVEREIGN WEALTH FUNDS

INTRODUCTION

1. We welcome the opportunity to comment on the Consultation Document published in October 2009 by HM Treasury at <http://www.oecd.org/dataoecd/59/63/44080490.pdf>
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

GENERAL POINTS

3. We believe that the proposed changes to the OECD Model Tax Convention strikes the right balance.
4. We feel that the changes to the Model Tax Convention should also usefully address what a sovereign state is. The OECD's focus is on 'contracting states' so it may be that any territory which is accepted internationally as having the power to contract in international law, and so enter into Double Taxation Conventions, should be recognised as a sovereign state.
5. There are a number of differences for instance in the way that the UK and France deals with its dependent or overseas territories and it would be helpful to lay down some guidelines to be able to gauge the impact of such different arrangements on sovereign immunity, in the context of the OECD Model Tax Convention.
6. In paragraph 6.11 it is stated that under the customary international law principle of sovereign immunity a Sovereign State is, as a general rule, immune from the jurisdiction of another sovereign State. But the paragraph then goes on to note that there is currently no international consensus on the precise limits of the sovereign immunity principle and this is particularly so in relation to business activities and tax matters. This might be an area to which the Working Party could usefully turn its attention in the future but for the purposes of the 2010 redraft it would be very helpful to provide some clarity on the issue of what is a sovereign State.

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ICAEW AND THE TAX FACULTY: WHO WE ARE

1. 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 132,000 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.
2. 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.
3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter TAXline to more than 10,000 members of the ICAEW who pay an additional subscription.
4. To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at taxfac@icaew.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

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 www.icaew.co.uk/index.cfm?route=128518.