



## REFORM OF TRANSFER PRICING, PERMANENT ESTABLISHMENT AND DIVERTED PROFITS TAX CONSULTATION

Issued 4 July 2025

ICAEW welcomes the opportunity to comment on the Reform of transfer pricing, permanent establishment and Diverted Profits Tax Consultation published by the government on 28 April 2025, a copy of which is available from this [link](#).

For questions on this response please contact our Tax team at [taxfac@icaew.com](mailto:taxfac@icaew.com) quoting REP 52/25.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 172,000 chartered accountant members in over 150 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

This response of 4 July 2025 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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### ICAEW

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## KEY POINTS

1. The measures proposed were largely viewed as positive by ICAEW members, helping to reduce complexity and more closely align domestic law with OECD principles. It was anticipated that this move in policy should increase certainty and make treaty negotiations easier for international businesses.
2. Only a relatively small proportion of ICAEW members operate in this specialist international space on a routine basis. We expect that responses on the detailed technical aspects of the consultation will be provided by large international businesses and advisers who regularly work in this area. On this basis we have decided to provide a high-level response which focuses on the tax simplification and growth agenda rather than answer each question individually.

## TRANSFER PRICING

3. The proposed removal of the requirement to apply transfer pricing on wholly domestic transactions where there is no tax advantage was generally welcome. This will remove an unnecessary compliance burden for many businesses, supporting tax simplification and the wider growth agenda. ICAEW members were keen to stress that the exceptions were relatively complex and therefore to urge caution in suggesting this is a 'blanket' exemption. Businesses will still need to ensure they do not fall into the rules.
4. Members appreciated the ability to elect to apply the transfer pricing rules as there are commercial situations where this will still be helpful.
5. With regards to the changes to the participation condition, members raised concerns around how broadly these might apply. The concept of 'common management' would need to be very carefully defined so as to not draw relatively routine commercial structures into transfer pricing. For example, a franchise arrangement or a global professional partnership with independent member firms may have a degree of common management. While members indicated that these types of structures would most likely result in transactions being charged at arms length, the administration burden in trying to record this information could be significant and so to bring these into the transfer pricing rules would be unwelcome. It would be helpful to understand what particular risk or scenario HMRC is seeking to address with the changes around participation and ensure commercial arrangements are not caught.
6. Similarly, concerns were raised around the introduction of a power to issue a transfer pricing notice in situations where the conditions for participation under Article 9 are met but not under UK domestic law. HMRC considered that this would bring only a nominal amount of businesses into scope but members would appreciate further clarity around how and when this power might be applied.
7. There were no significant concerns around the changes to financial transfer pricing and members recognised the benefits of aligning these rules to Chapter X of the OECD transfer pricing guidelines. Similarly, the changes to set one valuation standard for intangible fixed assets (the arm's length value) did not raise any significant comments, though members would appreciate more guidance around valuation methodology as the OECD guidelines are not very comprehensive on this issue.

## REFORM OF DIVERTED PROFITS TAX

8. ICAEW members welcomed the move to bring diverted profits tax within the corporation tax framework. It should bring further simplicity in the application of treaty relief for double taxation.
9. However, some members questioned whether unilateral measures such as unassessed transfer pricing profits (UTPP) were still appropriate in light of global solutions such as Pillar 1 and Pillar 2 and the wider BEPS action plan. Diverted profits tax has obviously served an initial purpose to flush out non-compliance (when the BEPS project was not as well developed) but many jurisdictions do not have such a measure, instead relying on OECD guidelines as the global consensus on transfer pricing. The government will also need to consider how international developments impact the ongoing policy need to have a domestic measure.
10. Some members were concerned around the removal of a 'safe harbour' and some of the provisions (particularly those around transparent entities) that give HMRC further discretionary powers when considering the application of the rules.
11. The tax design condition has not been aligned with existing familiar principles (for example unallowable purpose) and therefore there is no case law or guidance. This is at odds with the wider policy intent to create certainty and reduce complexity. We recommend that the condition is reviewed.

## PERMANENT ESTABLISHMENT

12. ICAEW members found the changes proposed in this area relatively uncontroversial and raised no serious concerns. These proposals should result in the UK's permanent establishment rules being more closely harmonised with OECD guidelines while retaining only certain unique domestic features, which should create more certainty for taxpayers going forward.
13. Where there is a tax treaty in place with the UK, these changes will not alter the existing position. However, where a treaty is not in place, some uncertainty and complexity could arise. Similarly, where treaties are re-negotiated, this position could alter and therefore it will be important for the government to keep businesses informed around any treaty negotiations.
14. However certain industries (such as insurance) which have more operations in non-treaty jurisdictions may be disproportionately affected, so it will be important for the government to consult further on these changes.
15. The changes around the investment manager exemption were largely viewed as positive and should provide increased flexibility going forward, though care would need to be taken in certain situations (eg, where the investment manager is closely related to the fund and the fund is located in a non-treaty location.)

## 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>).