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## Comments on IHT Pension draft legislation for Finance Bill 2025-26

### CIOT Technical Questions

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.

**Following publication of the draft Finance Bill legislation on 21 July 2025 to implement the new pensions and inheritance tax regime, we have the following 20 questions and comments.** We would be pleased to explore them further with HMRC.

- Q1 Proposed new section 150A(2) IHTA excludes pension scheme assets from being taken into account in determining the value of a person's estate immediately before their death. However, this is subject to new s150A(1), which specifically treats the pension scheme member as beneficially entitled to the funds immediately before death with the result that such funds will be treated as part of a member's estate on death under s5(1) IHTA. Please confirm that this means that those pension scheme assets will therefore be taken into account for the purposes of the £2 million estate threshold in s8G(5) IHTA that applies in determining whether a person qualifies for the full residence nil-rate band. We think it does but please confirm.
- Q2 New s.150A(3) will preserve spouse or charity exemption in certain cases. However, the draft legislation is too narrowly drafted. It reads as follows:

*'If after the person's death a relevant death benefit becomes (at any time) payable to the person's spouse or civil partner, or to a charity or registered club, section 18(3) or 23(2) (exemptions disapplied in cases of delay or conditional transfer) does not limit the application of section 18(1) or 23(1) solely on the grounds–*

- (a) that the relevant death benefit does not become so payable immediately on the person's death, or*
- (b) that its becoming so payable depends on any person's discretion.'*

As drafted, this provision only prevents spouse or charity exemption from being blocked by ss.18(3) or 23(2), and then only on the grounds mentioned in paragraphs (a) or (b) above. As currently drafted the spouse exemption will therefore not apply in cases where, on a member's death, funds are designated to drawdown for the benefit of the surviving spouse as dependant, nominee or successor. This is a 'pension death benefit' within FA 2004, s.167(2) and therefore a 'relevant death benefit' for the purposes of new s.150A; however, the underlying property will not pass the more basic test of becoming comprised in the surviving spouse's estate (s.18(1)).

Similarly, where, under the terms of the scheme, property is transferred on the member's death into an interest in possession trust for the surviving spouse, this is not property settled by will and so would appear not to be an IPDI even if transferred into a will trust.

Furthermore, it would not cover the position where PSAs have to pay to a discretionary trust (an 'integrated trust') which then distributes to the spouse or to a trust for their benefit.

As many funds will be designated into drawdown for the spouse, the position needs correcting and the exemption extended. This is an important point.

Q3 The 'Summary of Responses' document of 21 July 2025, states at the end of Stage 4, *'If Inheritance Tax is due, and the pension beneficiary does not direct the PSA to pay, they may end up paying Income Tax on the benefits they receive. In this scenario, pension beneficiaries will need to contact HMRC to request a refund of Income Tax.'*

This would appear to be dealt with by new s567B ITEPA. These provisions will apply by reducing the value of the taxable pension income (TPI). Please confirm (we think they do) that these provisions will apply in the following situations:

- (a) where the member died aged 75 or over and the pension scheme beneficiaries receive the pension fund by virtue of being a dependent, nominee or successor under drawdown and so need to make a drawdown encashment to fund the payment of IHT;
- (b) where beneficiaries receive a lump sum which is subject to PAYE in cases where the member died aged 75 or over; and
- (c) where beneficiaries receive a lump sum in respect of a member who died under age 75 but that lump sum exceeds the deceased's lump sum death benefit allowance and so the excess is subject to income tax.

Q4 If lump sum benefits are paid in respect of a member who dies aged 75 or over and the PRs are unable to pay the IHT, the pension scheme beneficiary (as vestee under s200(1)(c)) can decide whether he, she or the PSAs (by notice under new s210) can either pay the IHT or put the PRs in funds to meet the tax. In fact, as currently

drafted, it would seem to us that until the funds are paid to the pension scheme beneficiary they have no right to direct the PRs anyway as they are not liable for IHT until the funds are vested in them (under s200(1)(c) IHTA).

(a) When would HMRC regard the funds as being vested in the pension scheme beneficiary?

(b) In the case of drawdown, it is unclear how this is intended to work as drawdown benefits would not be vested in them. In these circumstances no direction could be made. The legislation on liability in s200 needs correcting to cover the position where a person is entitled to lump sum or drawdown death benefits.

Q5 In a case where the lump sum death benefit is paid to trustees (which could include trustees holding the pension funds for minor children of the deceased):

(a) Would the trustees (under s210) be able to decide if they or the PSAs pay the IHT (and if the PSAs are to pay, give them appropriate notice under s226A(2))?

(b) If the PSAs can be forced to pay the IHT on behalf of the trustees, presumably the amount then subject to the special lump sum death benefit charge (SLSDBC) where the member dies aged 75 or over would be the net amount after payment of the IHT. Please confirm.

(c) If the trustees choose to (or have to) pay the IHT in full, the SLSDBC would then be based on the full death benefits distributed. Because trustees could be considered to be 'persons' (see new s567B), the wording of new s567B ITEPA would seem to infer that the trustees would be able to recover income tax in respect of the amount used to pay the IHT. Please confirm that this is the case.

(d) If the PRs meet the IHT and seek recovery from the trustees (as the recipient of the benefits) for the IHT paid in respect of the pension fund, will that IHT liability be taken into account for the purposes of reducing the SLSDBC, so enabling there to be a recovery of income tax paid by the trustees?

(e) In particular, we note that this charge is imposed under FA 2004, s.206 rather than ITEPA 2003. The person liable for the charge is the scheme administrator and the lump sum death benefit is not to be treated as income for any purpose of the Tax Acts. It may be that if the trustees are able to request the scheme administrator to pay the IHT directly under new IHTA 1984, s.226A (see below) then this will be taken to reduce the amount of the lump sum death benefit on which income tax is charged. What is the position here?

Q6 On some estates, there might be an overpayment of IHT because, for example, a property sells for less than probate value and a qualifying loss relief claim is made (also possible with a sale of qualifying stocks and shares). It is noted that new s579CB provides that any refund of IHT paid will be taxed as pension income of the member. Must a refund of IHT always be paid to the pension scheme beneficiary – even when the PSAs previously paid this part of the tax liability **and** the fund has been designated to drawdown? If the PSAs can be refunded can this refund be paid back into the pension plan where it has been designated to drawdown? Or can the IHT refund be allocated entirely against the free estate which would be simpler?

Q7 Loss relief, similar to the IHT loss relief that applies on the realisation of qualifying investments, needs to be introduced for pension funds as there is no provision for this at the moment. Suppose the funds fall in value

due to a drop in the stock market after death. At present the PRs are liable to pay IHT on the full value at death.

- Q8 We note the statements on joint life annuities in Annex C of the release of 21 July 2025. If a pension scheme member dies whilst receiving a pension annuity and the commutation value of a guaranteed pension or a value protected payment is made to somebody other than the member's spouse or civil partner, say, a trust, we have been told that these payments (presumably net of any income tax), would be in scope to IHT under the new provisions. However, in Annex C, the rationale for continuing pension payments not being subject to IHT is that they are separate from the rights of the pension scheme member. Would not the same rationale apply to guaranteed or value protected payments that are held in trust?
- Q9 Is the value of an unused pension fund included in the estate value for complex estates that need to be registered on the Trust Registration Service if over £2.5 million? We assume so.
- Q10 If a pension scheme belonging to a deceased person is discovered some years after the IHT has been settled on an individual's death, is it intended that the deceased's estate will be 're-opened' to calculate the IHT? If so, this could involve the reallocation of nil-rate band(s) and a reduction in the residence nil-rate band. This seems unreasonable. We have covered this in our Policy Proposals paper and offered a solution.
- Q11 In what circumstances would HMRC regard the pension beneficiary or the PSAs liable for interest on unpaid IHT? We believe that the PSA or beneficiary should be made liable for interest if notified of the tax liability by the PRs (see our Policy Proposals paper).
- Q12 In cases where death benefits pass from a pension scheme to a separate trust on a member's death, the normal IHT analysis is that, by virtue of s81 IHTA, the payment is treated as being made to an existing relevant property trust that commenced when the deceased joined the original trust-based pension scheme. In a case where pension funds are paid after 5 April 2027 to a pre-existing trust, would HMRC now regard this payment as added property under s67 IHTA or do you agree that the position would continue as at present?
- Q13 Section 212 (powers to raise tax) needs to be amended further to allow the personal representatives' charge to extend not only to property derived from property comprised in the pension fund already but to any assets held by the pension beneficiary. The beneficiaries of the free estate should also have the right to pursue the pension beneficiary for recovery of IHT. Otherwise, where the relevant death benefit is a cash transfer that never passes through the PRs' hands, it is not clear that this will be of much practical use to the PRs.
- Q14 Personal Representatives need to be given full access to the pension dashboards giving details of uncrystallised pension funds. This has to be from the date of death, before the grant of probate is obtained, to enable PRs to identify the value of pensions subject to IHT. The exact process can be considered further, eg based on

death certificate and a copy of the will showing the PRs' appointment, but this early access is needed to enable PRs to obtain their grant of probate which confirms their legal title. The position of Administrators in an intestacy needs further consideration, as their legal rights do not arise until the grant has been issued.

- Q15 HMRC should have an obligation to inform PRs within a stated time limit whenever they become aware of a pension fund.
- Q16 Where benefits are appointed to an exempt beneficiary such as a spouse more than 6 months after death, the PRs would still have had to pay the IHT upfront (subject to the 23-month retention in proposal 1 of our Policy Proposals paper). Once the PSAs have made a decision (and the PSAs should be required to tell the PRs of their decision within four weeks of making it) the PRs can then claim reimbursement of IHT from HMRC. When the PRs notify the PSAs of the death they can also make it clear whether the deceased was married or had a civil partner and whether the deceased and the spouse/partner was a long-term resident in the UK so that the PSAs will then be aware of whether the spouse exemption is available on appointment to a married person.
- Q17 Consideration should be given to some level of 'triviality exemption' in relation to small pension funds. There is currently a £30,000 triviality level in relation to a fund below which PSAs can make lump sum payments and do not need to test against the Lifetime Allowance. Whether £30,000 is the right figure can be considered further, but there is a level below which it is surely not worth the considerable time and resources of PRs, PSAs and HMRC in applying the new regime.
- Q18 As a general principle, it is important that PSAs are statutorily required to tell PRs of decisions including payment once the grant of probate has been sent to them and provide all relevant information within specified time limits. The current proposals do not do this. HMRC should be obliged to tell PSAs when they are aware that the pension beneficiary has died and give the identity of PRs; and to tell PRs of the identity of any pension funds – see above. PRs themselves may not readily be able to trace pension funds.
- Q19 The penalty situation for PRs is unsatisfactory. Although Finance Act 2009, Schedule 55 is not yet in force in relation to IHT it could be soon and would result in very large personal penalties for PRs. Either any penalties attributable to pension liabilities should be suspended within the legislation until the new rules have had time to bed down or the PRs should have a right of recovery of penalties other than those caused by their gross negligence or fraud where attributable to the pension fund.
- Q20 PRs need definitive guidance from HMRC as to what action is sufficient to show that they have made all reasonable efforts to identify all potential pension schemes to protect themselves from claims. Is there a requirement to contact every past traceable employer for example? Absent this certainty we believe that obtaining Professional Indemnity Insurance will become an issue for professional PRs. When distributing death benefits to a non-exempt beneficiary the PSAs should be under an obligation to inform that beneficiary that IHT and interest could arise on that payment.

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Chair, Technical Committee

## **The Chartered Institute of 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. 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.