Response from ICAS to the HMRC Consultation
‘Inheritance Tax: Simplifying charges on trusts – the next stage’

26 August 2013
Inheritance Tax: Simplifying charges on trusts – the next stage

About ICAS

The Institute of Chartered Accountants of Scotland (ICAS) is the oldest professional body of accountants. We represent around 19,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK and in almost 100 countries around the world. Nearly two thirds of our members work in business, whilst a third work in accountancy practices. ICAS members play leading roles in around 80% of FTSE 100 companies. ICAS is also a public interest body.

General Introductory comments

1. ICAS welcomes the opportunity to comment on the consultation ‘Inheritance Tax: Simplifying charges on trusts – the next stage’, issued on 31 May 2013.

2. Overall, ICAS welcomes the objective to simplify the charges on relevant property trusts. There are however points of detail in the proposals where further consideration may be beneficial and these are detailed below in the responses to the particular consultation questions. In particular, whilst the proposed system may be simpler when considered in isolation there are difficulties that are likely to arise in the transition from one system to another.

3. ICAS is against retrospective tax legislation; taxpayers should be able to achieve certainty in their tax affairs. The consequences of these new rules will be, in part, retrospective. For example, the proposed simplification measures will override the existing tax treatment of Rysaffe type arrangements, generally increasing the tax charge on existing trusts. The Rysaffe decision confirmed that taxpayers may use the choices afforded by the legislation, therefore these changes, proposed under the banner of ‘simplification’, are more fundamental in changing core taxing principles. Greater clarity and openness in the consultation process would have been welcomed.

4. The transitional provisions will be important and it is suggested that existing trusts might be grandfathered; the trustees could continue calculating charges under the present rules but decide when to opt in to the new rules, at which stage this should be a permanent change.

Specific questions

Question 1: Do these proposals meet the objective of reducing complexity and administrative burdens and in what way(s)?

The comments in the consultation paper at paragraphs 45 and 46 indicate that practical amendments to the existing rules rather than radical changes are sought, and within a revenue neutral position. ICAS accepts these parameters and, therefore, considered in isolation the proposals in the consultation paper in chapter 3 appear to be a sensible approach. If adopted these would reduce the complexities of obtaining and retaining historical information, and reduce the complexities of calculation, both of which would be less costly than the current requirements. However, as discussed above there is an element of retrospection and there may be transitional difficulties which will need to be carefully addressed.
Question 2: Does a single rate of 6% present any difficulties, particularly for smaller trusts?

In the examples in the consultation paper which compare a single rate of 6% and the current calculation there is little significant difference in tax payable and any additional tax cost using 6% would probably be outweighed by the reduction in complexity and a corresponding reduction in professional costs. It is questionable, however, whether the examples are typical of most trusts. For example, a small trust might receive a large inflow of capital a few months before the ten year charge, not through any conscious decision if it arises from a death, and pay 6% on everything. This would be disproportionate.

The consultation paper says the changes are to be revenue neutral; a single rate of 6% is proposed but it is not clear why 6% is the right rate. If, for example, the tax treatment of Rysaffe type arrangements, or pilot trusts, is to be overridden by the new rules, resulting in potentially higher charges for more trusts, then perhaps a revenue neutral figure may be closer to 4%; the rate would probably be lower in any event. Alternatively, the transitional provisions will be key in containing tax costs to a revenue neutral position as discussed under question 8.

Question 3: How much time would the simplified method save trustees and practitioners, on average per trust?

Reducing the need for considerable amounts of historical information should mean that there is less time involved in making requests to others, such as the settlor or other advisors who have been employed; currently this can be a considerable amount of time relative to the tax payable.

Question 4: Will there be significant costs to trustees and practitioners familiarising themselves with the new system and if so can you quantify these?

No, it is unlikely that there would be significant costs to trustees and practitioners to familiarise themselves with the new system.

Question 5: Do HMRC’s proposals in paragraphs 54 - 58 on the way in which the nil-rate band should be split for ten year and exit charges provide the right balance between fairness and the risk of manipulation?

See comments above.

Question 6: Are there any other ways that the nil-rate band could be split that would not risk a loss to the Exchequer?

Another possibility is to have a deminimis nil rate band available regardless of the number of trusts set up by the settlor. Any trust can then simply work with the deminimis amount, which may be particularly useful for smaller trusts. This proposed treatment is the same as was introduced for the basic rate band so such a precedent has already been set.

Question 7: Would applying the new rules from a set date cause trustees and practitioners any difficulties?

Applying the new rules from a set date to new trusts would not cause difficulties, but there may be practical difficulties for all trustees having access to full details of the number of trusts set up by the settlor in order to apply the proposals of allocating out the nil rate band. How this would be allocated over settlements over time would need to be determined.

For existing trusts, the transitional provisions require careful thought to prevent difficulties arising, say, if the new rules had a single implementation date and this fell in between the ten year anniversary charge. Should the rules change and exit charges had to be recomputed within the ten year period this would add to, rather than reduce, administrative and computational complexities.
Question 8: In what other way could the new rules be implemented?

There are concerns that these new rules will be retrospective. For example, the proposed measures will override the existing tax treatment of Rysaffe type arrangements. Consequently, it is suggested that existing trusts might be grandfathered but that the trustees could opt in to the new regime. When the trustees do adopt the new rules this should be a permanent change.

The adoption of the new rules should be following the next ten year charge after these new rules are brought in.

Question 9: Are there any issues with using this method as a practical way of dealing with accumulations?

There is unease about the proposal to automatically add undistributed income to capital. This should rest on trust law and, if this proposal is to be adopted, then the date it applies should be much later, say, four years from when it arises; or the income should remain as income if the trustees formally note that they have not added to capital. Conceptually, it does not seem sound to deem income as capital when it is not unless it is to prevent tax avoidance, which is not the case here.

Question 10: Do you anticipate any additional administrative burden resulting from the proposed changes to the calculation of IHT on accumulated income? If so, what would you estimate to be the average cost per trust?

The introduction of this new provision could bring greater certainty. It may also encourage the trustees to have a regular review of the trust’s income and to make an active decision over whether to distribute it or accumulate it.

Question 11: Are there any issues with bringing IHT within the concept of Self Assessment?

The proposed new filing and payments being brought within the concept of self-assessment seems more logical than the existing procedures. However, if the assessment of charges on relevant property trusts is to move to a self-assessment regime then responsibilities are moved from HMRC to the trustees. It is therefore suggested that there should be a requirement on HMRC to advise the trustees of the number of trusts created by any settlor because that information is not always known by the trustees.

Question 12: How much time will trustees and practitioners save as a result of the payment and filing dates being aligned with the SA framework?

There is unlikely to be much difference in time spent but the proposal is more logical.

Question 13: What would the impact be on trustees and practitioners’ clients?

There is unlikely to be much impact.

Question 14: Will alignment bring benefits to customers in terms of reduced fees?

Depending on the final legislative shape of these changes, there may be a limited reduction in fees.