

HMRC Consultation: Income Tax – Low income trusts and estates

Response by the Chartered Institute of Taxation

1 Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 The CIOT broadly supports these proposals which are well-thought out and will ease compliance burdens for personal representatives and trustees with low levels of income.
- 1.3 It is essential for the effective operation of the scheme that guidance for lay trustees and personal representatives is very clear and easily accessible on GOV.UK.
- 1.4 Framing the cap in terms of income is a sensible and pragmatic approach; it will save personal representatives or trustees from undertaking the second step of calculating the tax on that income.
- 1.5 The *de minimis* amount of income should be indexed; if it is not, it is essential that it is reviewed regularly to maintain its efficacy.
- 1.6 A trust which normally has income over the *de minimis* threshold but drops below it in a particular year may find it inconvenient to disrupt its normal pattern of filing, paying tax and making a distribution that is franked by the tax pool; allowing for an election to disregard the *de minimis* provisions would address the concerns of trustees in those circumstances.
- 1.7 Trusts within the *de minimis* income threshold should be treated as non-taxable for the purposes of the Trust Registration Service and guidance on GOV.UK and in HMRC's Trust Registration Service Manual updated accordingly.

2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.
- 2.3 The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

3 Introduction

- 3.1 HMRC published the Consultation “Income Tax: Low income trusts and estates” on 25 April 2022¹ to seek views on proposals to formalise and extend a concession that removes trusts and estates from Income Tax where the only source of income is savings interest and the tax liability is below £100. Under the proposals, low-income trusts and estates with income from any source up to a ‘de minimis’ amount (to be decided following the consultation) will not be subject to income tax on that income.
- 3.2 Our stated objectives for the tax system include:
 - A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
 - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
 - Responsive and competent tax administration, with a minimum of bureaucracy.
- 3.3 We broadly support these proposals which are well-thought out and will ease compliance burdens. We appreciate the collaborative approach taken by HMRC in holding a meeting with representatives of the professional bodies on 20 May 2022 to explore the issues raised by these proposals.
- 3.4 As trusts and estates with low levels of income are less likely to have professionals involved in their administration, it is essential for the effective operation of the scheme that guidance for lay trustees and personal representatives is very clear and easily accessible on GOV.UK.
- 3.5 Our comments on the questions asked now follow.

¹ <https://www.gov.uk/government/consultations/income-tax-low-income-trusts-and-estates/income-tax-low-income-trusts-and-estates>

4 Question 1: Bearing in mind that the proposals aim to reduce burdens on trustees and personal representatives of low-income trusts and estates, do you have comments on the proposal to legislate a *de minimis* system?

- 4.1 Extending the scope of the current concession to cover all forms of estate income (potentially therefore including, for example, rental income and dividends rather than just interest) is a sensible and welcome move. It will be particularly beneficial for personal representatives of estates with a small amount of income. The proposals will spare many the burden of having to make an informal report of estate income, and the consequent income tax payment. HMRC will also be saved the cost of dealing with such small sums. There is a minor environmental benefit in that there will be a saving in paper and power.
- 4.2 We agree that framing the cap in terms of income (£500 is used in the Consultation by way of example) is a sensible and pragmatic approach: it saves the personal representatives or trustees from undertaking the second step of calculating the tax on that income (the approach of the current concession).
- 4.3 The mechanism proposed is that if the net income of personal representatives and trustees is equal or less than the *de minimis* amount, then for the purposes of Step 2 in the Income Tax Act 2007, section 23 calculation it is to be taken as being £0. We agree with this approach as it will afford consistency of treatment to all low income cases, even where personal representatives or trustees otherwise within the terms of the dispensation may have filed a self-assessment return (for example to report capital gains). We have not identified any inaccuracies in the draft legislation.
- 4.4 We recognise that the proposals inevitably create a cliff edge so that income tax will have to be paid on the entire estate or trust income where the *de minimis* amount is exceeded. However, in our view, the benefit to those cases which fall within the proposal (28,000 in the impact assessment) outweighs that disadvantage.
- 4.5 We would prefer the *de minimis* amount of income be indexed; if it is not, then (noting that the current limited concession has been unchanged since 2016) it is essential that it is reviewed regularly to maintain its efficacy.
- 4.6 The experience of our members would suggest that the proposals are more likely to benefit estates in the course of administration than trusts. HMRC's data may, of course, indicate to the contrary.

5 Question 2: Do you have comments on how a *de minimis* system may impact on beneficiaries and settlors of trusts or estates?

- 5.1 We do not think that there is particular difficulty in how these proposals align with the statutory scheme whereby an annual assessment is made on personal representatives and trustees, but the liability of most types of beneficiary (other than trust beneficiaries with an entitlement to income) depends on income being received by them in a given tax year. That disconnect is not increased by these proposals.
- 5.2 Guidance on GOV.UK and the Notes to the various forms R185 should be clear as to how the forms are to be completed when gross income is paid to a beneficiary with no tax deducted.

6 Question 3: Do you have comments on the proposals for discretionary trust tax pool adjustments and interactions with the disaggregation rules?

- 6.1 We agree that the mechanism to apply to payments made from trusts taxable at the trust rate is appropriate: where the income has not been taxed in the trustees' hands, a discretionary payment to a beneficiary will be taxed on the trustees at 45% under Income Tax Act 2007, section 496, subject to any set-off from the tax pool. We doubt that, given the limited scope of the proposals, this deferment of tax would provide sufficient incentive to alter behaviours.
- 6.2 We have concerns about a trust which has income above the *de minimis* level in most years, but in one particular year does not. If that trust is also regularly distributing income then it may be more convenient for the trustees to continue pay their tax each year rather than to find that that their trust lacks a tax pool. The administrative procedures of such a trust may well be set up to file the return, pay the tax and make a distribution appropriate to the tax pool. Adapting to pay additional tax when making distributions may be inconvenient – or worse, if the trustees are inadvertently non-compliant and then find themselves liable to interest and penalties.

We ask that HMRC address this issue by considering adding a further section to the draft legislation along the lines of: "Trustees may elect that section X above shall not apply to a particular trust for a particular year of assessment".

That might be reinforced by another line to the effect that "The filing of a tax return upon the basis that section X above does not apply shall be taken to be a claim for these purposes".

- 6.3 We also agree that it is good to align the anti-disaggregation rule for *de minimis* income with that which reduces the £1,000 band of trust income subject to the lower rates of tax where more than one trust created by a settlor exists in a given tax year. It would not be sensible to have different rules addressing what is essentially the same problem. We note that the greater difficulty for trustees (which the current proposals cannot remedy) remains in how one set of trustees can ascertain whether there are other sets of trustees, and if so how many.

7 Other issues

- 7.1 Since October 2020 all trusts (unless excluded) have been required to register on the TRS. However less information is required of non-taxable trusts (which currently include those that fall within the concession for tax of less than £100 on interest). If the proposals to extend non-reporting and non-taxpaying to trusts within a *de minimis* income threshold are enacted, we would anticipate that such trusts will be treated similarly for TRS purposes and guidance on GOV.UK and in HMRC's Trust Registration Service Manual is updated accordingly.

8 Acknowledgement of submission

- 8.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

15 July 2022