



HM Revenue
& Customs

Authorised contractual schemes: reducing tax complexity for investors

Consultation document

Publication date: 9th August 2016

Closing date for comments: 3rd October 2016

Subject of this consultation:	This consultation covers tax rules for investors in authorised contractual schemes (ACS) and reporting requirements on the ACS.
Scope of this consultation:	This consultation document outlines capital allowances principles, the difficulties which may affect some ACS investors and potential solutions. It also outlines the government's proposals for changes to requirements on the ACS to report information both to investors and to HM Revenue & Customs. It invites views on these issues and invites suggestions of other tax changes which would improve the tax framework in this area.
Who should read this:	We invite comment from current and potential investors in ACS and their advisers, as well as industry specialists such as trade bodies, fund administrators, and other interested parties.
Duration:	9 th August to 3 rd October 2016
Lead official:	Colin Strudwick, HMRC
How to respond or enquire about this consultation:	Written responses can be submitted by email to: colin.strudwick@hmrc.gsi.gov.uk Alternatively, you can post written responses to: Colin Strudwick Corporation Tax, International & Stamps, HM Revenue & Customs Room 3C/04, 100 Parliament Street London SW1A 2BQ Enquiries about the content or scope of the consultation and requests for hard copies of this document should be addressed to Colin Strudwick as above.
Additional ways to be involved:	We are willing to meet industry specialists during the consultation period to discuss the issues raised and assess the impact of various options. If you are interested in attending a meeting, please contact Colin Strudwick as above.
After the consultation:	Options will be reviewed in the light of representations received. The government expects to publish its response at Autumn Statement, and draft legislation shortly afterwards.
Getting to this stage:	ACS are transparent collective investment schemes. They were introduced in 2013 to help provide the necessary framework to ensure that the UK can be the location of choice for international funds. The industry has raised questions on the practicalities of allocating capital allowances to investors in some ACS funds. The government also wants to clarify what information ACS funds should provide to investors and to HMRC to enable investors to pay the right tax. This consultation invites comment on those issues as well as comments and suggestions on any other improvements that might be made to the current rules.
Previous engagement:	There has been no formal tax consultation in relation to ACS since their introduction. This consultation follows informal discussions between HMRC and industry specialists.

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1. Introduction

What is an Authorised Contractual Scheme (ACS) and who can invest?

1.1 An ACS is an onshore collective investment scheme. It has no legal personality and does not constitute an entity in its own right. It is essentially a pool of assets held and managed on behalf of a number of **participants** (the investors) who are co-owners of the assets.

1.2 The scheme has an **operator** (or manager) who is responsible for running the scheme. The operator is also responsible for decisions about the investment of participants' funds in accordance with the terms of the scheme. The scheme also has a **depository** who is responsible for holding and safeguarding assets in the scheme. The depository will acquire and dispose of assets on behalf of the participants on the instructions of the operator.

1.3 An ACS must be authorised by the Financial Conduct Authority (FCA) and the operator and depository must also be FCA-authorised persons.

1.4 An ACS may take one of two legal forms:

- a partnership ACS, formed as a limited partnership; or
- a co-ownership ACS (CoACS), formed under contracts agreed by the depository, operator and participants.

1.5 It is a regulatory requirement that investors in an ACS must be either:

- an institutional investor; or
- any other person who invests a minimum of £1m.

1.6 The government understands that most current or prospective investors in ACS are insurance companies or pension funds. Other institutional investors may participate in an ACS and retail investors can indirectly invest in an ACS via a feeder fund.

Tax

1.7 An ACS is not a taxable entity and is not within the charge to direct taxes. Each participant is responsible for tax arising on their own share of income (and gains, for partnership ACS) at their own rates of tax. It is the participant who is entitled to claim any available capital allowances. For this reason an ACS is described as “tax transparent”.

1.8 Where Stamp Taxes are payable on acquisitions then the operator of the ACS will account for these on behalf of the participants. Supplies of investment management services to an ACS are exempt from VAT.

Who is affected by this consultation?

1.9 Chapter 2 of this consultation mainly affects “taxable investors” – those institutions and individuals who may be entitled to claim capital allowances. While that does not include most current ACS investors, it is important to get the rules right for those who are affected.

1.10 Chapter 3 of this consultation affects all ACS and their investors.

Consultation purpose and scope

1.11 The aim of this consultation is to seek views on potential changes to the tax rules for investors in ACS and the reporting requirements on operators of ACS to address known issues. This will not change the tax transparent status of ACS.

1.12 Chapter 2 outlines the broad principles which seek to clarify and formalise how capital allowances rules apply to taxable investors. The government recognises this is a complex area and welcomes discussions with industry specialists during the consultation period, as well as written responses at the end.

1.13 Chapter 3 outlines the case for new reporting requirements on ACS operators and invites comment on whether they are effective and proportionate, and whether there are better alternatives.

1.14 We also welcome comments and suggestions on any other improvements that might be made to the current rules in other areas.

2. ACS investors and capital allowances

Background

2.1 The following issues mainly affect ACS investors who are within the charge to tax – this would exclude, for example, an exempt entity such as a pension fund.

2.2 Because ACS are transparent for tax purposes, the investors, rather than the ACS, are entitled to claim any available capital allowances. Capital allowances will only be available, however, where there is a qualifying activity – such as carrying on a trade or a property business.

2.3 Where an ACS has invested in buildings, for the purposes of capital allowances the claimant must have an “interest in land” and the special rules for fixtures in buildings may also be relevant.

2.4 The government understands that the existing capital allowances rules so far as they apply to partnerships generally also work appropriately for partnership ACS. For CoACS, there are two broad types of issues: legislative uncertainty and administrative burden.

Question 1 – Do you agree that the existing capital allowances rules so far as they apply to partnerships generally also work appropriately for partnership ACS? If you do not, please explain the difficulties that arise.

Legislative uncertainties affecting investors in CoACS

2.5 There is some uncertainty over whether each investor on their own can satisfy the condition of having a qualifying activity. For fixtures in buildings, there is uncertainty over whether the investors have an interest in land.

2.6 This consultation seeks to identify ways to address these uncertainties for investors, as well as administrative burdens (below), through looking at activity in the CoACS as a whole.

Question 2 – Do you believe that legislation should clarify, for capital allowances purposes: (a) what is a qualifying activity for investors in a CoACS; and (b) what is an investor’s interest in land held by a CoACS?

Question 3 – Do you believe that providing legislative certainty resolves the problem? In doing so, would that create any further problems?

What are the administrative burdens in relation to CoACS?

2.7 The operator of a CoACS will manage or outsource the management of a property business on behalf of the investors. However, currently it would be each investor who is entitled to claim capital allowances that would be expected to make their own claim. This presents obvious difficulties as each investor would need access to detailed information in order to calculate the capital allowances to which they may be entitled.

2.8 If one of those investors sells their holding, then there could be a part disposal for capital allowance purposes. Currently this could cause difficulties: under the rules for fixtures in buildings, unless an election under section 198 of the Capital Allowances Act is made the capital allowances would be lost to future owners of the building. (An election under section 198 ensures that purchaser and vendor use the same value for the fixture and that the value cannot be greater than original cost.) Managing the making of such an election when there are multiple investors is likely to be difficult and burdensome.

2.9 These difficulties and burdens increase with a greater number of investors, regular disposals of units or disposal of buildings by the CoACS. However, only the operator and depository of the CoACS, not the investor, would have the information necessary to calculate capital allowances and to coordinate the making of relevant elections.

2.10 One possible solution would be to provide legislation that permitted the operator of the CoACS to compute capital allowances looking at the activities of the CoACS as a whole and notify those capital allowances, as well as balancing allowances and balancing charges, to the investor. Legislation could also enable the CoACS to make Section 198 elections on behalf of the investor. This could enable investors to ensure that they claim the right allowances and pay the right tax without an unreasonable additional administrative burden.

Question 4 –What are the pros and cons of legislation enabling the CoACS to compute capital allowances on behalf of investors? Would the administrative burden be prohibitive?

Question 5 – Are there any other options to address the problems outlined in this chapter? What are the pros and cons for those options?

3. ACS: Information requirements

Background

3.1 Tax legislation already imposes certain information reporting requirements on UK collective investment schemes and offshore reporting funds. For the latter, this applies whether or not the scheme or fund is opaque or transparent. These requirements help UK investors to pay the right amount of tax, and enable HMRC to help customers do that.

3.2 The government wants to consider whether similar reporting requirements should be placed on ACS and how this could be done in an effective and proportionate way. Comments are invited on the impact of the following proposals taken as a whole.

Information provided to investors: context

3.3 An ACS is transparent for tax purposes, so the investor is liable to pay any tax due and may be entitled to claim any available reliefs. However, it is the operator and depositary of the ACS who hold the information that would enable investors to comply with their tax obligations.

3.4 Whilst there may be existing contractual or regulatory requirements placed on ACS to ensure certain information is passed to investors, the government invites views on whether specific tax rules should be introduced to ensure that investors and HMRC have the right information to ensure the right tax is paid.

Information provided to investors: proposal

3.5 The government proposes to introduce a legal requirement that the operator of the ACS must provide each investor with sufficient information to meet their UK tax obligations with respect to their participation in the ACS.

3.6 This requirement is modelled on the existing rule for transparent offshore reporting funds (regulation 92D of the Offshore Funds (Tax) Regulations 2009 SI2009/3001). It is well-known in the funds industry and offers certainty to investors. Given that some ACS have already set up systems for providing tax information to investors, it offers the flexibility to accommodate existing systems where possible as well as new ACS that may be set up.

3.7 The government considers that “sufficient information” would include information about income arising to the investor, information enabling the investor to calculate capital gains, information enabling the investor to claim capital allowances or to pay balancing charges as appropriate, and so on.

3.8 As a result of the considerable variation in the investments ACS may have, it is not proposed that legislation should specify what constitutes “sufficient information” as no definition could reasonably cover all cases.

Information provided to HMRC: context

3.9 Most UK-resident funds and offshore reporting funds are required to submit some form of tax or information return to HMRC declaring any tax due and / or

providing information which HMRC uses more widely, such as to ensure the right tax is paid by investors.

3.10 There is no specific requirement on a CoACS to submit a tax return as it is not itself liable to tax. Whilst partnership ACS are not excluded from the general requirement to submit a partnership return they, like CoACS, are not currently subject to any specific tax rules requiring them to provide certain information to investors so that those investors can correctly determine their own tax position.

3.11 The government is therefore proposing the introduction of common requirements for all ACS which are effective and proportionate.

Information provided to HMRC: proposal

3.12 The government proposes to introduce a legal requirement that the operator of all ACS must provide the following information to HMRC:

- On an annual basis, a list of all investors in the ACS at any stage in the previous accounting period; and
- On request, details of any information provided to investors for any given period, as well as any other information that HMRC might consider to be necessary.

3.13 This proposal recognises the fact that an ACS is not itself a taxpayer and would limit the amount of mandatory, annual information to be provided. At the same time, it retains HMRC's ability to obtain the information it needs to carry out its statutory function. HMRC could request information from an ACS as part of a specific enquiry or investigation, or as part of a programme of routine checks on ACS investors, or in other circumstances as the need arose.

Questions

Question 6 – What would be the impact of introducing a legal requirement on ACS operators to provide sufficient information to investors to enable them to meet their tax obligations (as outlined in paragraphs 3.5 to 3.8)?

Question 7 – Is there an alternative option which is both effective in ensuring that investors can meet their tax obligations and proportionate?

Question 8 – What would be the impact of introducing a legal requirement on ACS operators to provide HMRC with an annual list of ACS investors and other information on HMRC's request (as outlined in paragraphs 3.12 and 3.13)?

Question 9 – Is there an alternative option which is both effective in ensuring that HMRC has sufficient information to carry out its statutory function and proportionate?

Information requirements: compliance

3.14 It is generally the case that taxpayers who fail to submit a tax return are subject to a penalty. That principle is reflected in relation to funds, where a failure to provide information to HMRC or to investors results in a penalty or other sanction.

3.15 However, ACS do not submit tax returns because they are not themselves taxpayers. They do not require any approval from HMRC which might be withdrawn as a consequence of failing to meet obligations upon them, as may be the case for other collective investment vehicles.

3.16 The government would therefore like to consider whether a failure to provide information to HMRC or to investors should result in a financial penalty. HMRC would need to give further consideration to when a penalty should apply, how much it should be, and appeals procedures. Alternatively, the government invites comments setting out any existing regulatory or contractual obligations on an ACS that might ensure compliance with any reporting requirements placed on it.

Question 10 – Is there a need for a sanction should an ACS fail to provide information to investors or to HMRC? If so, what sanction should apply and when? If not, please explain how an ACS would otherwise be obliged to comply with this requirement.

4. Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	Impact expected to be negligible, subject to review during consultation. The final costing will be subject to scrutiny by the Office for Budget Responsibility, and will be set out at Autumn Statement 2016/Budget 2017.
Economic impact	Impact expected to be negligible, subject to review during consultation.
Impact on individuals, households and families	Only individuals investing a minimum of £1m can invest in an ACS, so the impact on individuals is expected to be negligible.
Equalities impact	The measure is expected to have no impact in relation to the protected characteristics.
Impact on businesses and civil society organisations	This measure will have an impact on ACS, administrators and institutional investors (such as insurance companies and pension funds). This consultation seeks evidence on the administrative burden and other impacts associated with the proposals.
Operational impact (£m) – [HMRC or other]	It is not anticipated that implementing this change will incur any additional costs / savings for HMRC, but we will keep that under review as the measure develops.
Other impacts	Other impacts have been considered and none have been identified.

5. Summary of Consultation Questions

Capital allowances

Question 1 – Do you agree that the existing capital allowances rules so far as they apply to partnerships generally also work appropriately for partnership ACS? If you do not, please explain the difficulties that arise.

Question 2 – Do you believe that legislation should clarify, for capital allowances purposes: (a) what is a qualifying activity for investors in a CoACS; and (b) what is an investor’s interest in land held by a CoACS?

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Question 5 – Are there any other options to address the problems outlined in this chapter? What are the pros and cons for those options?

Information requirements

Question 6 – What would be the impact of introducing a legal requirement on ACS operators to provide sufficient information to investors to enable them to meet their tax obligations (as outlined in paragraphs 3.5 to 3.8)?

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Question 9 – Is there an alternative option which is both effective in ensuring that HMRC has sufficient information to carry out its statutory function and proportionate?

Question 10 – Is there a need for a sanction should an ACS fail to provide information to investors or to HMRC? If so, what sanction should apply and when? If not, please explain how an ACS would otherwise be obliged to comply with this requirement.

6. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 5.

Responses should be sent by 3rd October 2016, by e-mail to colin.strudwick@hmrc.gsi.gov.uk or by post to:

Colin Strudwick
Corporation Tax, International & Stamps
HM Revenue & Customs
Room 3C/04, 100 Parliament Street
London SW1A 2BQ

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Relevant (current) Legislation

Regulatory basis of authorised contractual schemes

Section 235A of the Financial Services and markets Act 2000

Capital Allowances

Capital Allowances Act 2001

Requirements for offshore funds for reporting to investors

Chapter 7 of Part 3 of the Offshore Funds (Tax) Regulations 2009 (SI 2009/3001)