Technical consultation - Inheritance Tax on pensions liability, reporting and payment

A response by
The Chartered Institute of Legal Executives (CILEX)

January 2025

Introduction

0.1. CILEX would like to take the opportunity to respond to the Technical Consultation relating to Inheritance Tax on pensions: liability, reporting and payment.

0.2. The Chartered Institute of Legal Executives (CILEX) is the professional association and governing body for Chartered Legal Executive lawyers (commonly known as 'CILEX Lawyers'), other legal practitioners and paralegals. Under the Legal Services Act 2007, CILEX acts as the Approved Regulator (AR) and delegates these regulatory powers to the independent regulator, CILEx Regulation Ltd (CRL).

0.3. CILEX represents over 17,500 members of which 77% of the membership are female, 17% of members are from an ethnic minority background, 4% are LGBTQA+ and 6.2% have a disability. Additionally, in terms of social mobility, 64% of CILEX members attended a state-run or state-funded school and 49% have an undergraduate university degree. 15% of members come from households which received free school meals.

0.4. CILEX represents a large group of private client practitioners, who regularly engage with issues such as estate administration. As such, given the expansion of inheritance tax into discretionary schemes such as unused pension funds it is crucial that this process is considered from a legal perspective and therefore CILEX has sought to respond to the below questions.

Question 1: Do you agree that PSAs should only be required to report unused pension funds or death benefits of scheme members to HMRC when there is an Inheritance Tax liability on those funds or death benefits?

1.1. CILEX is unsure whether this would be a realistic proposal in practice. Firstly, pension scheme administrators may not be in a knowledgeable position relating to the full value of the estate and therefore they may not be in a position to correctly identify which unpaid pension funds or death benefits are reportable.

1.2. Secondly, the testator and beneficiaries from the estate are likely to want indemnities against pension scheme administrators submitting erroneous reports. This could also lead to increased costs for personal representatives for the deceased's estate, and potentially higher private client lawyer fees. Instead announcing all unused pension funds would be a guaranteed process which would lead to less errors.

1.3. There are also further concerns raised by CILEX practitioners relating to issues which could occur where the original financial position turns out to be inaccurate and Inheritance tax becomes payable. In those circumstances, it is a firmer position for both the estate and the PSA to have full reports submitted. This would also safeguard against fraudulent estimates being put forwards by those seeking to benefit from reduced rates of inheritance tax. As such, CILEX is of the view that it is safer for all unused pension funds to be reported.

1.4. However, given that there are some situations where incorrect reports, or no report, is provided to the PSA. Therefore there should be an alternative available to them.

Question 2: How are PSAs likely to respond if they have not received all the relevant information from the PR to pay any Inheritance Tax due on a pension by the 6-month payment deadline?

2.1. CILEX notes that the 6-month timeline provided for by the consultation is too constrained for PRs to provide all relevant information to the PSAs. In cases of complex estates, or cases where other 3rd parties are slow to provide information, this would unfairly penalise PRs.

2.2. One risk outlined by a CILEX Private client practitioner is that PSAs will likely report the entirety of the unused pension funds, and then pay a large portion (e.g. 40%) of the unused pension fund to HRMC in order to protect their position and limit the risks on any late payment fees. It will then be left to the PR to claim a refund on this if applicable. This may lead to a more protracted scheme, and more stress and complexity for PRs and for any beneficiaries. Additionally, it will add additional work for HMRC as this may increase the number of estates seeking refunds.

2.3. CILEX is of the view that where the above is going to occur, the PSA should expressly state this to the PRs as an action they may take, when the PSA is made aware of the death.

Question 3: What action, if any, could government take to ensure that PSAs can fulfil their Inheritance Tax liabilities before the Inheritance Tax payment deadline while also meeting their separate obligations to beneficiaries?

3.1. In order to ensure that inheritance tax payment are made on time, CILEX believes that the government should give power to PSAs to deduct and pay approximately 40% of the fund at source, if PRs have not followed the process in a timely manner (within 6 months).

3.2. This should however come with the strong caveat that this power should be used in exceptional circumstances, and that it is expected that information will have been provided within the correct period. It should also provide an express list of reasons where the PSA should not automatically make the report and payment.

Question 4: Do you have any views on PSAs reporting and paying Inheritance Tax and late payment interest charges via the Accounting for Tax return?

4.1. CILEX is of the view that it sensible to use a system which streamlines the process such as Accounting for Tax return. However, CILEX notes that the efficiencies derived from streamlining will only be successful where there is a very low frequency of errors on linking the accounts. I.e. where a reference number / inheritance tax number has not been provided by the reporting period, HMRC should use their best endeavours to link the report from the PSA to the correct estate, preventing costly recalculations.

Question 5: Do you agree that 12 months after end of the month in which the member died is the appropriate point for their beneficiaries to become jointly and severally liable for the payment of Inheritance Tax?

5.1. CILEX agrees with the consultation and believes that in addition to the beneficiaries becoming jointly and severally reliable, the PSA should also be jointly and severally liable. This would ensure that accurate inheritance tax amounts are reported, and that the PSA remains liable for any errors/omissions on their part.

Question 6: What is the most appropriate means of identifying or contacting beneficiaries if either the PR or HMRC realises that an amendment is needed after Inheritance Tax has been paid? Should PSAs be required to retain the details of beneficiaries for a certain period?

6.1. PSAs should have the authority to disclose beneficiary information if an issue arises in respect of inheritance tax, however this ought to be restricted to the PRs named on the grant of probate, or their legal advisers and HMRC.

6.2. CILEX is of the view that this should be retained for a period of 6 years from the date of closing the account (i.e. once the unused pension has been provided to the estate and any inheritance tax paid). CILEX also notes that there may also be situations involving claims against estates in which this information may be needed.

Question 7: What are your views on the process and information sharing requirements set out above?

7.1. CILEX agrees with the process as outlined within the consultation. Furthermore, the position outlined within question 2 above above (automatic payment of 40% unused fund) may be appropriate where information is either not shared by PRs in a timely fashion, or at all.

7.2. CILEX believes that the process and information sharing requirements accurately defines who shares which responsibility and should create a streamlined service for all stakeholders in the process.

Question 8: Are there any scenarios which would not fit neatly into the typical process outlined above? How might we address these?

8.1. CILEX notes that there will always be estates which fall outside the norm (e,g, foreign assets that are difficult to ascertain) however the 40% deduction with power for the PR to apply for a reclaim on behalf of beneficiaries would resolve most of those issues.

Question 9: Do you have any other views on the proposal to make PSAs liable for reporting details of unused pension funds and death benefits directly to HMRC and paying any Inheritance Tax due on those benefits? Are there any feasible alternatives to this model?

9.1. CILEX has nothing to add relating to the proposal on PSAs at this time.