



Chartered
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Finance Bill 2019-20

Clause 72 Inheritance Tax: Excluded property

Submission by the Chartered Institute of Taxation

1 Introduction

- 1.1 The Chartered Institute of Taxation (CIOT) comments on draft Clause 72 Inheritance tax: excluded property, as introduced on 19 March 2020¹.
- 1.2 As an educational charity, our primary purpose is to promote education in taxation. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 1.3 Our stated objectives for the tax system include:

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.
- 1.4 Clause 72 introduces legislation to provide that additions of assets by individuals domiciled in the United Kingdom to trusts made when they were non-domiciled cannot be excluded property and are therefore within the scope of Inheritance Tax.

2 Executive summary

- 2.1 We continue to be concerned that there are substantial deficiencies in the legislation as currently proposed.
- 2.2 Accordingly, for the reasons set out in Section 3, we endorse the recommendation of the Institute of Chartered Accountants in England and Wales (ICAEW) set out in their 20 April 2020 Briefing² that this clause

¹ https://publications.parliament.uk/pa/bills/cbill/58-01/0114/20114_en_7.html#pt3-pb1-l1g72

² <https://www.icaew.com/-/media/corporate/files/technical/icaew-representations/2020/icaew-rep-16-20-inheritance-tax-excluded-property-fb19-21-clause-72.ashx>

be taken out of the current Finance Bill and that HMRC conducts a formal public consultation with a view to clearer legislation, which does not cause unreasonable practical problems for trustees.

3 Why clause 72 should be withdrawn pending a detailed consultation

- 3.1 We endorse ICAEW's concerns originally expressed in their 5 September 2019 Response³ that there are infelicities in the drafting (particularly over the use of the word 'property') which create uncertainties. Those concerns have not been addressed in the current iteration of the clause. Dealing with uncertainties is costly for trustees.
- 3.2 Difficulties arising from uncertainty over the meaning of 'property' are compounded when additions made many years earlier are now required to be identified and valued as they become relevant to the calculation of the IHT charge arising on chargeable events occurring after Royal Assent. When such earlier 'additions' were made there would have been no need for the trustees to make (or keep) detailed records. It is unreasonable for legislation to be retroactive in ways that make it difficult for trustees to be confident of achieving compliance when there appears to be no pressing need to do so (see next paragraph). This issue could of course be considered in the consultation.
- 3.3 In our view, it is unlikely that additions to or transfers between settlements are currently taking or will in the future take place because of the limits put round the 2017 trust 'protection' provisions of Taxation of Chargeable Gains Act 1992, Schedule 5. Schedule 5 paragraph 5A switches off the CGT rules that would otherwise treat foreign gains within an offshore structure established by a non- domiciled settlor (other than a formerly domiciled resident settlor⁴) as arising to the settlor on becoming deemed-domiciled in the UK under the 15 year rule. However this protection is removed and the trust is treated as 'tainted' if additions are made after the settlor has become deemed UK-domiciled or UK domiciled. Similar changes were made in 2017 as regards 'protection' in relation to foreign income - see ITTOIA 2005 sections 628A and 628B, ITA 2007 sections 721A, 721B and section 729A. We believe that, while the uncertainties raised in the Joint Professional Bodies' Questions and Answers⁵ remain outstanding, trustees are likely to be very focussed on avoiding 'tainting' of the trust for these purposes. Accordingly, we do not see that there is currently an issue which requires legislation to be introduced as a matter of urgency.
- 3.4 We also endorse ICAEW's Briefing over the lack of appropriate consultation prior to the issue of the draft clauses on 11 July 2019. The published Minutes of the meeting of the Capital Taxes Liaison Group held on 9 January 2019⁶ indicate at paragraph 4.B that HMRC would consult informally. Despite CIOT's willingness to engage, we were not approached at that crucial stage in the process, when we would have had the time to engage more fully. We appreciate that the draft clauses were published in July 2019, but since that time further deficiencies in the legislation have been identified.

³ <https://www.icaew.com/-/media/corporate/files/technical/icaew-representations/2019/icaew-rep-90-19-inheritance-tax-and-excluded-property-added-to-and-transferred-between-trusts.ashx>

⁴ ie A UK resident non-domiciliary born in the UK with a UK domicile of origin

⁵ <https://www.tax.org.uk/sites/default/files/180327%20Deemed%20domicile%20changes%20-%20trust%20protections%20FINAL.pdf>

⁶

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/787864/Capital_Taxes_Liaison_Group_minutes_8_January_2019.pdf

- 3.5 For all these reasons it would seem preferable to withdraw these clauses to enable time for proper reflection and consideration, rather than proceed with provisions that are likely to cause practical difficulties for trustees if implemented as currently tabled.

4 Acknowledgement of submission

- 4.1 We would be grateful if you could acknowledge safe receipt of this submission.

5 The Chartered Institute of Taxation

- 5.1 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.

The Chartered Institute of Taxation

12 May 2020