ICAEW
REPRESENTATION 105/20

OTS CAPITAL GAINS TAX REVIEW

Issued 9 November 2020

ICAEW welcomes the opportunity to comment on the call for evidence on Capital Gains Tax (CGT) published by Office of Tax Simplification on 14 July 2020, a copy of which is available from this link.

CGT raises less than £10bn per annum and any changes are unlikely to raise significant revenue for the exchequer without a major structural change to reliefs such as principal private residence relief.

One of the main objectives for taxing capital gains has always been that it significantly reduces the incentive to develop schemes that seek to convert income into a capital gain. With the significant amount of anti-avoidance legislation that is in place, the current system largely achieves that objective and, to the extent that it does not, targeted measures could be considered.

ICAEW's view is that CGT largely meets the policy intent as we understand it and the present rules do not distort behaviour to any significant extent.

ICAEW does not comment on tax rates which are a matter for Government and Parliament, but the structure of tax rates is important, particularly for CGT as the taxpayer will often be able to choose the timing of disposals. The current rates are intended to reflect the fact that, following the removal of indexation and taper relief for individuals, the calculation of gains does not take into account the length of time an asset has been held or inflation; this is the basis for CGT rates being lower than income tax rates. Capital gains are different from income and the two terms should not be conflated.

Some administrative and legislative improvements are possible and are suggested in our response below.

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This response of 9 November 2020 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the 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.

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STRUCTURAL CGT ISSUES

Acquisition and disposal

Question 1: Is the scope and boundary of CGT clear? Is it always obvious when an event is chargeable?

1. The scope and boundary of CGT is generally clear. Events which unrepresented taxpayers may not appreciate are chargeable include gifts of assets, disposals of personal effects not covered by the exemption for chattels and disposals of properties which are only partly covered by principal private residence relief.
2. Capital gains are different from income and the two terms should not be conflated; the boundary between income and capital gains should be retained. Any change other than to rates would require substantial revision of income tax legislation which does not deal with matters relating to assets.

Question 2: How generally aware are taxpayers of their (potential) CGT liabilities following a disposal? Could/should they be made more aware, and if so how?

3. Awareness of potential CGT liabilities is lacking amongst the general population as most taxpayers make disposals that may incur a liability very infrequently. We consider that intermediaries such as estate agents, auction houses, the Land Registry and solicitors and licenced conveyancers could be encouraged to raise awareness. There is a separate and distinct problem for persons who are not UK resident.

Question 3: To what extent do the current CGT rules influence decisions around whether, how or when taxpayers acquire or dispose of assets? And to what extent and how do taxpayers adjust their activity to reflect this?

4. Sophisticated, well advised taxpayers may be influenced by the CGT rules but in most cases the decision on when and whether to acquire or dispose of an asset is not driven by tax considerations.

Question 4: Are there any specific practical challenges for taxpayers in dealing with the CGT aspects of acquiring and disposing of assets?

5. The biggest challenge for taxpayers is awareness and the need to keep appropriate records which include details of the original acquisition – which could have been many years earlier. The complexity of principal private residence relief and the number of potential pitfalls is demonstrated by the number of Tribunal cases concerning this relief (eg, Higgins and cases concerning the meaning of occupation as a residence and permitted grounds).

Question 5: Is it always clear and easy to understand which expenses (including capital improvement, acquisition or disposal expenses) qualify for CGT purposes? Are the rules on qualifying enhancement expenditure clear and reasonably straightforward to operate in practice?

6. The issue is more about availability of records on which to base claims than the rules themselves. It is likely that a considerable amount of qualifying enhancement expenditure goes unclaimed, especially by unrepresented taxpayers, as the records may no longer be available. In such cases, it is equally possible that relief may be claimed twice (as both revenue and capital) for some expenditure, such as for example, replacement windows.

Question 6: Are there particular practical challenges or issues arising from the CGT rules about acquiring, disposing of or transferring assets on marriage (or civil partnership), separation or divorce?

7. The difficulties with respect to spouses/civil partners and the principal private residence nomination are set out in our comments to question 11 below.
8. Divorce (or the dissolution of a civil partnership) is a particularly unpleasant and stressful time for a couple. The tax system should not make this worse. Unfortunately, that is exactly

what the current CGT system does. This is because the no-gain/no loss tax treatment (NG/NL) only applies up until the end of the tax year of separation.

9. The current system is both capricious (since the date of separation will determine how long the individuals have to benefit from NG/NL treatment with it ranging from a day to a year) and unfair. The financial settlement part of a divorce is often the most difficult area after care of any children (and generally there is a link between the two issues). It often comes as an unpleasant surprise to taxpayers that after the tax year of separation NG/NL treatment does not apply and the tax issues unnecessarily complicate the negotiations required to reach financial settlement.

10. Similar to IHT, NG/NL treatment should continue to apply to all transactions between couples until decree absolute (or in the case of a civil partnership a final order). In addition, where the transaction results from the divorce/civil partnership financial settlement agreed by the court NG/NL treatment should also apply after decree absolute/ final order.

Question 7: Are there particular issues around the boundary with income tax e.g. shares or share rights received by employees or the boundary between trading and investment?

11. This issue was covered in an OTS report in 2013.

Annual exempt amount (AEA)

Question 8: In your experience, to what extent do individuals or their agents arrange to time disposals of assets in such a way as to maximise use of their AEA to manage down their tax liabilities?

12. Some taxpayers may arrange their affairs to ensure that they utilise the AEA but to do so they have to make a genuine disposal. Anti-avoidance rules have stopped practices such as bed and breakfasting of shares. Assets other than shares cannot usually be managed in a way that specifically uses the AEA without tax being due.

Question 9: Could there be a simpler or more targeted way of taking small gains out of tax?

13. The AEA avoids the need to calculate and report small gains that might arise on a disposal that is otherwise exempt eg, a principal private residence which does not completely qualify for relief. The allowance allows small changes to be made in investment portfolios without incurring a tax charge. We consider that the AEA is the simplest way to take small gains out of tax. It is readily understood by taxpayers and reduces the compliance burden. If simplification is the overriding objective, then it should be retained at about its current level or even increased.

Different rates of CGT (10%/20%/18%/28%)

Question 10: To what extent do the different rates of CGT cause complexity? Is it always clear which tax rate should apply? Which situations present specific problems? Does the dependence on the income tax higher rate threshold make this inevitable? Do you think the rates position could be made simpler, and if so how?

14. The structure of tax rates is important, particularly for CGT as the taxpayer will often be able to choose when to make disposals. The current rates are intended to reflect the fact, that following the removal of indexation and taper relief for individuals, the calculation of gains does not take into account the length of time an asset has been held or inflation; this is the policy basis for CGT rates being lower than income tax rates. Having differential rates for short-term and long-term gains would introduce a distortion, providing an incentive to retain assets until such time as they would be treated as being long term. The extent to which CGT should be payable on gains arising from inflation and how it should be mitigated is a policy matter for Government and Parliament to determine.

ISSUES COMMONLY AFFECTING INDIVIDUAL TAXPAYERS

Reliefs and exemptions

Principal Private Residence Relief (PPR)

Question 11: Are you aware of situations where the current rules are not easy to operate perhaps because of changes in society or patterns of work (such as home-working, taking in a lodger, letting out a bedroom to tourists, or the use of gardens or grounds)?

15. The rule that spouses/civil partners 'living together' can have only one PPR between them can cause issues. This does not reflect the reality of some people's lives and appears to be a hangover from the era of joint taxation. A couple can be 'living together' for CGT purposes when they are in the real world living apart.

16. Living together for CGT purposes is defined by s288(3) TCGA which refers to s1011 ITA 2007 as:

> ***1011 References to married persons, or civil partners, living together***
> *Individuals who are married to, or are civil partners of, each other are treated for the purposes of the Income Tax Acts as living together unless—*
>
> *(a) they are separated under an order of a court of competent jurisdiction,*
> *(b) they are separated by deed of separation, or*
> *(c) they are in fact separated in circumstances in which the separation is likely to be permanent.*

17. It is therefore possible to have a married couple who are a 'proper' married couple, who are not separated in any respect, but who live in separate houses. For PPR purposes they can be treated as having only one main residence between them.

18. The rules can result in a spouse having as a main residence a property which is for them not a residence at all – contrary to the general principle of PPR. This issue has always been present but societal change, for example caused by later and subsequent marriages, the inclusion of civil partnerships into the tax code and general societal change in respect of women's working lives has exacerbated this anachronism.

19. The introduction of the residential property rate to tax disposals of residential property at 28% means that on the disposal of a property with land in excess of the permitted area some gains will be taxed at 28%.

20. Residential land, subject to the 28% rate, is defined in paragraph 3(b) Sch 1B, TCGA 1992:

> *… an interest in land in a case where—…*
>
> *(b) the interest in land subsisted for the benefit of land that consisted of or included a dwelling at any time falling on or after that date*

21. This means that the land in excess of the permitted area can be residential for the purposes of taxing the gain but not part of the residence for the purpose of PPR relief. This is illogical and the rules should be aligned.

22. In the case of *Desmond Higgins v the Commissioners for HMRC [2019] EWCA Civ 1860* the Court of Appeal confirmed to be correct in law the understanding of professionals that the period of ownership for PPR purposes starts at completion and not exchange. This has been applied for many years in practice. In addition to being incorrect in law, the contrary position put forward by HMRC in that case, which was that the period begins at exchange, is not useful in practice. Any change in the law to reflect the position HMRC argued for would complicate the operation of the relief. Either nothing (other than explaining the point clearly in

HMRC guidance) should be done since the Court of Appeal made the position clear or, if it is felt that clarification is required (unrepresented taxpayers being unlikely to know about case law), the position established in Higgins should be made clear in legislation.

Question 12: Are the ancillary reliefs and occupation rules consistent with what you consider PPR is aiming to achieve? If not, what would make them simpler to apply or better achieve these aims?

23. The COVID-19 pandemic and EU exit uncertainties mean that a nine-month period final period of ownership exemption is insufficient in the current market. This is designed to give relief where a house struggles to sell and the owner needs to move to a new property, perhaps for a job relocation. These representations were made last year when the period was shortened – current events have made this even more relevant.
24. Further to the recent legislative changes, lettings relief is now available in very few situations and remains complex for unrepresented taxpayers to apply.

Question 13: How do you find the principle and practice of making a nomination? Are there better ways of achieving the same ends?

25. The ability to make a nomination is helpful and should be retained. There are many instances where taxpayers have more than one residence and a nomination provides certainty. Currently, however, the only way to make a nomination is for the taxpayer/couple (in the case of a marriage/civil partnership) to send a letter to HMRC. This process could and should be amended to make it quicker, simpler and more certain for taxpayers.
26. Provided that agents have access to the personal tax account and could make the nomination for their clients, we agree with the recommendation, set out in the OTS Claims and Elections Report published in October 2020, that a facility should be added to the personal tax account that would allow nominations to be made and amended (from the date specified). There should be a history feature so all nominations made are recorded and can be reviewed by the taxpayer and agent.
27. The difficulties with having one election for spouses/civil partners are discussed in the comment above on question 11. If this feature of the relief is retained, then there would need to be a linking of accounts so only one nomination can be made per couple.
28. One possible simplification would be to allow UK residents to make PPR nominations on disposal, in the same way as non-UK residents. As well as being simpler in general (especially for unrepresented taxpayers who will often not be aware of the need to make a nomination) this would also remove the pitfall of new arrivals to the UK discovering they are out of time to make nominations. The policy rationale for the time limit is unclear. If a time limit is required, it would be simpler if it were aligned to self assessment filing dates.
29. PPR would also be simpler if interests with negligible value could be removed from the definition of residence (e.g. assured shorthold tenancies).

Chattels exemption

Question 14: Are there any aspects of the taxation of gains arising from the disposal of chattels that you consider would benefit from being simplified?

30. There is a general exemption from CGT for wasting assets (though it does not generally apply to plant and machinery qualifying for capital allowances and there are special rules for leases of land). Taxpayers would not expect such assets to be subject to CGT. As such, this exemption is sensible and prevents inadvertent non-compliance.
31. Rather than a blanket exemption there is a relief for chattels that are not wasting assets. Broadly:

- If the net consideration for the disposal is £6,000 or less then any gain is exempt.
- If the net consideration is over £6,000 the gain is limited to 5/3 of the excess.

32. The £6,000 figure has not been increased for over 30 years. We, therefore, feel that it should be increased in line with inflation over the time period since 6 April 1989 (when the £6,000 came in). The similar restriction for chattels sold at a loss would also need to be amended.

Question 15: Is it clear to taxpayers that gains on significant chattels are potentially taxable? Or is there a general lack of awareness?

33. There is probably a general lack of awareness over the tax rules with respect to chattels. As such, it is likely that there is some current inadvertent non-compliance, particularly in relation to gifts. Increasing the current £6,000 in line with inflation would go a long way to eliminating this.

34. Auction houses will often be used to sell high value chattels. HMRC should produce tax guidance for auction houses to provide to potential clients prior to the sale of their assets, particularly as they can be required to provide details of such sales to HMRC.

35. An extension of gift holdover relief such that personal chattels come within the provisions would be helpful. However, unrepresented taxpayers would not know that a joint claim had to be made. Consideration should be given to amending the legislation such that where there is a gift the default position is that the donee takes over the donor's base cost and a claim has to be made for the disposal at market value provisions to apply to the gift.

ISSUES COMMONLY AFFECTING BUSINESS OWNERS AND INVESTORS

Business lifecycle

Question 16: Are there features of CGT that present barriers or distortions at any of these stages? Are the rules simple to understand and apply correctly? Please provide examples along with any suggestions on how the rules could be made simpler.

36. No comment.

Question 17: Do you know of occasions when CGT rules have affected business decision making more generally, including decisions regarding the structure of a business or the choice of business vehicle (for example a corporate entity, partnership, unincorporated business)?

37. No comment.

Question 18: Please tell us about any complications or rules which unduly affect the way businesses operate if payment for the sale of a business is not made in cash but in some other way (such as qualifying and non-qualifying corporate bonds, deferred consideration and earn outs). To what extent is there a business tension between claiming a tax relief at the point of sale as opposed to deferring the tax charge until cash is received?

38. No comment.

Reliefs available to business owners/shareholder

Question 19: Is the scope of each of these reliefs intuitive or are there unexpected differences between them that create practical problems for businesses? Are there aspects of any of these reliefs that you consider are unclear or particularly difficult to utilise in practice?

39. No comment.

Question 20: Are there aspects of these reliefs which distort business decision making (for example in respect of such areas as the timing of the disposal of an asset, or how much cash to accumulate on a company balance sheet) or are inconsistent with your understanding of what the relief is aiming to achieve? Are there any ways in which they could be made less distortive?

40. The relief that resulted in the greatest distortion in recent years is Entrepreneurs' Relief, now Business Asset Disposal Relief. One of the issues is that the maximum available relief is £1m which means that transactions are structured in a way to maximize the availability of the relief, and sometimes in a way that runs counter to the original policy objectives behind the operation of the relief. This and similar reliefs would be less distortive if they were better focused and only introduced after extensive consultation with interested bodies. An example of legislation that would have benefited from such a process is Investor Relief, which is rarely considered or used in practice. This represents a missed opportunity to help incentivise innovation and entrepreneurial behaviour in the UK economy.

Question 21: Should gift relief be extended to cover a greater range of business and investment assets as it was until 1989? What would the effect of this be? And would any extension open up unintended avoidance opportunities?

41. When the relief was originally available it facilitated several tax saving strategies. Given the extent that the availability of the relief has been curtailed in relation to trusts under which a settlor and his immediate family can benefit, the opportunity for introducing a wider form of relief would seem to be worth considering. Introducing a relief of this nature would help broaden the scope for passing on wealth between the generations. The scope for unintended avoidance has been already greatly restricted because of the introduction of legislative provisions to counter such consequences.

Specific asset classes

Question 22: Are there any aspects of the rules relating to the taxation of gains or losses realised on the disposal of shares and securities that are particularly complex to understand or apply? Are you aware of any difficulties in ascertaining the base cost of such assets, such as the share matching rules?

42. The quality of stocks and shares year-end tax packs produced by investment managers varies considerably. For represented taxpayers this adds to their compliance costs. For the unrepresented this means that tax returns could inadvertently be filed incorrectly as the individual is likely to assume that the tax pack figures are correct.

43. In addition, some taxpayers use more than one fund manager. This can lead to significant complexity as the same shares in the same company may be held in both portfolios meaning that for those shares the tax pack share matching will be incorrect. Where an agent prepares the tax return this is not such an issue (albeit there will be a compliance cost) as the problem should be picked up and there will be software to produce correct share matching. For unrepresented taxpayers it is far more significant as they are likely to be unaware of the issue. We would suggest that a clear warning is added to the end of tax packs to alert taxpayers to the potential problem.

44. A further issue with year-end tax packs is that very few provide figures for retained income with respect to reporting funds.

45. The share matching rules cause considerable difficulty for employee share schemes where shares are purchased each month, often over several years.

Question 23: Are there any aspects of the taxation of gains arising from the disposal of investment properties, leases, land or buildings that you feel would benefit from being simplified?

46. The taxation of leases is both niche and highly complex and could be replaced with a more codified approach with reporting perhaps linked to SDLT/LBTT submissions. The CGT regime can produce odd outcomes where areas of land with multiple owners are pooled under option contracts for development, rather than being a tax on true economic returns.

Question 24: Are there other asset classes (such as for example crypto assets) which present challenges or complexity for individuals on disposal?

47. It would be helpful if all the crypto trading platforms were to produce accurate year-end tax packs for individuals.

Company issues

Question 25: Are there particular areas of complexity that relate exclusively to companies? And if so, should these be simplified or made more consistent?

48. No comment.

ADMINISTRATION OF CGT (FOR INDIVIDUALS, INVESTORS, AND UNINCORPORATED BUSINESSES)

Administration

Question 26: Please describe any problems you have had (or anticipate having) in navigating the online systems or forms and provide any suggestions you have on how the forms or related guidance could usefully be simplified, made clearer or made easier to complete. Please specify which method(s) of reporting your experience relates to.

49. The system for reporting and paying tax on gains on UK residential property within 30 days of completion which was introduced in April 2020 has been very problematic. The functionality was not all in place when the requirement was introduced and, although many taxpayers and agents have successfully used the system, far too many have encountered problems, such as confirming their identity, when doing so and some issues are still unresolved. For example, the service cannot be easily located on gov.uk and is not available directly from personal and business tax accounts. The design needs to be improved to properly accommodate multiple disposals on the same date and multiple acquisition dates. HMRC helplines have struggled to deal with queries on the service.

50. The systems for reporting and paying CGT have become more fragmented. Most of the reporting and payment is done alongside income tax on self assessment returns. This is logical given that the rate of CGT payable is dependent on income and avoids the need for a separate system for reporting and payment. It also provides a useful prompt for those who complete returns to consider whether they have a disposal to report. HMRC introduced a voluntary system to pay CGT straightaway in 2016 which we understand has seen only a small amount of use. Unfortunately, agents have not been given access to this service. The introduction of the requirement to report and pay CGT on UK residential property has been problematic partly due to lack of awareness but also because 30 days is generally too short to gather all the information required. It is not clear why the system requires a separate CGT account to be set up rather than using self assessment references which most of the taxpayers concerned would have and that CGT account is not integrated with self assessment (this may be for technical reasons as the new CGT account is on HMRC's new ETMP platform). It is also not clear why separate agent authorisation is required even when a 64-8 is in place and, if it really is necessary, why this authorisation cannot be set up by the taxpayer at the same time as they set up their CGT account.

51. We suggest that there needs to be a strategic look at the reporting and payment of CGT and whether it should sit alongside income tax self assessment or be completely separate. At the moment we have a confusing mix.

Question 27: Do you have any suggestions about how HMRC could use information it currently has or has access to, in order to reduce administrative burdens, improve customer experience and ensure compliance in respect of individuals' and businesses'

CGT obligations? Does HMRC get the balance right between asking for information to avoid unnecessary enquiries and streamlining the experience for those with simple affairs?

52. As far as we are aware HMRC only uses information it holds for post-submission compliance purposes rather than as a way to reduce administrative burdens. There may be scope for HMRC to use Land Registry data to prepopulate returns (or prompt taxpayers that a return is required) but it is not clear how taxable transactions would be identified. Any further prepopulation would probably require third party reporting of data by, for example, investment funds or auction house and impose a compliance burden on those businesses.

Payments

Question 28: Please comment on any complexities or practical problems that you have experienced (or anticipate) in relation to the process of paying CGT. Please specify which reporting system(s) your payment(s) relate to.

53. Taxpayers and agents who use the paper filing option for CGT 30-day reporting of gains on UK residential property do not have access to payments and liabilities information online. Personal representatives who report gains on behalf of an estate also do not have access to the online other than to file a return.

Claims

Question 29: Are you aware of any particular practical or technical issues (relating to for example record keeping, awareness, use of ringfencing rules, timing deadlines or other challenges) for losses, other claims, or clearances that you feel should be highlighted as part of this CGT review?

54. The OTS Claims and Elections Review Report October 2020 makes recommendations intended to simplify making holdover claims and rollover claims. Generally, we support these recommendations. However, as mentioned above any technological improvements such as using the personal tax account or online forms must be open to tax agents to both file and review claims on behalf of clients and also the appropriate functionality must be there from the start so that it does make things simpler.

55. The OTS Report considers the s 431, ITEPA 2003 election. Given the impact the election has on the CGT base cost we feel that it is appropriate to consider this with this response. We agree that the default position should be changed such that:

    - the unrestricted market value automatically applies where restricted securities are acquired; and
    - the employee and employer have the option to file a joint election with HMRC to disapply that treatment.

56. We do not, however, agree that 14 days is a sufficiently long period to make an election. We would suggest the self assessment tax filing date for the tax year in which the securities are acquired would be the appropriate deadline, as taxpayers are most likely to take tax advice when their returns are being completed.

57. The treatment of losses does not generally distort decision making. The existing legislation mostly prevents the creation of artificial losses, which was a problem in the past. If the rates of tax for income and capital gains were to be aligned, there would be an argument that it should be possible to offset capital losses against income.

58. Taxpayers who are internationally mobile or non-UK domiciled do need to manage their tax affairs and the timing of disposals more carefully to ensure that losses can be used.

59. The fact that it is not possible to carry back losses means that some taxpayers may choose to realise losses where they have realised a gain in the tax year. This is particularly relevant to taxpayers who rarely realise chargeable gains, and so may not be able to utilise a brought forward capital loss at a later date.

60. Some practical issues do arise with losses such as:

    - Taxpayers being unable to offset capital losses because they omitted to crystallise them by reporting them on a tax return or making a standalone claim within the four-year time limit. Having to report losses within a four-year time limit is a trap for the unwary that should be removed.
    - The difficulty of keeping track of losses on disposals to connected parties, the use of which is restricted. No tax software product that we are aware of allows these records to be maintained digitally, necessitating manual records and the policy objection to the unrestricted use of such losses is unclear.

61. We suggest that the OTS considers the role of HMRC clearances which can offer simplification by giving the taxpayer certainty and reducing the number of disputes and appeals. In recent years HMRC has been reluctant to consider clearance procedures on new policies even though they are a form of real time reporting.

Record keeping, valuation and calculation of any tax payable

Question 30: What, if anything, could be done to help taxpayers to more easily fulfil their record keeping obligations and calculate any tax payable in relation to their capital gains?

62. HMRC could do more to encourage the development of a commercial software market that would assist with reporting by keeping track of acquisitions, enhancement expenditure etc and which would link to reporting via APIs. HMRC might also consider introducing a facility in the personal tax account to help taxpayers to keep such records.

Question 31: Have you encountered any difficulty with valuing assets either at acquisition or disposal? What, if anything, could HMRC do to simplify the valuation requirements or processes without opening up unintended avoidance opportunities?

63. No comment.

Question 32: Would changing to a more recent rebasing date than 1982 make finding the base cost of a disposal easier or would any such benefit be outweighed by an increase in the number of valuations that would then be required?

64. No comment.

Estates in administration

Question 33: Are there particular aspects of the taxation of capital gains made by those administering an estate that could be simplified?

65. It would be helpful if the CGT and IHT rules could apply in a neutral way which is not affected by whether assets are sold from the estate or transferred to beneficiaries and then sold immediately.

Question 34: To what extent does the absence of a CGT charge on death and transferring those assets at market value on death distort and complicate the decision-making process around passing on assets to the next generation?

66. The absence of a CGT charge on death means that executors do not have to research the historical costs of assets owned by the deceased. If they did, this would add enormously to costs and burdens of executors at what is a difficult time for families.

Interaction between CGT and IHT and with other taxes

Question 35: Are there any aspects of the taxation of gifts or other disposals that are not made at market value, that you feel would benefit from being simplified? Should the range of assets eligible for a tax deferral when they are gifted be broadened to include a greater range of assets? And would any extension open up unintended avoidance opportunities?

67. We consider that the range of assets eligible to benefit from tax deferral where lifetime gifts are made should be broadened. Currently only gifts of certain special categories of property,

or where transfers are made to discretionary settlements, are eligible for relief. This means that in some cases a lifetime gift can have CGT and IHT consequences. This seems unduly harsh and places a fetter on the freedom of transferability of wealth within the generations. For this reason, it should be possible to enter into a holdover election for CGT purposes where a potentially exempt transfer is made and not simply where a chargeable transfer is involved. This would not open up unintended avoidance opportunities, but rather prevent unfairness in the operation of the tax system.

Question 36: Are there instances where you feel the interaction of CGT with other areas of tax results in particular complexity or difficulty in applying the rules correctly? Are there definitions within CGT that would benefit from closer alignment with the definitions found in other taxes? Please provide examples, as well as any suggestions for ways to simplify the system.

68. Having annual Finance Acts means that unexpected changes to aspects of the tax system are introduced. Frequent changes and failure to consider and consult properly result in greater complexity in the tax system and piecemeal change compounds the problem. The numerous changes to property taxation (particularly residential property) are a prime example. Property taxation is also an area which would benefit from an alignment of definitions across the taxes.

69. Finance Act 2018 made extremely complex changes to the anti-avoidance provisions with respect to non-UK resident trusts. For both the income tax and CGT provisions legislation was introduced with respect to onward gifts. The policy objective was the same for both income tax and CGT. The legislation, however, is different for income tax and CGT. While we appreciate that different teams worked on the income tax and CGT aspects there is no reason why they could not have liaised so that the legislation would be aligned. In future, where legislation with the same policy objective is to be introduced simultaneously and is to apply to more than one tax, alignment would simplify the legislation.

70. We should not be in the position that the professional bodies had to publish joint guidance (with input from HMRC) because HMRC was unable to publish the guidance on gov.uk as happened with the changes in Finance (No.2) Act 2017 and Finance Act 2018.

Question 37: Are there instances where you feel the interaction of CGT and capital allowances (in respect to income or corporation tax) results in particular complexity, difficulty in applying the rules correctly, or unexpected tax outcomes?

71. No comment.

Other areas of complexity

Question 38: Are there any particular areas of complexity that are unique to partnerships?

72. No comment.

Question 39: Please tell us about any other areas of complexity not covered above in applying any CGT reliefs, thresholds, or administration not already mentioned in your response, along with any suggested improvements to the CGT rules or legislation.

73. No comment.

Question 40: Are there any areas of complexity that are specific to England, Scotland, Wales or Northern Ireland?

74. It is not complex, but the fact that HMRC does not accept that s 248A, TCGA 1992 applies to Scottish partnerships is clearly unfair. This was discussed in detail in the ICAS Budget Representation 2020 (dated 21 January 2020).

Wider CGT framework

Question 41: Do you think that there are ways in which the taxation of capital gains should be reformed more widely to simplify the regime for the benefit of taxpayers? If so, how?

75. HMRC's statistical evidence shows that in 2019/20 the total yield from CGT was £9.5bn for 276,000 CGT taxpayers. The total yield is relatively modest, and it would make sense to reduce the cost of collection provided that this is consistent with maintaining the policy objectives behind the operation of the tax. This further supports the position taken at question 14 (chattels exemption).

Question 42: Do you think it would be reasonable for some reliefs or exemptions to be removed if they fail to meet what you regard as their policy objective or are infrequently used? If so, which ones?

76. We consider that it is reasonable to simplify the current rules and remove reliefs and exemptions that no longer serve a useful purpose. Investor Relief should be retained but kept under review in case it needs to be amended so that it meets the policy objectives.

Question 43: Are there any useful lessons that can be learned from the UK's historic CGT regime or other countries that would be relevant to the UK today? If so what, and from which countries?

77. No comment.

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 https://goo.gl/x6UjJ5).