

**Written evidence submitted by the Chartered Institute of Taxation (FB20)**  
**Representation to Finance Bill 2020 Public Bill Committee**

**Clause 72**  
**Inheritance Tax - Excluded property**

**Executive Summary**

**Clause 72 introduces legislation to provide that additions of assets by individuals domiciled in the United Kingdom to trusts made when they were non-domiciled cannot be excluded property and are therefore within the scope of Inheritance Tax (IHT).**

**We are concerned that there are substantial deficiencies in the legislation as currently proposed. Accordingly we suggest that this clause be taken out of the current Finance Bill and that HMRC conducts a formal public consultation with a view to clearer legislation, which does not cause unreasonable practical problems for trustees.**

**1 Background**

- 1.1 Under the Inheritance Tax regime applicable to trusts, tax is charged on ‘relevant property’ held in trust when certain events take place. However if the settlor was non-domiciled when the trust was created with foreign property, that property is treated as ‘excluded property’ (so that it is outside the scope of UK IHT) and remains so even if the settlor subsequently acquires UK domicile (Inheritance Tax Act 1984, section 48(3)). The position where property is added to such a settlement after the settlor has become UK domiciled (or UK deemed-domiciled) has hitherto been unclear.

**2 Our concerns**

- 3.1 There are problems in the drafting (particularly over the use of the word ‘property’) which create uncertainties that have not been addressed in the current iteration of the clause. Dealing with uncertainties is both time consuming and costly for trustees.
- 3.2 The amendments made by this clause are [sub-clause (11)] to be “treated as always having been in force”. This means that trustees are required to identify and value ‘additions’ which may have made many years earlier but which only now become relevant to the calculation of an IHT charge arising on chargeable events occurring after Royal Assent. When such earlier ‘additions’ were made there would have been no need for the trustees to make (or keep) detailed records. It is unreasonable for legislation to be retroactive in ways that make it difficult for trustees to be confident of achieving compliance when there appears to be no pressing need to do so (see next paragraph).
- 3.3 In our view, it is unlikely that additions to or transfers between settlements are currently taking place or will in the future take place because doing so risks breaching the 2017 trust

‘protection’ provisions of Taxation of Taxable Gains Act 1992, Schedule 5<sup>1</sup>. The CIOT, with other professional bodies, has sought clarification of those provisions. While those questions remain unanswered by HMRC trustees are unlikely to make additions or transfers which may cause ‘tainting’ of the trust for these purposes. Accordingly, we do not see that there is currently an issue which requires legislation to be introduced as a matter of urgency.

- 3.4 For these reasons it would seem preferable to withdraw this clause to enable time for further reflection and consideration of its difficulties, rather than proceed with provisions that are likely to cause practical problems for trustees if implemented as currently tabled.

## 4 The Chartered Institute of Taxation

- 4.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members’ experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT’s comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT’s 19,000 members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’, to represent the leading tax qualification.

The Chartered Institute of Taxation

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<sup>1</sup> Schedule 5 paragraph 5A switches off the CGT rules that would otherwise treat foreign gains within an offshore structure established by a non-domiciled settlor (other than a formerly domiciled resident settlor) as arising to the settlor on becoming deemed-domiciled in the UK under the 15 year rule. However this protection is removed and the trust is treated as ‘tainted’ if additions are made after the settlor has become deemed UK-domiciled or UK-domiciled. Similar changes were made in 2017 as regards ‘protection’ in relation to foreign income - see ITTOIA 2005 sections 628A and 628B, ITA 2007 sections 721A, 721B and section 729A.