TAXREP 40/14

(ICAEW REP 108/14)

ICAEW TAX REPRESENTATION

INHERITANCE TAX: A FAIRER WAY OF CALCULATING TRUST CHARGES

Comments submitted on 20 August 2014 by ICAEW Tax Faculty in response to HM Revenue & Customs consultation document *Inheritance Tax: A fairer way of calculating trust charges* published on 6 June 2014

Contents

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document *Inheritance Tax: A fairer way of calculating the trust charges* published by HM Revenue & Customs (HMRC) on 6 June 2014. This is the third consultation to consider trust charges and many of the comments in our responses to the earlier consultations are still relevant to this consultation, see TAXREP 39/13 and TAXREP 50/12.

2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

WHO WE ARE

4. ICAEW is a world leading professional membership organisation that promotes, develops and supports over 142,000 chartered accountants worldwide. We provide qualifications and professional development, share our knowledge, insight and technical expertise, and protect the quality and integrity of the accountancy and finance profession.

5. As leaders in accountancy, finance and business our members have the knowledge, skills and commitment to maintain the highest professional standards and integrity. Together we contribute to the success of individuals, organisations, communities and economies around the world.

6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

KEY POINT SUMMARY

7. We continue to welcome the undertaking by HMRC to simplify the Inheritance tax (IHT) rules in relation to the taxation of relevant property trusts and we hope the outcome of this, the third consultation on the topic, will result in a simpler and fairer system. In particular, we support the proposals for a continuation of the existing rules (ie grandfathering) for trusts already in existence on 6 June 2014 and to no longer proceed with the intention to split the settlor's nil rate band allowance between ALL the settlements created by a settlor at a particular point in time.

8. That said, these new proposals, like the earlier ones are revenue raising disguised as simplification/fairness. We have made recommendations in our previous responses on this topic as to how the tax charge could be simplified, for example split the total population of trusts between low value with a simplified form of reporting and potentially taken out of the charge to tax altogether and higher value trusts subject to the full regime and we refer you to those responses.

9. The new proposals will not achieve the simplification to IHT calculations for trusts that the original consultation dated 13 July 2012 set out to achieve. In our opinion, the latest proposals will actually result in increased tax revenue (it is telling that the Tax Impact Assessment only covers five years but the main impact will be in ten years) for HMRC and more administration

for trustees, tax professionals and HMRC alike. This outcome would be contrary to HMRC's policy aim in 1.2 of the consultation document.

10. In respect of HMRC's stated aim of tackling 'Rysaffe' planning, (which it announced during the second consultation rather than being an objective of the original consultation), we believe these proposals are still disproportionate and unnecessarily complex. We still recommend that if steps are to be introduced to tackle this planning, it should be through targeted anti-avoidance legislation, instead of penalising other tax payers in the process and we are happy to work with HMRC to see how this can best be introduced.

11. The proposals place too high a burden on settlors and they are far too complex.

12. There are still unresolved technical issues resulting from Finance Act 2006 changes and changes introduced following on from this consultation are likely to bring these issues into sharper focus, for example there is confusion over what is and what is not a transitional serial interest and exactly what is the effect of a loan received by the trustees, especially if the trust has a qualifying interest in possession. We are happy to submit a paper detailing the technical issues if HMRC are really committed to improving and simplifying the present regime.

SUPPORTING ANALYSIS

INTRODUCTION

13. Many settlors create lifetime trusts in order to gift assets (eg cash or shares in unquoted trading companies) to family members, often children or grandchildren. The donor usually prefers a trust to provide an element of protection against divorce, bankruptcy or spendthrift beneficiaries. Many of these trusts are seen as short to medium term solutions; few settlors expect these trusts to be in existence in 125 years, despite the recent extension to the perpetuity period of trusts.

14. In line with common sense IHT planning, the amounts settled are invariably within the settlor's available nil rate band to avoid any immediate IHT liability and as far as we can see, the current IHT legislation intended that the settlor's nil rate band is restored fully every seven years so the planning can then be repeated. Furthermore, as it is virtually impossible to create lifetime trusts which are potentially exempt transfers, the popularity of this planning approach has increased since 2006.

15. Even though the Finance Act 2006 resulted in the creation of many more relevant property trusts, administration costs for trustees, tax professionals and HMRC were reduced by SI2008/606, as it avoided the need to complete many nil IHT returns. We believe that this change in legislation had a greater positive impact on the administration burden of trustees than could ever be achieved through the current proposals.

16. The current IHT regime therefore works well for families who want to pass on modest wealth to their families in several stages during lifetime, as this can be done in a similar way to a potentially exempt transfer (ie no immediate IHT liability and no need to inform HMRC), but with asset protection that an absolute gift cannot give.

17. During a meeting with HMRC in July 2013 as part of the second consultation period, we were therefore extremely surprised to discover that HMRC consider a settlor creating a modest settlement every seven years, as described above, to be IHT avoidance and therefore a direct target of their proposals in the same way as those who undertake Rysaffe style planning. We are very disappointed that HMRC categorise these two very diverse planning types as fragmenting ownership across a number of different settlements (see section 2.4). However, even if such septennial planning is brought within the IHT trust charging regime, we expect settlors to continue to create trusts in this way for the reasons set out above (ie no immediate

IHT liability and asset protection).

18. We therefore expect the consequence of the proposals to be an increase in the number of tax returns required and IHT paid to HMRC, given that fewer new trusts will fall within the nil rate band allowance.

19. We note that only a third of respondents to the July 2012 consultation considered that changing the way the nil rate band is applied to trust charges could result in a risk of fragmentation across trusts, so this indicates that the vast majority of respondents did not consider it to be such a risk.

KEY AREAS OF DIFFICULTY AND HMRC'S PROPOSED SOLUTIONS

Summary of existing rules

20. As we have already stated, we believe that if HMRC's policy objective to tackle Rysaffe planning is to be actioned, it should be done through targeted anti-avoidance legislation. Given that this planning has been approved by the courts, if HMRC wish to prevent it being implemented further, it should only affect trusts created after a particular date (irrespective of when property is added, as this would be in line with previous IHT anti-avoidance legislation (eg Eversden, Ingram).

Areas of concern

21. At 2.20, we note HMRCs proposals to shift the administrative burden away from the trustees to the settlor by making the settlor responsible for electing how his settlement nil rate band (SNRB) is allocated. However, we still do not consider that this will make a material difference to the calculation of IHT for trusts and in fact, may do little, if anything, to decrease the burden for trustees overall.

22. This is because in our experience, few trust calculations involve related settlements, non-relevant property or previous cumulative lifetime transfers (PCLTs), whereas under the proposals more calculations will be required, more IHT returns submitted and more IHT will be payable as more trusts will fall within the charge to IHT. (As stated above, we expect the creation of nil rate band settlements every seven years to continue so that settlors avoid an immediate IHT charge, even though these proposals will create IHT charges for these trusts.)

23. We welcome the grandfathering suggested at 2.22, but this could still create an administrative burden for trustees and HMRC alike where new funds are added to existing trusts. We presume (but would appreciate clarification), that accumulated income would be treated under the existing rules and would not be subject to the new proposals, as this is not property that has been added by the settlor. It would be inequitable to include accumulations; if they were included several trustees will have inadvertently brought a part of their trust into the new regime whilst this document has been under consultation.

24. If IHT trust charges are to fall within the self-assessment regime, then it is essential that comprehensive and efficient online calculators are provided as soon as the new rules are introduced. This will be especially important now that the reporting deadline and tax payable are both now 6 months after the relevant event. For those not knowledgeable or experienced with the existing regime, the calculations remain complex. Not only would detailed guidance on how to deal with SNRB elections be required, but we envisage how to calculate the settlement rate of tax for exit charges (which is still required even if the 10 year charge rate is fixed at 6%) and dealing with added property will be likely areas for errors. We expect that the new proposals will result in many trustees and small firms of practitioners being required to complete IHT calculations for the first time, as the trusts they deal with will no longer fall within the SI 2008/606 exemptions.

25. Regarding HMRCs views on the parity between property held absolutely and settled property, we comment as follows:

25.1. Relevant property is already at a disadvantage compared to property held absolutely, as only the latter will receive a tax-free capital gains tax uplift on death. This point should not be underestimated by HMRC, as many elderly tax payers prefer to retain assets with significant inherent gains until death in order to benefit from this uplift.

25.2. If HMRC prefers gifts of assets where the settlor has no say of what happens to the assets (as per absolute gifts to individuals), the current nil rate band rules could be maintained for trusts where the settlor is neither a beneficiary nor a trustee.

25.3. The illustration at 2.30 can be misleading, as the couple could save the same £1.3 million in IHT by age 75 by making PETs of the same amount to family members. For example, if the gifts were to say their children, and the children then made further PETS to their own children, the amounts gifted would escape IHT on the deaths of at least two generations ie a saving of at least £2.6 million. There is no reason why this pattern could not continue down the generations. When this IHT saving is possible through directly owned property, we do not see the basis for penalising trusts in this way, particularly as trusts are now subject to income tax and capital gains tax at the highest rates compared to individuals, so there is now no clear tax advantage in owning assets in trust.

New Proposals

26. The new proposals may relieve trustees of a limited amount of administrative burden, but it could be at a significant cost to the beneficiaries of a trust. For example, where a trust is no longer entitled to a nil rate band under the proposals (eg because a settlor creates two trusts with £325,000 of assets, albeit 8 years apart, and the settlor allocates the full nil rate band to the first trust), the second trust would be liable to £19,500 (£325,000 @ 6% and ignoring any growth in the underlying investments) of IHT at its first 10 year charge. Although it may cost trustees time and perhaps some professional costs to collect all the required information under the existing rules, it is hard to believe that this would cost the trustees as much as the IHT liable under the proposals.

27. We are also concerned about the complications and potential lack of confidentiality that could be created by the proposals for election(s) by the settlor if any new trust is to receive a nil rate band allocation. If a settlor does not allocate 100% of his SNRB allowance to a trust, there is a risk the unallocated proportion could be lost if he fails to allocate it at a later date (either to the same trust or a new trust). We acknowledge there are proposals that following the death of the settlor, the personal representatives (PR) can allocate any unused SNRB, but this then just transfers the administrative burden to another party. (We have commented on the proposals relating to the PRs later).

28. We note the proposals to allow pre 6 June 2014 trusts to retain their existing nil rate band entitlement but allow them to benefit from the simplified calculation using the standard rate of 6%. Although we welcome this proposal, in practice, we do not see the simplified calculations making a significant difference to the vast majority of existing trusts, as either there are not any related settlements (or only £10 for the initial trust property), no non-relevant property in the trust and only rarely any PCLTs to take into account.

29. With regard to the anti-forestalling provisions, it is unfortunate that a settlor making a trust now has uncertainty as to the election mechanism that may be introduced. It is therefore creating an unnecessary administrative burden for the settlor to make the election at some point in the future if/when the details and election form have been finalised. It is highly likely that an exit charge could also have arisen before these aspects have been finalised, so transitional provisions would be required if the rules are changed.

30. For example, when a similar situation arose in the period between 22 March 2006 and the Finance Bill 2006 receiving Royal Assent, there was a period of significant uncertainty, particularly as the rules were amended several times during the committee stages. For example, this resulted in trustees of some accumulation and maintenance trusts being unable to amend the trust terms to meet the new age 18-to-25 trust rules, because a beneficiary attained an interest in possession before the new rules were introduced. We hope HMRC is aware of the genuine uncertainty for settlors during this period of consultation and perhaps the onset of as yet, unknown new rules.

The revised model

The election to allocate nil-rate band to a settlement

31. Due to family reasons, a parent may wish to create separate trusts for each child, and he may wish to keep the existence of each trust secret from other family members (and perhaps trustees of the other trusts) who cannot benefit from a particular trust. An election that includes details of all trusts could reveal the existence of other trusts that the settlor has made, but of which he did not want other family members/trustees to know. Consideration therefore needs to be made to the form of the election to ensure that a settlor is able to keep trusts confidential should he wish to do so.

32. We would recommend that along with the settlor notifying the trustees of any settlements he has created with the election, the settlor should have an option to register his SNRB election with HMRC in a central register. This should help to avoid the situation where the settlor makes the election and informs the trustees, but the trustees lose the form or have changed before they need to include it on say a 10 year charge calculation. If the settlor has made the election and informed the trustees, it would be unfair to the beneficiaries of the trust if it were not able to benefit from the nil rate band allocated to it, due to an administrative oversight by the trustees.

33. We also envisage potential problems with the ability of a settlor to vary the allocation of the SNRB between settlements up to the due date for the payment of the first charge. This could happen for example where a settlor does not wish to be a trustee, (so is not aware when/how the trust fund is distributed) and the trustees could trigger a due date for the payment of IHT by making a capital distribution of which the settlor is unaware. We can also foresee problems where lay trustees may make a distribution from a trustee which they believe to be income, but due to insufficient income being received, part/all of the distribution is capital, therefore triggering a due date without it being realised straightaway.

34. In our view, trusts where the settlor is not a trustee (or protector) could be at a significant disadvantage under these proposals. The SNRB proposals may therefore be more effective if they were only applied to lifetime settlements where the settlor is/has been a trustee at any time (including a 'shadow trustee' capacity if this can be defined sufficiently). This should encourage settlors to create trusts and step away from the decision making process, if they want the trust to benefit from the full nil rate band allowance.

35. Although the ability to increase the SNRB allocated to a trust has attractions, we feel that such amendments, along with the split treatment for existing trusts where new property is added is unnecessarily complex given the policy objective of simplifying the calculation of IHT for trusts. In particular, it would impose a burden on trustees to segregate newly added funds from the pre 6 June 2014 trust property in order to prepare two sets of IHT calculations. There would then need to be guidance as to how any distributions from the fund are dealt with, eg pro-rate old proper and new property, last in first out, or some other method. As suggested above, the new proposals would become more workable if existing trusts were entirely removed from any changes in legislation, even if new funds are added to those trusts. Although HMRC may not

welcome this proposal, it would help to bring an air of fairness and balance, given than the overall effect of the new proposals will be to increase revenue raised from IHT.

Examples

36. As per the examples provided in previous consultation documents, we do not feel that these examples are realistic, as in practice it is very rare for any settlor to create a trust and trigger an immediate IHT liability. However using the figures provided, if a settlor only allocates 50% of their SNRB to that trust, the 10 year charge is doubled (ie £10,500). The settlor may not want to allocate all their SNRB in case they create a future trust, but in our view £10,500 is an unnecessarily high price for the trustees and their beneficiaries to pay in order for the settlor to retain flexibility over his financial affairs.

37. Furthermore, if a settlor allocates his full SNRB to his first trust and creates a second nil rate band trust 7 years later, ignoring any growth in the fund, the second trust will be liable to £19,500 on a 10 year charge.

38. Considering these examples, we do not see how HMRC can deny that the new proposals will be a revenue raising exercise.

39. The points regarding the effect on the 10 year charge will also be relevant for exit charges, although the effect will actually be compounded further for trustees who make regular distributions of capital, as each payment is now likely to result in IHT being payable. Even if there is a slight decrease for some trusts in the background information required before the IHT can be calculated, the fact that a return will be required for far more distributions will therefore not save professional fees in the long run.

40. When SI2008/606 was introduced, this had a very positive effect on the administration of many trusts, as trustees needed to submit far fewer nil returns. In contrast, the effect of SNRB going forward will overturn that reduction in administrative work for trustees and HMRC.

41. If NRB splitting is introduced so that more capital payments will need reporting and small amounts of tax regularly become payable (eg where only a few quarters have passed after a 10 year charge for a nil rate band trust that currently does not need to pay IHT), we recommend that new concessions are introduced for capital payments of less than say £1,000 or where the tax payable is less than £100 so such distributions could be reported in batches.

42. We understand HMRC would like to incorporate the reporting of IHT events on the same annual tax return as for income tax and capital gains tax, but as this is not expected for several years to come, the impact of the proposed new rules if introduced in 2015 should not be underestimated.

In summary

43. As ‘historic baggage’ affects a small proportion of trusts, we still do not see the proposed amendments bringing about the simplification that this series of consultations seeks to achieve.

44. As guidance will still be required to explain existing concepts such as ‘quarters’ and ‘settlement rate’, (and we note the use of ‘effective rate’ and ‘hypothetical chargeable transfer’ at 3.5 so presumably these concepts too), we feel that time and money spent producing guidance so that trustees can self-assess the current rules would be better, compared to tweaking the current rules and introducing a whole new concept of ‘SNRB’. We would however welcome any attempts to make IHT tax returns fully electronic.

Additions to existing settlement under the new rules

45. We welcome the proposals for existing trusts to remain under the existing calculations, but we believe this should extend to the life of the trust, even if new property is added at any time. This is because it will produce unnecessary complications by having two different sets of relevant property rules relating to the same settlement. The added complications of allocating some/all SNRB to such trusts are not simplifying the calculations.

46. Adding new funds to existing trusts is likely to occur where someone has created a trust during their lifetime and they leave the balance of the estate to the same trust on death.

47. These proposals create a similar position to that for pre 2006 interest in possession trusts where funds are added later. It is worrying that there is still not total agreement as to how such settlements should be dealt with so we would strongly advise not to recreate a similar position with relevant property trusts.

48. The sensible option would be to allow any additions at any time to trusts created prior to 6 June 2014 to be taxed under the existing relevant property rules provided the terms of the trust remain unchanged.

49. Many individuals have created pilot trusts and written their Wills such that their estate will pass to the pilot trusts. To bring those trusts into the new regime following the death of the settlor/testator would be retroactive legislation and, particularly if the individual is no longer capable of making amendments to their Will unjust.

Death of the Settlor

50. Our concern here is how the executors will know if the settlor has created any previous lifetime trusts, eg a £10 pilot trust to receive his residuary estate on death (particularly if more than seven years prior to death so there is no IHT liability/reporting requirement arising on death) and if so, how the deceased has allocated any SNRB. The executors may or may not be trustees of the earlier settlements and without this common knowledge, the existence of such earlier trusts could easily be overlooked therefore leading to incorrect use of the SNRB. Again, removing one requirement for historical information seems to be replaced with a different record keeping requirement.

51. Unless HMRC is prepared to keep a register of SNRB which they will release to the executors on say submission of IHT400, then it is hard to see how the executors can be expected to allocate any unused SNRB correctly. If such a register is to be maintained, then executors should be given six months from HMRC confirming the SNRB allocation rather than a fixed period from death.

52. Without such a register, there is undue pressure on settlors to “die tidy” so that executors are aware of all the deceased’s trusts thus ensuring the trustees (and the beneficiaries) are not subject to more inheritance tax than absolutely necessary. However, the settlor may not be aware that some of his trusts had ended so he may not be able to “die tidy”.

Trusts that are wound up

53. We accept it would be simplest for any SNRB to only be reallocated where an entire trust has been wound up. However, presumably this would only refer to funds subject to the new regime, so if a settlement has funds subject to the current regime to which new funds are added, only the new funds need be distributed in order for the SNRB to be reallocated.

54. If the SNRB is lost completely for a trust wound up after the settlor’s death, this may be a deterrent to winding up trusts and could be counterproductive to HMRC’s aims. Therefore we

recommend that trustees could instead allocate any SNRB they have received for a trust that is wound up to any other trust created by the same settlor that are still in existence.

The nil rate band for existing trusts

55. Although we welcome the proposals to allow IHT calculations for existing trusts to benefit from the new rules to the extent that the initial value of related settlements and non-relevant property, we feel that overall, this concession will make little practical difference. Our preference would be for the existing rules to remain as at present given most practitioners are familiar with them.

56. As stated above, in practice our members find few relevant properties trusts are created on the same day, but even in those cases where they do occur, it is far more common to find that the initial value (being that required in the computation) is a nominal value (say £10). We therefore find your example 5 suggesting a £6,300 IHT saving for an existing trust under the proposed new rules unpersuasive.

57. Apart from cases where pre 2006 interest in possession trusts have received additional property which is now subject to the relevant property rules (which is something that our members usually recommend is avoided in order to prevent these unnecessary complications), we find there are few trusts in practice that will benefit from the second concession.

58. At 3.30 it is proposed that relevant property settlements created by companies will not be entitled to a nil rate band at all. To compensate for this change in policy, it is suggested that the tax rate charged should be reduced from 6%.

Age 18 to 25 trusts

59. These trusts were created as a concession to the change in accumulation & maintenance rules that required trustees to distribute assets to beneficiaries at age 18 in order to avoid relevant property charges. It therefore seems unfair to impose relevant property charges on these trusts only 8 years later.

60. Our main concern is that reforms to these calculations could result in more IHT being payable, since at present the calculation is usually based on the value of the trust at creation, as opposed to the most recent 10 year charge, as required under the relevant property regime. However, it is not clear from the consultation document what is being proposed ie amending the current age 18-to-25 regime, or imposing relevant property charges instead so clarification regarding this would be appreciated.

61. We would welcome an option for trustees of such trusts to elect in to a simplified regime (eg pay tax at a fixed settlement rate of up to 6%, 4.2% maximum for 18-25 trusts) if the information is difficult to obtain and does not warrant the costs incurred, but in our view it would be unfair to amend the calculation for all such trusts.

RESPONSES TO CONSULTATION QUESTIONS

Q1 Are there any other provisions that would need to be made for when a settlor dies that have not been covered in this section?

62. Unless the executors become aware that the settlor has allocated 100% of his SNRB, these proposals would introduce a requirement for executors to check if there are any trusts created more than seven years prior to death, to see if the SNRB has been allocated to any of those trusts instead. This information may not be readily available unless the settlor is aware of this need. Therefore, in removing the need for certain historical information from relevant property

charges in order to simplify the calculations, the new proposals simply replace this with a different historical record keeping requirement.

Q2 Are there any other features of the existing rules that should be retained under the new rules?

63. We still cannot see the required simplification stemming from the proposed new rules and therefore suggest that the existing rules be retained for all trusts. This is because the new rules only dispense with infrequently required components, whilst introducing a whole new concept of SNRB and creating more opportunities for one trust to be subject to two different IHT regimes.

Q3 Are there any aspects of the proposed new rules for allocating the SNRB or calculating the IHT charges that could be improved?

64. We have concerns over knowledge sharing of the SNRB, particularly after the death of the settlor. Even though the settlor may have done everything in his power to inform his trustees of the allocated SNRB, it would still rely on the trustees' record keeping. A central register of SNRB maintained by HMRC is essential to enable personal representatives to allocate any unused NRB correctly.

65. As more trusts would pay IHT under these proposals (by definition far fewer will fall within the nil rate band allowance), there will be an overall increase in the level of administration required from trustees and also the IHT collected by HMRC. Our particular concern is smaller trusts that make regular payments to beneficiaries; concessions not to have to report every minor payment are necessary to strike a fair balance. Presumably HMRC can check their records to see the average exit charge value and the IHT collected under the current regime and can do analysis as to how this will be affected under the proposed new regime?

66. We suggest that HMRC give consideration to only introducing SNRB to new trusts where the settlor is or can be a trustee of that trust at any time. In contrast, where the settlor is not a trustee, new trusts can continue under the current rules (or simplified rules providing the seven year rule to enable sub-threshold trusts to be entitled to a full nil rate band allowance). This would mean a settlor could create trusts and choose their trustees in full knowledge of the IHT consequences.

Q4 Are there any aspects of the existing rules that would no longer be necessary under the new rules?

67. Given that trusts can now continue for up to 125 years under English law, the existing rules will be required for the foreseeable future.

Q5 Are there any other impacts for example on cost or equality that should be taken into account?

68. As above, we see small trusts created by a settlor every seven years so that they currently fall within a settlor nil rate band being unfairly hit by the new proposals. These trusts currently have no reporting requirements and no IHT charges, whereas such trusts will be caught by the new proposals, even though they will have been created in accordance with commonly accepted IHT planning principles over many years, without any previous criticism by HMRC.

69. As the Tax Impact Assessment is for just five years to 2018/19 it is difficult to understand the impact of these proposed changes which in the main will not impinge on trusts until 2025.

Q6 Should the simplified method for calculating ten year and exit charges proposed for relevant property trusts be extended to trusts that fall within the relevant charging

provisions for 18-25 trusts?

70. To answer this question fully we need more detail about what exactly is being considered but it would appear that HMRC may be considering bring age 18-to-25 trusts within the relevant property regime and therefore imposing 10 year charges as well as exit charges on these trusts. We strongly oppose the introduction of 10 year charges in relation to such trusts.

71. In our member's experience, there are very few age 18-to-25 trusts that will be better off under the relevant property exit charge calculations, since the main value used to calculate the rate of IHT will be greater due to the growth in funds between creation of the settlement and a recent 10 year anniversary.

72. It would be fairer to let these trusts be subject to the new proposals (or perhaps a set flat rate of IHT of up to 4.2%) if the trustees elect accordingly.

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APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.

4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/~/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)