



TAXREP 63/12

(ICAEW REP 187/12)

## ICAEW TAX REPRESENTATION

### OECD MODEL TAX CONVENTION: REVISED PROPOSALS CONCERNING THE MEANING OF “BENEFICIAL OWNER” IN ARTICLES 10, 11 AND 12

Comments submitted on 15 December 2012 by ICAEW Tax Faculty in response to OECD discussion draft] *OECD Model Tax Convention: Revised proposals concerning the meaning of “Beneficial Owner” in Articles 10, 11 and 12* published on 19 October 2012

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## INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the discussion draft *OECD Model Tax Convention: Revised proposals concerning the meaning of “Beneficial Owner” in Articles 10, 11 and 12* published by OECD on 19 October 2012.
2. We should be happy to discuss any aspect of our comments and to take part in any consultations on this area.
3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty’s Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

## WHO WE ARE

4. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW’s regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
5. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

## OUR COMMENTS

7. The overall objective of the current work of OECD in this area is to improve the clarity of the meaning of the beneficial owner test which is relevant for Articles 10, 11 and 12 of the Model Tax Convention which deal with the payment of Dividends, Interest and Royalties respectively.
8. Further changes are put forward to the proposal in the earlier discussion draft in relation to paragraph 12.4 of the Commentary to Article 10 where the beneficial owner test can be failed if the recipient has an obligation to “pass the payment on”. The Commentary goes on to state that there needs to be a “contractual or legal” obligation to pass the payment on and that this must be related to the payment received. At the moment there is no clarity as to how to determine whether the two payments are related such that the beneficial owner test is not satisfied. We strongly urge OECD to clarify this point which is clearly an absolutely critical factor.
9. We are also concerned that the removal of comments in paragraph 12.1 to the Commentary as to the relative importance of the domestic law meaning of “beneficial owner” detracts from the position of the earlier draft which did seek to give a clear answer to the on-going debate as to whether the test is to be addressed as a treaty concept or should be interpreted by reference to domestic law. We support the view of other commentators that an autonomous treaty meaning should be given to the term “beneficial owner”.

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## APPENDIX 1

### ICAEW TAX FACULTY’S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person’s tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see [icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx](https://www.icaew.com/en/technical/tax/tax-faculty/-/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx) )