Representation from the Chartered Institute of Taxation
for Finance Bill 2025-26 Committee of Whole House

Clauses 63-68
Inheritance Tax: Pension interests

Chartered Institute of Taxation.

Executive Summary

These measures bring pensions within the scope of inheritance tax on death. Our concerns focus on the practical difficulties faced by personal representatives in administering estates where there are pensions over which they have no control. We suggest ways in which the burden could be eased, by requiring pension scheme administrators and personal representatives to liaise with each other, offering alternatives for complex estates, extending the option for instalment payments and bringing forward the timetable for detailed guidance.

While we have expressed deep concern about making PRs responsible for paying a tax on the assets they do not control, and see significant delays with likely disputes and litigation, we recognise that the government has made a policy decision to proceed in this way. We therefore seek to help make the plans as workable as possible for all concerned – including the beneficiaries of both estate and pension funds (who in many cases are different).

1. Pension interests: clauses 63 to 68

1 Clauses 63 to 68 bring certain defined contribution and other pension interests into the scope of inheritance tax (IHT) on death from April 2027.

1.1 The IHT charge does not apply to defined benefit schemes and will therefore exclude most public sector employees as these benefits cease on death or are payable as ongoing pensions to their dependent partner or child. Those in defined contribution schemes could purchase an annuity to achieve the same IHT exemption, but for most they will only do this on retirement. For those dying before purchasing an annuity, an IHT charge can arise even if the fund is then used for such a purpose, creating a discrepancy in the tax due on essentially the same circumstances. Those with defined benefits also more often have the advantage of giving away more of their remaining free estate in their lifetimes tax free to their children safe in the knowledge that they will have sufficient income on which to live. Most pensions are currently excluded from the value of a death estate for IHT purposes. This is on the basis the pension passes directly to a beneficiary at the discretion of the pension scheme administrator, rather than through the estate in accordance with the will/intestacy.

1.2 *Liability without control*

Key to understanding the CIOT's concerns with the draft legislation is the concept of liability without control. Although the government has listened and responded to some of our concerns there nevertheless remain significant complexities and potential unfairness as set out below. With more thought, we believe these could be resolved.

Personal representatives (PRs) have a legal obligation to gather in all the assets, settle any liabilities (including IHT) and distribute the remainder of the estate to the beneficiaries. They are personally liable if they fail to retain enough funds to settle all liabilities whether of the estate or (from April 2027) the pension fund. This personal liability over the IHT due on a pension fund that never comes into the PR's hands will likely lead to protracted and costly litigation. It will also make PRs who are not beneficiaries of the estate (e.g. friends of the deceased or professionals) very much more cautious before they distribute all the estate.

Moreover, if the PRs discover a new asset, lifetime gift or pension fund after settling the initial IHT liability this will have a knock-on effect not only on the free estate but on all other pension funds. The nil rate band must then be reapportioned and IHT recalculated for every element of the estate and every pension fund. It is not uncommon for people to have a series of jobs with separate pension plans for each job. If they die before there has been a chance to consolidate the pension funds tracking these down within 6 months of death will be very difficult and will mean that the initial IHT calculations could be wrong.

Complexities also arise where there are overpayments of IHT e.g. due to loss claims, additional liabilities or adjusted valuations. New s579CB provides that any refund of IHT paid will be taxed as pension income of the member. But in these circumstances must the refund of IHT be made to the beneficiary and what happens if the fund has been designated to drawdown? We suggest it should be possible for amounts repaid to the PSAs to be put back into the drawdown fund.

There may well be uncertainties in the case of blended families as to who will be given which pension. The government cannot cater for family disputes, but it would have been helpful if the IHT on pensions had been imposed at a lower flat rate - of say 20% when not otherwise exempt. This would have made it administratively much easier both for pension scheme administrators and PRs as it would have avoided the need for recalculation of tax on multiple funds as new facts emerged. These changes are due to take effect in April 2027 and it will be apparent by the following April just how much practical administrative difficulty they are causing families.

1.3 *Pension withholding notice*

The CIOT welcomes the introduction of a withholding notice option for the PRs, under which they may require PSAs to withhold 50% of the pension fund until the IHT has been settled (for a maximum of 15 months). This is something we had suggested in our comments on the draft legislation to administer estates fairly. Without this we could have faced an iniquitous situation where, for example, the adult children of the first marriage in no particular need could have taken the whole of the pension fund worth say £300,000 immediately tax free if this had been nominated for them while the cohabitee of the second relationship might have had to sell the family home worth say £450,000 in order to fund the IHT. The PRs or cohabitee could then have to chase the children through the courts in order to recover the IHT. On an estate of this size including the pension fund, IHT will be payable of £170,000. Before 2027 the IHT will be limited to £50,000. This is not a large or complex estate but the change will have profound implications for the family.

Furthermore, we are concerned that the reality of the probate process means this measure will not benefit all estates and even fewer of the complex estates on which IHT arises, since they are likely to take far longer than 15 months to administer particularly bearing in mind the likelihood that such estates may also have other difficult assets such as business property where valuations have to be agreed

1.4 As currently drafted, there is no requirement for PSAs to contact PRs in the event of a member's death and no obstacle to them distributing the entire fund before a withholding notice is received.

The PSA's duty is solely to the pension beneficiary. It will therefore be in the PSA's interest to distribute as soon as possible, before a withholding notice is received requiring them to hold back 50% of the fund for up to 15 months, with associated additional costs and administration.

1.5 We suggest a requirement for PSAs to actively confirm with the PRs whether a withholding notice will be issued, before funds can be distributed. If they distribute before receiving an answer either way the PSA should be made liable for the IHT.

This would give the PRs some level of control over the pension. It also ensures PSAs and PRs are in touch with each other earlier on in the process, reducing the likelihood of late discovered pensions and easing the administration of the estate, particularly for lay PRs unaware of the withholding option.

Additionally, it would be helpful for HMRC to be obliged to inform PRs within a stated time limit whenever they become aware of a pension fund and equally to inform PSAs of the death of a member and any known PRs, since they may be the only party with contact details for both PRs and PSAs.

1.6 We recognise there can be difficulties for PSAs in contacting the PRs, for example in contentious cases or where PRs must first be appointed by the court. However, we believe it is reasonable for the burden of delays and additional work in these cases to be shared between PSAs and PRs.

To streamline this process, we suggest a definition of personal representatives be inserted into s226A to say something like:

"for these purposes, 'personal representatives' shall include any person entitled to apply for letters of administration in accordance with the Non-Contentious Probate Rules 1987 who, in the withholding notice, certifies [in such form as may be prescribed by regulations under this section] to the scheme administrator that he intends to apply for a grant of administration to be issued to him."

1.7 For estates with IHT to pay, 15 months is likely to be too short a timeframe in which to finalise the IHT position.

IHT calculations come at the end of a process requiring the will to be checked, PRs appointed, identity checks carried out, assets and liabilities established, valuations conducted for property and other assets, reliefs determined, sales completed and deeds of variation considered and finalised. And that is before HMRC carry out their own checks, with the Shares and Assets Valuation office often taking many months to agree the value of private businesses. The 6-month timeframe is already tight and it will be impossible to meet in many cases with interest being charged at 7.75% on any later payment.

1.8 The CIOT suggest a discretionary framework for complex cases, whereby HMRC would have the power to extend the pension fund withholding period on application by the PRs, where it is apparent there will be IHT due but the amount cannot reasonably be finalised within 15 months.

In this case, we suggest the withholding could be varied to an amount up to 50%, rather than requiring an all or nothing approach.

1.9 The legislation as drafted is unclear on certain points, on which we would welcome clarification. If the lump sum death benefit is paid to trustees is it intended that the trustees under new s210 should be able to decide if they or the PSAs pay the IHT? If the trustees pay the IHT on the pension fund in full would the income tax charge be limited to the net amount after IHT as for direct payment by PSAs? Similarly, if the PRs pay and recover from the trustees can this reimbursement be taken into account for the purposes of reducing the special lump sum and death benefit charge and enabling there to be a recovery of income tax paid by the trustees?

1.10 *IHT payment from illiquid assets*

Government policy acknowledges that IHT on illiquid assets gives rise to practical challenges. That is why IHT on land, property and businesses can be settled by way of ten yearly instalments where the assets are part of a death estate or trust.

We suggest that IHT on pensions is aligned with this policy.

1.11 Without the option of instalment payments, pensions holding illiquid assets may be forced to make quick sales, potentially at undervalue, affecting not just the deceased estate but other members of the scheme. This is particularly a concern for businesses whose premises are held within a SIPP.

In addition, if a quick sale to pay the IHT results in a loss compared to the death value there is no provision for loss relief – IHT has to be paid on the higher sum. This is at odds with how the free estate works and so we suggest an equivalent of loss relief should be included in the IHT pensions legislation.

1.12 *Refunds and reimbursements*

If PRs pay IHT on behalf of the pension beneficiary, the legislation requires the pension “vestee” (i.e. the person with control over the pension) to reimburse them. However, there is no definition of the term “vestee”. We think this should refer specifically to the PSAs if they have beneficial or legal control of the pension fund e.g. if it is in draw down or they have not made any decision.

For clarity, we suggest s211(3)(c) is expanded, to read “property to whose value the tax is attributable is vested (*whether legally or beneficially*) in someone other than the PRs”.

1.13 If the entire pension pot is put in drawdown it is not clear that the pension beneficiary can direct the PSAs to reimburse the PRs out of the pension fund but we believe there should be specific provision to allow them to do so to prevent unfairness. This applies equally to late payment interest, which should be reimbursable to the PRs if paid by them on the pension element of IHT.

Generally, if the PSAs have made no decision yet and the PRs have nevertheless paid the IHT on both free estate and pension fund in order to get the grant of probate quickly (perhaps to facilitate a house sale or stop interest running) the PRs should have the right to require the PSAs to reimburse them before the PSAs distribute any funds. At the moment, it is not clear that vestee is intended to include PSAs.

A simpler alternative to this system of payments and repayments would be for HMRC to collect IHT due on the pension fund directly by default where it is clear no exemption such as the spouse exemption is in point. This mechanism is already in place for IHT due on pensions discovered after the estate IHT has been finalised.

This will also ease the income tax interaction – at present a beneficiary whose pension fund has suffered IHT will only pay income tax on the balance. If the PSA pays the whole fund out to them as a lump sum and the deceased was over 75 then the PRs must pay the IHT, seek reimbursement from that beneficiary who then has to seek reimbursement of the income tax withheld on their lump sum from HMRC on that part of the fund used to pay IHT. It is also not clear what happens if the PRs pay the IHT, the beneficiary repays the IHT to the PRs but not out of the pension fund because say this is in draw down. In these circumstances it would appear that the pension fund has resulted in additional tax (albeit payable from other resources of the beneficiary).

In general, the interaction of income tax and IHT needs further consideration and amendment in s567B ITEPA and related provisions.

1.14 *Payment deadline and interest*

We acknowledge that HMRC should take steps to encourage prompt payment and ensure fairness for those who pay their tax on time.

1.15 However, we question whether it is fair for two lots of significant complexity to be added to the administration of estates (bringing in pension interests alongside APR/BPR changes) with no increase in the time for PRs to pay.

1.16 It is something of an anomaly for a full account of an estate to be reportable to HMRC within 12 months of death, but for the tax due on that account to have to be paid 6 months earlier. We therefore wonder whether aligning the payment deadline with the 12 month reporting deadline would be a fairer, simpler outcome.

By way of comparison, an individual first falling within self-assessment has 10 months to settle the tax due on their previous year's income, and unlike PRs they can be assumed to be familiar with their own affairs.

1.17 This issue is exacerbated by the penal rate of interest charged by HMRC on overdue tax. Since April 2025 this has been the Bank of England base rate plus 4% for most taxes (up from base rate plus 2.5% previously). This contrasts with the interest rate HMRC pay in relation to tax owed to taxpayers: base rate minus 1% (with a lower limit of 0.5%).

1.18 *Professionals exiting the market*

The CIOT welcome HMRC's engagement on the new rules, including the workshops run shortly after the budget to provide stakeholders with more detail on the expected timelines.

1.19 However, while the workshops were helpful, we are concerned that HMRC do not expect to issue detailed guidance on the new processes until spring 2027.

Given the uncertainty arising from PRs taking on liability for IHT on pensions without control (1.2 above), professional executors are already considering whether they can continue to offer their services. Indeed, we are aware of some firms already exiting the market.

1.20 If professionals no longer feel they can accept the risks of this new legislation that will both add to the workload of lay PRs and deter people from taking on that role. Reduced involvement from professionals will also make it more likely errors will be made, including delays with payment of the correct tax, potentially increasing the tax gap.

1.21 In addition, professional indemnity insurers will be concerned with what is good practice and how firms are able to manage the risks, for which HMRC guidance is critical. This should be made available at least 6 months before the new liabilities take effect. Without this, some firms may find PI cover withdrawn or the cost of premiums raised to impractical levels.

1.22 We suggest that, if possible, HMRC guidance is brought forward to autumn 2026 or earlier to give professionals the time to put processes in place and ensure their professional indemnity is sufficient.

2 The Chartered Institute of Taxation

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2.2 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.

2.3 The CIOT's 20,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

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The Chartered Institute of Taxation
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