



Law Society
of Scotland

Consultation response

Income Tax: Low income trusts and estates

July 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Tax Law and Trust & Succession Law Sub-committees welcome the opportunity to respond to HMRC's consultation on *Income Tax: Low income trusts and estates*¹. We have the following comments to put forward for consideration.

Consultation questions

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?

We strongly support the proposals to legislate a de minimis system as set out in the consultation. We consider that this will be a welcome reduction in administrative burden for trusts and estates.

We suggest that it would be appropriate for the de minimis limit to be £1000 rather than £500. This would bring the provisions into line with the £1000 basic rate for discretionary trusts and take account of current high levels of inflation.

We consider it is most appropriate to legislate for a de minimus system rather than allowance given the potential complications raised in the consultations. We note there could be questions about how an allowance would interact with the standard rate band. In addition, an allowance approach would benefit all trusts rather than only the low income trusts which are intended to be targeted by the measures.

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

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

We consider that the financial impact on beneficiaries and settlors is likely to be minimal as the same amount of tax will be paid, but it will be paid by the beneficiary rather than the trustees in the first instance. In some cases, where the beneficiary has an available personal savings allowance (PSA) and dividend allowance (DA) it will reduce their tax administration burden because there will be no need to reclaim small amounts from HMRC.

Where a payment is discretionary, the tax credit will still be funded by the trustees via the tax pool adjustment mechanism but where a payment is not discretionary, whether or not the beneficiary receives a tax credit will vary depending on which side of the de minimus amount the income has fallen each year. The inconsistency might make it more difficult for beneficiaries who are not otherwise within the self-assessment system to understand their position.

It is our understanding that at the moment, the de minimus is not being applied where there are capital disposals to be reported – effectively if anything is reported to HMRC, then income tax has to be paid on all of the income. Is it being proposed that this practice is cemented or over-ridden?

In addition, we would welcome clarification as to how the proposed de minimus will interact with the complex estates rules. Where an estate has a very high capital value but very little income it will not qualify for the informal reporting procedure and the executors will have to complete annual tax returns. Does the need to file tax returns override the de minimus or would the executors simply leave income within the de minimus out of the return?

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

In relation to discretionary trust tax pool adjustments, we note the impact of the Scottish differential income tax rate. Under the tax pool arrangements, income entering the pool will be liable at 45% but going out, will be liable at 46%.

For further information, please contact:

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