Foresight group

NAUGHTY OR NICE?

THE OFFICE OF TAX SIMPLIFICATION IHT REVIEW

The Office of Tax Simplification recently issued an early festive gift by publishing the first part of its review into Inheritance Tax. First commissioned in January 2018 by Chancellor Philip Hamilton, the OTS has received over 3600 responses to its call for evidence, and to reflect the complexity of the issues surrounding the review, will be issuing its response in two parts.

In mid December Chancellor Phillip Hammond wrote to the OTS saying; “Your report showed a very interesting number of suggestions aimed at improving the experience of those interacting with the inheritance tax system. I look forward to receiving the second report on inheritance tax in spring 2019, after which I will respond to both reports.”

The first instalment of the report focuses on the ‘day to day matters of concern to all who responded’ and proposes several recommendations. The second report, anticipated in the spring of 2019, will explore ‘key technical and design issues’.

Before ploughing through the 80+ pages of part one, it’s first worth reminding ourselves of the OTS’s role to play with changes to legislation. The Office of Tax Simplification, created in July 2010, is an office of HM Treasury and became a statutory body under the 2016 Finance Act. The brief is simple; to identify where areas of complexity in the tax system for business and individuals alike can be identified and reduced, and report these to the Chancellor. The OTS does not implement changes, nor does it recommend legislative or policy change, these are a matter for the government of the day and for Parliament. Separately Paul Morton, The Director of Tax at the OTS, has spoken of his belief that major legislative change with regards to IHT is unlikely to feature heavily on any governments agenda over the next few years as the fallout from BREXIT will attract huge administrative and legislative focus and use very significant resource across all departments.

The report is thorough in terms of explanations of the core elements of IHT, the current statistics regarding the receipts raised, (many of which you can expect to appear in product provider marketing literature arriving shortly…) and is keen to reflect as much as possible of the feedback received, whilst acknowledging there will be further developments in the second phase.

Encouragingly the OTS spoke positively regarding BPR and commented “they don’t expect to announce major changes to the reliefs themselves” (whilst reserving the right to review the practical application of the relief). Positive words for those who use this relief as a planning tool.

The OTS produced 8 recommendations, all focused on improving the ease of administration of the tax. The largest of these recommendations was the implementation of a ‘fully integrated digital system for Inheritance Tax, ideally including the ability to complete and submit a probate application online’.

So, what do we have now?

Phase one is split into three parts;

- **A review of, and recommendations of how to, reduce the administrative burden on estates**
- **The administration of other Inheritance Tax Charges** (predominantly those charges which occur during an individuals lifetime)
- **Areas of complexity – currently sat in the 'too hard' box**

Another practical recommendation in chapter one addressed the issues that arise with the timescales that are imposed on the payment of IHT. Payment of any IHT liability is currently due within 6 months, often this is before probate can be granted, which means that beneficiaries must borrow the amount due or make special arrangements with HMRC. Recognising this impractical approach to the payment of any liabilities, the OTS have made recommendations to streamline both payment and probate processes, and this is to be welcomed. It is also worth noting that the Foresight Group Inheritance Tax Solutions are not hindered by these delays as we are able to pay investment proceeds direct to HMRC prior to the granting of probate. This allows executors and beneficiaries to meet the financial requirements in a timely fashion thus avoiding the difficulties referred to by the OTS and potentially having to arrange expensive loan arrangements.

Chapter two promised more, looking at areas where tax planners and financial advisers could become more excited (or concerned). This chapter reviewed the area concerning IHT charged during an individual's lifetime, including;

- **Chargeable lifetime transfers (including failed PETs)**
- **Ending of a qualifying interest in possession trust**
- **Trust exit charges**
- **Trust 10 year anniversary charges**
- **Chargeable events in respect of an alternatively secured pension fund on the death of a relevant person**

All the above will resonate with tax advisers and financial planners as trust planning and gifting are all, at some time, likely to have formed part of a recommendation to mitigate the burden of IHT. However; the focus of the report continued on the administration of the tax and continued to work towards an overarching goal of simplifying the process as a whole.

The OTS did make some valid observations and were critical of the IHT100 form (the form used to inform HMRC when IHT is payable on a trust or other chargeable event). The OTS made the point that the 8 page form, supported by a further 16 supplementary forms, is complex and not fit for purpose. Although set out with good intention, this harked back to Chapter One as the OTS made no specific recommendations how restructures would be made.

Chapter Three, ominously named 'Areas of Complexity,' pointed a spotlight on the following;

- **Chargeable lifetime transfers (including failed PETs)**
- **The nil rate band and residence nil rate band**
- **Lifetime gifts**
- **Businesses and farms**
- **Big picture reform**
- **Other areas of complexity**

The OTS opens with a non-commital "the chapter does not go into detail, and no recommendations are made on these areas in this report", frustrating for those involved with tax planning as this is an area with significant opportunity for change.

What is apparent from the commentary is that confusion is caused by the complexity of gifting, particularly concerning the many exemptions and reliefs, the interaction of failed PETS and chargeable lifetime transfers, and even payment of the tax itself. In keeping with the OTS's stated objective it would not be a surprise to see recommendations to significantly simplify the gifting regime appear in the second report.

A common planning approach is the use of Business Property Relief and Agricultural Property Relief in removing assets from an estate. It was encouraging to see that the general perception of the reliefs was that they work in a straightforward way and the OTS focus will be on 'the practical application and complexity of these reliefs rather than major changes to the reliefs themselves'.

In summation this is entirely unfinished business. Phase one of the report will be of more interest to those involved with the administration of estates rather than those whose primary role is to assist in how to effectively plan for minimising the impact of Inheritance Tax, and even then it has to be remembered these are still only at the 'recommendation' stage.

Father Christmas has delivered early this year in issuing the report. To continue the festive theme it appears to be another pair of rather boring socks, however we all know that socks are welcome at some point, useful and never controversial... let's see what the Easter Bunny brings.

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