

STEP's comments on clauses 72/73 Finance Bill 2020

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STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 20,000 members across 95 countries. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members' views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

STEP welcomes the opportunity to comment on these specific clauses of the Finance Bill 2020.

Inheritance Tax – additions to and transfers between settlements

Although some of the comments which we made in relation to the previous draft of the legislation issued in July 2019 have been taken into account, we remain concerned that the draft legislation has not been adequately thought through and that, as a result, it will give rise to significant uncertainties and lead to unintended consequences.

Section 80-82 inheritance Tax Act 1984 are already complex and difficult to understand. For example the interaction between section 80 and section 81 gives rise to uncertainties.

The proposed new legislation only adds to those uncertainties by suggesting that there are circumstances where there may be a transfer from one trust to another but which does not fall within section 81.

We drew attention to one of the unintended consequences in our previous response. This relates to the fact that the new rules relating to transfers between settlements only apply for the purposes of the relevant property regime (chapter 3 of part 3). The result of this is that for all other purposes, where there has been a transfer between settlements prior to the date when the legislation becomes law, excluded property status will be lost if the settlor of the transferee settlement is UK domiciled (or deemed domiciled) at the time of the transfer.

This is contrary to the statement which was made in Budget 2018. The Overview of Tax Legislation and Rates published on 29 October 2018 states that:

“Legislative amendments will also be made to ensure that transfers between trusts made after the date of the Finance Bill 2019-20 receives Royal Assent will be subject to additional excluded property tests”.

However, the way the legislation is drafted, transfers made before that date will result in property losing excluded property status.

This will have an extremely serious impact on the settlor of an excluded property settlement if funds have been transferred to another trust at a time when settlor is deemed domiciled in the UK if the settlor is a beneficiary of the transferee settlement. In those circumstances, inheritance tax will be payable on the death of the settlor under the reservation of benefit rules in relation to the assets contained in the transferee settlement. Despite the assurances of Budget 2018, the property will no longer qualify as excluded property.

These are just some examples of the problems which are likely to arise in practice should the Government press ahead with the draft legislation as it currently stands. As we said in our previous response, our view is that there should be a freestanding section dealing with transfers between trusts which applies for all inheritance tax purposes (not just the relevant property regime), which does not refer to section 80/81 IHTA and which deals comprehensively with the question as to which settlor’s domicile need to be tested and at what point in time in order for the property comprised in the transferee settlement to continue to qualify as excluded property. We would be happy to prepare a draft clause for consideration. In summary, we do not believe that the legislation should be enacted in its current form and that there should be consultation on a new draft of the legislation to be included in the Finance Bill 2020/2021.

Submitted by STEP UK Technical Committee dated 13 May 2020