



30 Monck Street
London
SW1P 2AP

T: 020 73400551
E: info@att.org.uk
W: www.att.org.uk

INCOME TAX: LOW INCOME TRUSTS AND ESTATES

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC consultation document 'Income Tax: Low Income trusts and estates' ('the Consultation') issued on 25 April 2022¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 Further to our earlier engagement with the proposals via the Capital Taxes Liaison Group we are pleased to continue our engagement in this response and we welcome the proposals, which will be of particular value for estates.

2 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?

- 2.1 We are pleased to see the existing approach being put on a permanent footing and widened to other sources of income.
- 2.2 Members report that they find the current concession to be a helpful and practical approach. A broader provision which also applies to small amounts of dividends and small amounts of rental (which could, for example, cover income arising from a wayleave), is therefore a positive move.
- 2.3 This approach is likely to be most beneficial for estates. In respect of trusts, members report that there are few trusts which have a sufficiently low income to benefit from the current concession, but it will be a welcome move for those trusts that will benefit.

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

- 2.4 We agree with setting the *de minimis* at the income level, rather than on the tax liability. This should be clearer for people to understand, be quicker and easier to establish if the exemption applies and be simpler to record if evidence is needed.
- 2.5 Related to the previous point, we think it would be helpful if guidance could make it clear what, if any, evidence PRs and trustees are expected to keep to confirm that they are within the *de minimis* limits in the event of a query by HMRC.
- 2.6 In principle, we would usually call for the avoidance of so called ‘cliff edges’ where small amounts of income can have a big effect on the tax position. With the proposed *de minimis*, an income of £501 would mean a trust needs to do a self-assessment return and pay tax on the entire £501 of income, while £500 would have no liability. However, in the context of an administrative simplification for low income trusts and estates we accept that the resulting cliff edge is a necessary consequence as a line needs to be drawn somewhere. Even when tax is payable at the estate or trust level, beneficiaries may, depending on their personal circumstances, be able to recover the tax paid.
- 2.7 However, given that there is a cliff edge, we consider that whatever *de minimis* level is set, it does need to be reviewed regularly. We suggest it should be reviewed at least every five years, and potentially more often, to ensure that the value of the provision is not eroded over time such that it ceases to be helpful or beneficial. We note that the existing limit on income tax liability, which corresponds to an effective income limit of £500, has been unchanged since 2016. .

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

- 3.1 Feedback from members suggests that the current concession is most useful to small estates and that few trusts will benefit from even the proposed enhancements. Given there will be a benefit for some trusts, we consider that it is worth going ahead with the proposals. However we suggest that HMRC should give consideration in the future to looking at the wider position for the simplification of income tax for trusts, and smaller trusts in particular.
- 3.2 Some steps were taken to consider the issue in late 2018/early 2019 as part of HMRC’s consultation ‘The taxation of trusts: a review’² and the ATT commented in meetings and in our submission at section 7³ on various options. We would welcome further engagement regarding the simplification of income tax for trusts.

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

- 4.1 Since the overall tax pool and ‘top up’ payments with the new proposals should not exceed the tax paid under the old system, then the fact that tax pool adjustments will be higher in years in which a distribution is made but nil in years in which the trust can take advantage of the *de minimis* provision is largely a question of timing and we don’t see any particular issues with this in principle.

² <https://www.gov.uk/government/consultations/the-of-taxation-of-trusts-a-review>

³ <https://www.att.org.uk/sites/default/files/190226%20Taxation%20of%20trusts%20-%20ATT%20response.pdf>

- 4.2 Our main concern is how this will actually work in practice, since the primary benefit to a trust of the *de minimis* provision is not so much in saving tax as the saving in both the time and costs involved in preparing a tax return. Where the tax due is small, the cost of preparing the tax return can easily exceed the tax liability. Trusts which are not issued with a return will be able to claim the benefit of the provision by default and will only need to take action if they do not fall within it. A trust which is issued with a return must complete it or make a formal application to have it withdrawn. Moving in and out of the requirement to submit a tax return is not always straightforward - in example 2 of the consultation, the trust would still have to submit a tax return in years 1 and 2 if one has been issued, even when income is under £500. We presume therefore that it will be sufficient, where a return is issued, for the trustees or their agent to call HMRC to confirm that the low-income provision applies, and for the requirement for a tax return to be cancelled on that basis.
- 4.3 As noted above, while we welcome the extension in general, the main benefit of the *de minimis* provision is for estates, and we think it would be helpful to consider the broader simplification of income tax for trusts separately.

5 Other comments

- 5.1 Prior to October 2020, only trusts which paid one of five taxes (including income tax and CGT) were required to register on the Trust Registration Service (TRS). Since that date, all trusts (unless they fall within a specific exclusion) are required to register on the TRS, but non-taxable trusts do not need to supply as much information as taxable trusts. If the current concession is extended and legislated as proposed, then we presume that a trust within the proposed provisions would qualify as a non-taxable trust. It would be helpful if guidance on GOV.UK and in HMRC Trust Registration Service manuals could confirm this point either way. For many trusts, the burden of the TRS is likely to exceed the burden of the self-assessment system, so any small assistance to reduce the work involved in registration would be welcome.

6 Contact details

- 6.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact us at atttechnical@att.org.uk.

The Association of Taxation Technicians

7 Note

- 7.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,000 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.