

# Technical consultation - Inheritance Tax on pensions: liability, reporting and payment

Hymans Robertson LLP is pleased to provide its response to HMRC's [consultation](#) on the above topic.

## About Hymans Robertson LLP

Hymans Robertson has grown up with the Local Government Pension Scheme (LGPS). The firm was founded to provide advice to the LGPS in 1921, just as the first funds were being created. Whilst our business has developed over the decades, working with the public sector remains at the heart of what we do.

We have a specialist public sector actuarial team, which employs over 100 people exclusively advising on the LGPS. Alongside our actuaries there is a team of 30 governance, administration and project consultants providing advice to our LGPS clients on benefits matters.

## This consultation

Although this consultation covers all registered pension schemes, our response is largely in respect of the LGPS. This means we have mainly considered the impact on the payment of death grants, since annuities and drawdowns are not part of LGPS main scheme benefits. However, the questions are quite broad, and we believe most of our responses would apply to other types of in-scope benefits.

### **Question 1: Do you agree that PSAs should only be required to report unused pension funds or death benefits of scheme members to HMRC when there is an Inheritance Tax liability on those funds or death benefits?**

It seems sensible that the reporting requirement only exists where an IHT liability has been identified. However, PSAs will only be aware of an IHT liability when the PR has correctly discharged their duties. Any legislation must recognise that PSAs, from time to time, and acting in good faith on information received from the PR, will not report an IHT liability when in fact one exists. Similarly, PSAs may face a situation when no PR has been identified and any potential tax liability is unknown.

### **Question 2: How are PSAs likely to respond if they have not received all the relevant information from the PR to pay any Inheritance Tax due on a pension by the 6-month payment deadline?**

The question highlights our view that 6 months from the end of the month in which death occurs is an unrealistic deadline. We would expect there to be many cases where the relevant information is not received by the PSAs in time to meet this limit.

It is for the legislation to set out what process PSAs should follow in these circumstances but, if the 6-month limit is maintained, we do not believe any of the options are particularly palatable.

If PSAs pay the full value of the death grant without any deduction for IHT, they may subsequently find themselves liable for a tax charge and with no recourse to the recipient(s) of the death grant.

If PSAs delay payment of the death grant until all information is available, there could be serious impacts on the death grant recipients who may be in desperate need of funds. Even if LGPS funds had the vires to do this, which seems unlikely, no fund wants to delay payments of death benefits to individuals at such a vulnerable time. If waiting for relevant information causes the death grant to be paid more than 2 years after the PSA became aware of the death, then there is a further tax liability placed on the recipient. These delays and

additional penalties are also likely to lead to appeals under the Internal Dispute Resolution Procedure and subsequent appeals to the Ombudsman.

**Question 3: What action, if any, could government take to ensure that PSAs can fulfil their Inheritance Tax liabilities before the Inheritance Tax payment deadline while also meeting their separate obligations to beneficiaries?**

The most helpful step would be to extend the 6-month deadline, which as previously discussed we believe is too short. Although there will always be complex cases, a timescale of, say, 12 months would provide a more realistic target for most cases.

It could be argued that government should legislate to place an obligation on PRs to inform pension schemes of a member's death at the first opportunity, but we are not convinced this would make a material difference. Any delays in providing information by PRs is likely down to difficulty obtaining information from other sources. Also, such an obligation would do nothing in cases where there is no PR.

Another consideration might be to simplify the process, so that where it is established that the IHT spousal exemption exists, benefits can be paid immediately. However, this approach would also have drawbacks. It would create a two-tier process, where a death grant paid to a spouse or civil partner may be paid more quickly than one paid to a co-habiting partner. Also, assuming that the discretion over who receives the death grant continues to remain with PSAs, it incentivises PSAs to pay to a spouse, rather than fully investigate all claims to a death grant which may lead to delays.

**Question 4: Do you have any views on PSAs reporting and paying Inheritance Tax and late payment interest charges via the Accounting for Tax return?**

According to paragraph 3.1 of the consultation:

*PSAs will pay the Inheritance Tax charge to HMRC through the Accounting for Tax process (interest will accrue on this charge from the due date until it is paid and can be viewed on the pension scheme financial information)*

The due date is 6 months from the end of the month of death. Even if the death grant is paid within this period, there may still be situations where the tax charge cannot be paid until after that period.

AFT returns are submitted in respect of each quarter, with the deadline for submission and payment of tax being 45 days after the end of that quarter.

If a member dies in, say, April, then the due date is the end of October. If all of the information is received, the IHT liability calculated and payment of the death grant is made in October, then the earliest AFT in which it can be reported is October to December i.e. after the 6-month time period. They would then be liable for late payment interest, even though they were not able to pay the tax liability by the due date.

Could an alternative approach be that the requirement on PSAs is to pay the tax liability in the first available Accounting for Tax return after the death grant has been paid? Interest could then be due if this is not done (and could be due from the deadline of the first available AFT to the date of payment). In the above example, this would mean that payment of the death grant is made in October, falling in the 'October to December' quarter, and administrators would need to pay the tax by 14 February.

**Question 5: Do you agree that 12 months after end of the month in which the member died is the appropriate point for their beneficiaries to become jointly and severally liable for the payment of Inheritance Tax?**

Once the PSAs have paid the death grant, we do not believe that any further liability should fall to the fund. There is no additional payment outstanding from which Inheritance Tax could be recovered and so it would have to come from the remaining assets in the fund, which are in effect allocated for the provision of other members' benefits.

Where the consultation states that the beneficiaries become jointly and severally liable for any additional tax charge that arises, we assume that this is only in respect of any liability attached to the benefits they have received. For example, if a death grant has been paid 50% to a spouse and so exempt from IHT and 25% each to two children who are liable to IHT, then if further tax becomes due the liability should fall entirely on the children.

**Question 6: What is the most appropriate means of identifying or contacting beneficiaries if either the PR or HMRC realises that an amendment is needed after Inheritance Tax has been paid? Should PSAs be required to retain the details of beneficiaries for a certain period?**

It seems reasonable for PSAs to retain information on beneficiaries as it stands until the point the death grant is paid. We would not expect PSAs to be required to keep up to date records after this point. To do so would require maintaining ongoing contact with beneficiaries in order to keep up to date contact details and, in some cases, the use of address tracing services, for something that would affect a tiny number of beneficiaries.

**Question 7: What are your views on the process and information sharing requirements set out above?**

Our key concern is that in many cases, the timescales set out in the process will have been exceeded before the PSA is even aware of the death. In the case of some deferred members, the PSA does not hear about the member's death until many months or even years after the event.

It is also unclear how the process will work when there is no PR, as is sometimes the case. Who will be responsible for determining if there is a tax liability? PSAs will need certainty that they know the circumstances when they can pay a death grant and when further work is needed on assessing the tax liability before a death grant can be paid.

**Question 8: Are there any scenarios which would not fit neatly into the typical process outlined above? How might we address these?**

As previously mentioned, there will be many cases where PSAs are not aware of a member's death until the six-month period has already passed or, if they are aware, the PR does not provide sufficient information to make payment in time. The government should ensure that PSAs face no penalties for delays outside of their control or for acting in good faith on incorrect information provided by PRs.

The government needs to determine the default position in cases where there is no will and no individual has applied for a Grant of Letters of Administration in order to act as the administrator of the deceased's estate. In such cases the estate is likely to be small but there is still a risk for the PSA to assume that there is no IHT liability. In such cases, can the death grant be paid in full to the individual and HMT recover any IHT liability if they believe it exists?

**Question 9: Do you have any other views on the proposal to make PSAs liable for reporting details of unused pension funds and death benefits directly to HMRC and paying any Inheritance Tax due on those benefits? Are there any feasible alternatives to this model?**

As outlined above, we believe that the current IHT timescales will be difficult to meet when paying death grants from the LGPS.

The main complexity arises from the interaction between the PR and the PSA and the value of the estate and the death benefits. This complexity will apply in every case, even though the number of estates actually liable for IHT liability will be relatively small.

One option may be to decouple death benefits from the IHT regime and tax them separately. Below a certain level PSAs would continue to calculate and pay death grants as they do now. Where the value of the death grant exceeds a certain level, the excess is taxed and paid to HMRC in an achievable timescale. The remaining death grant is then distributed at the discretion of the PSA.

Allowances and rates would need to be set by government to achieve an appropriate tax take.

We recognise that this will produce slightly different results. There may be cases where the death grant triggers a charge but there is little value in the remainder of the estate, so tax is payable when it would not be under the proposed system. Conversely a death grant paid in respect of a member with a very large estate could escape any tax, which would otherwise be payable under the proposals.

However, decoupling the death grant tax from IHT does recognise that pension schemes exist for the benefit of members and dependants. It would make the administration simpler, the dependant experience better, add less cost and address the government's concern about pensions being used to pass on wealth tax free.

