



TRANSPARENCY OF LAND OWNERSHIP INVOLVING TRUSTS

Issued 23 February 2024

ICAEW welcomes the opportunity to comment on the Transparency of land ownership involving trusts published by Department for Levelling Up, Housing and Communities (DLUHC), on behalf of and jointly with His Majesty's Treasury (HMT), His Majesty's Revenue and Customs (HMRC) and the Department for Business and Trade (DBT) on 27 December 2023, a copy of which is available from this [link](#).

For questions or comments on this response, please contact ICAEW's Tax Faculty on taxfac@icaew.com quoting ICAEW REP 21/24.

ICAEW does not think the propositions to extend transparency measures should go ahead in their current form and without further consideration. There needs to be a period for appropriate reflection so that one consolidated system can be established for trusts owning UK land.

This response of 23 February 2024 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

GENERAL POINTS

Introduction

1. ICAEW supports the government's aim to tackle crime and corruption. To this end we support the core objective underpinning the Trust Registration Service (TRS), the Register of Overseas Entities (ROE) and this new proposal. However, the case to extend the proposals needs more in-depth consideration before any proposals are taken forward.

Concerns

2. Our most significant concern is that the consultation paper does not give due weight to the right to privacy. While we are fully in favour of measures that support the fight against money laundering and terrorist financing the consultation does not present compelling arguments as to why publication of extensive information about trusts should be extended beyond that of tax/law enforcement agencies and those who meet the criteria for having a legitimate interest in accessing the information (as set down in the regulations relating to the TRS with the safeguards available there).
3. It is vital to strike a balance between transparency and privacy, and to evaluate what is in place by how well it achieves the aims of countering money laundering and terrorist financing. The legislation needs to be appropriately targeted and proportionate.
4. We are concerned that there are still various practical issues with respect to the ROE . We would suggest that these are resolved before moving on to create another register.
5. As a wider overarching comment, we do not think that it is beneficial to have many overlapping registers that must be considered where a trust owns UK land. Registering more than once is burdensome for trustees, and different information is required by different registers, increasing complexity and administration. Perhaps more importantly, it is not helpful for those in law enforcement to have to consult multiple registers. Rather than rush to implement a new register a period of reflection is required to establish how the current registers are operating and exactly what additional measures are needed. It should be possible to create a system where a trust must only register once, and all the necessary detail can be provided on one system that can be searched by law enforcement agencies.

Conclusion

6. To conclude, we do not think the propositions to extend transparency measures should go ahead in their current form and without further consideration. There needs to be a period for appropriate reflection so that one consolidated system can be established for trusts owning UK land. We are not convinced by the arguments for the general publication of information. If information is published, it should be specifically targeted to what is required for the needs of the public interest and the right to privacy should be protected to the greatest extent possible.

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 <https://goo.gl/x6UjJ5>).