



REFORMING INHERITANCE TAX - UNUSED PENSION FUNDS AND DEATH BENEFITS

Issued 15 September 2025

ICAEW welcomes the opportunity to comment on the draft legislation on reforming inheritance tax - unused pension funds and death benefits published by HMRC on 21 July 2025, a copy of which is available from this [link](#).

ICAEW does not disagree with the overall policy, but we have major concerns with the way the measures are being implemented.

The measures will be unworkable for any case where the pension beneficiaries are different to the estate beneficiaries. Personal representatives will have to pay inheritance tax on pensions funds they do not control, and they will struggle to enforce the right of recovery from pension beneficiaries. The estate beneficiaries will be worse off if they have to bear tax that should be borne proportionately by the pension beneficiaries. The interests of both estate beneficiaries and pension beneficiaries should be properly balanced to ensure a fair and equitable outcome.

Due to the risk of personal liability, few professional or lay people will want to act as personal representatives.

The fair and equitable solution is to have a withholding of inheritance tax on unused pension funds by pension scheme administrators.

We are seriously concerned that due weight has not been given to the representations made by those representing personal representatives, rather than those in the pension industry. The proposal as drafted is not in the public interest and needs an urgent rethink.

ICAEW

Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
T +44 (0)1908 248 250 F +44 (0)20 7920 0547 icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

This response of 15 September 2025 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, ICAEW's Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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For more information, please contact: Tax – taxfac@icaew.com

KEY POINTS

ICAEW is concerned that the government has failed to appreciate that beneficiaries of an estate may not be the same as the beneficiaries as a pension fund. Personal representatives (PRs) are being made personally liable for the payment of all inheritance tax (IHT) due from a deceased's estate, even where this relates to funds in pensions over which the PRs have no control. This was exactly the situation that the government sought to avoid in the original consultation.

The right of recovery under IHT legislation (s211, Inheritance Tax Act 1984 (IHTA), as amended by the draft legislation) is insufficient and in cases where the pension beneficiaries do not engage with the PRs, the PRs will need to take legal action against the differing beneficiaries of multiple pension funds. There may be insufficient funds in the free estate to fund such legal action and lay PRs, who in many cases will be bereaved family members, will not want the stress of litigation. Legal action against pension beneficiaries who live abroad will be almost impossible to enforce.

Sole liability of the PRs for the IHT will result in a grossly unfair position, where the beneficiaries of pension schemes will receive their funds free of IHT. In contrast, the estate's beneficiaries (ie, those entitled under the deceased's Will) will have to bear the IHT on pension funds they may not be entitled to, with little prospect of recovering IHT from the pension beneficiaries. All beneficiaries must be treated equally. To ensure parity amongst beneficiaries and to improve the chances of IHT being paid on time, ICAEW believes that the government must implement a system where pension scheme administrators (PSAs) are required to make a fixed deduction of IHT from pension funds.

If a fixed deduction is not implemented, the option for a pension beneficiary to ask the pension fund to pay their share of IHT needs to be clarified and pension funds with illiquid assets, such as real estate, need to be given more than three weeks to raise the necessary funds.

The requirements for PRs and PSAs to exchange information must be sufficiently strong.

Firms involved in probate work are already advising their partners not to act as PRs where there is, or may be, a pension in the estate, because they risk having to pay IHT on funds they do not control. Probate firms may experience difficulties in obtaining sufficient professional indemnity cover, either to act as professional PRs or to advise the lay PRs, and may withdraw from advising PRs altogether. If PRs are unable to obtain proper advice on their IHT information sharing, payment and reporting obligations, estates will not be finalised promptly. Incorrect IHT returns will be submitted, leading to HMRC enquiries, penalties and punitive late payment interest (currently charged at 8%).

THE RESPONSES TO THE CONSULTATION

1. The [original consultation](#) ran from 30 October 2024 to 22 January 2025.
2. ICAEW's response of 22 January 2025, ICAEW REP 05/25, is available [here](#).
3. HMRC received 649 [responses](#) to the consultation, which is an unusually high number. A typical consultation might receive 100-120 responses. ICAEW has undertaken an analysis of responses and we consider that only around 30 respondents could be seen as representing the views of PRs and estate beneficiaries, such as firms of accountants or solicitors, or professional bodies (tax, accountancy or legal). The other respondents were predominantly public and private sector pension schemes or PSAs of varying sizes. ICAEW is concerned that the views of PRs have been drowned out by the sheer number of responses from pension funds and PSAs.
4. We also have concerns about how AI was used to analyse the responses, as this appears to be one of the first times that HMRC has acknowledged that it has used AI for this purpose. ICAEW requests that HMRC publishes further information:
 - about how it used AI to analyse the responses to the consultation;

- whether consideration, including any weighting, was given to which parties the respondent might represent; and
 - what it considers to be the limitations of the AI analysis.
5. The second paragraph of the consultation response notes that the original proposal was that the PSAs would report and pay any IHT due on a pension fund. This was so that:
- The PRs would not have to pay IHT on pension funds that they did not control.
 - There would not be an additional income tax liability on the pension funds used to pay IHT.

However, the changes announced on 21 July 2025 – where PRs will be liable to pay all of the IHT due, including on pension funds that they do not control – have put PRs in exactly the position that the government initially intended to avoid.

DIFFERING AND UNFAIR TREATMENT OF BENEFICIARIES

6. The beneficiaries of a deceased's estate may not be the same as the beneficiaries of a pension fund – particularly given that many individuals have 'blended families' due to divorces, remarriages, cohabitation, etc. An individual could easily have 10 or more separate pension pots, from the different employments that they had over their working life. Each pension fund may well have multiple beneficiaries, as well as the beneficiaries of one pension being different to those of other pensions. Small pension pots regularly come to light years after a member has died, and in some cases, the member may have inadvertently omitted to update their nominated beneficiaries before they died.
7. Under the proposals (cl2, the new s210, IHTA) and in the absence of a s226A 'scheme pays' nomination, the PRs will have to pay all of the IHT from estate funds, even though some of the IHT is attributable to the value of pension funds over which the PRs have no control and no access to. HMRC considers that the revised right of recovery given to the PRs in s211(3), IHTA, along with the new option for a pension beneficiary to require the pension fund to pay the IHT, will be sufficient. ICAEW disagrees with HMRC's position.
8. In practical terms, this proposal will be unworkable. If pension beneficiaries do not cooperate with PRs (and while we still await the information sharing regulations, the current draft legislation places no legal obligation on the pension beneficiaries to do so), the PRs will need to take legal action. In cases where there are different beneficiaries of multiple pension funds, there may not be sufficient funds in the estate to support that scale of legal action. If pension beneficiaries live abroad, the legal costs of trying to recover IHT by the PRs would likely be prohibitive and potentially impossible to enforce.
9. If, for any reason, the PRs cannot recover the IHT from pension beneficiaries, the estate beneficiaries, will bear the full burden of IHT from their entitlement. It is a poorly designed system that will allow pension beneficiaries who fail to engage with the PRs to be paid without a deduction of IHT, leaving the PRs having to fund the IHT on a pension. Pension beneficiaries will be unjustly enriched by having borne no IHT. Assets in the estate, including family homes, that would otherwise have passed to heirs had the burden of IHT been properly pro-rated, may need to be sold to fund the IHT on a pension.
10. PRs have a fiduciary duty to the estate beneficiaries and not to pension beneficiaries. ICAEW does not understand why pension beneficiaries should be treated more favourably than the estate beneficiaries. All beneficiaries must be treated equally and the burden of IHT must be pro-rated between all sources of assets that form the IHT estate.

11. In paragraph 6 of ICAEW's [consultation response](#) of 22 January 2025, we proposed a number of practical measures to ease the information exchange process, to ensure IHT is paid within the current deadline (of six months from the end of the month of death) and to ensure a fair burden of tax.
12. We urge the government to revisit our proposals, particularly the proposal that PSAs should be required to deduct a flat rate of IHT, which they pay to HMRC, before paying out to the pension beneficiaries. Any adjustments or repayments can then be processed by the PRs. The government must consider the following options:
 - Deductions at different rates for different value funds, so that lower-value pension funds could deduct a lower rate of IHT, say 20%, possibly with an exemption for funds worth less than £10,000. High value funds deduct a higher rate of up to 50%.
 - A fixed deduction of 50% could be made by all PSAs, to cover the IHT, the executors' costs and any HMRC interest, except for pensions where the sole pension beneficiary is the surviving spouse who is a long-term UK resident (for IHT purposes).
 - Pension funds must retain 60% of the funds, so that a maximum of 40% of the value of the death benefits is paid out to pension beneficiaries. The retention period would be a maximum of 23 months (as such payments are only free of income tax for the pension beneficiary if paid within 24 months following the death of a member who died under the age of 75), or until the PRs confirm to the PSAs that the IHT position is final.
 - In cases where a long-term resident spouse and/or a charity are the sole beneficiaries of a pension fund, there would be no need for the PSAs to make a deduction.
13. The overall IHT position can then be considered at estate level, with any necessary refunds claimed from HMRC (of both IHT if overpaid and of the income tax that pension beneficiaries have then suffered on their receipts from the pension). Pension beneficiaries are much more likely to cooperate with PRs if they are due a refund.

COMMENTS ON THE SPECIFIC DRAFT LEGISLATION CLAUSES

Clause 2 – revised s210, IHTA 1984

14. As outlined above at paras 6–10, we consider this clause should be rewritten so that the IHT, along with an appropriate proportion of late payment interest and any fees incurred by the PRs in dealing with PSAs and pension beneficiaries, is borne proportionately by pension beneficiaries. As currently drafted, the burden on the PRs, and ultimately the estate beneficiaries, is grossly unfair where the pension beneficiaries differ from the estate beneficiaries. This is because the PRs have no control over and no access to the funds in the pension.
15. Under s201, IHTA 1984, liability for the IHT due on settled property rests with the person in whom the assets are vested. ICAEW considers that s200(1)(c) IHTA 1984 should be strengthened so that beneficiaries of a pension fund are jointly liable for the IHT.

Clause 3 – new s226A, IHTA 1984

16. If a pension beneficiary asks the pension scheme to pay the IHT, not all pensions will be able to raise sufficient funds within the three-week deadline for paying it, particularly if the fund has illiquid assets such as real estate. The sale of a commercial property can take six to nine months, and any forced sales (or 'fire sales') will inevitably be for less than market value. This period should be extended.

17. This provision will be unenforceable for non-UK pension schemes, so the IHT would have to be paid by the PRs and potentially be unfairly borne by the estate beneficiaries.
18. HMRC advised that the £4,000 is 40% of the trivial commutation lump sum cap of £10,000. Section 226A needs to be amended to make it clear:
- Whether this £4,000 limit is only the amount of IHT due. ICAEW considers that it should include IHT late payment interest that is reasonably attributable to the IHT due on the pension fund, any legal fees incurred by PRs in recovering the IHT that is due from the pension beneficiaries plus any penalties imposed by HMRC (as noted at paragraph 27 below). Estate beneficiaries must not be disadvantaged by having to bear the burden of interest or legal costs that relate to the funds in a pension.
 - Whether a pension beneficiary can make more than one 'scheme-pays' notification under this section. Under the proposed provisions, ICAEW believes that most estates will struggle to pay the IHT on time, so late payment interest will be common area of dispute between the PRs and pension beneficiaries.
19. ICAEW is concerned that the £4,000 minimum liability where the pension fund is obliged to pay the IHT (s226A(3)(c), IHTA 1984) is too high where there are multiple beneficiaries. ICAEW recommends that a joint election should be available to beneficiaries where their combined IHT liability is at least £4,000 but each individual's liability is less than that.
20. ICAEW requests clarification on whether the representative of a minor beneficiary of a pension fund, or of a beneficiary who lacks legal capacity, can make the election for the pension to pay the IHT on the beneficiary's behalf. We are thinking particularly in the case of intestacies.
21. As a wider issue, ICAEW considers that the IHT payment deadline (six months from the end of the month of death) should be extended, or the IHT should be payable in instalments, in cases where the estate includes a pension fund. This is to allow sufficient time for the necessary information to be exchanged between the PRs and PSAs and for all parties to realise sufficient funds to pay the IHT. ICAEW looks forward to reviewing the draft legislation for this information exchange process when it is published.

Clause 4 – amendments to s211(3) & s212 (1), IHTA 1984

22. As noted at paras 7–9 above, ICAEW does not consider that the right of recovery is sufficient, because in the case of uncooperative beneficiaries, PRs will need to instigate legal action to recover the IHT from beneficiaries of multiple pension funds. The estate may not have the funds to pay for such legal action. Recovery of tax from pension beneficiaries who live abroad is even more problematic and in many cases will be unfeasible.

Clause 6 – related changes to income tax rules

23. Section 567B(1)(c), ITEPA 2003 appears to deny relief from income tax for any IHT paid after 31 January following the tax year in which the pension member died. Extra IHT may become payable if the value of the estate changes (eg, HMRC valuation enquiries, legal claims by dependents, additional assets are discovered, etc, that change the apportionment of the nil rate band) after a relevant death benefit has been paid to a pension beneficiary. ICAEW recommends that this 31 January deadline for relief is extended.
24. ICAEW considers that the phrase 'pass on the burden' in the new s567B(1)(c)(ii), ITEPA 2003 and its definition at s567B(5)(b), needs to be revised. It appears to be possible for a pension beneficiary to obtain an income tax deduction under s567B(5)(a) once the PRs have paid the IHT on pension death benefits, but before the pension beneficiary has actually reimbursed the PRs (i.e., in cases where the PRs are still chasing the beneficiary for the reimbursement). We understand the need for the pension beneficiary not to suffer both IHT and income tax charges on the same funds from a pension and that for cash flow purposes, the beneficiary may need to obtain the income tax refund before they can reimburse the IHT to the PRs. However, ICAEW considers that if the pension beneficiary does not reimburse the PRs within a reasonable time, say within six months of receiving the income tax relief/refund from HMRC, that the deduction from 'taxable pension income' (TPI) should be withdrawn.

25. We are unclear as to what circumstances s567B(5)(a), ITEPA 2003 would apply to in practice. Could HMRC clarify whether this is aimed at pension funds which are already liable to IHT prior to 6 April 2027, because the trustees do not have discretion about making payments of death benefits? We understand that the pension schemes for the NHS and Judiciary (per [IHTM17058](#)) fall into this category.

Other comments

26. ICAEW notes that HMRC will issue draft amendments in due course to the information sharing regulations (Annex B of the consultation outcome). It is a shame that these draft regulations were not provided along with the draft legislation, because the information sharing process will be crucial if IHT is to be paid on time. The regulations must ensure that PRs and PSAs are obliged to exchange all the necessary information about the deceased and their pensions' beneficiaries and on a timely basis. This should include all beneficiaries' contact details, death and marriage certificates, the long-term residency position of both the deceased and their spouse (if our suggestion at para 11 above for a fixed-rate deduction is implemented), details of distributions made to pension beneficiaries and potentially even copies of identity documents.
27. The government should not issue the statutory instruments needed to implement the IHT regimes for late filing and late payment penalties (as provided for in Sch 55 & 56, Finance Act 2009), until PRs and PSAs have had sufficient time to get used to the Finance Bill measures.
28. PRs need to have a right to recover the above penalties from PSAs and/or pension beneficiaries where the delays are attributable to the pension fund.
29. To ensure PRs and PSAs have all necessary information, ICAEW recommends that:
- PSAs should be able to access the government's [Tell Us Once Service](#); and
 - PRs should be given access to the [UK Pension Dashboard](#), which is expected to be available in October 2026, so they have a complete view of the UK pensions of which the deceased was a member.

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 [TAXGUIDE](#)).