FB 2015 – inheritance tax provisions

Inheritance Tax and trusts

01 November 2015

CIOT comments on clause 9 of the Finance Bill

The CIOT submitted a briefing to the Finance Bill committee on clause 9 of the Finance Bill, the legislation to amend the inheritance tax (IHT) regime by creating a residence nil-rate allowance (RNRA). After 6 April 2017 if an interest in a home is passed on death to a direct descendant of the deceased, that estate will have an RNRA of, initially, £100,000 (or the value of that interest if a lower amount), rising to £175,000 by April 2020. The RNRA is added to the existing £325,000 nil rate band to create the value of the estate that can be passed on free of IHT.

We acknowledged the government's specific policy objective: to reduce the burden of IHT by making it easier to pass on the family home to direct descendants without a tax charge, but noted that this new allowance creates two tiers of inheritor and opens up various definitional issues. Our briefing sets out our concerns about the additional length of legislation and the burden this places on HMRC, advisers and taxpayers.

This measure also increases the complexity of the tax system. The consequence of raising the threshold for only a particular category of beneficiaries (direct descendants) and only for a particular constituent element of the deceased's estate (the family home) is nine extra pages of dense legislation to the statute book, placing further compliance burdens on HMRC, advisers and taxpayers. The increasingly diverse patterns of the modern family are not addressed by restricting the allowance to direct descendants only.

We welcomed the subsequent consultation on preserving the RNRA if the deceased had downsized to a less valuable residence or had ceased to own a residence on or after 8 July 2015. However, the additional legislation proposed for Finance Bill 2016 will inevitably further complicate the tax system and could increase the revenue cost of the change.

New IHTA 1984 s 8K(3) allows a step-child to receive the benefit of the RNRA. We welcomed this, but were concerned that the definition of ‘step-child’ was inadequate. The *Oxford English Dictionary* definition (which is used in the absence of any more specific definition in the legislation) is ‘a child of one’s husband or wife by a previous marriage’. This definition appears to exclude the children of a husband or wife who was not married at the time of the child’s conception, or one who was married but the child is not a child of the person to whom he or she was married. Our request for the legislation to make clear that the term ‘step-child’ includes any child of one’s husband or wife who is not also one’s own child was not heeded at the committee stage.

The legislation is inadequate in that it sidesteps the problem of how to establish that a property has been a person’s residence. There are numerous definitions of residence in the tax system and greater clarity is necessary. This is a particularly glaring omission at a time when additional complication is added to the CGT main residence rules. It is unclear what evidence HMRC will require of the personal representatives.

New IHTA 1984 s 8H deals with the situation in which there are multiple possible qualifying residences. It gives the deceased’s personal representatives the right to nominate the property qualifying for the allowance. Our suggestion that, if a residence passes under a qualifying trust the trustees should be part of that process, was not pursued.

The full text of the CIOT’s briefing can be found parliament.uk.