



Office of Tax Simplification

Inheritance Tax Review: Call for evidence

**Institute of Legacy Management response**

June 2018

Chris Millward, Chief Executive

## Summary

The Institute of Legacy Management (ILM) is the professional body for legacy professionals – those responsible for the sensitive and successful administration of donors' final gifts to charitable organisations. Our members deal with issues arising from the drafting and administration of wills on a daily basis. We are uniquely positioned therefore to provide insight into the issues on which the Office of Tax Simplification is consulting on in relation to your Inheritance Tax Review.

We have consulted in detail with our members on the following elements of the consultation:

- Payment and forms
- Probate
- Estates that do not have to pay IHT
- Administering an estate, record keeping and valuations
- Lifetime gifts to individuals
- Charitable giving
- Other concerns

A summary of the outcome, in relation to each of the above points, is set out below.

**We are very willing to provide further views or examples cases, from our members, as the Office's work on this consultation progresses, if they would be of assistance.**

## About the Institute of Legacy Management

The Institute of Legacy Management (ILM) [www.legacymanagement.org.uk](http://www.legacymanagement.org.uk) is the membership body for legacy professionals – those responsible for the successful and sensitive administration of donors' final gifts to charitable organisations.

The Institute was established in 1999 to provide individual legacy professionals with a network of support and dedicated training services. Today it represents and supports more than 600 individuals, working in over 350 charities, not-for-profit organisations and associated professions.

Across the sector, legacy professionals are responsible for over £2.8bn (1) of charitable income each year – income that many charitable organisations rely on for their survival. They are proud to do the work they do, they know they are representing a person's final wishes, and they conduct their work with great skill and compassion.

Ultimately ILM seeks to ensure that every donor's charitable legacy achieves its greatest potential. In working towards that goal, the Institute partners with a range of companies and professional bodies to ensure the legal environment supports and promotes charity legacy giving, and to offer members additional support, information and collaboration opportunities.

### We are proud to:

- Act as a crucial network uniting legacy professionals across the UK
- Provide dedicated training services to maintain and improve practices across the profession
- Work with probate professionals and other service providers to improve and strengthen the legacy management process from start to finish
- Maintain and deliver information about the legacy management profession to the wider community
- Help define and share the highest professional standards for legacy management

### Our vision

Ensuring every generous donors' final wishes achieve their greatest potential.

### Our mission

- To support our members in the delivery of professional, proactive and sensitive legacy case management.
- To champion the interests of donors, members and charities to optimise the impact of legacy gifts.
- To drive professional standards and benchmark performance in legacy giving.

(1) Legacy Foresight – Legacy Giving 2017 report

## A unique perspective

As the professional body for charity legacy professionals, ILM is uniquely placed to provide insight into the issues on which the Office of Tax Simplification is currently seeking input.

Our members deal with issues arising from the drafting and administration of wills on a daily basis. As a body – given their professional knowledge and experience, and number of estates they are involved in the administration of – they are uniquely exposed to the issues arising.

In 2015, 6 in every 100 deaths (36,080 estates) resulted in a gift to charity. (2)

On average (mean), each ILM member has an ongoing workload of 187 cases (3)

<b>How long have you worked in legacy administration?</b>  Less than 1 year = 7% 1-2 years = 7% 2-3 years = 12% 3-5 years = 20% 5-10 years = 23% 10+ years = 32%	<b>What is your organisation's annual legacy income?</b>  Less than £20,000 = 1% £20,000 - £400,000 = 5% £400,000 - £1m = 12% £1m - £8m = 37% £8m - £20m = 12% Over £20m = 32%
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<b>What % of your time is spent on legacy administration?</b>  Less than 20% = 17% 20 - 50% = 14% 50 - 70% = 16% 70 - 90% = 18% 100% = 35%	<b>Do you hold a legal or other professional qualification?</b>  Yes – 64% No – 36%
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(Data from 2017 member engagement survey)

(2) Smee and Ford, 2015 market analysis

(3) ILM member survey 2017

## Methodology

The ILM has encouraged member organisations to engage with the consultation, consider the implications of the proposals and to submit responses on behalf of their organisations.

We have also facilitated dialogue amongst members to provide them with a platform through which they can discuss their views on the consultation topics.

To help shape ILM's formal response on behalf of our members, we facilitated a round table discussion, attended by a cross section of UK charity representatives, together with a number of lawyers who act for many of our charity members, in respect of estates in which charities have an interest.

The attendees comprised of representatives from the following organisations:

Cancer Research UK  
Bloodwise  
NSPCC  
Save the Children  
Legacy Foresight  
Salvation Army  
CAFOD  
Penningtons Manches LLP

The discussions at our round table event focused on the following areas of the Office of Tax Simplification's consultation, which members felt might have the most significant impact:

- Payment and forms
- Probate
- Estates that do not have to pay IHT
- Administering an estate, record keeping and valuations
- Lifetime gifts to individuals
- Charitable giving
- Other areas of concern

Our key thoughts/observations on each of these areas can be found in the sections that follow.

However, at the beginning of the meeting, and in order to gauge the attendees' general concerns, we invited the group to initially comment upon what one thing they would like to change in relation to inheritance tax legislation, if they had the power to do so (many of which were subsequently raised when discussing the issues highlighted in the consultation document):

1. The Inheritance Tax threshold in general has been frozen for years which makes it increasingly unhelpful, as property prices continue to rise
2. The lack of knowledge of the requirements to apportion distributions between exempt and non-exempt beneficiaries (as clarified in the cases of *Re Benham* and *re Re Ratcliffe*). Both lay executors and professionals appear to have difficulty with this area.

3. Exempt and non-exempt beneficiaries – concerns over the complexity of grossing up and double grossing up calculations. The calculations can be complex and executors often get these wrong. For charities, it can impact on their reputation if they are repeatedly having to point out errors in calculations.
4. Lifetime gifts:
  - GDPR compliance – information which might be required to prove how a lifetime gift had been dealt with might not be appropriate to retain
  - Statutory periods / limits – should these be reduced?
  - Is it possible to give greater visibility to the process of bringing lifetime gifts into account (and to collect the related tax liability from the recipient)?
  - Should recipients pay tax on a lifetime gift upon receipt (and refunded depending upon how long the gift was made prior to death)?
5. Residential Nil Rate Band:
  - The correct interpretation of this exemption is being blurred by professionals, who appear to find it difficult to implement
  - It looks similar to other exemptions from the ‘outside’ but isn’t in practice – simplify or remove
  - Needlessly complex – is a more radical overhaul needed?
  - Is there an interplay with the stated goals of political parties?
6. Grossing up:
  - HMRC guidance too generic - specific examples relating to charitable gifts are needed
  - Complexity / inaccessibility – this does not appear to have been touched on by the consultation?
7. Delays with processing tax calculations/assessments and particularly major delays in receiving IHT clearance certificates at the conclusion of an estate administration.
8. Complexity where Trusts are concerned:
  - There is a lack of consistency re overall approach, when bringing aggregable funds into account
  - Issues re form formats, and a lack of clarity re information which is being requested/ prompted for
8. IHT205 – there is a major potential for fraud and a tighter check/process should be implemented in order to properly assess assets values – currently no need to produce evidence

We also invited comments on other issues covered by the consultation which are included at the end of this report.

## Payment and forms

1 - If you have completed an IHT form, please state which form(s) you completed and whether you completed them in your professional or individual capacity. Please describe any problems you had in navigating the form(s) and provide any suggestions you have on how the forms or related guidance could usefully be simplified, made clearer or made easier to complete.

2 - In general, the deadline for payment of IHT is 6 months after death, whilst the deadline for submitting the relevant IHT form is 12 months after death. Please describe any problems or issues that arise because of this.

### SUMMARY:

It was initially determined that a small number of the attendees were involved in the completion of IHT forms themselves. However, the following comments were based upon their experience in respect of forms sent to them for signature (as well as the fact that many of the attendees had worked in private practice and had experience in dealing with the forms from that perspective).

In respect of Question 1, it was generally the view of the group that Form IHT 205 is easy to use, although it was universally agreed that the IHT400 can be quite time-consuming to complete and particularly daunting for lay executors. Guidance on the gov.uk website is actually rather unhelpful, and searching for a simple term, such as 'probate', can produce thousands of results.

The group agreed that there can be considerable delays in finalising an estate, from an inheritance tax point of view. The process at the end of an administration needs to be speeded up. It was hard for attendees to determine whether the initial stages are quicker to deal with, from an inheritance tax point of view, as most of the charities are only notified after the grant has been received (and then only if the lay executors get in touch with them direct). The main delaying factor, when charities are contacted by executors regarding the finalisation of an estate, is obtaining inheritance tax clearance.

It was agreed that more information is needed in relation to digital probate applications, particularly to ensure that lay executors are clear from the outset of their responsibilities in respect of inheritance tax. Online grant process does not appear to have appropriate checks and balances, with the questions lay executors are being asked to answer on screen not necessarily having a clear context.

The group would be supportive of a move to provide executors with more information at the point that a grant application is being made. For example, many of the attendees had come across instances where the charity exemption was not being included by some lay executors – perhaps more prompts in the process are required? The current IHT Form Notes are rather unwieldy and are not written with a lay executor in mind.

In the same way, it was felt that there perhaps needs to be a process by which an executor is prompted to consider the 36% rate criteria. This is not immediately apparent on the paper forms/accompanying notes and is therefore 'lost' in the mass of information online.

Also, when thinking about completing IHT forms online, an inexperienced user may be 'blind' to some of the options available, if the form is not clearly laid out. For example, if the inexperienced user ticks a 'yes' box as opposed to a 'no' box, due to a lack of knowledge, this could take him elsewhere within the online process, thereby resulting in the executor perhaps missing a prompt or a note which might have been useful in clarifying (for example) the possibility of claiming a reduced rate of inheritance tax. We recommend that any online processing includes pop-up boxes, to the extent that they are not there already, in order to ensure that - at each stage - a lay executor is aware of the implications of what he has set out. It was generally felt that this should include the potential personal liability that the executor might face, in relation to inheritance tax.

It was also agreed that the recent changes to the supplementary IHT400 forms have made the process of setting out asset-related information unnecessarily complex (for example the personal chattels supplementary pages were felt to be 'over the top').

In considering Question 2, the group generally felt that there was a disparity between the requirement to pay tax after 6 months of death and 12 months to submit the appropriate forms. The level of interest (on the outstanding liability) was seen as being unnecessarily punitive, in circumstances where HMRC's requirements gave an executor a longer timeframe in which to submit actual figures (thereby giving HMRC potentially 6 month's worth of interest 'for free'). Perhaps the interest should only start to run from the date that the forms are submitted, or when 12 months had passed since death (whichever came sooner)?

## Probate

In general, IHT forms must be processed by HMRC, and IHT must be paid, before probate is granted and the estate can be distributed. The benefit of this mechanism is that it ensures that IHT is generally paid before assets are distributed to beneficiaries, which avoids any need to recover the tax later.

3 - Does this process create practical difficulties? Bearing in mind the benefit of this mechanism, what could be done to address any such difficulties? To what extent does the instalment payment option where the IHT is attributable to certain assets in instalments help mitigate any issues?

### SUMMARY:

It was generally agreed that the current regime is rather 'brutal' – expecting an executor to find funds to pay inheritance tax up front can be particularly troublesome, particularly where they might be coming to terms with family bereavement, as well as fulfilling their duties as an executor. It was felt that the bridging loan options which are currently available are expensive (in terms of interest rates and financial restrictions), and can also be costly to arrange (in terms of professional fees). It was also found to be the case that many lay executors were expected to take out a loan in their own name, sometimes where they did not have a sufficient credit rating to do so.

It was found that charities are increasingly being asked to contribute towards an inheritance tax bill in order to facilitate a grant application. Charities are going to find this extremely difficult to comply with as this is not generally going to be in the best interests of a charity, particularly as a charitable interest in an estate would rarely be liable to inheritance tax. This could of course lead to adverse PR and reputational issues if a family felt that a charity was being 'unhelpful'. Such requests are often made when the full extent of an estate's value (or a beneficiary's entitlement) is unclear.

Perhaps consideration could be given to making the initial payment of inheritance tax on non-property assets into an 'instalment option', as well as for realty, in order to enable an executor to defer at least part of the payment of tax until after the Grant had been issued? This might be subject to an executor agreeing to make no distributions from the estate until HMRC had provided a clearance/certificate of payment form, in respect of tax due on personalty? Under these circumstances (and in general) an executor would need to be made aware that they would be personally liable for any tax, penalties or interest arising, should they not comply. It was felt that this point was often missed by lay executors, and more should be made of this particular point when a grant application was being made.

There was also a discussion concerning the possibility of a new type of limited grant being created, specifically allowing assets to be collected in, in order to raise the initial inheritance tax bill for a full application. The group would strongly support this move.

One of the group provided an example whereby they had been asked to make a contribution towards a pre-Grant inheritance tax bill – the executors tried to arrange a loan but were advised that they would be personally liable in the event of non-repayment. They were naturally reluctant and asked the charity to assist (which it could not do). The difficulty here was that payment was required before the grant could

be issued, but there were insufficient cash assets available (an increasingly frequent scenario where property values often now represent the bulk of an individual's assets).

In general, it was felt that it would be appropriate to consider legislating for interest free loans, in order to pay inheritance tax in circumstances where there were insufficient liquid funds in an estate – perhaps with the appointment of government-approved lenders? Given the difficulty faced by some executors in obtaining bridging loans for the purposes of paying inheritance tax, perhaps the loan could be dealt with as a charge against the estate rather than a personal loan taken out by the executor? Perhaps such inheritance tax loans (if introduced) could be paid for by way of a fixed fee instead of charging interest?

## Estates that do not have to pay IHT

The nil rate band (NRB) is, broadly, the value up to which an estate has no IHT to pay. For most estates, there is no liability to pay IHT because the value of an estate is below the NRB.

In addition, an estate may be above the NRB, but still not have IHT to pay because an exemption applies. For example, where an entire estate has been left to a spouse, the spouse exemption will generally apply with the result that no IHT is payable.

4 - Are there any disproportionate administrative or compliance burdens in establishing whether the value of the estate is below the NRB, or where the spouse exemption applies? How could these be reduced?

5 - Could the guidance on [www.gov.uk](http://www.gov.uk) be improved to support people handling estates on which no IHT will be paid? If so, how?

6 - Are there other steps that government could take to raise awareness of the NRB to reduce anxiety around liability to IHT for people who don't have to pay it?

### SUMMARY:

In general, it was felt that, for estates where inheritance tax was not payable, but still require the completion of an IHT400 (even in a limited form), there is an issue of proportionality in relation to the forms that must still be filled in.

The view was that the administrative and compliance burdens in relation to completion of Form IHT400 (including the lengthy supplementary forms) were disproportionately high.

There were also concerns raised regarding the level of detail required in completing Form IHT205 in general, and in particular there is no requirement at present for proof of any of the asset/liability values to be provided (such as a copy tax return – where available – to verify that all of the deceased's assets had been declared). It was felt that Form IHT 205 is open to abuse, given that there is no requirement to provide proof of assets (with no experience in the room of HMRC ever having made any 'spot-checks' in their experience).

One specific example of this was mentioned, where a sole executor (who happened to be a sole practitioner) had deliberately under-declared the value of an estate on form IHT205 and, as he had both a firm client account in relation to the estate, and a separate bank account (also in his sole name), he cashed in the undeclared assets and simply paid these into his account. The value of the stolen proceeds exceeded £200,000 and it was subsequently found that he had administered a number of estates on this

basis. It was a charitable beneficiary who had raised concerns, and he was arrested, but the funds could not be recovered.

To this end, a discussion arose concerning the possibility of appointing 'certificate providers', or 'certified valuers', in order for an executor to be required to provide verifiable proof of assets, as well as proof of their value.

It was felt that the option of creating the requirement for a 'certified valuation' to be provided, by a 'certified valuer', in respect of all assets in a non-taxable estate over a particular value. Perhaps a RICS approach, as is currently the case for property valuations, could be expanded upon?

Also, it was felt that there should be a requirement that all land and properties in a non-taxable estate should require the provision of a RICS valuation, rather than the usual 'marketing-style' estate agent valuations. If taken forward, all certified valuers could perhaps be required to apply a fixed fee approach, to keep estate-administration costs down (as it was generally agreed that there are widely varying charges made by surveyors/valuers). Other concerns were raised, including the general lack of detail in many estate agents' appraisals of value, and unless specifically requested, estate agent valuations do not take development value into account (potentially leading to an undervalue being declared).

In addition, it was noted that the District Valuer has become far less involved in all but the most complex or unusual cases. No one in the group recalled dealing with a charitable (non-taxable) estate which had involved the District Valuer in a property value assessment. In addition, whilst it is sometimes seen as being more straightforward to obtain several estate agent appraisals of a property to save on a professional valuation fee, it was felt that in terms of costs overall, it could still be more expensive overall if the appraisals were being co-ordinated by a lawyer (who would naturally charge for doing so).

It was agreed that the risk of incorrectly valuing a property would fall upon a RICS-qualified surveyor (with the benefit of insurance), whereas an executor could find themselves personally liable. Lay executors, in particular, need to be made more aware of the need to ensure that values set out in an IHT205 must be correct and appropriate.

A number of examples of the dangers in not having a proper probate valuation were provided, including one where an executor had pressed charities to agree to a property sale without using an estate agent, ostensibly to save money, but this did not allow the market to be properly tested. Another attendee shared an example, where they had declined an offer by a neighbour/friend of the deceased, and had insisted that proper marketing of the property took place. It transpired that the probate valuation (upon which the offer was based) had been too low. Proper marketing led to a much higher sale value being achieved than would have been the case with a quick sale to a neighbour or family member.

It was agreed that lay executors generally require more assistance and guidance in this area, as they might unwittingly lead to a charity beneficiary receiving less than their full entitlement simply because an executor thinks that they are being helpful by accepting an offer from a neighbour. Many lay executors do not appreciate that the beneficiaries of an estate should be consulted about the sale of a property, although it is all too common for them to find out after the event. It was felt that the broader context here is the importance of helping executors to properly understand their role.

The same applied to grossing up, in that there seem to be many instances where both practitioners and HMRC have been getting the calculations wrong, or where HMRC have merely signed off on a set of figures

without checking them. One attendee had dealt with lots of estates where an executor (including professionals) simply did not know what they needed to do and ended up paying tax unnecessarily which then had to be reclaimed.

Due to the fact that the IHT205 only requires a 'summary value' for certain classes of assets, it was felt that executors could unwittingly not include assets which might, for example, only be found by reviewing the deceased's 'digital life'. Guidance for executors could usefully raise the possibility of looking for evidence of online bank accounts, Paypal accounts, cryptocurrency, ownership of internet domains, and so on. Quite often, a testator might appoint one of their peers to be their executor, and it was felt that there might be a general lack of awareness of the potential for digital assets than if a younger generation has been appointed. The provision of suitably helpful guidance could assist in avoiding the value of an estate being under-declared through ignorance.

## Administering an estate, record keeping and valuations

IHT is unique in that it is not generally administered by the person on whose assets it is paid, but by executors following a death. This can create significant challenges for executors in finding and reviewing the deceased's financial records, especially where the deceased person may have given gifts during their lifetime (see further below). In addition, executors must conduct their review in time to meet the deadlines for paying the tax and submitting returns.

7 - What, if anything, could be done to help executors administer an estate and fulfil their obligations?

8 - Have you been required to obtain a valuation of assets for the purposes of completing an IHT form? Was there any difficulty in doing so? Was the cost of the valuation commensurate with any IHT payable? What could be done to simplify this process?

### SUMMARY:

This point has in part been covered by responses set out above.

The group discussed whether there should be a mandatory requirement for will drafters to provide a check list / prompt sheet to testators setting out some of the wider issues to consider (as well as incorporating some of the points raised elsewhere in this report).

It was therefore agreed that it might be appropriate for the consultation to consider whether any solicitor or will writer advising a testator who wished to appoint a non-professional executor should provide them with a guidance note at the time that the will is drafted setting out an executor's responsibilities, rather than dealing with the resulting problems post death.

Many lay executors feel obligated to act as executor, even when they were unaware of the fact that they were being appointed. The provision of a guidance note could be a formal requirement, perhaps using stipulated wording, strongly advising the testator to talk to their proposed executor(s), in order to ask them if they are willing to act, setting out the duties and responsibilities they would be expected to adhere to, and making it clear that there might be a personal liability on the executor themselves if they got anything wrong (even due to simple ignorance). This would also provide an opportunity for a testator to pass on information about where their papers are stored, whether there were any unusual assets or overseas properties, unusual family relationships etc.

## Lifetime gifts to individuals

Where a gift is either: below certain monetary thresholds, a regular gift made out of a person's disposable income (the 'normal expenditure out of income' rules) or for the maintenance of a family member, then it may be exempt from IHT regardless of how long before death the gift is given.

In other cases, the IHT rules may interact to give different results depending on the precise situation.

9 - Are there any aspects of the interaction between the thresholds and exemptions relating to lifetime gifts that you find especially distortive or complex to understand and apply? Please provide examples.

10 - How, if at all, should these rules be simplified? What could be done to improve public understanding of the rules? Have you found that the joint liability of the estate and the person receiving the gift can cause problems for executors or HMRC?

11 - How, if at all, could the monetary thresholds and the various lifetime exemptions be simplified?

### **SUMMARY:**

Lifetime gifts were also discussed and it was agreed that it was a common scenario that an estate would have to pay the tax due on a taxable lifetime gift, because the recipients were either not able to pay, or refused to do so on the basis that they weren't warned that there could be a tax bill if the donor passed away within 7 years (or 14 years depending upon the nature and circumstances of the gift).

One example was provided where a charity was aware of a lifetime gift having been made within the 7 year limit, but the beneficiary had no funds to pay the tax, so had to declare himself bankrupt.

There was a discussion on the possibility of changing the legislation to require the beneficiary to pay the tax, with a refund given at death if the actual tax liability was lower due to the donor passing away outside of the 7 year period, or at some point within 7 years prior to death. However, it was thought that this would act as too much of a deterrent and might discourage the transfer of wealth.

## Charitable giving

If a person gives to charity in their will or during their lifetime, this is exempt from IHT. If 10% or more of a person's net estate is given to charity in their will, IHT may be payable on the whole estate at a lower rate of 36%. There are also complex rules about the incidence of IHT between exempt and non-exempt parts of the residue on death.

18 - How well do you think the charitable exemption and the lower rate of tax on death is understood by advisers or the public? Please tell us about any areas of complexity in the application of this rate, or the charitable exemption, along with any suggested improvements.

### SUMMARY:

There was a strong view that clarity on charitable exemptions and other exemptions should be made available to lay executors at the outset, including the availability of the 36% rate option.

In general there was a consensus that the availability of the lower tax rate of 36% was a very useful tax concession, which appeared to be encouraging some additional charitable giving. However, it was apparent from all of the members present that there needs be simplification of the process, as even the probate practitioners do not always understand how to assess the amount which would need to be given to the charity to receive the benefit of a lower tax rate. It was suggested that the current baseline and donated amount calculations should be done away with, and a simple assessment carried out to see whether 10% of the gross estate (less pecuniary legacies) would give rise at least to a 10% share passing to charitable beneficiaries. The formula could be made simpler and it was generally agreed that this would encourage greater use of the concession. Anecdotal evidence suggest that complexity of the calculations discourages will draftsmen from recommending use of the concession.

A further suggestion was made that in addition to simplifying the basis on which the lower rate applies, it might also be useful to consider a sliding scale of rates to avoid an undue focus giving 10% of the estate to charity. Given that the exemption of 100% is available if the whole estate is gifted to charity it was mooted that further lowering of the rates could apply if, say, 25%, 50% and 75% of the estate were gifted to charity.

Mention was made that there used to be example wording on the HMRC website in relation to clauses which could successfully direct that 10% of the estate should pass to charities to secure the 36% rate, but these have now disappeared. As this affects the consistency of the wording of wills seeking to claim the 36% rate, it was agreed that it would be useful to reinstate the template wording.

The gov.uk website was discussed in relation to the example calculations re the 36% rate - it was universally agreed that the examples on the website were not helpful as they were too generic. It was suggested that we could provide examples of calculations in relation to the 36% rate which are relevant to estates with existing charitable interests. However, the general view was that it would be far more appropriate to simplify this particular aspect of inheritance tax legislation.

In addition to the 36% rate, the group extensively discussed the need to simplify the issues arising from s41 Inheritance Taxes Act (more commonly referred to as the *Re Ratcliffe* and *Re Benham* tax issues). It was generally agreed that this area needs more explanation for executors and their advisors, and that the process would benefit from being simplified. Remedies discussed included amending the appropriate legislation to ensure that there was a statutory presumption that the *Re Ratcliffe* method of calculating distributions should apply in all cases unless a prescribed form of words were included in the will (with that wording also being incorporated into statute). It was appreciated that there would be difficulties in respect of wills in existence already, where the wording of the will would still require careful thought. However, this could help going forward.

Other difficulties which were discussed included the manner in which the estates of deceased life tenants of a trust aggregate. Clarity as to how the burden of tax falls is still an issue for some, including an example where a professional refused to aggregate and discharge IHT pro-rate because he couldn't find reference to it in statute. He completed the IHT400 on the basis that the estate paid all of the tax (even with mention being made of the trust on the supplementary pages), and HMRC rubber-stamped the calculations. Several charities protested, and in the end a refund of tax was made by HMRC (exceeding £245K) and the trustees were required to pay tax on the trust's share.

## Other issues

**Attendees were invited to share thoughts on any other areas of the consultation.**

In general, inheritance tax is commonly regarded as being tantamount to double taxation on assets, given the amount of lifetime tax paid by most individuals. It is perceived, by some, as being an unfair tax.

It was generally agreed that the current charitable exemption is beneficial and there was a clear desire to promote the availability of both this exemption and other exemptions. There are clearly some areas where everyone would benefit from simplification of the IHT rules.

Suggestions included the removal of the RNRB or, failing that, trying to improve consistency in the approach of HMRC to the RNRB (an example was shared where it was applied to non-property assets which passed to children - apparently within the legislation but not very well-known). Very few estates with a RNRB application are made, and it is perceived as being a 'silent' exemption as HMRC aren't necessarily advertising it is an option, meaning that there could be a higher tax bill than was necessary.

Gifts with reservation were also discussed, and it was appreciated that this is a complex area but often difficulties arose due to poor advice at the time that a will was drafted, or people not having an awareness that their estate might have an unexpected tax liability if someone continued to live in a property which they had gifted to someone else, particularly if they were trying to avoid the payment of any potential future care fees.

Inheritance tax/tax regimes in other jurisdictions were briefly discussed, including Australia which has no inheritance tax in place at all, and instead favours a more stringent capital gains tax regime. Also examples were given where, in the United States, a party is able to gift a property to charity, but with the donor still being able to retain an interest under a charitable remainder trust.

Other points discussed included the implications of a 100% inheritance tax liability, or completely doing away with inheritance tax. Generally the group agreed that there would be difficulties with the 100% tax approach, albeit with a much higher threshold in place, would people feel obligated to make more lifetime gifts in order to avoid the assets passing to HMRC, but then not having enough to pay for their own care in later years. Might a 100% rate encourage more charitable giving on death to ensure that individuals had enough cash for their twilight years (as opposed to more lifetime gifts to family)?

A recent Resolution Foundation report (<https://www.resolutionfoundation.org/app/uploads/2018/05/IC-inheritance-tax.pdf>) has also recently considered the abolition of IHT in some detail, replacing it with a Lifetime Recipients Tax (ie taxing the donees rather than a donor's estates). It is apparent that the political will is there, and perhaps this is a good opportunity to consider radical change.

Executor fraud is a concern with the current IHT205 – if this is digitized it was felt that this could lead to increased opportunities for fraud – a non-validated tick box system would enable lay executors to virtually

report what they want. Perhaps consideration could be given to certain 'certificate providers' being able to provide validated assets and liabilities schedules (having seen the evidence) or even validated estate accounts (perhaps based upon an example template made available on the gov.uk website) – any grant applications would need to have a certificate in place by a certified assessor, signed/stamped and then scanned on to the system - only once the assets have been validated can the probate process continue? Charities regularly see incidences of fraudulent activity in estate administration but this is thought to be a very real challenge for all estates, not just those passing to charities.

### **Examples of problems that the charities have experienced with IHT:**

#### 1) Apportionment of tax

- Received our cheque for £37,170.47 on 16/3/16.
- Received Accounts 19/7/16 and IHT allocated incorrectly.
- We queried this.
- We discovered Solicitors firm closed in July 16.
- We instructed our Scottish Solicitor to pursue this as we couldn't find anyone to help us.
- We got balance due of £3,272.07 from the insurers in May 18.

#### 2) Apportionment of tax

- Received final cheque and accounts 1 Aug 2016. Total received £33,578.43.
- IHT allocated incorrectly as done Re Benham. Will clause says re Ractliffe specifically. Extra £6,196 due.
- We queried immediately.
- Executor upset with Solicitors and switched to another firm.
- They then agreed figures with charities and pursued individually for money back.
- They, evidently, threatened individuals with Court action as one of them phoned charity to see if we had authorised these tactics.
- We received extra £6,003.62 in March 2017. We had to give up on small part as they couldn't recover it.

#### 3) Apportionment of tax

- Received payment and accounts Dec 2012. IHT allocated incorrectly.
- We queried and they agreed incorrect straight away.
- Solicitors delayed claiming money so when did, finally, ask for it they couldn't recover it.
- We had to instruct our own solicitors to pursue.
- Got extra £13,178 from insurers in Mar 2015.

#### 4) Valuation of assets

- Lay executor (IFA).
- Charity get all of residue.
- 21.12.16 - wrote and told us sale agreed at £450,000 and enclosed supporting Estate Agent valuations.
- We were tipped off the same day by the eventual purchaser as he had noticed that they were selling at £450,000 and then reselling to him at £650,000.

- We had to remove Executor and there were police investigations.
- We still haven't established conclusively whether any assets were taken.

#### 5) Apportionment of tax

- Received accounts 20.3.18.
- We immediately pointed out that IHT allocated as re Benham so incorrect.
- Solicitors now amended accounts.
- We are due £46,961.49 rather than the £39,954.19 they originally showed.

#### 6) Valuation of assets

- Died 4.2.15.
- Solicitors originally contacted us 16.3.15.
- Took until October 16 to decide that charity needed to act as Executor as Solicitor didn't actually exist in same form.
- Probate value of property £125,000.
- Property is a specific gift so couldn't appropriate to charity on eventual sale at auction.
- Sold for £515,000.
- We have now got amended probate valuation as didn't include any hope value at all even though in London.
- To negotiate with HMRC to reduce CGT due.

#### 7) Fraudulent submissions

- Solicitor was Executor and Power of Attorney.
- All looked ok to start with and had interim payment.
- Came to light that Solicitor arrested and in prison.
- Charity now Executor.
- He had taken £380,000 from this estate and had declared the lower figures for probate - there should be more checks on Attorneys.

#### 8) Professionals' lack of knowledge of the various exemptions and reliefs

- Solicitor was Executor.
- We noted that had benefitted from another Estate and asked about IHT position - was any paid on that Estate?
- It turned out it was possible to do DOV to reclaim IHT.
- We had to instruct another solicitors firm to act to assist as they refused to do DOV.
- Charities got a reasonable amount extra each.