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Via email: ihtonpensions@hmrc.gov.uk

Comments on Pension draft legislation for Finance Bill 2025-26

CIOT Policy Proposals

on HMRC's Proposals for Personal Representatives to be liable for IHT on Pension Fund

The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

Introduction

The first four proposals were put to HMRC for careful consideration on 25 August 2025. The last four result from the workshop held by HMRC on 9 September.

We recognise that HMRC and HM Treasury have decided that the Pension Scheme Administrators (PSAs) or the pension fund beneficiaries are not to be made directly liable for IHT on the pension fund in the same way as trustees are under the pattern set by Inheritance Tax Act 1984, section 201 and as was originally proposed in the October 2024 Budget. The established model under section 201 and section 204 had been for the person holding the asset (eg trustees or donees of a failed PET) to be the person primarily liable for the tax; HMRC's proposals represent a radical and very challenging change to that practical approach. If specific roadblocks are perceived to our proposals then please can we first discuss them on a call before the proposals are dismissed out of hand (especially as there appears to be some confusion within HMRC about how the IHT legislation on liability works). The current proposals have the capacity to cause genuine hardship and unfairness to a wide class of beneficiaries.

One of HMRC's priorities is to reduce the tax gap. We are concerned that the current proposals will increase the chances of IHT on pensions being unpaid, which would increase the tax debt element of the tax gap. We therefore suggest that liability for the IHT on pensions should be funded from the monies held by the PSA.

It is important to realise that under the current HMRC proposal the Personal Representatives (PRs) are liable for IHT on the pension fund up to the entire value of the property that comes into their hands (basically the free estate). So, they are liable for tax on a fund (viz the pension fund) that never comes into their hands. Although we appreciate that this is also the case for survivorship property and failed PETs, these are far less frequent occurrences and the legislative mechanism for liability and recovery there is very different, as explained below. If HM Treasury/HMRC consider that the only option is the route of making PRs primarily (and indeed arguably solely) liable to pay tax on funds that they can never control we must ask HM Treasury/HMRC to consider carefully and constructively the proposals below. We should add that the beneficiaries of the free estate may often be acting as the PRs and will be traumatised by the death of a loved one. HMRC are imposing all the compliance and liability burdens on the PRs rather than the PSAs when it is the latter who are the professionals and are not suffering from bereavement.

At present, the only sensible course for PRs would be to retain the entire free estate and make no interim distributions until they are sufficiently confident that they have located every known pension fund, giving a sufficient period for any new ones to emerge that might be taxable and pass to different beneficiaries. We note the difficulties in the increasingly common situation where there are blended families, particularly where the deceased died with a cohabitee and children from another family; there the entire free estate as well as the pension fund will then be chargeable without the benefit of spouse exemption.

Indemnities from beneficiaries (typically the children or the cohabitee) of the free estate will not be sufficient without security which may be impossible given the main asset will often be the beneficiaries' house which is likely to be mortgaged. It also begs the question why beneficiaries of the free estate should be indemnifying the PRs for a liability on pension funds that they do not receive. (If the children are beneficiaries of both the Will and the pension fund then the PRs can obviously recover the tax from the amounts due to the children on the free estate under the draft legislation). Do HM Treasury have any figures or information on the number or quantum of pension funds where the pension passes to different people from the free estate? This data is crucial in estimating the practical impact on the PRs. Our practical professional experience is that the position can vary a great deal depending on the complexity of the family arrangements and the size of the free estate vs the pension.

Where the free estate and pension beneficiaries are different, under the current mechanism PRs would, to protect themselves from potential liabilities in respect of as yet undiscovered pension funds, be best advised to make no distributions to the free estate beneficiaries (in many cases for years) even if the free estate is small or protected by spouse exemption. The proposals below aim to resolve these difficulties, the impact of which is not only the practical / liability issues for the PRs but also the unfairness on the beneficiaries of the free estate. In short, the very thing that HM Treasury say they want to avoid – of pension beneficiaries making reclaims where no IHT is due and consequent delay – will occur but instead the delays and difficulties will impact upon the free estate and its beneficiaries rather than the PSAs or the pension beneficiaries.

The system proposed is predicated on the PRs receiving accurate and timely information from third parties, the PSAs, over whom they have no control. The experience of our members is that the quality of responses from PSAs can be extremely variable. We appreciate the HMRC implementation timetable is designed to give time for gearing up and upskilling to the new regime, but this is undoubtedly needed to provide consistency.

1 Proposal 1 - PSAs retain 50% of pension fund until the earlier of:

- a. two years (or 23 months to avoid it drifting over 2 years with death benefits then being subject to income tax where that would otherwise be disappplied in respect of deaths before age 75) from date of death; or**

b. 4 weeks after confirmation of IHT position is provided by the PRs to the PSAs as set out below (verified by HMRC).

If a beneficiary of a pension fund is a spouse or charity and the payment to them is exempt (a point that we discuss in our Technical Questions Paper as the spouse exemption is not comprehensive), then there is no need for retention; those benefits can be paid to the beneficiary (or designated to drawdown as the case may be) without any retention.

Comments

- 1.2 A proportion of 50% has been chosen as the appropriate retention to cover all possible IHT on pension plus interest and charges – see below.
- 1.3 If IHT becomes due on the pension, PRs would notify PSAs of the amount of IHT (via formal notice or letter from HMRC setting out the IHT and interest specifically due on the pension so PSAs are in no doubt it is accurate); PRs can then instruct PSAs either to pay the IHT to PRs by way of reimbursement if PRs have already paid the IHT, or direct to HMRC if the PRs have not.
- 1.4 This route allows the PSAs to make an early payment of some of the pension benefits to their beneficiary whilst providing the PRs with some reassurance that there will be funds retained to pay IHT on the pension fund (plus interest and costs) if any is due. This means PRs are not forced to retain all the assets of the free estate that come into their hands to avoid any personal liability, a far more equitable position for the beneficiary of the free estate.
- 1.5 It is important to realise that the beneficiaries of the free estate also have the right to receive assets on an interim basis; this proposal strikes a proper balance between the beneficiaries of the pension fund and those of the free estate.
- 1.6 It also means that if later pensions are discovered after the PRs have distributed the estate, although the PRs may be responsible for calculating the tax there will be funds retained by the PSAs to pay the IHT, unless the process has taken longer than the 23 months identified above. We have a separate proposal for late discoveries outlined at Proposal 2.
- 1.7 This proposal will not involve PSAs in any liability or calculation of the tax which remains with the PRs (unless the PSAs wrongfully distribute). The interaction and debate on tax calculations remains solely between PRs and HMRC (a significant additional compliance and risk burden often on the very people who are most affected by the death personally but in the interests of pragmatism we can accept this).
- 1.8 If PRs have already paid the IHT and this is confirmed in the HMRC letter, then there is no reason why PSAs should not reimburse PRs directly – otherwise HMRC have an unwarranted cash flow advantage and unnecessary complications for the PRs and more delays for the free estate beneficiaries. PRs by then will have obtained the grant of probate and the HMRC letter can confirm specifically the amount of IHT on each pension. PRs should therefore be able to instruct the PSAs to reimburse the IHT from the retained 50% to the PRs without consent / instruction from the pension beneficiary. We believe that, from HMRCs perspective, this will also greatly reduce the risk of non-payment of IHT that currently exists in the proposal where the decision as to whether to instruct PSAs to deduct rests solely with the pension beneficiary. Where the pension beneficiary lives abroad why would they ever so instruct the PSAs, given that the pension beneficiary knows that the PRs cannot recover the tax from them if they have no UK property? It is highly uncertain whether a country such as the USA would countenance recovery of UK IHT by PRs on a pension fund paid to a US

beneficiary given *Government of India* principles. In some countries there is mutual enforcement but as there are so few estate treaties this is largely redundant.

- 1.9 Even where the pension beneficiary is UK resident this approach avoids the PRs having to recover IHT from the pension beneficiaries through the courts. Under the existing proposals, all that section 211 requires is for the chargeable beneficiary to repay the tax to the PRs. On the face of it, this only extends to tax on the funds actually received by the beneficiary – not any funds designated for drawdown which have not yet been paid to the beneficiary. Until the funds are vested in the beneficiary they are not liable and therefore the direction by the pension beneficiary to the PSAs to pay the IHT cannot be made. If the pension beneficiaries do not reimburse the PRs, then PRs will have to sue. Under this Proposal 1 that will not be necessary. The PRs know that if they act within broadly 23 months, there will be funds there to pay the IHT.
- 1.10 It will also streamline the process as the PSAs will not be deducting income tax on the gross amount payable to the beneficiary meaning that the beneficiary then has to reclaim that income tax as and when they reimburse the PRs the IHT. This will save HMRC significant time and administrative costs.
- 1.11 It will help avoid arguments between the PRs and pension/free estate beneficiaries.
- 1.12 50% is to be retained to allow for interest on that sum and a reasonable proportion of the PRs' costs in calculating and dealing with that IHT on the pension fund which should also be certified as recoverable. The costs figure could follow the pattern set at [CG30570 - Death and Personal Representatives: Personal representatives and their liabilities: Personal representatives: incidental expenses: England: Wales: N Ireland - HMRC internal manual - GOV.UK](#), applying realistic bands to each pension fund. We see no reason why the free estate beneficiaries should have to bear the costs of calculating IHT on the pension fund, especially when it will add complexity generally to the free estate (given that it also affects the availability of the RNRB and estate rate prompting further calculations that need to be made as further pension funds emerge).
- 1.13 In the event of the process going wrong, the PRs should still retain any rights of recovery against the pension beneficiary for IHT correctly due on the pension paid to them (or allocated for their benefit). In addition, the pension beneficiary should, in the revised legislation, be made specifically and personally liable for all IHT on funds designated/allocated for their benefit whether or not the same has been vested in them and the right of recovery from that pension beneficiary should be given also to the free estate beneficiaries who have lost out. See Proposal 3 below on section 210.
- 1.14 We should point out that without this safeguard PRs may be concerned that they have an insolvent estate where the free estate is small and the pension fund large and are therefore far more likely to renounce or refuse to act. HMRC will then be faced with the position that the free estate is eventually taken by them to pay the IHT due on the pension fund but then they have to recover the IHT due on the pension fund from the pension beneficiary. The number of PRs simply refusing to act in relation to small free estates where it is known that the pension fund is large and chargeable will obviously greatly increase. Has HMRC any statistics or other information on the size of pension funds vs free estate on a mean, median and mode basis? We assume HMRC must have such information as this will inform policy decisions.¹

¹ The PRs will not be aware of all liability issues until they have undertaken some action in relation to the estate, meaning that they are likely to have 'intermeddled' and will be unable to renounce. Given that risk, best advice would be not to accept any appointment as PR without modification of the proposals in line with this paper.

2 Proposal 2 - Certificate of Discharge - amendment to section 239 and section 214

Comments

- 2.1 HMRC confirmed that the PRs would remain liable for the payment of tax on pension funds which had been discovered after issue of a certificate of discharge. The officer gave the analogy of designated (aggregable) trusts but of course there the liability rests with the trustees who will not pay out unless the tax has been settled. No liability at all rests with the PRs for IHT on trusts except in the occasional case of land.
- 2.2 Here the PSAs will pay out but will not be liable and the PRs who have distributed the free estate will be personally liable even if they have a certificate of discharge! This underlines the point that PRs will be advised always to retain funds until (potentially many) years have passed in case new pensions are discovered. This will in turn mean the administration of the free estate continues indefinitely to the detriment of its beneficiaries.
- 2.3 **Proposal 2:**
- a. **Section 239 should therefore be amended to provide that PRs will not be liable for any IHT on pensions or indeed any additional IHT that arises (for example, because the new unused pension value takes the estate over the £2 million residence nil-rate band taper threshold) if the pension is discovered only after a certificate of discharge has been obtained. HMRC must in such cases pursue the relevant pension beneficiary directly.**
- b. **In addition, section 214 should be amended to require HMRC on request to provide a proper certificate specifying within prescribed time limits the amount of tax, costs and interest payable in respect of the pension fund for the purposes of the PRs evidencing the debt due to the Courts and pension beneficiary in any proceedings. At present s214 would not seem to cover pensions as it only covers tax for which the person paying is not ultimately liable and in the present case the PRs are made liable.**

3 Proposal 3 - Right of recovery and clarity on the pension beneficiary's liability

Comments

- 3.1 Why does the new section 210 not impose a specific concurrent liability on the pension beneficiary as well as the PRs who seem primarily or even solely liable until the funds are vested in the beneficiary? Section 200(1)(c) imposes liability on the pension beneficiary on the basis of property becoming vested in them. However, this does not cover the case where funds have been designated for drawdown and so remain vested in the pension scheme trustees or the PSA. The legislation should also be amended to make it clear that the pension beneficiary is concurrently liable for IHT in respect of all funds allocated for their benefit. A drawdown fund for example would not necessarily be vested in them, and they could not direct the PSAs to pay IHT until it is vested as they only become liable then.
- 3.2 Although section 212 has been amended to allow PRs to impose a charge on property derived from the pension fund, they cannot impose a charge on other property already owned by the pension beneficiary such as their house. Given the pension benefit will be paid as a cash transfer which is likely to be spent or used to repay debts, how will the PRs trace the 'benefit' once paid? Even if it can be traced, how can the PRs impose a charge on cash or quoted investments?

- 3.3 This is why the PRs need an ability to protect themselves by imposing a charge on other assets of the beneficiary, such as a house, where the charge can be protected by registration. This should not require court proceedings – just evidence from HMRC that the tax has been paid and the pension beneficiary is liable to reimburse. The PRs can then charge any of the beneficiary’s assets to the extent available (or perhaps require their employer to deduct the debt from net earnings if the pension beneficiary has refused to reimburse the PRs after a certain period).
- 3.4 If Proposal 1 is adopted, recovery will clearly be less likely to occur anyway. It should be remembered that where the pension beneficiary lives abroad with no assets in the UK it will be next to impossible for PRs to recover the tax.

4 Proposal 4 - No IHT is due on the pension fund until after issue of the Grant of probate

Comments

- 4.1 There are already difficulties in paying IHT before obtaining the grant of probate. PRs often have to borrow on the security of portfolios, etc. PRs will now be required to pay IHT on the pension fund even though the free estate may be very small by comparison or they cannot easily realise funds from it eg if the free estate mostly comprises a house.
- 4.2 It should be provided in the legislation that PRs must calculate IHT including on the pension funds to get the grant, but are not required to pay the IHT on the pension funds until they have grant of probate and can realise assets or can instruct the PSA to pay the IHT.
- 4.3 Unlike the position with the free estate (which could be dissipated after the grant is issued), HMRC have the security of knowing that the PSA will have retained 50% of the pension fund so that the IHT can be paid.

Further proposals for improvements to the legislation and administrative system – in response to the HMRC Workshop held on 9 September 2025

CIOT make four further proposals to make the changes more workable for PRs and to seek to provide a better balance between estate beneficiaries and pension beneficiaries.

5. Proposal 5 - Instalment option

Further to our Proposal 4 above, which we believe would be fair, if this is not accepted we propose that there be an instalment option on the full pension element, whatever the nature of the assets held, for the PRs or beneficiaries who are liable to pay the tax.

Comment

We appreciate this would not be interest free (as for relievable assets) but should apply in the same way as it currently does for real property. This, we believe, makes logical sense. This would help address the concern raised by many pension funds that hold illiquid assets as it would give them time to sell and raise the funds, as is the case for PRs in the case of real property.

6. Proposal 6 - Interest (a key issue in the workshop)

6.1 Liability and Burden

The legislation needs to be clear that, as with IHT on the estate, interest on the IHT in respect of the pension fund runs from 6 months from the end of the month of the member's death and is added to the IHT due on the pension. Even if the liability for pension beneficiaries only starts when they become entitled to death benefits, their liability is to include the full amount of interest arising from the IHT on the pension fund.

Comment

This highlights the difference between liability and burden, in that while the PRs may have a liability to pay the IHT, there should be no burden on the estate for the interest on the IHT on the pension fund, which should fall on the relevant part of the pension; this should be the case even where the PRs pay the tax and interest as early as possible (and in many cases before the pension beneficiary is entitled and thus liable) to stop the liability for interest building up.

6.2 Notice from pension beneficiary to PSA to pay IHT: the interest thereon should accrue automatically.

Any notice should simply need to specify that the specific amount of IHT is payable, not the amount of interest (which will vary over time). It would be quite disproportionate to require a separate notice for the interest. The notice could, perhaps, be worded as: 'The IHT and any interest thereon'.

7. Proposal 7 - PSAs appointing (or designating) and distributing

7.1 Can HMRC please clarify the process required to be adopted by PSAs in order for death benefit beneficiaries to have the funds vested in them so that they can give the PSAs a notice to pay the IHT.

There is uncertainty about what the term 'vested' (s.200(1)(c)) means in the context of death benefits under pension schemes. It is assumed it is akin to a situation where benefits are appointed to a beneficiary out of a discretionary trust (which triggers a s.144 IHT change in tax position if made to the deceased's spouse within 2 years of death). Clarification on this would be welcome, both in relation to lump sum death benefits and to death benefits designated to drawdown.

7.2 A window is needed between appointing and distributing death benefits. Can HMRC please specify the different processes required for the two stages of payment of death benefits ie (1) deciding who is to benefit and (2) agreeing whether benefits are paid as a lump sum or designated to drawdown.

7.3 For example, having decided who should benefit, can PSAs then be regarded as holding the lump sum on a bare trust for the beneficiary and use the window to sort whether they will be required to make a payment of IHT under the Direct Payment Scheme?

7.4 If pension schemes do not allow more than one distribution, can the legislation be amended to enable a payment on account by PSAs, whilst uncertainty remains about the IHT position because it has not yet been finalised?

The aim here is to recognise that it is far better for both HMRC, in terms of collecting tax in a timely manner, and for PRs to avoid unnecessary and expensive processes to recover tax from pension beneficiaries.

8. Proposal 8 - £4k de-minimis pension distribution

We recognise the case for this, to minimise administration in smaller cases, but also see the potential for greater injustice if the estate beneficiaries have to bear the IHT cost, especially as a number of small £4k amounts can build up with interest to a larger aggregate.

We suggest 2 changes or clarifications which, taken together, would make a £4k de minimis workable:

- 8.1 Confirm that the £4K limit is per pension beneficiary, not an aggregate for the pension; so recognising that the aggregate could mount up;**
- 8.2 The PRs should not have any liability for IHT in such de-minimis cases; HMRC should deal directly with pension beneficiaries to recover the IHT.**

This would free PSAs from the onus of collecting IHT but also recognises that it would be impractical and uneconomic for the PRs to recover IHT from each beneficiary in such de minimis cases. As noted in the Workshop, the costs of recovery could easily exceed the tax due, making the estate beneficiaries de-facto paying the tax.

We hope HMRC will see the value of these four new proposals, in seeking a better balance between estate and pension beneficiaries. As discussed in the Workshop, this should make the whole process more workable for both taxpayers and HMRC. We would be pleased to explore these points further if that would help.

John Barnett
Chair, Technical Committee

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. 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:

- A legislative process that 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.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

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.

Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.