

Written evidence submitted by the Chartered Institute of Taxation (Clause 35 and Schedule 10) further submission (FB23)

Clause 35 and Schedule 10

Settlements: anti-avoidance etc.

Executive Summary

Instead of introducing operative provisions that appear unworkable in practice, our strong preference was to strengthen existing anti-avoidance legislation. That approach, backed up by the General Anti-Abuse Rule and a purposive interpretation based on the *Ramsay* doctrine, would provide a robust barrier to cases of avoidance while minimising complexity and maintaining a practicable code. We suggest that these provisions are deferred and rewritten in these terms.

1. Context

- 1.1 Clause 35 and Schedule 10 (as amended¹ by Amendments 2 to 32) introduce anti-avoidance provisions in relation to the taxation of income arising and gains accruing to offshore trusts. These provisions are part of the reform of the taxation of non-UK domiciliaries but their remit is wider, potentially affecting trustees, settlors or beneficiaries of non-UK resident trusts and UK residents receiving gifts from someone who is non-resident.
- 1.2 There are three main income and capital gains tax codes that apply to non-UK resident trusts; the settlements code², the transfer of assets abroad code³ and the capital gains tax code⁴. Schedule 10 amends all three sets of provisions (although not consistently).

2. Schedule 10 - Non- UK resident settlements: recipients of onward gifts to UK residents (the 'anti-recycling' rule)

- 2.1. We have two main concerns: firstly the severe practical difficulties in operating the anti-recycling rule, and secondly that the complexity of such prescriptive anti-avoidance provisions tends to undermine their efficacy.
- 2.2. The rule attributes payments or benefits received from an offshore trust by an individual who is not subject to UK tax (either because of their non-UK residence or because the individual is a remittance basis user who has not remitted the payment to the UK) to a UK resident who receives an onward gift from that individual. The UK resident is taxed as if he or she receives a direct distribution from the offshore trust.

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/670423/Amendments_2_to_32_to_Clause_35_Schedule_10_-_Settlements_-_anti-avoidance_etc.pdf

² ITTOIA 2005 Part 5 Chapter 5

³ ITA 2007 Part 13 Chapter 2

⁴ TCGA 1992 section 86 et seq.

- 2.3. A UK resident individual in receipt of an onward gift need not be a beneficiary of the trust or indeed have any knowledge of the trust.

How will the recipient know whether what he/she has received is an onward gift within the scope of the provisions?

It appears that UK residents who receive gifts from non-UK benefactors will have the onerous task of establishing whether or not the provider of the gift has received or expects to receive a distribution from an offshore trust.

- 2.4. In addition to the practical difficulties in establishing a liability on a relatively straightforward gift, the rule appears to apply in unforeseen circumstances, for example a gift is not restricted to a gift during lifetime:

Will the provisions apply to a distribution from an offshore trust that is made to a non-UK resident individual who dies and leaves assets under their will (or via intestacy or even forced heirship) to a UK resident?

- 2.5. One of the problems with complex prescriptive anti-avoidance legislation is that it tends to create loopholes and lacunae in particular circumstances.
- 2.6. Instead of introducing operative provisions that appear unworkable in practice, our strong preference was to strengthen existing anti-avoidance legislation. That approach, backed up by the General Anti-Abuse Rule and a purposive interpretation based on the *Ramsay* doctrine, would provide a robust barrier to cases of avoidance while minimising complexity and maintaining a practicable code. We suggest that these provisions are deferred and rewritten in these terms.

11 January 2018