Chartered
Institute of
Taxation

30 Monck Street
London SW1P 2AP
T: +44 (0)20 7340 0550
E:post@ciot.org.uk

Ref: PC(UK)

12 August 2020

Mr Mark Pickard
Office of Tax Simplification
Room G41
1 Horse Guards Road
London
SW1A 2HQ

Via email: ots@ots.gov.uk

Dear Mark

Capital Gains Tax (CGT) Simplification Review[1] – Stage 1 High Level Issues

Thank you for inviting us to follow up the useful video-call meeting held with our representatives on 7 August with brief points on three high-level areas of concern:

1. We were puzzled at how the line of enquiry fits into the OTS's statutory remit of simplification when it appears to move into areas of tax policy;
2. We thought there should be more recognition of the contrasts between income regularly arising and capital gains, especially from long held assets; and
3. Departing from the current rebasing for CGT purposes on death, whatever its other merits, would introduce elements of complexity

As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

Our stated objectives for the tax system include:

1 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900348/CGT_Call_for_Evidence.pdf

- A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.

The OTS's statutory remit

We appreciate the difficulty in distinguishing 'simplification' from 'policy' changes and proposals as inevitably they are interlinked. We also appreciate that the OTS goes about its work in a very consultative way. Nevertheless, we would hope that fundamental changes to the scope of CGT would be the subject of 'blue skies' consultation and further engagement at later stages as proposals are worked up in more detail, as envisaged in the Tax Consultation Framework[2]. We wonder how a central line of enquiry into extending CGT to the taxation of gains on death fits within the OTS's function set out in Finance Act 2016 section 185(1), that it is to 'provide advice to the Chancellor on the simplification of the tax system'.

A related point is that if the scope of CGT were to be altered in such a way, the impact of any change on the interaction with (in particular) income tax and inheritance tax would need to be fully considered, and the potential for unintended consequences minimised: it is not clear that these issues would be in scope of the current review. Furthermore, the exclusion of trust and corporate capital gains from the current review means that the impact of CGT on all classes of potential taxpayers cannot be addressed.

Distinction between capital gains and income receipts

There appears to be inadequate appreciation of the differences between capital gains, realised on the one-off disposal of a capital asset, and income receipts, arising on an annual basis. A capital gain potentially represents two elements, an increase in value relating to inflation and a real 'profit' which has built up over time. The tax system has, at different times, recognised the inflationary element by providing an indexation allowance, a tapering of the tax rates, and lower tax rates on capital gains than on income. We note that the impact of a one-off charge on insurance bond chargeable event gains is mitigated through top-slicing relief by reference to the years of ownership. Distinctions between income and capital gains become even more marked when considering the position of an unrealised gain (for example, on a lifetime gift or, potentially, on death).

Treatment of capital gains on death

The current approach whereby an asset is rebased to its market value on death has the merit of simplicity in both concept and administration. The personal representatives (executors of a Will or administrators of an intestacy) are spared the difficulties of establishing historic base costs in circumstances where they may have had little (if any) personal knowledge of the deceased or their affairs, and where the deceased's records may be inadequate or even non-existent. It is far from unusual, for example, for the personal representatives of a deceased farming partner to be presented with a balance sheet entry for 'land and buildings' on the accounts. That figure has been carried forward over two changes of accountant, there are no explanatory notes or supporting records and what is historic cost (and of what assets) and what represents expenditure which may be allowable improvements for CGT purposes is unclear. Under the current CGT regime a line can be drawn and the position (based on a date of death valuation) clarified for

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/89261/tax-consultation-framework.pdf

future dealings. The merits of this practical approach cannot be over-emphasised; conversely, the cost to taxpayers in trying to establish the facts, of any departure from it.

We observe that the current interaction between CGT and IHT represents a rough and ready trade-off built up over a number of years: in broad terms, IHT is primarily charged on death and CGT is charged on lifetime disposals. Changing one element – the CGT uplift on death – to a no-gain/no-loss holdover would upset that 'balance'. A *quid pro quo* might be a general CGT holdover for all lifetime gifts to provide neutrality in the CGT treatment for gifts, whether made during life or on death. It is difficult to gauge how any such changes might affect taxpayers' behaviour with regard to lifetime gifts: some might be encouraged towards making lifetime gifts; others however would still retain assets until their death, either to provide financial security in their own mature years or not wishing to risk the next generation dissipating their assets through divorce or insolvency.

It is not possible to assume that one 'improvement' will simply flow through the existing system without adverse effects or behaviours elsewhere. We suggest that the full picture be considered through an overarching review of the policy objectives and scope of both taxes, to include both life and death transfers, and trusts.

To the extent that a problem is perceived due to 'double relief' from both IHT and CGT on death, if the major difficulty lies where a farm or business has attracted APR or BPR and is sold soon after death with minimal (if any) tax charged, one approach might be to address any deficiency in the IHT regime and consider whether the APR/BPR clawback provisions which apply to a lifetime transfer might appropriately be extended to death?

Additional complexities would arise if a 'no-gain/no-loss' holdover CGT regime were to be applied to the transfer on death, but limited to cases where an IHT relief or exemption applies. Immediately, complication is introduced by having two classes of estate: those IHT taxable estates where the uplift would apply and those cases involving the spouse or charity exemption or the APR and BPR reliefs where a 'no-gain/no-loss' regime would apply. However there is also a third category (creating even more complexity): what would be the CGT regime for those estates which lie below the IHT threshold?

In applying a CGT 'no-gain/no-loss' holdover regime where an IHT relief or exemption applies, specific areas of complexity include the treatment of:

- A partially-exempt estate (e.g. 50% to spouse, 50% to children); and the spousal interest might well be through an Immediate Post-Death Interest trust;
- A specific asset left to multiple beneficiaries, some of whom are exempt; and
- Property to which a 50% APR or BPR rate applies.

The OTS IHT Review (2nd Report)[3] at 4.33 put forward three suggestions 'on how to approximate [to] a sensible result without creating unnecessary complexity'. That report recognises the difficulties posed by the suggested solutions. We agree with that recognition, and are not convinced that any of the suggested solutions avoid 'creating unnecessary complexity': all require additional and potentially complex valuations, and the need for enhanced record keeping - the opposite to simplicity. That would also incur further cost for the taxpayer.

---

3 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816521/Final_Inheritance_Tax_2_report_-_print_copy.pdf

We think this demonstrates the pitfalls of attempts at piecemeal reform. Trying to reform one aspect of the imbalance between lifetime and death transfers simply by introducing a death uplift does not truly deal with the complexities and inconsistencies of IHT and CGT as a whole, particularly after IHT was 'reformed' in 1986 and then 2006 away from the original Capital Transfer Tax model. What is required is a proper look at capital taxation generally including trusts. Some of the dangers of a piecemeal approach to reform and criticisms of the death uplift were well set out in a recent British Tax Review article by Mr C Whitehouse which we attach as an Appendix for completeness.

We remain willing to discuss further any of the issues raised.

Yours sincerely

John D. Bunker LL.B CTA TEP
Chair, CIOT Private Client (UK) Committee

The Chartered Institute of Taxation

The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

APPENDIX

The Office of Tax Simplification's second inheritance tax report

Chris Whitehouse*

Journal Article

British Tax Review

B.T.R. 2020, 2, 137-143

Subject
Tax

Keywords
Inheritance tax; Lifetime gifts; Nil-rate band; Office of Tax Simplification; Pre-owned assets

B.T.R. 137 The first Office of Tax Simplification (OTS) report was published in November 2018 and was concerned with the administrative aspects of inheritance tax (IHT).[1] The second report—entitled rather ominously[2] *Simplifying the design of Inheritance Tax* (the Second Report)—was published in July 2019.[3] Overall the recommendations seem calculated to cause new difficulties for taxpayers and their advisers whilst there is minimal technical analysis of the tax and its history.

The omissions

Anyone with even a nodding acquaintance with the tax would be able to identify the areas where the law is impenetrable and indeed its raison d'etre unclear. First, there is the residence nil-rate amount and notably the downsizing provisions (which have already had to be modified since the original legislation did not work as intended!).[4] The Second Report concludes

"the residence nil rate band is still very new, and more time is needed to evaluate its effectiveness before recommendations can be made on how to simplify it".[5]

The discriminatory aspect of the relief is noted as a matter going to the underlying policy rather than to simplification (and so is outside the remit of the OTS!).[6] The second area is the pre-owned assets tax which—lest it be forgotten—was designed to plug the holes in the reservation of benefit rules. The curious might consider that if the reservation of benefit rules were defective it would have been simpler to amend them rather than call for income tax support! Chapter 7 of the Second Report simply bypasses discussion of the pre-owned assets tax (POAT); it recommends that the Government review the POAT rules to consider if they are still necessary.[7] Also in Chapter 7 it is notable that the Second Report has nothing to say about the gift with reservation ***B.T.R. 138*** of benefit (GWR) rules themselves save to give a very basic example of their operation.[8] Given the history of how this legislation was resurrected, the subsequent revisions that have been necessary, and the continuing difficulties that cases such as *Hood v HMRC*[9] reveal,[10] is this not an area ripe for simplification and clarification?

The use of the nil-rate band and paying tax on lifetime gifts

Chapter 3 of the Second Report is concerned with the payment of IHT on lifetime gifts. The OTS in its observations comments that taxing the gift recipients is "counter intuitive".[11] It also notes that allocating the nil-rate band to the earliest gift first can cause "inequalities".[12] All of which leads the OTS to suggest either reforming or amending the existing framework.

Reform, it suggests, will involve the estate paying the IHT due on lifetime gifts with the nil-rate band being allocated proportionately across the total value of all lifetime gifts with the balance (if any) being available to the estate. Putting the burden of tax on the estate is "more intuitive", although the OTS "is aware that this would be quite a significant change to the way Inheritance Tax is calculated and paid"[13] (surely an understatement!). Exciting times indeed for executors if this change were to be implemented: they will, for instance, be required to gross up gifts in appropriate cases in order to calculate the correct amount of tax payable. Two other points: if the estate does not have sufficient assets to pay the lifetime tax then HMRC would, as now, be able to recover tax from the donees, whilst the OTS recognises that "this change would affect any testators who wanted lifetime gift recipients to bear any Inheritance Tax on those gifts".[14] The implication is that no freedom of choice is to be available to testators and that this change (if introduced) would be mandatory. In the writer's experience taxpayers who make substantial lifetime gifts (and we are only concerned with gifts above the nil-rate band) will take professional advice and be in no doubt where the burden of tax lies. If they wish to relieve the donee from any possible charge then they will so provide in their will (in effect leaving a pecuniary legacy to that donee). Perhaps it is not intuitive, but it seems to work well.

The proposed change in allocating the nil-rate band involves dividing it between lifetime gifts when the taxpayer dies rather than on a first come basis. Accordingly, 10 equal gifts made in the seven years (or five if the reduction discussed above is made) before death will each receive ***B.T.R. 139** a nil-rate allowance of £32,500. As noted above, this is to "prevent confusing inequalities between the tax paid by different gift recipients".[15] This change—were it to happen—will finally destroy the cumulation principle which had been a bedrock of capital transfer tax (CTT).[16] Any such change may, of course, pose problems for trustees when the taxpayer makes settled lifetime gifts. At the moment, standard advice is to set up the trust *before* making outright gifts so that the trust can take the benefit of the nil-rate band both in respect of its creation and in the calculation of 10 year and exit charges. Were this change to be implemented this planning would not be effective, since later gifts would take a proportionate part of the nil-rate band. One way of dealing with these difficulties, the OTS suggests, would be for trusts to be given "a de minimis Inheritance Tax threshold instead of, and separate from, the nil rate band".[17] An idea along these lines was debated at the time of the 2014 IHT consultation on trusts[18] in the context of changing the rules taxing multiple trusts; it was then rejected by HMRC as being too complex but no recognition of these difficulties is given in the OTS Second Report.

So far as the IHT treatment of trusts generally is concerned, the OTS opts out of making any recommendations since it feels that it is more appropriate for the separate HMRC trust consultation announced in 2018[19] to deal with it so that the IHT treatment can "be addressed in the round alongside other taxes".[20]

Conclusion on the proposed changes

The current system provides an element of certainty in that:

1. the allocation of the nil-rate band on a first come basis enables taxpayers to plan their gifts—and notably settled gifts—efficiently;
2. with the burden primarily on the donee in the event that the tax becomes payable, taxpayers are free to draft wills to allocate that burden if they so wish; what might be more useful is to give the personal representatives (PRs) a statutory right of recovery from donees who refuse to pay the tax as was the case under estate duty; currently the PRs' rights of recovery may exist in equity but are not completely clear.

Under the proposals, it will still be necessary for the donee to retain assets in case there are insufficient assets in the estate to pay the tax. In terms of simply amending (rather than reforming) the existing legislation, the alternative suggestion of the OTS is that if the donee does not pay ***B.T.R. 140** the tax then the estate should only be liable to the extent that it has assets which are (under the terms of the will) due to be distributed "to the gift recipient in question".[21] Does that mean, therefore, that in the case where (say) the taxpayer gives his daughter a full entitlement to her share *inter vivos* because she is about to emigrate to Canada and leaves his estate on death to his son, and the daughter fails to pay the IHT, that HMRC cannot recover any tax from the estate? Bound to be a popular change in Nottingham…

The seven year period

A seven year period was introduced in 1986[22] and mirrors the period which had applied at the time when estate duty was killed off. The length of this period might be thought to be above all a matter of fiscal policy: to have a tax that only applies to assets owned at death would invite the making of deathbed gifts.[23] Any period selected is therefore a matter of policy and at various stages the estate duty period was one year, three years and five years. The OTS recommends reducing the period to five years on the basis that it is difficult to obtain accurate records as far back as seven years, and not much tax is raised in respect of gifts made in years six to seven before death. Of course, in those years substantial taper relief applies (at 60 per cent and 80 per cent respectively) and the OTS recommends that with a shorter period taper relief should be abolished. Accordingly, full tax will be due throughout the five year period (that is, the 20 per cent reduction after three years and 40 per cent after four will not apply). The record keeping issue also arises in the case of gifts with reservation where it remains necessary to investigate gifts made at any time after 18 March 1986.[24]

The 14 year period

It has always been a principle of IHT that chargeable transfers (that is, lifetime gifts which are not potentially exempt transfers (PETs)) are cumulated over a seven year period. Hence it is necessary to know what the cumulative total of transfers is at the time when a later transfer is made. The OTS gives the example of a gift into trust of £325,000 in 2009, a PET in 2013 of £20,000 followed by the death of the taxpayer in 2018. The PET becomes chargeable at the time when it is made (in 2013) and, because the gift to the trust uses up the nil-rate band, the PET is taxed at 40 per cent.[25] This is often referred to as the "PET trap". Needless to say, it is said to be "confusing" and the OTS recommends that "it would be desirable to remove this…feature of the system even if the other aspects of the recommendations package are not taken forward".[26] This means that all gifts made more than five years (or seven years if the survivorship period is not altered) before death must be ignored when calculating the IHT on death (see paragraph 2.23 of the Second Report). The effect of this proposal where there are two immediately chargeable transfers, for example transfers into two trusts—one made within seven years (or five years if ***B.T.R. 141** the period is changed as the OTS suggests) of the other—is unclear. Then (presumably) there will still be a tax charge (at life rates) at the time of the transfer into the second trust but if the taxpayer dies more than seven (or five) years after the creation of the first settlement, no supplementary charge. There is a suspicion that the importance of the timing of a transfer of value is sometimes lost in the Second Report: at paragraph 2.22, for instance, it is stated that by reducing seven years to five and ending taper relief all "[g]ifts made less than 5 years before death would then be subject to Inheritance Tax at the same rate as the assets held by the deceased at the time of death"[27] which is, of course, incorrect, since they will benefit from a full nil-rate band at least under the current system. The complexities of how the nil rate band works are not really properly understood.

Lifetime gift exemption

This is dealt with in Chapter 1 of the Second Report and it is striking that the OTS refers to the tax applying to gifts[28] where the trigger for an IHT liability is a transfer of value which is chargeable. Generally, the Second Report refers to an individual but in paragraph 1.3 there is reference to "the person" making a gift, and it is important to remember that whilst a person can make a transfer of value only an individual can make a chargeable transfer of value. There are also inaccurate references to the nil-rate band reducing the value of gifts: it does no such thing! That portion of a chargeable transfer falling within the nil-rate band is taxed at 0 per cent.[29]

The lifetime gift exemptions have lagged behind inflation: the annual exemption of £3,000 has been frozen since 1981 (inflation linked, it would now be £11,900); the small gifts exemption of £250 frozen since 1980 (inflation linked, it would now be £1,010); whilst the marriage/civil partnership exemption was fixed in 1975. It is a landscape the OTS considers creates "confusion" and so it recommends that the annual and marriage/civil partnership exemptions be replaced by a "personal gift allowance".[30] There would be no roll-over of an unused amount (as to a limited extent applies to the annual exemption). The small gifts exemption would be retained (it "prevents the need to account for small transactions and removing the exemption could introduce complexity"[31]). Whilst the current interaction between the small gifts exemption and the annual exemption is confusing, "it is not clear how any alternative would improve or simplify the position".[32]

That leaves the normal expenditure out of income exemption, which is criticised as being "anomalous, confusing and…difficult to document".[33] The OTS considers the possibility of removing the requirement for the expenditure to be regular and introducing some kind of percentage cap. Predictably this is considered to be "more intuitive".[34] Is the relief anomalous? ***B.T.R. 142**[35] It has its roots in the estate duty legislation and is thought to allow taxpayers, having suffered income tax on income (perhaps at 45 per cent) to avoid a further 40 per cent IHT if it is gifted while effectively current income. Hence the restriction that once invested the gifted property loses its income character and then falls outside the exemption. Elsewhere in the legislation the definition of "relevant property" is generally limited to the capital in the settlement and a deeming provision is necessary to catch certain retained but not accumulated income for the purposes of the 10 year charge.[36] There are other provisions dealing with the waiver of dividends and remuneration. Is it perhaps more anomalous to charge IHT on income in the estate at death? Might it even be counter-intuitive?

Interaction with capital gains tax

This is dealt with in Chapter 4 of the Second Report where there is a discussion about replacing IHT with a capital gains tax (CGT) charge. The important recommendation, however, is that the Government should consider removing the CGT uplift on death when a relief or exemption from IHT applies. Instead the recipient should inherit the assets at the base cost of the deceased. This charge would affect assets passing on death with the benefit of the spouse/civil partner exemption and property benefitting from business property relief (BPR) and agricultural property relief (APR). But there are formidable difficulties in this proposal: for example, how will it work if less than full relief is available, as with 50 per cent APR or BPR?[37] And in the situation where a spouse receives a percentage of residue, perhaps on an immediate post-death interest (IPDI) trust? More generally, however, it is arguable that, especially in the area of BPR/APR, if the relief is intended to prevent a business from being sold to pay a tax liability arising on death then, if and when a sale occurs, the relief should be clawed back. Perhaps like heritage property the exemption should be conditional. To deal with this problem by seeking to impose a quite different tax has echoes of the POAT fudge noted above. If there is a problem with the IHT legislation then (so long as we retain the tax) it is that legislation which should be amended.

Coda

The recent annual report of the OTS referred to a "significant proportion of its energy and resources" being expended on the two IHT reports.[38] Was it money well spent? Many of the recommendations will do nothing to simplify the tax but will further undermine the original CTT ***B.T.R. 143** structure on to which IHT was welded. Confusion will not be reduced and some of the proposals might even be described as counter-intuitive. There can be no greater criticism!

Chris Whitehouse

Footnotes

1 *OTS, Inheritance Tax Review – first report: Overview of the tax and dealing with administration. Presented to Parliament pursuant to section 186(4)(b) of Finance Act 2016 (November 2018)*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/758368/Final_Inheritance_Tax_report_-_print_copy.pdf [Accessed 13 May 2020]. For comments on this Report, see C. Whitehouse, "IHT - reform at last?" [2018] PCB 57.

2 The writer doubts that IHT was ever consciously designed but rather involved a mutilation by successive governments of capital transfer tax (CTT): see Whitehouse, above fn.1.

3 *OTS, Inheritance Tax Review – second report: Simplifying the design of Inheritance Tax (July 2019)*, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816520/Final_Inheritance_Tax_2_report_-_web_copy.pdf [Accessed 13 May 2020].

4 See R. Jamieson, "Inheritance tax: inheritance tax residence nil-rate band and Finance Act 2019" [2019] PCB 75.

5 OTS, Second Report, above fn.3, 71, para.10.34.

6 OTS, Second Report, above fn.3, 68, para.10.15. The Second Report notes at para.10.32 that the introduction of the relief has led to a revival of pre-October 2007 planning to avoid the taper restriction and states (rather desperately) that "what is clear is that downsizing will continue to confuse and cause problems unless a more straightforward way…is considered". But is this not what the OTS is supposed to do?

7 OTS, Second Report, above fn.3, 58, para.7.15, "Recommendation 11".

8 The reference (OTS, Second Report, above fn.3, 56, para.7.5) to either reducing IHT or future care home fees is typical of the slapdash language used throughout the Second Report. The OTS is not concerned with planning to avoid care fees and should not stray into that controversial area!

9 *Hood v HMRC [2018] EWCA Civ 2405; [2018] STC 2355; [2018] 10 WLUK 428 (CA (Civ Div))*. See also E. Chamberlain, "Buzzoni v HMRC and Lady Hood v HMRC: a reservation too far?" [2020] BTR 164.

10 See C. Whitehouse, "Inheritance tax: Lady Hood in the Court of Appeal" [2019] PCB 105.

11 OTS, Second Report, above fn.3, 31, paras 3.9–3.10, "Observations: Taxing the gift recipient is counter intuitive". Much is made of seeking to make the tax "intuitive": the latest annual report of the *OTS, Annual Report 2018-19: Simplifying the tax system to make it easier for taxpayers (Annual Report 2018-19) (July 2019)*, commenting on the OTS, Second Report, above fn.3, refers at 9 to whether "features of the system" (presumably the IHT "system") "fit well with people's perhaps intuitive expectations about how it operates". All of which raises the question: should taxes be—for the general public—intuitive, and how many are?!

12 OTS, Second Report, above fn.3, 31, paras 3.11–3.15, "The allocation of the nil rate band to the earliest gift first can cause inequalities".

13 OTS, Second Report, above fn.3, 34, para.3.32.

14 OTS, Second Report, above fn.3, 35, para.3.37.

15 OTS, Second Report, above fn.3, 35, para.3.39.

16 CTT was originally a cradle to grave tax based on cumulating all transfers of value (including the final transfer on death). It was eroded with the introduction in FA 1981 s.93 of a 10 year limit on cumulation and a further reduction to seven years and the introduction of potentially exempt transfers (PETs) in FA 1986 s.101.

17 OTS, Second Report, above fn.3, 75, para.11.16.

18 *HMRC, Consultation outcome, Inheritance tax: A fairer way of calculating trust charges (published 6 June 2014; last updated 10 December 2014)*, available at: https://www.gov.uk/government/consultations/inheritance-tax-a-fairer-way-of-calculating-trust-charges [Accessed 18 May 2020]. This consultation was focused on the inheritance tax position of relevant property trusts. It resulted in legislative changes effective from 18 November 2015.

19 *HMRC, Closed consultation, The taxation of trusts: a review (published 7 November 2018; last updated 18 January 2019)*, available at: https://www.gov.uk/government/consultations/the-of-taxation-of-trusts-a-review [Accessed 18 May 2020]. This review looked at the taxation of trusts more generally and so far has resulted in no recommendations.

20 OTS, Second Report, above fn.3, 77, para.11.27.

21 OTS, Second Report, above fn.3, 36, para.3.45.

22 FA 1986 s.101.

23 Of course, the taper restriction in the case of the residence nil-rate band, which considers only assets in the death estate, has exactly this result.

24 FA 1986 s.102(1).

25 Subject to the availability of taper relief, which reduces the tax charge by 20%.

26 OTS, Second Report, above fn.3, 28, para.2.23.

27 OTS, Second Report, above fn.3, 28, 2.22.

28 There are references to an individual “giving a gift”—an unhappy use of English!

29 The fact that tax is charged at 0% on a transfer is significant in terms of CGT hold-over relief under TCGA 1992 s.260 which depends on there being a chargeable transfer.

30 OTS, Second Report, above fn.3, 23, under “Recommendation 1”.

31 OTS, Second Report, above fn.3, 21, para.1.34.

32 OTS, Second Report, above fn.3, 22, para.1.34.

33 OTS, Second Report, above fn.3, 21, para.1.28.

34 OTS, Second Report, above fn.3, 22, para.1.39.

35 OTS, Second Report, above fn.3, 19, para.1.20.

36 See IHTA s.64(1A) inserted by FA 2014 s.117 and Sch.25.

37 For a discussion of some of these problems see the *All-Party Parliamentary Group report, Reform of inheritance tax (January 2020)*, available at: https://www.step.org/sites/default/files/Policy/Reform%20of%20inheritance%20tax%20report%20Jan%202020%20final%20ALT.pdf [Accessed 18 May 2020], 24–28.

38 OTS, Annual Report 2018-19, above fn.11, Ch.2, 8.