Evidence Paper 11

Wealth Tax Commission

The administration of a wealth tax

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THE ADMINISTRATION OF A WEALTH TAX

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Introduction

In this paper we set out how a net wealth tax (NWT) might be administered in practice, how a system of returns, valuation, assessment and payment might work and describe some of the challenges which HMRC would face in maintaining an adequate level of collection.

We also discuss the main areas of potential tax loss, from evasion, avoidance etc. and what level of ‘tax gap’ might be expected from NWT.

We set out some of the principles of tax administration in Section 1, and in Section 2 we examine the administration of existing taxes (in the UK and overseas) which might provide some precedent for the administration of a UK NWT. Section 3 describes the various elements of tax administration and the issues and choices that the administration of NWT would need to address.

In Section 4 we examine tax leakage, the various potential areas of tax loss and the size of the tax gap for NWT. Section 5 considers the investigation and enforcement of NWT by HMRC and the tools and powers which it might need.

The authors bring experience from tax practice and public administration. The conclusions in this paper therefore rely to a significant extent on personal experience and should be read in that light.

Summary

- Existing UK taxes provide a number of relevant precedents for the administration of NWT. The underlying processes of the UK inheritance tax (IHT) could be adapted for NWT, using a modernised (digital) version of the return and filing processes.

- NWT returns could be integrated into the self-assessment return or operated, as for the annual tax on enveloped dwellings (ATED), on a free-standing basis, with payments matched to existing income tax dates.

- Finalisation of estates for IHT purposes typically can take a number of years, primarily due to the need to identify and value all assets, irrespective of size. Without some significant policy simplifications – e.g. a banded structure of charges rather than fully *ad valorem*, and/or using only five-yearly valuations – administering an annual tax would involve significant administrative burdens and delay.

- The scope of exemptions and reliefs, particularly where reliefs interact, will materially affect the degree of complexity of administration and the extent of any non-compliance (whether deliberate or accidental).

- To the extent that NWT applies to UK resident taxpayers, existing HMRC powers (suitably adapted) should be sufficient to achieve a degree of compliance broadly consistent with other taxes on capital and a tax gap of the same order of magnitude (i.e. around 10%) as for those taxes.

- To the extent that NWT applies to the UK assets of non-UK residents, compliance rates are likely to be lower.

- The compliance costs to the taxpayer of a broad-based NWT are likely to be largely comparable in the first year to those for IHT (i.e. around 0.5% to 1% of aggregate wealth) but to fall in subsequent years. We have found it hard to draw any firm conclusions about the likely costs to HMRC in administering NWT as these will depend both on design choices and HMRC's approach to compliance risk.

1. Principles of tax administration

Tax administration in the UK and most developed countries is largely based on a process that starts by assuming self (rather than coerced) assessment and payment – the principle of self-assessment.[1] 90% of taxes in the UK are collected by self-assessment mechanisms without the need for state intervention (National Audit Office, 2020). Intolerance of the frequent use of overbearing enforcement powers and the necessarily finite limit on resources, means that the role of fiscal authorities has evolved into primarily a facilitative function – providing the systems, support and guidance to allow payment to be made. Investigative activity and, where necessary, coerced enforcement is an essential but secondary activity. It is necessary in order to collect tax from those who are unwilling to pay (although this typically accounts for no more than 5% of overall receipts[2]) and to support effective compliance by the willing majority, both by deterring non-payment and providing reassurance that all taxpayers do indeed 'pay their fair share'.

The rules of NWT need sufficient clarity (and arguably therefore simplicity) to be understood and applied by taxpayers, the administration systems must allow for straightforward registration and payment and HMRC (who are assumed in this paper to be charged with the administration of any NWT) must have access to both the information and tools to allow it to enforce against the unwilling minority, or those unaware of their obligations.

It is not a given that any one set of rules can be successfully enforced. Resource constraints, limits on public willingness to be subjected to a particularly high level of personal enquiry and the practical burden of proof for disputed cases to succeed in the courts may impede practical enforcement. For instance, the design of the IR35 rules introduced in April 2000 required individual determinations and a practical burden of proof that has made these rules extremely difficult to administer. Non-compliance rate for these rules was around 90%[3] and effective compliance action by HMRC involved disproportionate and burdensome use of resources to investigate an individual-by-individual fact-based test.

The design of NWT – including valuation, thresholds, rates and reliefs - needs to take into account the practicalities of collection. Difficult trade-offs between (apparent) simplicity, fairness and scope for abuse will inevitably arise.

All tax administration involves some degree of 'tax gap' – the shortfall of taxes actually collected from the theoretical 100%. The amount of the tax gap should be capable of being held at a sufficiently low level to represent an acceptable level of compliance and a sufficient level of public support. While targeting the tax gap as a performance measure is not an effective way to manage a tax administration, due to both extraneous economic and other factors which can affect tax loss and the inherent delay in measuring the tax gap, over the longer term it can, and arguably should, be the best measure of the overall effectiveness of a tax administration. We

[1] Strictly, self-assessment refers to the process of establishing the amount of tax payable (s9 Taxes Management Act (TMA) 1970), but we use it in the looser sense here also to encompass the actual payment of the tax.
[2] Compliance yield of £34 billion out of total revenues of £627 billion in 2018/19 (HMRC, 2019)
[3] Parliamentary discussion on off-payroll working rules, House of Commons (02 July 2019), Available: https://hansard.parliament.uk/Commons/2019-07-02/debates/43FF2D0A-1EB8-4258-8ED8-3E3C6E6D179A/Off-PayrollWorkingRules

have therefore included some comments on the main areas of tax gap for NWT and how these might be addressed.

Although a number of proposals have been mooted for the integration of tax collection more generally into the financial system, by passing responsibility for payment to banks or financial intermediaries, there is no real prospect of such mechanisms being generally available for the foreseeable future. We have therefore not considered any of these longer-term options and have assumed that NWT would need to be collected using ‘traditional’ methods of tax collection.[4]

[4] Discussed further in Russell-Prywata (2020).

2. Comparisons with other taxes

This section describes the approaches to administration adopted in respect of the main UK taxes on capital in order to identify how these might be applied to NWT, the lessons that might be learnt and the differences that might impact on their effectiveness, if applied to NWT.

This section is based on the consideration of five UK taxes that are levied on the capital wealth of UK residents and in certain circumstances on some or all of the capital assets of non-domiciled and/or non-residents: inheritance tax (IHT), capital gains tax (CGT), the annual tax on enveloped dwellings (ATED), stamp taxes (SDLT and stamp duty) and council tax. We also look at the practical processes and experience of a probate-practitioner of the first three of these and the steps which are typically undertaken in relation to a deceased-estate for IHT purposes. More detail of these taxes can be found in Appendix 1.

In this section we concentrate on the administrative mechanisms up to and including the filing of a return (and any subsequent corrections/claims) and payment of tax by the taxpayer. Subsequent administrative mechanisms dealing with investigation, enquiries, enforcement, disputes and settlement tend to be more homogenous across UK taxes and are dealt with later in this paper.

2.1 General observations on the administration of other taxes

Existing taxes do not follow a single administrative model and varying rules and processes apply for returning, payment, time limits, interest and penalties. However desirable a more integrated and consistent approach might be, we have, for the present, considered NWT on a purely standalone basis (which is largely how IHT operates). In practice, internal and timing considerations within HMRC may well result in the administration of NWT being closely based on the processes and IT infrastructure used for existing taxes, however sub-optimal that might be. IHT, ATED, self-assessment (for CGT and Income tax) and, to a limited extent, council tax provide a number of precedents for mechanisms which could be adapted for calculating, assessing, returning and paying NWT. Other existing mechanisms, for investigation, enquiries, enforcement and disputes – discussed further below – could fairly readily be adapted.

2.2 Inheritance tax (IHT)

IHT is the tax closest in its subject matter to NWT – requiring a full statement of 'wealth' i.e. assets at death, detailed valuations where necessary and the computation and payment of tax on a wide range of assets for which different reliefs apply. As will be seen from the description of the IHT processes in Appendix 1, this tax can create significant practical problems and delays for executors, families of the deceased and practitioners; largely based round the complexity of its reliefs, the need to look back 7 or even 14 years before a person died and track their lifetime giving and the allocation of the nil rate band. Many of these difficulties were highlighted in the Office of Tax Simplification's second report on inheritance tax published in July 2019.

As it is (largely) a one-off tax, IHT is not integrated into the annual report/self-assessment process and, partly as a result of this, and partly as a result of the complexity and diversity of individual circumstances, has lagged behind HMRC's wider programme of digitisation and online filing.[5]

In Appendix 1, we draw on practitioner experience to illustrate the significant time required to conclude the IHT aspects of an estate. This process[6] in our experience rarely takes less than 12 months and between 2 and 5 years is not uncommon (and in more complex cases the process can take up to 5 years or longer). Of this time:

- it takes around 4 to 6 months[7] for an initial return to be submitted. However, this initial return will often involve estimated or incomplete information and will usually be filed to comply with the 6 month deadline for paying tax;[8]

- as the initial return will often be estimated or incomplete, it may take another 6 to 18 months to finalise matters, ensure that assets and liabilities have not been omitted and that provisional valuations are confirmed.[9]

In Appendix 2, we have taken data from the leading private client firms' websites which mirrors this practitioner experience. The mean average time to obtain probate was between 3.1 and 6.8 months and a further 5.9 to 13.7 months to finalise matters.

Although based primarily on anecdotal experience we believe that the main reasons are:

- The lack of any level of materiality threshold adopted in a strict *ad valorem* tax – the need to ascertain every single item in the estate, often referred to as the 'every-teaspoon' problem, but applying much more widely than chattels.

- Difficulties with ascertaining who owns a particular item – particularly with joint ownership, foreign-law issues[10] and disputes generally as to ownership.

- The need for valuations.

- Anti-avoidance rules which require other assets (gifts with reservation; certain trusts; joint property; gifts in the previous 7 years) to be aggregated.

- The number of reliefs and exemptions and the interaction between them, for example disputes around business and agricultural property.[11]

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[5] The IHT 205 is the only online service available, but only for estates with no tax to pay. It is only available in England and Wales (not in Scotland or Northern Ireland). It is not available to agents. https://www.tax.service.gov.uk/inheritance-tax/what-do-you-want-to-do (accessed 24 September 2020).
[6] For estates of the size likely to be subject to NWT. (It may be that smaller simpler estates can be concluded more quickly).
[7] This is the average of the time reported by probate practitioners see details in Appendix 1. Data from 800 tax-paying estates sampled by the Office of Tax Simplification showed an average of 4 months.
[8] s226(1) Inheritance Tax Act (IHTA) 1984.
[9] HMRC does not appear to have data on returns which are subsequently amended, but these timeframes are consistent with the time limits reported by probate practitioners in Appendix 1.
[10] For instance, whether a couple were married into a community of property regime in a different jurisdiction.
[11] It would be fair to note that the probate process is also extended by other factors which would probably not apply with NWT: probate disputes, particularly around second marriages; the need to obtain probate before one has access to the assets with which to pay the tax.

These factors are reflected in a complex reporting process[12], requiring multiple return forms and a system of provisional and corrective returns.

Although a number of the issues with the administration of IHT on the death of an individual would not apply to NWT (including the need to apply for probate, family disputes and specific policy features of IHT e.g. grossing up, double-grossing, residential nil-rate band, transferable nil-rate bands), the core features – the processes of identifying, valuing and reporting the estate – are likely to be relevant for NWT. Probate practitioner experience, albeit somewhat subjectively assessed, is that these represent probably around half of the work involved in administering an estate.

Comparisons might also be drawn with the process by which trusts report to HMRC under the special IHT regime applicable to trusts. This process is in some respects more straightforward than that applying on the death of an individual[13] and is not a one-off process[14]. However, trusts tend to have more straightforward assets than individuals and the forms for reporting it are less well designed for completion by lay individuals. For these reasons we think that IHT on death represents the better comparison for NWT.

The extent to which the problems of IHT could be avoided or mitigated with NWT would depend both on policy choices e.g. whether the tax would be a periodic charge, or an annual charge based on periodic not annual revaluation of assets; whether wealth is banded (thus reducing the need for exact valuations) or strictly *ad valorem*[15]; and the thresholds at which it starts and also on administration choices e.g. the extent to which HMRC would be prepared to tolerate 'approximate' valuations or adopt generally looser compliance processes.

2.3 Capital gains tax (CGT)

CGT is a transaction-based tax which applies to only a minority of taxpayers and has been integrated into existing self-assessment processes, providing some precedent for the assimilation of NWT into the annual income tax self-assessment process. Integration of CGT into self-assessment created difficulties when the CGT charge on UK property was extended generally to non-UK residents, requiring the adoption of a hybridised CGT filing process to cope with non-UK residents without the delay inherent in self-assessment and also to manage the rules requiring disposals of residential property on or after 6 April 2020 to be notified within 30 days rather than at the end of the tax year[16].

2.4 Annual tax on enveloped dwellings (ATED)

ATED is an annual charge on the value of residential property held in a corporate or similar 'wrapper'. Many of the problems with IHT administration have been avoided with ATED. It has

[12] IHT returns can up to 20 separate IHT forms to report different assets.
[13] The need to obtain probate does not apply and family disputes are less likely to cloud the picture. Certain design-features of IHT on death (such as nil-rate bands, transferable nil-rate bands and grossing/double-grossing) also do not apply. However, the special regime for trusts presents its own complications including complex rules around calculating the rate of tax applicable and potential aggregation of other transfers by the settlor in calculating this.
[14] Trusts pay IHT every ten years, or on certain 'exits' between ten year anniversaries.
[15] An ad valorem charge applies a prescribed percentage rate of tax to the exact amount of wealth.
[16] Specifically, non-residents have to report disposals of all real estate and property rich vehicles within 30 days of disposal whether or not the gain is chargeable or even if there is no gain; UK residents only have to report the disposal of residential property within 30 days if the gain is not exempt.

the advantage of having a tax base limited to a single class of reasonably easy-to-value assets (residential property) and having been designed entirely for online filing, its administration has proved relatively straightforward. This has been assisted by adopting five-yearly revaluations, ignoring debt and adopting a banded and capped approach to the charge, thus reducing the number of valuation events, and the scope for dispute over liability. Even so, the existence of a number of reliefs has created sufficient administrative complexity to require the introduction of 'relief declaration returns' (RDRs) to reduce the administrative burden.[17]

The adoption of periodic valuations could offer some reduction in the administration burden of NWT, and if a cap (i.e. a fixed NWT charge for estates above a certain value) were applied, a very significant reduction in administrative costs could be achieved for the largest estates as they would be able to declare that they lay above the upper limit and simply pay the fixed amount of tax due without further return information being supplied.

2.5 Banding

The use of a banded charge for ATED allows for simplification of filing processes and reduced costs. The equivalent approach applied to NWT would prescribe the amount of tax payable for estates falling within certain bands (e.g. £1 million to £2 million) therefore requiring only a determination that the value fell within the band.

The main scope which this could offer to reduce the compliance burden of NWT would lie with the reduced need to undertake detailed valuations. The need to identify all assets forming part of an individual's wealth (which could contribute materially to compliance costs, at least initially) would not be eliminated – although in most cases it would allow *de minimis* assets to be ignored and assets (such as household chattels) to be grouped. For individuals with relatively straightforward assets (say main residence, financial investments and household chattels) whose wealth lay squarely within a band, approximate valuations would provide assurance of the amount due and remove the need for anything other than a personal self-assessment of value.

Hughson (2020), using data from HMRC's Wealth and Assets survey, provides helpful analysis of the possible width of such bands and approximately what proportion of taxpayers would fall squarely within the band (and therefore could take a simplified approach) compared to those near the boundaries (who would need to undertake a more detailed exercise). The analysis shows that it might be possible to devise suitable bands where approximately 80% of taxpayers could take a simplified approach – but difficult to achieve a much higher percentage than this.

How much this would reduce overall compliance costs would depend on a number of additional factors:

- The width of any bands. More detailed valuations would still be needed for individuals whose wealth fell near the boundary of a band, so that any savings would depend on the bands being broad enough to allow a significant proportion of estates to lie well within the band (say more than 20% in value away from any boundary)

- Penalties for error. The compliance and penalty regime would need to be finely graded so as not to allow wildly inaccurate valuations to be adopted without penalty, while still giving taxpayers the confidence to adopt their own (personal) valuations without excessive fear of the consequences of honest misjudgement.

[17] See Appendix 1 section 1.4(i).

- The attitude of taxpayers. The ability to rely on third party professional advice if challenged and a general 'better safe than sorry' approach may mean that in practice taxpayers will continue to use professional advisers even if not strictly required.

Once initial values are established (in the first year of the tax) banding could result in significant savings by allowing taxpayers to record 'no material changes' and confirmation that they still fall within the same band of the tax.

Banding could, in theory, also be applied to individual asset classes (e.g. a property in the value range £500,000 to £1 million could be included in net wealth calculations at £500,000 irrespective of actual value, or fixed figures could be accepted for chattels). This could result in some savings on valuation, but could equally lead to additional complexity when asset values needed to be aggregated for computational purposes or if reliefs were applied. We have therefore assumed that only a banding system applied to total wealth would be considered as an option in the design of NWT.

2.6 Summary

A number of points can be made from the discussion above:

- There is no 'standard model' for filing and payment processes. Each tax has either evolved or been introduced with an administrative structure based primarily on the exigencies of the relevant tax and not as part of an overall coherent structure for tax collection. Similarly, time limits and enquiry processes vary across all of these taxes and most notably between IHT and CGT/income tax.

- For a charge based on value (e.g. IHT) a pure *ad valorem* approach creates considerable administrative burden and delay. Banding of valuations (as with ATED) operating by reference to a person's total wealth could reduce this burden, depending on the banding structure adopted and the way it is enforced.

- A system of periodic (three or five yearly) valuations, at least for real estate, businesses and valuable chattels, would reduce compliance burdens.

- For an annual tax (rather than a one-off or, say, five-yearly charge), adoption of mechanisms for IHT (which probably provides the closest parallel to NWT) would require very significant simplifications to avoid the need to undertake an annual 'probate' exercise.

2.7 International comparisons

Chamberlain (2020b) sets out details of wealth taxes imposed in other jurisdictions. These taxes are discussed in more detail in Perret (2020) and the Wealth Tax Commission international background papers.[18]

While other countries do impose and collect wealth taxes, care should be taken in using these as workable precedents for the administration of NWT in the UK, as the social and compliance context may be very different (Perret, 2020). It is notable that countries with a more accepted wealth tax do not have inheritance tax or have a wide ranging tax base with relatively few exemptions. Furthermore Switzerland and Spain both operate wealth tax (and also IHT) on a

[18] Rehr, 2020; Ramallo, 2020; Eckert and Aebi, 2020; Dupas, 2020; Tirard, 2020; Monte, Paoletto and Bonomi, 2020; TA and Vanvari, 2020; Banoun, 2020.

largely regional level. Although in Switzerland the tax base for wealth tax does not vary between cantons significantly, the rates and exempt thresholds do and there are significant differences as to the ways in which gift tax/IHT work and interact between cantons. In France and Germany, which (like the UK) already have complex IHT systems for taxing transfers of wealth, wealth tax has either been abolished (Germany) or limited to real estate (France).

3. Mechanisms of assessment and collection

This section sets out how the assessment of NWT might be achieved and some of the choices which will be involved.

Tax collection can be broken down into three broad elements: identification of taxpayers, determination of the liability due and payment of the tax due. These process elements need to work within an over-arching assessment/returning framework and backed up by an investigation/compliance process. There also needs to be a mechanism for resolving disputes.

3.1 The assessment framework

The number of NWT taxpayers is likely to be in the range between around 500,000 and many millions depending on the threshold at which the tax starts.[19] Even if at the lower end of the range there is no theoretical reason why administration of the tax should not be fully integrated with the existing self-assessment regime – although it is worth noting that NWT might well bring new taxpayers into self-assessment who have not previously been required to do so.[20] Just as the existing self-assessment process allows for the inclusion of a capital gains tax 'page' (either physical or digital, depending on the method of filing), so a further 'page' for NWT could be included.[21] In practice, with the increasing shift to digital, and the level of means and sophistication of NWT taxpayers, it will probably be appropriate to mandate digital filing by NWT taxpayers.[22]

3.2 Identification of taxpayers

As NWT will be a new tax, some degree of activity by HMRC will be needed to ensure that taxpayers are aware of their obligation to make returns and have access to the necessary online and professional support.

In practice, the publicity surrounding the introduction of NWT, information already held through HMRC dedicated resource, and specifically HMRC's Wealthy Unit and the (relative) sophistication of individuals with sufficient wealth to be within the charge to tax should ensure that the overwhelming majority of those liable to the tax will be aware of their obligations, either through personal knowledge or through professional advisers, without proactive communication from HMRC.

To the extent that NWT applies to (the UK assets of) non-UK residents, the problems of identification of (and enforcement against) non-UK resident taxpayers would be similar to the liability on non-residents for IHT and CGT, and the liability for IHT for at least three tax years following departure from the UK for certain non-domiciled but deemed domiciled individuals[23]. The compliance rate with the existing IHT rules in these circumstances is unknown and there

[19] Assuming a tax which applies to between 1% and 10% of households see Advani et al (2020).
[20] For instance a capital rich, income poor pensioner whose income tax has been dealt with by their pension provider under PAYE, but the value of whose house might bring them within the charge.
[21] Although, as noted in Appendix 1, if NWT is payable on all assets and is a strict ad valorem charge, then the equivalent IHT forms would suggest that up to 20 different additional forms might be needed.
[22] Pope and Tetlow (2020) discuss the logistical challenges of introducing a new digital filing process and whether this can be done alongside or needs to wait until after the tax is fully designed and legislated.
[23] See Chamberlain (2020) Appendix B for detailed review on the current taxation of foreign doms and the concept of domicile generally.

are recognised defects in some of the enforcement powers. This is likely to be a source of tax loss, but self-evidently only affecting a small minority of the tax base.

Summary

Identification of UK resident and domiciled taxpayers is unlikely to prove more difficult (and in some respects may be easier) than for other taxes, given the relative visibility of wealth and the existing HMRC focus on wealthy taxpayers. For non-UK resident taxpayers, and those UK residents who are currently largely outside the UK tax net due to their non-UK domicile, identification is likely to be more difficult, even with current levels of international cooperation, but the precedent has already been set in relation to non-residents for CGT and IHT.

3.3 Filing

If NWT was introduced as an annual tax, returns could be included as an additional element of the existing self-assessment (SA) return (which for over 90% of taxpayers is now submitted online).[24] If imposed on a one-off or a less frequently than annual basis, a free-standing filing mechanism, similar to that for IHT or ATED might be appropriate. The decision on this will be determined to a large extent by HMRC IT and systems considerations and in part by the extent of information required to be submitted. Inclusion within the existing SA return would constrain the filing dates to the existing timetable of 31 January following the end of the tax year, although this would not preclude requiring payments (interim or final) on other dates. Two practical questions need to be considered:

(1) How much information, to what level of detail, needs to be included in the return?

(2) What degree of due diligence is the taxpayer required to have undertaken before submitting the return, in particular in relation to establishing *de minimis* assets and valuations?

Similar questions arise in relation to IHT, which requires a full account and valuation of all assets to be made, and, to a lesser extent for CGT. A combination of the level of detail currently required for IHT purposes in the IHT400 form and for CGT purposes on the self-assessment return might provide a reasonable balance between the detail required to accurately assess NWT and the burden on the individual to provide information. As seen in Appendix 1, the full details required by the IHT400 series are onerous and require the completion of up to 20 forms.

The collection of unnecessary information should be avoided in order to minimise the burden on the taxpayer (and to avoid concern as to the reason for the collection, which might hinder disclosure) but HMRC needs sufficient information to allow them to undertake proper risk assessment and to raise enquiries only in those cases where they are appropriate.

Administrative burdens are mitigated for straightforward IHT estates through the use of form IHT205 (effectively a short form version of the IHT400). However, the IHT205 is only acceptable for non-taxpaying estates (below £325,000), so whether such a simpler form would be acceptable to HMRC for estates subject to NWT[25] is unclear. It might be possible for a shorter form approach to be adopted for NWT where reliefs are claimed or where there are no material

[24] UK Government (3 Feb 2020), 'Record Breaking 10.4 million customers filed online' , available at: https://www.gov.uk/government/news/record-breaking-104-million-customers-filed-online (accessed: 25 Aug 2020).

[25] And, depending on thresholds, almost certainly larger and therefore probably more complex in their composition.

changes from previous years. Coupled with the use of banding (which could include an overall cap on liability) this could reduce burdens in later years.

Electronic filing, still not wholly available for IHT, should simplify the mechanical process of filing and make the submitted data more easily accessible by HMRC for enquiry and compliance purposes. The extent to which it will reduce the underlying burden of returns is less clear and, given the very diverse nature of wealth, there is likely to be the need to provide for extensive 'white box' or 'white space' disclosure (i.e. free text additions to numerical computations). The use of such disclosure is extensively used in the case of IHT, both due to complexity and to provide protection against any liability for omission or non-disclosure, and provides a significant incentive for compliance. Although 'white space' disclosure creates challenges for HMRC's compliance work, as free text is more difficult to subject to analytic compliance techniques than numerical data, it is difficult to see how such disclosure can be avoided with a tax having such universal coverage of asset types.

Subject to the (large) question of valuation, computation of liability should be straightforward once the components of an individual's wealth have been identified, although care would need be needed in the design of NWT, if there were an interaction of progressive rates of NWT with less-than-100%-reliefs to avoid the administrative complexity of 'top-slicing' reliefs.[26]

The issues of valuation are discussed extensively in Loutzenhiser and Daly (2020). The burden on the taxpayer in submitting returns will depend both on the valuation methods required to be adopted and on a number of design choices of which the major ones will be:

- Whether periodic (e.g. five yearly as for ATED) valuations are acceptable for assets held on a long-term basis
- Whether banded charges to NWT are applied (either to total wealth, or potentially to individual classes of assets) to reduce the degree of valuation accuracy required by most taxpayers

Summary

The filing processes are likely to be structurally straightforward, but (depending on policy choices) the contents of any return will almost certainly involve a great degree of complexity to enable coverage of different asset types and holdings as the existing IHT processes show.[27] The ability to complete filings on a timely and accurate basis will depend critically on the identification / ascertainment of assets (the every-teaspoon problem), valuation methods and the basis and extent to which valuations are capable of challenge by HMRC. Significant trade-offs exist between simplicity, breadth of coverage, perceived fairness and revenue collection. These will not be easy to resolve.

[26] For example if tax were charged at 1% between Band A and B, 2% between Band B and C and 3% on the excess over Band C but business assets were charged at 0.5% between A and B, 1% between B and C and 1.5% over C then a top-slicing problem would arise depending on the order in which business and non-business assets were taxed. This would be avoided if half of the value of the business assets were cumulated instead.
[27] See Appendix 1.3(l) in particular.

3.4 Payment dates and deferral

The payment of NWT needs to address:

- When tax is due to be paid if the taxpayer is compliant
- Mechanisms for deferring or spreading those payments in the case of illiquidity or hardship
- The extent to which payment can be deferred in the case of disputes
- How, and over what period, further assessments for tax may be made in the case of under-declaration; including whether this should vary for innocent, careless or deliberate mistake
- From whom payment may be collected and in what circumstances.

3.5 Payment dates

Payment of NWT imposed as an annual tax could be aligned with that of income tax. This has the advantage of being familiar to taxpayers and their advisers and fitting with HMRC's existing systems[28]. The disadvantages include the short timescale over which to value worldwide wealth and to pay the tax if assets are illiquid and the potential addition to HMRC's (and professionals') workloads at a single time of year.

IHT requires payment of tax within six months of death, irrespective of where a return has been made or valuations agreed, with appropriate interest on over- and under-payments. Similar provisions would be needed with NWT to minimise the incentive to dispute valuation simply to defer payment.

Both the current IHT and CGT regimes contain provisions for tax to be paid in instalments where wealth is illiquid or where there is hardship. Inclusion of similar instalment options may address concerns about how to realise funds in order to pay tax, although how necessary such provisions would be for NWT depends on the scope and rate of the tax. Most wealth taxes apply rates of tax an order of magnitude lower than the highest rates applicable for CGT (28%) or IHT (40%) and real hardship is only like to be relevant where an individual's wealth overwhelmingly comprises illiquid assets[29].

3.6 Time limits

Where tax is under-declared (or no return is made) HMRC will need the ability to investigate and assess under-paid tax, subject to appropriate time limits. Those time limits will need to strike an appropriate balance between the ability of HMRC to detect and correct under-declarations and the requirement for a taxpayer to have certainty over their affairs and to avoid the need for length periods of record-keeping. In the case of income tax, an annual tax, time limits of 12 years apply in the case of offshore income and 4/6 years in other cases, although a 20 year time limit applies in the case of deliberate error. IHT applies a time limit of 4/6 years if a return is submitted but 20 years if no return is submitted but failure is not deliberate and otherwise the time is

[28] A further advantage – noting from Appendix 1 the experience of probate practitioners that dealing with the deceased's income tax is often a significant consideration in establishing the size of the estate – is that a person's total wealth will not require the same calculation of mid-year self-assessment tax positions.
[29] For more detailed discussion of illiquid estates see Loutzenhiser and Mann (2020).

unlimited. Given the likely relationship between under-declared wealth and under-declared income, these time limits could form a suitable precedent for NWT, adopting a 4 or 6 year initial time limit, extending to 12 years for offshore wealth and 20 years for deliberate error.

3.7 Liability for payment

Primary liability for payment of NWT would undoubtedly fall on the taxpayer i.e. the owner of the wealth. However, there may be cases where secondary liability for payment should also fall on a third party, to facilitate effective collection or where that wealth is assessed on the taxpayer but held by a third party (for instance if trusts are aggregated with their settlors).

Although withholding taxes are widely used to collect taxes on income (e.g. PAYE, interest withholding, withholding from rent paid to non-residents), they have no direct application to NWT which is based on the ownership of wealth rather than the receipt of income, although provisions could be included (as for some pension tax charges currently) for payment to be made out of assets held by pension fund trustees or other third party custodians of an individual's wealth. However, in circumstances where the taxpayer is non-resident, to the extent that NWT applies to non-residents, or where wealth is owned indirectly, it may be appropriate to impose a liability for payment on those third parties. For example, liability for payment might be imposed on a connected company, trustee, settlor, beneficiary, heir or personal representative, who holds the funds attributed to that individual. In the event of default, a secondary liability could be imposed up to the level of property under the relevant person's control e.g. if a trust is liable, tax could be assessed on the settlor or any beneficiary in receipt of assets or a benefit.[30] Secondary liability could also be attached to an asset or investment which the taxpayer disposed of by way or gift or otherwise than on sale before payment of any tax was made.

3.8 Disputes

While the assessment processes for existing taxes (ATED, IHT, CGT/IT, Stamp Taxes) vary significantly, the disputes process for these taxes tends to be very similar – with only minor differences between taxes. The disputes process for NWT would almost certainly, we suggest, follow this existing model. The main difference would potentially be around valuation disputes – which is dealt with separately in Daly and Loutzenhiser (2020). The dispute process is covered in further detail in Appendix 1.[31]

[30] Further discussed in Chamberlain (2020).
[31] See Appendix 1 Section 3.

4. Tax leakage – the tax gap

4.1 General comments on tax loss from NWT

Like any other tax, NWT will be subject to some loss of revenue – through simple failure to make returns, inaccurate or missing information, deliberate non-payment, evasion, avoidance or insolvency. The potential degree of loss which these will contribute to the NWT tax gap will depend both on the design and the administration of the tax.

HMRC uniquely in the world publishes annually an assessment of the total UK tax gap (HMRC, 2020b). Although this shows a relatively low level of tax gap (4.7% in 2018/19, the most recent year measured), there is considerable variation in the level of the gap depending on the type of tax and the method of collection, with gaps ranging from 5.4% to 22.9% for self-assessment and from 0.5% and 34.9% for excise duties. It is possible to draw some broad conclusions from the UK tax gap analysis which will help inform the design of NWT.

Tax loss tends to be greater where taxes are collected directly rather than by withholding or through intermediaries (self-assessed income tax vs PAYE), or where collection relies on a dispersed population of smaller businesses or taxpayers (VAT vs fuel duty).

Evasion of taxes paid by the better-off, through deliberate non-payment or concealment, remains relatively low, although persistent problems with measuring the informal or hidden economy mean that there will always be uncertainty over this.

Measurement of tax lost through avoidance is difficult, as successful avoidance is – by definition – legal and therefore any measurement of tax lost requires a subjective evaluation of what tax 'ought' to have been paid.

NWT taxpayers are, a priori, well-off and in many cases will have tax advisers or other professional advice in relation to their affairs. Our personal professional experience is that they will be more likely to test the legal limitations of any NWT and (legal) tax planning or avoidance than the wider population. However, they also value a settled life and seek respectability by complying rigidly with the law and are less likely to seek deliberately to evade tax.

We have not considered straightforward behavioural responses to an NWT – in particular migration or the impact on individuals propensity to spend rather than save. These are addressed in Advani and Tarrant (2020). We would simply note here that migration has been a straightforward and easily adopted approach for the very wealthy, as, anecdotally, took place to some extent when the higher rate of income tax increased to 50%. There may be technocratic solutions to this which have to some extent been adopted by various countries in relation to CGT and IHT/wealth tax (see Chamberlain, 2020).

The main areas of likely tax loss for NWT are likely to be evasion, avoidance and a broad category covering error, carelessness and factual disputes – primarily around valuation. We consider each of these separately below and offer some conclusions on the likely level of the tax gap from a broad-based NWT. Although conclusions are necessarily speculative, experience with IHT and other taxes would suggest that, for UK resident taxpayers, while avoidance and evasion may carry a public perception of the greatest areas of risk, in practice HMRC deals more with errors, carelessness and disputes over the law than with deliberate attempts not to pay the tax.

4.2 Evasion and deliberate non-payment

The extent to which the wealthy deliberately fail to comply with legal obligations is difficult to determine, but anecdotal evidence and the limited data available in HMRC's annual Measuring the Tax Gap publication (HMRC, 2020b) suggests that evasion by the wealthy is at least no higher overall than for the wider population[32] and may in fact be somewhat lower.

Tackling the non-disclosure (deliberate or otherwise) of sources of offshore income and gains is a long-standing concern for HMRC and has been subject to compliance activity for many decades. In recent years a number of specific initiatives have focussed on overcoming the inherent difficulties HMRC (and all tax authorities) has in obtaining information about assets and transactions outside their legal jurisdiction. This has been addressed in two broad ways:

(1) Through international cooperation, both on a bilateral basis through exchange of information on specific taxpayers under double tax treaties, but also, in more recent years, by international efforts to exchange information more generally. These are discussed below, but as relatively new initiatives have so far provided limited data on the scale of previously unidentified offshore evasion by UK taxpayers.

(2) Through creating incentives for voluntary disclosure by offering reduced penalties, agreement to use civil rather than criminal powers to investigate and the threat of increased penalties or sanction in the future if disclosure is not made.

Adopting the latter approach were the series of disclosure facilities operated by HMRC since 2009. The first of these, the Liechtenstein Disclosure Facility (LDF) (HMRC, 2016) ran from 2009 to 2015 and, despite its name, allowed a wide range of undisclosed offshore liabilities to be settled with agreed penalties and no criminal prosecution and time-limiting past liabilities. The LDF was replaced in 2016 by the slightly less generous Worldwide Disclosure Facility (WDF) which remains in force. These two facilities have raised respectively around £1.4 billion (HMRC, 2016) and £100 million (HMRC, 2019, p. 30) to date, although these figures represent accumulated unpaid tax rather than annual tax liabilities and included tax which had not been deliberately underpaid, so that direct comparison with the compliance yield of the HMRC's Wealthy Unit or extrapolation to size of the current tax gap would be misleading. Nevertheless, the receipts from these two facilities (and from the somewhat different UK/Swiss Tax agreement of 2012 which yielded around £1.3 billion[33] of tax from income on previously undisclosed Swiss bank accounts) give an order-of-magnitude indication of the scale of detectable offshore evasion.

Some additional indications of the likely evasion behaviour of the wealthy can be obtained from the Requirement to Correct (RTC) legislation[34] introduced in 2017 as a further means of incentivising the disclosure of historic tax loss from previously undisclosed offshore sources.

[32] See also Advani (2017).

[33] The National Audit Office Report (2015, p. 25) on 'Increasing the effectiveness of tax collection: a stocktake of progress since 2010' reported collections of £1.2 billion through the UK-Swiss tax agreement, with a further £0.1 billion is recorded in HMRC's annual report for 2014–15 (HMRC, 2015, p. 108).

[34] S.67 and Sch.18 Finance (No. 2) Act 2017; S.67:
https://www.legislation.gov.uk/ukpga/2017/32/section/67/enacted; Sch. 18:
https://www.legislation.gov.uk/ukpga/2017/32/schedule/18/enacted

Anecdotally this did show quite a high level of evasion but among a very few.[35] RTC also provided some insight into the behaviours of the wealthy.[36] Practitioner experience has been that most non-compliance revealed by the RTC was inadvertent – the tax legislation is counter-intuitive; taxpayers are over optimistic about how the rules will apply to them; they had previously considered the position but the interpretation of the law has changed; or it is difficult practically to determine what is held e.g. whether an asset (such as a debt) is situated in the UK.

It is of course the case that, whatever the overall level of evasion, the amount of tax lost in each case is likely to be also larger than for the general taxpayer. And, just as the concealment of turnover by a small trader results in a loss of both income tax and VAT, concealment of assets by the wealthy may well result in the loss of other taxes than the NWT itself, or simply reflect other taxes already lost on concealed assets.

The main risks of evasion (i.e. deliberate and unlawful attempts not to pay) are likely to be the concealment or non-disclosure of assets (including concealment through nominees, trusts and overseas holdings). We have also been concerned about loss of tax from under-valuation, deliberate or otherwise. Some comments on this are included here, although any tax lost through under-valuation is likely to cover careless and legal disputes as well as deliberate behaviour.

Concealment of assets – UK residents

Concealment of assets and income by UK residents is not a new problem. A large part of HMRC's existing compliance effort is devoted to individuals and businesses who withhold information on income or capital gains. For UK financial and property assets, HMRC deploys a wide range of tools, including extensive use of its own and third party data (e.g. shareholding registers, Land Registry etc.) as well as reporting information from its own and third party sources. The effectiveness of this is reflected in tax gap figures where the overall loss for evasion of tax is less than 1% of overall liabilities.[37]

In recent years there has been significant attention, both by the public and by tax administrations, on the concealment of assets outside the jurisdiction i.e. in offshore accounts or in countries outside the UK and similar arrangements. The amount of such wealth held by UK residents is hard to determine – and subject to a very wide range of (often speculative) estimates. The literature would suggest that the amount of offshore household wealth (disclosed and undisclosed) might be of the order of around 15% of domestic household wealth[38]

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[35] Based on an informal conversation with HMRC; further statistical evidence is required to show that this is representative.

[36] This is based on the anecdotal experience of senior members of the UK Tax Bar involved in RTC shared with senior tax practitioners who concurred with that experience at a number of meetings across the UK attended by approximately 100 practitioners in the UK and the Channel Islands.

[37] Disaggregated figures for individual taxes are not available so the level of loss may be higher for individual taxes.

[38] Studies of offshore wealth and offshore tax evasion by Alstadsæter, Johannesen, and Zucman (2018) and Alstadsæter, Johannesen, and Zucman (2019) provide some basis for this figure, but these studies should be read with extreme caution. The studies are based on data nearly 20 years old (2003–4) before the majority of the international initiatives to counter offshore evasion had commenced. They (necessarily) make broad assumptions about the relationship between corporate and household wealth and between bank deposits and wider wealth, as well as assuming a wide degree of cross-country equivalence in evasion behaviour. Nevertheless their conclusions imply a tax gap consistent with HMRC

although translation of this into amounts of tax evaded are impossible without further data. This difficulty is compounded by the extent to which such assets are owned by UK resident but non-UK domiciled individuals, who are generally not liable to tax on income and gains from such assets.[39]

Although the introduction of NWT will further increase the incentive to conceal wealth, it would seem unlikely that the level of evasion would be significantly greater than for other taxes and, against a background of continuing international cooperation, we would not expect the loss of tax from concealment of financial assets to be materially different from losses from other taxes. It is difficult to assess how much evasion might arise from evasion of NWT on tangible assets but as these represent a relatively low proportion of wealth the actual tax loss could be expected to be low.

At a practical compliance level, NWT will apply to assets beyond those financial and property assets the income and gains from which are already required to be returned for existing tax purposes. Amongst 'traditional' investment assets, HMRC does not, in the main, hold any information on principal private residences or routinely receive data on investments held with ISA wrappers, but both of these classes of asset are readily discoverable and evasion through non-concealment of these is likely to be minimal, if these are to be included within the tax base.

For 'non-traditional' investments – works of art, jewellery, stamp collections, gold bullion, motor cars, racehorses, etc., concealment of ownership may in some cases be relatively easy and detection by HMRC difficult without extensive investigation. Currently it remains largely unknown how much such assets represent the total of UK wealth when held by foreign domiciled individuals who live here and even in the case of UK domiciled individuals who die here in many cases the wealth may have been transferred on legitimately using the potentially exempt transfers (PET) regime without the need to report. Even if the imposition of NWT were to increase concealment, the aggregate loss of tax is likely to remain low as a percentage of total receipts. Nevertheless, as with other areas of tax loss, failure to collect the tax effectively from this source would carry risks to the wider credibility of the tax.

Concealment of assets – non-UK residents

In practice (as with other countries) IHT is avoided not by means of concealment but by moving such UK assets into a foreign incorporated company ('enveloping'). If the scope of any NWT includes non-UK residents holding any UK assets, failure to register is likely to be significant without mechanisms requiring UK intermediaries to notify either of the holding of UK assets and/or of the potential liability to NWT of non-resident clients. In practice, unless there are wider changes to UK reporting obligations on the beneficial ownership of UK situs, and international agreement to allowing tracing of such ownership through non-resident vehicles, tracing ownership and hence liability of assets ultimately owned by non-residents may be near impossible in practice.[40] A first-order assumption should be that effective enforcement of NWT liability against non-residents will be low, except to the extent that the charge applies to real estate or other easily traced and non-mobile assets. The design issues raised by territoriality are discussed in Chamberlain (2020).

published figures and confirm the very speculative (and almost certainly inaccurate) nature of much larger figures being promulgated by a number of non-academic organisations.

[39] See also Appendix B of Chamberlain (2020).

[40] Discussed further in Russell-Prywata (2020).

Undervaluation

Based on IHT experience, undervaluation can occur in a range of situations, which may range from careless to deliberate behaviour.

First, and least problematic, is deliberately taking the lower end of an acceptable range (e.g. on a property valuation), where in most cases the taxpayer would, inevitably, adopt the lower end of a range of possible values for IHT.[41]

Second, is what might be described as 'sloppy' valuation: taking insufficient care over valuation and simply providing a ball-park estimate. Again, this undoubtedly does occur for IHT purposes and in some cases (e.g. accepting a round-sum figures for chattels) appear to be tolerated by HMRC or to have become accepted practice (e.g. a standard 10% discount applied to joint ownership). It would seem likely that similar practices would be likely to grow up around NWT.

Third is what might be described as 'optimistic' valuation – a low value which, while it has some rationale behind it, is right on the edge of acceptability and is unlikely to stand up to detailed scrutiny, for instance wilfully ignoring recent comparable transactions in a property valuation, often in the hope that an apparently plausible figure will simply be overlooked by HMRC.

Deliberate under-valuation appears uncommon in relation to IHT and, although experience of this is lacking, it would seem more likely that a taxpayer willing to adopt a deliberate undervaluation would be equally inclined to omit the undervalued asset entirely from the return.

Taken together, although undervaluation does undoubtedly occur, its contribution to the tax gap for IHT is likely to be relatively low, as the range of assets to which it can, and is, applied and the extent of under-valuations would seem reasonably constrained.

4.3 Avoidance

All tax induces behavioural responses, legal and illegal, which reduce the yield. Avoidance is generally taken as any legal behavioural response which produces a response inconsistent with the intention of Parliament in legislating for the tax in question. This definition distinguishes avoidance from 'pure' behavioural response. Pure behavioural response is discussed in Advani and Tarrant (2020), as not involving issues for HMRC. We consider here only those behaviours which might be expected to require legislation to counter, either at the outset or in response to the development of specific schemes.

As with other taxes, the boundary between (acceptable) tax planning and (unacceptable) tax avoidance will be difficult. Some existing planning tools employed for IHT are set out in Appendix 1. From these it is possible to discern four broad categories of planning:

(1) Planning which simply makes use of an existing relief, clearly prescribed by Parliament. Into this category would fall, for instance, business and agricultural property relief, pensions and some trusts. For the most part this sort of planning is unobjectionable, although the boundaries are frequently pushed into avoidance where a relief (such as business property relief) is capable of being manipulated.

[41] Although as the IHT valuation also represents the CGT base-value for a future sale, there are some situations where there is an incentive to push for the higher valuation.

(2) Behavioural responses. The most obvious form of planning here is dissipation of wealth through spending the kids' inheritance but also fragmentation depending on rates and thresholds or moving wealth into exempt assets.

(3) Relying on valuation principles. This would include many arrangements involving life insurance (which often rely on the low surrender value which life policies have during lifetime) and some of the more complex arrangements involving carving-up shareholdings or other interests (again often those involving life insurance) to create interests with lower value or ones where the day to day benefit can be retained.

(4) Transforming the character of assets e.g. by the use of corporate vehicles (typically family investment companies) so as to give them many of the characteristics, but not the IHT treatment, of trusts.

In part because of the difficulty of classifying planning and avoidance, the measurement of avoidance poses some difficulties – if the behaviour is indeed legal (i.e. the avoidance is successful) how can the tax loss be measured? Measurement of avoidance therefore involves a subjective judgement of what Parliament intended and the extent to which that intention has been frustrated. The published tax gap numbers record only the extent of avoidance activity which HMRC believes (on the basis of legal advice) that it can counter through the courts. It therefore does not measure any avoidance which HMRC does not believe it can challenge successfully, sometimes referred to as the 'policy avoidance gap' (although it will normally seek legislation to counter such activities).

Over the last ten years, the measured level of avoidance has fallen by around two-thirds from around 1% of total theoretical tax liabilities to 0.3%. Although, as noted, this only includes avoidance which HMRC is able to counter, the trend does reflect the continued success of a broad range of specific and general anti-avoidance approaches over this period, combined with a very significant shift in public attitudes to, and tolerance of, tax avoidance. HMRC's measurement of the avoidance tax gap for other taxes should therefore give some indication of the order of magnitude of the loss through avoidance that might be expected from NWT.

Avoiding liability to NWT is likely to follow many of the same approaches as IHT. These typically include: entering into arrangements which remove assets from the scope of the tax without the taxpayer in reality relinquishing ownership or control; bringing assets artificially within the scope of an exemption or relief; or manipulating the rights attaching to assets so that their value is reduced.

A wide range of legislative measures already exist to counter these arrangements, most of which can potentially be applied to NWT. A specific avoidance (and policy design) issue for NWT will arise on the question of whether a taxpayer should be subject to a wealth tax on the enjoyment of an asset as opposed to its ownership. To counter a number of IHT avoidance devices, the rules of IHT treat an individual who gives away their house but continues to live there rent-free as subject to IHT on death under the 'reservation of benefit' rules. Although these rules are, at heart, anti-avoidance measures, they go to the definition of ownership (a policy question for NWT) and also raise the potential for double charges to tax (for IHT both the owner and the person having the use of the asset can be subject to tax). This issue is discussed further in Chamberlain (2020) but we note that such anti-avoidance mechanisms could significantly complicate the operation of an annual tax.

Conclusions on avoidance

There is nothing inherent in NWT which differentiates its avoidance risks materially from other taxes and in many respects, as a purely asset-based rather than transaction-based tax, opportunities for avoidance may actually be lower than, for instance, income tax and corporation tax, where the tax base depends on definitions of income more capable of manipulation than the concept of wealth.

The overlap with most of the requirements of NWT with those of IHT will limit the scope for new forms of avoidance, although there may (depending on scope and rates) be greater incentive for advisers to develop new avoidance techniques.

The boundary between 'ownership' and 'enjoyment' of an asset creates avoidance opportunities and raises policy questions on how widely the definition of an individual's wealth should be drawn (discussed further in Chamberlain (2020).

The more extensive any reliefs from NWT the more scope there is to (ab)use them; to exploit boundary definitions to bring assets within those reliefs; or to invest in assets that are exempt.

4.4 Error, carelessness and factual and legal disputes

Error, failure to take reasonable care and differences of legal interpretation make up nearly half the tax gap (44% in 2018/19, see HMRC, 2020b, p.13). While there is no reason to believe that mistakes and carelessness are more or less likely to arise with NWT than with other taxes, the degree of error will be highly dependent on the complexity of the tax, the computations needed and the extent of any reliefs, given that complexity of calculations and the application of reliefs both being major causes of error for CGT and IHT. The experience of practitioners is that for IHT, error and mistake represent as great a proportion of their workload as issues arising from avoidance or deliberate non-payment, which would suggest that the general tax gap figure of 44% attributable to these causes is likely to be reflected for IHT and, by inference, for NWT.

Disputes over liability can cause both specific tax loss and delay and, in extreme cases, can result in the failure of an entire tax, as was the case with Lloyd George's 1909 land value tax. Such challenges around the tax as a whole (for instance a judicial review action claiming that the whole tax is unconstitutional, retrospective, contrary to human rights, breaches data protection laws or similar) have been relatively frequent in recent years, even if in most cases unsuccessful, and can be seen as an extension of the political process of the introduction of legislation.

The extent of case-specific disputes will depend upon the design of the tax and the extent to which there are specific factual issues (e.g. valuation) or definitional questions (the scope of a relief) open for argument. Anecdotal experience of ATED is that the level of disputes has been relatively low, almost certainly because of ATED's straightforward design, the absence of the need for annual revaluation and the banded charge. ATED disputes have generally centred around the availability of a particular relief and whether the conditions for it have been met (for instance whether a property is genuinely open to the public on 28 days a year or whether property is let to an unconnected party or whether a development activity is being carried on).

By contrast a full, *ad valorem* NWT is likely to be more comparable to IHT, in requiring the identification of ownership, agreement on valuation and the determination of the applicability of reliefs, all of which can take considerable time to resolve. Resolution of these issues is made possible for IHT through the mechanisms for provisional returns which can later be corrected and amended (as new assets or information come to light). This provisional/correction model, potentially stretching over several years, is possible with IHT as a one-off (or ten-yearly) change.

It helps avoid the need for rigid checking of the original return and allows a longer timeframe in which to agree valuations without generating disputes.

Applying such a system to an annual NWT would create significant difficulties. Income tax self-assessment (which also contain CGT returns) requires a return to be filed annually with a strict timetable of one further year in which to amend that return. HMRC's compliance activity is similarly targeted on an annual cycle. While it would clearly be possible to apply a provisional/correction model over a period longer than a year, the risk with such a model is that last year's dispute is not corrected before next year's return is filed, with a compounding effect likely to cause particular aggravation for taxpayers (and difficulties for HMRC).

While we therefore see no fundamental reason to anticipate loss of tax through error etc. to be materially higher than for other taxes, managing the scope for the delay and loss from disputes will depend critically on design and policy choices to ensure that liability can be accurately determined, and where necessary, challenged by HMRC within the annual cycle, without creating excessive cumulative delays.

4.5 Tax gap - conclusions

Although NWT would have no direct UK precedent, all of its elements – returns, asset statements, valuations, computation, payment and disputes – have been used in other contexts. The ways in which tax can be lost and the way that loss can be addressed will be familiar to HMRC. The extent of any actual tax loss will, of course, be dependent on the design details and rates of tax adopted. It will also, to a critical extent, depend on the level of powers and resource which it is seen as appropriate and acceptable for HMRC to be given. While it is therefore not possible to make any precise estimates of potential tax loss, we believe that for the UK resident taxpayer population it will be comparable to the loss for other directly assessed taxes.

The most recent published tax gap for IHT (the most directly comparable tax) is 8.6% (HMRC, 2020b, p. 20). Although responsibility for the payment of IHT lies with executors who do not have to bear the cost of the tax themselves and might therefore seem to have less of an incentive to minimise tax paid than in the case of a tax which is the direct responsibility of the taxpayer him/herself, many executors include members of the family who benefit from the Will and professional executors are still dependent on the family for information on past transactions. The tax gap for NWT may therefore be comparable and is unlikely to be lower than that for IHT.

The tax gap for the self-assessed taxpayer population as a whole is 12.9% (HMRC, 2020b, p.20). The self-assessment taxpayer population includes a wide range of individuals and businesses with a wide range of opportunities and incentives to reduce their tax bill. HMRC's coverage of the self-assessed population is also relatively low. It therefore seems unlikely that the tax gap for NWT would exceed that for the self-assessed population.

It therefore seems likely that the level of tax loss for UK resident NWT taxpayers to lie somewhere between these two figures i.e. to be of the order of 10% of theoretical tax liabilities.

5. Investigation and enforcement by HMRC

5.1 General compliance approach

Modern tax compliance is based, as noted above at Section 1, on achieving a high degree of voluntary compliance through the operation of good systems, the creation of trust in the overall system and on deterrence. To the extent that active compliance action is required to support this, processes are primarily risk-based i.e. only a proportion of taxpayers, returns or transactions are investigated based on the anticipated risk to the Exchequer. Risk may be assessed in a number of ways – by reference to the type of taxpayer (e.g. those with high incomes, or with a known record of non-compliance), by criteria derived from extrapolation of other cases (e.g. taxpayers in particular occupations or with particular spending patterns) and through external intelligence, either derived internally by compliance staff or from external sources – e.g. references from other enforcement agencies.

Increasingly, case selection for risk-based assessment is supported, and to a large extent driven, by data analytics to enable a wide series of data sets to be correlated against known and anticipated compliance issues and to improve case selection. HMRC, along with other tax administrations, uses data analytics extensively and we would expect them to do so in administering NWT.

Risk-based compliance enquiries will be supplemented by random investigations, both to ensure that an overall sense of deterrence is maintained, and to identify any non-compliance factors not picked up in risk-based selection. The overall effectiveness of this approach depends on the successful identification of likely non-compliance through risk-based analysis and on HMRC being able to identify and counter non-compliance in cases selected on a cost-effective basis, which will in turn depend on the information required to be returned and the availability of third-party information.

There are some complex trade-offs involved in establishing the optimum compliance process – and indeed both the type and volume of compliance work is likely to vary considerably over time. The type of compliance work undertaken will depend, in part, on the depth and detail of information taxpayers are required to return – greater detail allowing better targeting and hence potentially 'smarter' (and potentially fewer) audits, at the cost of higher compliance costs for the taxpayer; lighter reporting requirements (aggregating values, not requiring detailed asset identification etc.) will reduce initial costs for taxpayers but will need to be administered through with less well-targeted (and potentially more) audits by HMRC. The volume (and to some extent the focus) of HMRC work will depend on resource priorities, initially determined by internal HMRC choices, which are likely to be based on tax gap analysis and the anticipated return from audit work but with some degree of political input in ministers' willingness to fund HMRC for particular areas of activity.

Taxes where non-compliance is hard to detect or where the cost of investigation is excessive are likely to result in large tax gaps. The loss of excise duty on hand-rolling tobacco, which is both easy to smuggle and subject to a high rate of duty, has in recent years been at levels as high as 50% and is still running at 35% (HMRC, 2020b, Table 1.1, p. 20) and the so-called IR35 rules to counter the use of single-person companies to avoid PAYE liability achieved only a 10%

compliance rate[42] due to the high costs and relatively low yield of investigating and determining the facts of each case individually.

5.2 Specific compliance challenges for NWT

Some of the main areas of tax loss from NWT are described in the discussion on tax gaps: non-registration, concealment of assets, under-valuation, avoidance and error. All of these are issues with which HMRC is familiar and for which there are well-developed operational responses.

Although existing operational techniques are capable of dealing with NWT, the scale of such a tax is likely to require both the expansion of HMRC resources and the development of new operational and legislative responses (further discussed in Pope and Tetlow, 2020). There is likely also to be political pressure to be seen both to make a new wealth tax 'work' (i.e. to raise the revenues Government anticipates without widespread and visible tax avoidance or evasion) and to ensure that taxpayers are adequately supported in taking on responsibilities for a new tax.

It is inevitable that the powers needed to collect a tax which seeks to require a disclosure of total wealth will be seen as burdensome, and potentially, oppressive. The balance between creating and applying new powers, providing an adequate and manageable system of administration (with proper rights of redress) to taxpayers and allowing a degree of tax leakage will ultimately be a political judgement. The current enforcement powers available to HMRC are set out in Appendix 1 and are currently subject to review.

Some of HMRC's existing powers have been discussed above. The principal areas where more powers are likely to be appropriate will be to identify the ownership of assets, to track assets held offshore and to trace ownership through intermediate vehicles. Achieving this could involve a greater degree of reporting by intermediaries, the creation of ownership registers for wider classes of assets, extension of requirements to disclose beneficial ownership and, of course, the continuation of the exchange of information (automatically or on request) internationally between tax administrations.[43]

5.3 Offshore compliance

The extent of tax loss (both to the UK and other countries) through the holding of assets outside the jurisdiction (either by way of concealment or through avoidance using offshore structures) has been the focus of successful domestic and international compliance efforts, both to achieve a greater degree of transparency and exchange of information and through policy initiatives to counter the effectiveness of offshore structures as a tax planning tool.

HMRC has used a series of disclosure facilities, allowing taxpayers to disclose past liabilities in exchange for reduced or waived penalties (Section 4.2 above) and participated in international initiatives to exchange information, notably the OECD Common Reporting Standard for the automatic exchange of information between tax administrations,[44] both on a bilateral and

[42] Parliamentary discussion on off-payroll working rules, House of Commons (02 July 2019), Available: https://hansard.parliament.uk/Commons/2019-07-02/debates/43FF2D0A-1EB8-4258-8ED8-3E3C6E6D179A/Off-PayrollWorkingRules.
[43] The scope for tracking beneficial ownership is discussed further in Russell-Prywata (2020).
[44] Common Reporting Standard developed by the OECD, Available: https://www.oecd.org/tax/automatic-exchange/common-reporting-standard/

multilateral basis, on financial assets. It has devoted considerable resource (now primarily contained in the HMRC's Wealthy Unit and colleagues) to focus on the taxpayers most likely to utilise offshore structures. Policy changes have also addressed some of the main planning techniques so that, for instance, there is now virtually no tax advantage to be gained from a UK resident and domiciled taxpayer establishing a trust, whether offshore or onshore.[45]

5.4 Costs of compliance and administration

The level of compliance costs for taxpayers will depend on design choices. However, some indicators of likely costs can be derived from the costs of ATED and IHT compliance. These are necessarily anecdotal and based on the authors' personal experience, but we believe that they are representative of the typical level of costs for clients whose affairs would be dealt with by HMRC's Wealthy Unit.

ATED returns tend to cost around £750 to £1,000 plus VAT per annum for a relatively straightforward case.[46] As ATED is a relatively simple tax (fixed rate, based upon wide valuation bands, and for a single asset) the costs tend not to deviate too much from this. It is worth noting that the same costs are likely to apply both to those who have an ATED liability and to those who do not (but who need to claim a relief in order to fall outside it – and who therefore need to file anyway). These costs (including VAT) can represent up to 1/3 of the tax payable at the lower end. At the upper end (where the charge is over £200,000 per annum for properties worth more than £20 million) they represent a small percentage of the tax liability.

The costs of IHT compliance for a deceased person's estate will vary significantly depending upon the complexity of the estate. Although complexity and size do not always correlate, Appendix 2 shows that the costs of an uncontested probate would typically be of the order of 1.9% to 2.8%[47] of the total estate. Although some probate costs relate to other matters, Appendix 2 suggests that at least half of the work in a probate is work which would be needed for NWT (ascertaining the assets; valuing them; reporting them for tax purposes; making arrangements to pay the tax), which suggests that, on an equivalent basis, costs (at least for the first year of NWT) would be of the same order i.e. ranging up to 1% to 1.5% which could, depending upon the rates chosen for a wealth tax, result in costs roughly equivalent to the tax due. The level of costs in subsequent years, would inevitably be lower (potentially at half the initial level or less) and would depend upon design decisions around the frequency of (re-)valuation and the extent to which an individual's assets change. To the extent that HMRC requires returns from individuals below the tax threshold (as is the case for IHT in order to provide compliance assurance) any costs would, of course, be incurred by the taxpayer even though no tax falls due.

The costs to HMRC of administering NWT will depend on the model chosen (e.g. how much IT investment is required), how much taxpayer support is provided and how much taxpayer

[45] To some extent there is a conflict in that UK tax policy does incentivise the tax planning of certain foreign domiciled individuals after they become UK tax resident and deemed domiciled. See for example the CGT protections published by the UK Government: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/678830/Trust_ProtectionsCGT_guidance.pdf

[46] Based on responses to correspondence with a small selection of representative firms. Mean average: £737 to £1,800. See Burgherr (2020) for more details.

[47] This figure is the mean average for those firms which quoted a percentage rate. Those which quoted ranges showed a mean average of £22,800 to £68,700. It is not clear whether the figures from law firms include or do not include VAT – we suspect that most do not, so these figures are likely to be higher in practice.

compliance activity is undertaken, which are choices for HMRC. As with other elements of NWT, all of these are highly dependent on the complexity of the tax and in many cases can be integrated into existing elements of HMRC work (e.g. we would expect investigation activity to be undertaken, at least for the wealthiest taxpayers, by HMRC's Wealthy Unit as an integrated part of compliance activity).

HMRC's annual costs of £4 billion represented just over 0.5% of the total revenues raised of £627 billion in 2018 (HMRC, 2019). HMRC does not publish disaggregated administration costs for individual taxes (and indeed it would be hard to disaggregate many of those costs), but do 'resource to risk' i.e. devote a greater proportion of resources to those areas where the risk of tax loss is higher. In practice, this means that the costs of administering those taxes with low risk and low tax gaps is likely to be lower than for the more complex taxes and those with higher tax gaps. Although, as we have indicated, we do not anticipate a significantly higher level of tax loss from NWT than from other taxes it is reasonable to assume that, at least in the early years of NWT, a somewhat disproportionate amount of resource would be devoted to its administration. We have been told by HMRC that the administration costs of IHT are £35 milion per annum or around 0.7% of IHT receipts of £5.3 billion (comparable to wider HMRC collection costs).

However, expressed as a percentage of the estates on which IHT is charged (assumed to be around £25 billion) HMRC's costs of £35 million represents around 0.15% of the wealth taxed by IHT. If this cost was reflected in NWT set at a rate of 1%, the effective administration costs would represent around 15% of tax raised – a figure comparable of the experience in Ireland where administration costs were around 25% of tax raised (Sandford and Morrissey, 1985, p. 145). The administration costs for IHT of £35 million per annum can also be viewed as representing around £1500 for each of the around 24,000 estates taxed (figures for 2017-18 in HMRC, 2020a), as an alternative indication of the potential administration costs of NWT, if operated on a basis similar to IHT.

International comparisons of administration costs have proved hard to obtain but Burgherr (2020) contains the results of initial researches. In France, total administrative costs for the wealth tax in 2016 were €103 million representing 2% of wealth tax raised. In Germany the costs are disputed with some experts claiming they are as high as 43% of the collected intake, whereas others cite a lower figure (claiming that other costs are included in these high figures). The Federal Government estimated the collection costs at 4 to 4.5% of its intake.

It is therefore difficult to draw any firm conclusions about the likely administration costs to HMRC (particularly given the range of choices for HMRC on the nature of reporting requirements and the extent of investigation work as discussed above), other than to note that they might represent a significant proportion of revenues raised.

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Appendix A

A1 The administration of existing UK taxes on wealth

A1.1 Capital gains tax (CGT)

Scope: UK residents on all disposals; non-UK residents on disposal of UK assets
Number of taxpayers: 276,000
Tax raised: £9.5 billion[1]
Tax gap: Not published

(a) CGT is a tax on transactions (viz. disposals giving rise to gains or losses) and is not an annual tax. However, when chargeable gains have arisen, an individual is required to return those gains to HMRC as part of their tax return for the tax year in which the gains arose.[2] As such, it contrasts with other transactional- or event-based taxes (IHT and SDLT) for which a free-standing reporting process exists.

(b) CGT is self-assessed and no central register is maintained of those who may be liable to the tax. However, an individual will be registered with HMRC under the self-assessment system or, if not so registered, will need to register in order to report the chargeable gain.[3] The deadline to register is six months after the end of the relevant tax year.[4] As the chargeable gain is[5] returned within the annual personal tax return, it has the benefit of being, for many taxpayers, a familiar process that is undertaken to a familiar timetable with familiar channels to access support. Linking a one-off irregular tax to the annual administration cycle of another tax has advantages for both the taxpayer and their adviser.

(c) Linking CGT to the familiar income-tax self-assessment process gives some indication of how the administration of one tax can be bolted onto the systems used for another.

(d) Filing
The deadline for filing the return varies depending on the method of submission. A paper return must be filed by 31 October following the end of the tax year.[6] If the taxpayer wants tax to be collected automatically from their wages or salary, the return must be filed by 31 December following the end of the tax year.[7] In all other cases, an electronic return must be filed by 31 January following the end of the tax year.[8] [9]

(e) Payment
(i) CGT is generally paid on 31 January following the end of the tax year, in line with the normal income tax payment. Interest is charged on the late payment of tax.

[1] https://www.gov.uk/government/statistics/capital-gains-tax-statistical-tables.
[2] S.8(1) Taxes Management Act 1970 (TMA).
[3] S.7(1) TMA.
[4] S.7(1C) TMA.
[5] For the most part with the exception of residential property.
[6] S.8(1D)(a) TMA.
[7] Regulation 186 Income Tax (PAYE) Regulations 2003.
[8] S.8(1D)(b) TMA.
[9] The exception is residential property where all disposals giving rise to a chargeable gain must, from 6 April 2020, be reported within 30 days of completion and tax paid accordingly.

(ii) Special payment rules apply to instalment sales and gifts (which are normally taxed as if sold at market value). Where the consideration is received in instalments, HMRC may permit the payment of CGT in instalments over a period of up to eight years or a period ending on the date on which the last instalment of consideration is due. Where the disposal is a gift and it is not possible to claim holdover relief, the taxpayer may choose to pay in ten equal instalments on gifts of land, shares in a company the donor controls or unquoted shares, which are traditionally considered to be illiquid assets. To the extent that CGT is paid in instalments, interest is usually charged on the unpaid balance.

(iii) From 6 April 2020, the rules (see next section) that had been introduced for non-UK residents disposing of UK residential property have been extended to UK residents, who must also submit a provisional return of the estimated gain arising on the disposal of UK residential property within 30 days of disposal. The practical difficulty with these rules has been principally an issue of awareness of the need to file a return and the short time limit in which to do so.[10]

(f) <u>Special rules for non-residents</u>

(i) Until 2013 the UK did not generally charge CGT to non-residents,[11] even on UK situated real estate. From April 2013, this position changed with the introduction of CGT for enveloped residential properties (broadly mirroring those companies to which ATED was charged)[12]. From April 2015 CGT was extended to non-residents on all UK residential property[13] and from April 2019 it was further extended to apply to all UK real estate.[14] In addition from April 2019, shares or other interests in property-rich vehicles were also included within the scope of CGT for non-residents.[15]

(ii) Extending CGT to non-residents posed two main administrative issues:

(iii) First, CGT has traditionally been a self-assessed tax: reported and paid at the same time as income tax. As the deadline for reporting is 31 January following the tax year in question, this can mean that a disposal for CGT purposes is not reported (and tax not paid) for at least 9 months and (for disposals early in the tax year) potentially up to 21 months after the transaction takes place. For those already in the self-assessment system, the downsides of such a long delay were counterbalanced by the advantages of tying CGT to the usual annual reporting cycle. However, as non-residents will usually not be within the self-assessment system, this delay was thought to give too long a period before tax was paid and significant scope for non-residents to forget about transactions before they were due to be reported.

(iv) Second, there is a knowledge problem: both for HMRC and for non-residents. For non-residents the knowledge problem is how they are expected

[10] They only apply where the gain is not wholly exempt under the principal private residence relief so most taxpayers will be unaffected by the change (s.222 Taxation of Chargeable Gains Act (TCGA) 1992).
[11] Except where operating through a branch, agency or permanent establishment in the UK.
[12] S.2B TCGA 1992 – since repealed (so ATED-related CGT no longer operates from April 2019).
[13] S.14D TCGA – since rewritten and consolidated.
[14] S.1C TCGA
[15] S.1D TCGA

to know and keep up with detailed changes in UK legislation. As Judge Thomas wryly observed in *McGreevy v Revenue and Customs Commissioners*:[16]

> *I am sure that every December in the past few years the appellant, like many other inhabitants of Rozelle, NSW, Australia, has been agog with excitement waiting for the British Chancellor of the Exchequer's Autumn Statement. How much more relevant must it be to their tax affairs than anything the Australian Treasurer has to announce.*

(v) And for HMRC there is the problem of knowing when non-residents have disposed of UK real estate; and more particularly knowing when they may have disposed of shares or other interests in property-rich companies. For UK real estate there is Land Registry data and data from estate agencies and various property websites. But for the disposal of property-rich entities, there is no easy way for HMRC to know (a) whether or not an entity is property-rich (as defined in the legislation) and (b) when the shares or other interests in it are disposed of.

(vi) The imposition of a 30-day deadline for CGT purposes[17] was an attempt to deal with both problems. As regards the first problem, the shortened time-scale is an obvious remedy. The way in which a shorter deadline attempts to solve the knowledge-problem is less obvious. However, it is assumed that most transactions involving substantial UK land (even when the disposal is of shares in a property-rich entity) are likely to involve UK lawyers. And if the reporting deadline is short then (as is the case for SDLT) it seems more likely that the lawyers will alert the non-resident client to the need to file and pay tax. (By contrast, the annual self-assessment process seems likely to lead to a disjointed situation where the lawyer has moved on from the transaction some time previously and the reporting is typically done by different people at a different firm (typically an accountant) who may have no knowledge of the transactions.)

(vii) While the 30-day deadline has solved some CGT problems, it does create others. One of the reasons for CGT being an annual tax is that allocation of capital losses, annual exemption and other reliefs typically apply in aggregate across all the capital gains of a tax year.[18] So the 30-day reporting deadline has created new issues for those who, for instance, make capital losses later in the same tax year, and need to file amended returns and claim reliefs. However, in practice this is less of an issue for non-residents, particularly if their UK real estate was their only UK chargeable asset.

(viii) The rebasing given to non-residents disposing of property solved some administrative problems of locating acquisition and improvement costs. Thus only gains accruing since April 2013 were charged to ATED-related CGT (at 28%) and non-resident individuals and trusts holding UK residential property could rebase the asset to the value in April 2015. Similarly on disposals of shares of property rich companies and commercial property the base cost is taken as the value at April 2019.

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[16] [2017] UKFTT 690 (TC)
[17] Sch. 2 para. 3 Finance Act (FA) 2019.
[18] S.1(3) and S.1K TCGA.

A1.2 Inheritance tax (IHT)

Scope: UK residents on death and some other occasions; non-UK residents on UK assets
Number of taxpayers: 24,200 taxpaying estates
Tax raised: £5.3 billion[19]
Tax gap: £500 million (equivalent to 8.6% of theoretical liabilities)[20]

(a) Unlike CGT, IHT uses an event-based returns process outside the normal annual self-assessment returns.[21] It also differs from other taxes in that the primary liability for the tax falls on the personal representatives (executors) of the deceased who have a legal responsibility to deal with the assets of the estate in accordance with the will or intestacy.[22]

(b) With its requirement for a return of total assets and the need for valuation, IHT is the existing tax whose administrative requirements, and the problems they raise, are arguably most similar to a net wealth tax, although a net wealth tax would differ from IHT in a number of respects (in that a net wealth tax is likely to be an annual or regular tax, the asset owner would have primary liability for the tax and is still alive to provide the information and the rate of tax would obviously be much lower than the rate of IHT).

(c) The requirement to determine the size of an estate for IHT purposes, even if no tax is payable, serves as a reminder that as well as affecting those who pay the net wealth tax, a similar sized, if not larger, constituency will need to undertake a similar exercise in order to establish whether they are above (or just below) the threshold for liability. The IHT form (IHT400)[23] is a comprehensive summary of assets and liabilities and their market value and may therefore provide a useful indication of what a net wealth tax return might look like.[24]

(d) On death, the assessment and payment of IHT is linked to the receipt of the grant of probate, which allows assets to be passed to the beneficiaries. The legal position of the personal representatives and the requirement to provide an HMRC IHT stamp before probate can be granted[25] provides strong incentives to ensure that IHT is paid and minimises the extent of deliberate non-compliance. On the other hand, the probate process is only secondarily concerned with payment of tax. The prize at the end of a probate is usually a windfall for those who inherit.[26] The same incentive looks unlikely to apply to a net wealth tax.

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[19] https://www.gov.uk/government/statistics/capital-gains-tax-statistical-tables
[20] *Measuring Tax Gaps 2020*, p.90 https://www.gov.uk/government/statistics/measuring-tax-gaps
[21] S.216 Inheritance Tax Act 1984 (IHTA).
[22] S.200 IHTA.
[23] https://www.gov.uk/government/publications/inheritance-tax-inheritance-tax-account-iht400 accessed on 26 August 2020.
[24] Alternatively a net wealth tax return could be based upon the IHT100 series of forms used by trustees to report certain inheritance tax events. In the authors' view the IHT400 is the more likely model because (a) it records personal rather than trust assets – and the primary net wealth tax liability is, we believe, likely to be on individuals and (b) the IHT400 series is designed to be capable of being completed by lay people whereas the IHT100 series (although shorter) is less intuitive and seems to assume that it will be completed by a professional. We make this assumption throughout this Appendix and our paper.
[25] S.109 Senior Courts Act 1981.
[26] Of course those acting as executors may well not be beneficiaries of the Will so may not (if they are not paid) have a personal incentive – but will undoubtedly come under pressure from those who do inherit.

(e) Filing

(i) An IHT return must be submitted to HMRC containing full details of the deceased's assets and liabilities.[27] The form must be submitted within 12 months from the end of the month of death or three months from when the personal representatives start to act if later.[28] The IHT return process is only partially online and, unlike self-assessment, does not provide a system into which a net wealth tax could be easily integrated.

(ii) A reduced return or an excepted estate form may be completed in certain straightforward cases where no IHT is due.[29] The rules surrounding when a simplified return may be submitted are complex, involving the threshold at which tax is paid, the provisions allowing the transfer of unused threshold (the nil rate band) between spouses and a further transferable band based on ownership or past ownership of a residence. The administrative complexity involved in dealing with these ostensibly straightforward IHT policy choices carries lessons for a net wealth tax.

(f) Payment

(i) Payment of IHT on death is not linked to the submission of the return but is due within six months after the end of the month in which the death occurred.[30] In practice this can cause significant difficulty and expense because the tax must be paid before access is given[31] to the deceased's assets (such as bank accounts) with which to pay the tax[32]. The same difficulties appears unlikely to arise with net wealth tax where the rate is obviously less and in any event there is no restriction on the ability of the taxpayer to deal with their own assets. In that respect payment issues are more similar to that adopted for trusts and the ten year anniversary or exit charge. This is a separate issue from the question of illiquidity more generally where wealth tax or IHT has to be paid from businesses or in respect of assets such as the main residence or art which do not generate an income. These issues are discussed in Loutzenhiser and Mann (2020).

(ii) The disconnect between the payment date and the return submission deadline also means that taxpayers face a tactical choice as to whether to underpay or overpay IHT, balancing the risk of interest on underpaid tax against weakening their negotiating position on any points of uncertainty on the IHT return (for example valuation).

(iii) IHT may be paid in ten equal instalments in the case of land, woodlands, shares and businesses if the taxpayer so elects.[33] In the case of shares, they must either give control or be unquoted and meet further tests regarding the amount of tax due, the size of the holding or the level of hardship in paying the tax. Interest is normally due only on instalments paid late on the outstanding balance except in

[27] S.216 IHTA.
[28] S.216(6) IHTA.
[29] The Inheritance Tax (Delivery of Accounts) (Excepted Transfers and Excepted Terminations) Regulations, SI 2008/605 pursuant to S.216(3B) IHTA.
[30] S.226 IHTA.
[31] Via a grant of probate or letters of administration.
[32] This problem was highlighted in the Office of Tax Simplification IHT report particularly as banks have inconsistent methods of allowing finance to be raised prior to the grant.
[33] S.227ff IHTA.

the case of land.[34] Provision is also made for the deferment of the payment date where the tax liability arises in respect of foreign assets that cannot be repatriated due to foreign exchange control restrictions.[35]

(iv) The length of time during which HMRC may enquire into IHT is a significant area of difficulty with the result that there can be a very extended period of uncertainty for a taxpayer ranging between:

(A) a normal time limit of four years where a return is submitted and tax paid;[36]

(B) extended to six years in the case of carelessness where a return is submitted and tax paid;[37]

(C) to twenty years where either:

1) the loss of tax is brought about deliberately[38]; or

2) no return is submitted (but this is not deliberate)[39];

(D) otherwise – principally if the taxpayer deliberately fails to submit a return – no time limit at all[40].

(v) We would suggest that the enquiry periods for net wealth tax would need to be considerably simpler – not least because of the recurring rather than one-off nature of the tax.

(g) <u>IHT for non-UK individuals</u>

(i) Until April 2017, foreigners[41] paid IHT only on UK situated assets. While this generally remains the case, since April 2017, enveloped UK residential property has been brought into the IHT net[42].

(ii) Prior to April 2017 the main administrative issues for IHT were:

(A) that non-residents might not realise that IHT was due on UK situated assets (not just on death, but also on gifts of UK assets made in the seven years before death)

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[34] S.233 IHTA.
[35] HMRC, Extra Statutory Concession F6.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733377/Extra_Statutory_Concessions.pdf
[36] S.240(2) IHTA.
[37] S.240(4) IHTA.
[38] S.240(5) IHTA.
[39] S.240(7) IHTA.
[40] S.240(6) IHTA.
[41] The IHT legislation uses the concept of non-domicile, rather than non-residence to define who is a 'foreigner', but the overall principle is similar.
[42] Sch. A1 IHTA 1984 now provides that shares, interests in partnerships and certain loans are no longer 'excluded property' to the extent to which their value derives from UK residential real estate.

(B) that a person's domicile status might be unclear; or they might have left the UK but continue to be subject to a domicile-tail[43] for three years (or sometimes more); or HMRC might dispute a person's domicile after they have died.

(iii) Whether the extension of IHT to enveloped properties and certain loans will increase administrative issues is not yet as clear as for CGT. Whereas, for the latter, we have had over three years of disposals (and 30-day filings), for IHT[44] reports are only necessary where a person dies (or with certain trust transactions).

(iv) The timing issue is less pertinent for IHT than for CGT, as – see A1.3 below– IHT administration inevitably takes a longer period in any event. However, the knowledge issue is far more pertinent and there are no easy answers to it. How will HMRC know when someone living in, say, Mozambique, dies owning shares in a, say, Mauritian company part of whose value may derive from UK residential real estate? And how will a resident of, say, Belarus, know that her company has a small UK residential property buried away in a group company three tiers below the company in which she holds shares? For private investment companies whose only asset is UK residential property the issue may be obvious, but in more complex structures with multiple shareholders and companies with multiple assets, the compliance and knowledge issues are potentially insurmountable.

(v) The one slight saving grace with IHT is that it is often thought of as more of a 'lawyers' tax' (often – although not universally – dealt with as part of the probate process). As lawyers may typically have more sight of UK real estate transactions, it is to be hoped that some of these knowledge issues will be uncovered by this means. Clearly, however, relying on lawyers to spot the issue and do the right thing is a far from perfect situation.

[43] S.267 IHTA 1984.

[44] Some IHT may have been reported where clients have specifically restructured their affairs in light of the new rules, but where the restructuring has been done specifically with this in mind then the knowledge problem will typically not apply as the client and his/her lawyers will be well aware of the position.

A1.3 Practical experience of administering estates for probate

(a) Enlarging on the discussion of IHT above, in this section we look at the practical steps which a probate practitioner needs to take when administering the estate of a deceased person – with particular reference to the filing obligations for IHT purposes. This provides a helpful comparison[45] of the steps which all individuals subject to a net wealth tax are likely – depending upon design-choices – to have to take at least in the first year of a net wealth tax and possibly in subsequent years.

(b) For a probate practitioner, ascertaining a person's estate after they have died is likely to involve a considerable amount of work:

(i) Records must be searched through to establish what the deceased owned;

(ii) banks and other financial institutions must be contacted to confirm continued ownership and to obtain point-of-time balances;

(iii) real estate valuers will usually be needed to value the deceased's home and other properties;

(iv) chattels must be appraised (and by whom they are owned sometimes contested); cars similarly (the V5 document merely proves the registered keeper not the owner);

(v) physical cash should be counted (but one suspects is often in practice simply taken away by other relatives);

(vi) intangible assets (such as copyrights) will in principle need to be established. In principle any creative work by the person is subject to copyright (so a person's collection of letters or e-mails in principle is an asset). In most cases, however, a pragmatic view is taken as most copyright material probably has little value;

(vii) pre-payments and other claims must also be assessed. Perhaps the main example of this is any possible income tax reclaim. A further recent issue has arisen around whether executors should be forced to examine the possibility of Payment Protection Insurance (PPI) claims. Other situations would include pre-paid vouchers; lock-in payments to contracts (e.g. broadband, mobile phone);

(viii) on the other side of the balance-sheet, debts, including liability for income tax in the present and previous tax year, must similarly be established.

(c) The process will, in the authors' experience, typically take between three and six months for the simplest estate.

(d) For a more complex estate involving private businesses; partnership and private equity interests; agricultural property; fine art; boats and planes; and contested-claims to ownership of any of the above, the process may – again in the authors' experience – take much longer.

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[45] See footnote 24 as to whether the IHT400 series or IHT100 series is the most appropriate comparison.

(e) Appendix B shows data from the websites of law firms dealing with probate[46] which includes the average length of time for the probate process. These websites admittedly contain an element of marketing (where there may be an incentive to win work by downplaying the length of time it takes). Nonetheless they give a fair indication of the complexity of the process. It will be seen that the mean average time between a person dying and probate being obtained (and therefore, crucially, the initial IHT return having been filed) is between 3.1 and 6.8 months. The process after grant of probate – some element of which will include corrections to the IHT position, although some of which will involve dealing with the claims of beneficiaries – takes a mean average of a further 5.9 to 13.7 months. The total time for a probate process is therefore (mean average) between 9 and 20.5 months.

(f) Admittedly, the probate practitioner has to undertake this exercise without the assistance and personal knowledge of the (now deceased) person whose estate is being identified and ascertained. However, even the living may well forget the odd bank account; the premium bonds bought for them by a fond grandparent; or exactly where the boundaries of their land lie. And, as there is 'no materiality when it comes to tax'[47], the process of identifying and ascertaining the estate for IHT purposes must be done exhaustively and exactingly.

(g) For IHT purposes, to the estate is then added various other components:

(i) gifts made in the previous seven[48] years;

(ii) gifts with reservation of benefit;

(iii) settled property in which the deceased had a qualifying interest in possession.[49]

(h) The former two of these are effectively anti-avoidance provisions; the latter part anti-avoidance and part linkage of settled property to its effective-owner. The question of whether a net wealth tax would need similar rules to deal with deliberate deprivations of property; property in which benefits were reserved and other settled property linked to the taxpayer is considered in Chamberlain (2020).[50] A share of jointly-owned assets must also be included even if they pass by survivorship – again something which a net wealth tax would need to deal with. However, the income tax and CGT treatment of jointly owned assets may provide a precedent for this (see Chamberlain, 2020).

(i) Having aggregated the estate and other related components, reliefs and exemptions then have to be applied. This process is more complex for IHT than is likely for a net wealth tax because of the interplay of reliefs (generally operating at an asset-level – such as business property) and exemptions (generally operating at a recipient level – e.g. spouse or charity). The process for allocating reliefs to specific gifts; the interaction with

[46] The law firms shown in Appendix B are taken from eprivateclient tier I and II law firms. These would tend to represent the top end of the private client market and therefore the firms which will probably deal with those most likely to be affected by a net wealth tax. https://www.paminsight.com/epc/storage/app/uploads/public/5f6/c6b/bc9/5f6c6bbc9b73b775328701.pdf - accessed on 13 October 2020.
[47] Source of this quote uncertain, but a quick Google search will reveal that it is in general circulation.
[48] And due to cumulation rules it is sometimes necessary to know the position for 14 years.
[49] Defined as 'appropriate property. See S.216(3)ff IHTA
[50] Given net wealth tax is an annual tax and is going to be levied on the owner of the wealth anyway (subject to thresholds) the question of taxing enjoyment without ownership on A but also taxing ownership of the asset on B may be less relevant.

the exemptions available to the recipients; and who pays the tax leads to some complex rules (grossing; double-grossing; and the particularly complex rules that surround the interaction of inheritance reliefs, tax free and taxable legacies[51]); opportunities for avoidance (leaving non-relievable assets to spouse and relievable assets to children and then having the latter sell to the former); and a further slew of anti-avoidance rules to defined the limits of acceptable and unacceptable planning. As a net wealth tax would not have the same distributive aspect as IHT, these rules would almost certainly not be as complex.

(j) However, the aggregation of different components; who pays the tax on those components; whether there are rights of reimbursement of tax paid by others and the interplay of these with reliefs is still likely to require some very detailed rules.

(k) Having ascertained all of the above, the reporting of it to HMRC involves a process of self-assessment. The time limits of this process are set by statute[52] but given the complexities outlined above, for all but the simplest estates it is often necessary in practice to file and pay tax on an estimated return and then amend it (potentially several times) as further assets come to light[53]. A net wealth tax would presumably need similar rules for estimation and reassessment (particularly in its early years).

(l) It is also worth noting at this point that self-assessment of IHT involves the stick of not being able to obtain a grant of probate until (at least estimated) IHT is returned and paid, and the carrot of access to the deceased person's assets which flows from that grant. It is difficult to see that a net wealth tax would have the same incentive. Equally a net wealth tax would not suffer from the well-known double-bind from which IHT suffers: a grant of probate cannot be obtained until IHT is paid; but IHT can often not be funded without recourse to the assets for which a grant of probate is first needed[54].

(m) Form-filling

(i) The form-filling accompanying this process of reporting is not straightforward. The basic IHT account (IHT 400)[55] is supplemented by at least 27 other forms dealing with:

- territorial limits of the charge (IHT 401 – domicile; IHT417 - foreign assets);

- aggregating other components of the tax-base (IHT403 – gifts; IHT404 – jointly-owned property; IHT418 – assets held in trust; IHT500 – election out of pre-owned assets tax);

- dealing with reliefs and exemptions (IHT402 – transfer of unused nil-rate band; IHT408 – donations to charity; IHT413 – business and partnership assets; IHT414 – agricultural property; IHT420 – national heritage assets; IHT430 – reduced rate for giving 10% of estate to charity; IHT435

[51] See Section 39A IHTA 1984.
[52] See Section A1.2(e)(i) above.
[53] S.217 IHTA
[54] See Section A1.2(d) above.
[55] https://www.gov.uk/government/publications/inheritance-tax-inheritance-tax-account-iht400 - accessed on 28 August 2020.

– residence nil-rate band; IHT436 – transferable residence nil-rate band);

- practical details of different types of assets (IHT 405 – land and buildings; IHT 406 – bank and building society accounts; IHT 407 – household and personal goods; IHT409 – pensions; IHT410 – life assurance and annuities; IHT411 – listed stocks and shares; IHT412 – unlisted stocks and shares; IHT413 – business and partnership assets; IHT414 – agricultural property[56]; IHT415– interests in other estates; IHT416 – debts due to the estate; IHT417 – foreign assets; IHT418 – assets held in trust);

- forms to summarise and pay the IHT due (IHT421 – probate summary; IHT422 – application for IHT reference number; IHT423 – direct payment scheme).

(ii) While not all of these forms would be applicable to a net wealth tax, those dealing with territorial limitations (two IHT forms); aggregation of other components (four forms) and practical details of different types of assets (thirteen IHT forms) would undoubtedly need to be reported in some way or another. Depending upon the level of reliefs and exemptions (eight IHT forms) which were available against a net wealth tax, further forms may be needed.

(iii) It is easy to envisage that a net wealth tax might require up to thirteen forms even in the case of those with straightforward affairs[57] and up to a further seven forms[58] for those with some elements of foreign assets; business or agricultural assets; trusts or interests in other estates or heritage property[59].

(iv) It is true to note that, for trusts the IHT100 series of forms is not quite as extensive. However, these still run to up to twenty forms[60]. It is also worth noting that the calculation of IHT under the special rules for trusts is sufficiently complex that it seems unlikely that a lay trustee would generally attempt to complete them – relying instead on a tax-professional. The IHT 400 forms are designed with the lay executor in mind. We suspect that they are therefore a better comparison than the trust forms, as – while in practice they might employ professionals – forcing the wealthy into a tax which they are unable to assess themselves is likely to prove unpopular and generate adverse headlines.

[56] IHT413 and IHT414 serve a dual purpose of itemising business and agricultural property and also claiming reliefs on them.
[57] Assuming no business, agricultural or heritage property; no trust interest; no territorial limitations and no reliefs other than, say, charitable reliefs, this would still require the equivalents of IHT 400, 403, 404, 405, 406, 407, 408, 409, 410, 411, 416, 421 and 422).
[58] The equivalents of IHT 401, 412, 413, 414, 415, 417, 418.
[59] It would obviously be possible (although we think unlikely in practice) to combine sub-forms into sections of a single-form – but that single form would then be correspondingly more complex. We therefore give the number of forms as an indicator of complexity rather than a definitive guide to the exact number of forms actually required. One reason for multiple forms (rather than a single composite form) is to make it easier for a lay person to complete them. We would assume that this design decision is likely also to be the case for a net wealth tax.
[60] https://www.gov.uk/government/collections/inheritance-tax-forms

(v) By contrast, self-assessment for income tax and CGT has ten main groups of forms[61]. Someone with straightforward affairs might typically have to fill in only around five forms (SA100 – main form; SA101 – supplementary information; typically one of employment, self-employment or partnership (SA102, 103, 104) SA105 (property); SA108 (capital gains)).

(vi) Having made an initial report of IHT, further forms are then typically needed:

- To file corrective accounts if (see above) the initial return has had to be estimated (C4);

- To claim reliefs for subsequent falls in value (IHT35 – loss on sale of shares; IHT 38 – loss on sale of land);

- To apply for closure (a 'clearance certificate') of the IHT position (IHT30).

(vii) It is envisaged that a net wealth tax would need mechanisms similar to these for subsequent changes in the position.

(n) Payment[62]

(i) Once returns have been filed, *payment* of IHT is more straightforward. At this point it is simply worth noting that IHT has additional rules for:

- Payment in instalments for certain illiquid assets (private company shares; land) – generally over up to ten years or until the asset is sold, with interest on later instalments;

- Acceptance of certain national heritage assets in lieu of tax; and

- Liability of different or multiple persons (personal representatives; trustees; beneficiaries; donees of gifts) to payment of the tax.

(ii) It again seems like that a net wealth tax would need to consider these issues, even if the solutions arrived at for illiquid assets and secondary liability are different to those for IHT.

[61] https://www.gov.uk/government/publications/self-assessment-tax-return-sa100#supplementary-pages accessed on 9 August 2020. While 19 separate forms are listed here, around half of them are more specialised versions of the main form (for instance, the employment pages have special versions for ministers of religion and members of different parliaments/assemblies).

[62] See Section A1.2(f) above.

A1.4 Annual tax on enveloped dwellings (ATED)

Scope: Companies wherever incorporated holding UK residential property
Number of taxpayers: 6,330
Tax raised: £139 million[63]
Tax gap: not published

(a) ATED is a self-assessed annual tax on dwellings held within a corporate structure. It was introduced in 2013[64] to deter the holding of residential property within a company or other enveloped structure. Voluntary compliance is seemingly high[65] and yield is well above expected levels – it was expected to raise £420 million in its first five years [66] but in fact raised £712 million[67]. The tax might therefore be considered to be uniquely successful!

(b) ATED is, in effect, an annual charge on the gross value of property held within a company payable by the company. It is therefore a tax on companies, but in its design and administration contain lessons for the administration of a net wealth tax.

(c) It applies to UK and non-UK resident companies alike but there are certain reliefs that exempt companies from payment e.g. if the property is let out to unconnected parties. However, it is still necessary to file an ATED return and claim the relief even if no tax is due.

(d) The charge to ATED is based on the value of property held but the rate is determined in a series of fixed amounts according to the band within which the property falls.[68] The rates are increased annually[69] and are currently around 0.5% to 1% of the value of the properties within the band. More particularly there is a fixed upper limit for properties about £20 million so the maximum amount of ATED is capped at the highest amount.

Taxable Value	ATED payable each year
£500,000 to £1,000,000	£3,700
£1,000,001 to £2,000,000	£7,500
£2,000,001 to £5,000,000	£25,200
£5,000,001 to £10,000,000	£58,850
£10,000,001 to £20,000,000	£118,050
More than £20,000,000	£236,250

(e) The disadvantages of a 'slab' system like this are well-rehearsed and clearly do lead to some element of regressivity; very high marginal rates as boundaries are crossed; and

[63] https://www.gov.uk/government/statistics/uk-ated-statistics
[64] FA 2013 Part 3.
[65] It is understood that HMRC has correlated Land Registry data for any residential property with a corporate owner against widely-available house-price data and launched enquiries accordingly. The authors are not aware whether any data has yet been published as to the extent of non-compliance which this exercise may have revealed. The proposed extension of the People with Significant Control (PSC) register to Overseas Entities owning UK real estate (draft Registration of Overseas Entities Bill published July 2018) will presumably give HMRC more granular detail from 2021 onwards.
[66] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/221885/budget2013_complete.pdf - accessed on 7 October 2020.
[67] https://www.gov.uk/government/statistics/uk-ated-statistics - accessed on 7 October 2020.
[68] S.99 FA 2013.
[69] S.101 FA 2013.

opportunities for avoidance and valuation-disputes at those boundaries. However, in the context of a possible net wealth tax, it is also worth rehearsing the advantages of a slab-system which ATED has revealed:

(i) Where a tax has a relatively low effective rate (the maximum effective rate of ATED is generally only just over 1% at the margins of each valuation band), arguments about unfairness may be easier to gloss over;

(ii) A slab-system could lend itself to avoidance at the margins. However, given that valuation is inherently subjective when it comes to real estate, a slab-system makes more sense than it would for assets (such as listed shares or bank accounts) with a more precise value. The same would be true of other assets (chattels; private company shares) subject to a net wealth tax;

(iii) The need for any valuation (and disputes around it) are confined only to the margins of each band;

(iv) Reasonably wide bands can also cope with the issue of materiality (people forgetting assets; the need to ascertain and value every teaspoon; or getting valuations slightly wrong) outlined elsewhere in the paper; and

(v) The tax gap is much easier to calculate, or putting it another way, some of the subjective elements of the tax gap calculations are removed by building them into the overall structure of the tax. This potentially has the advantages of public and taxpayer confidence outlined elsewhere in the paper.

(f) The effective tax cap at the top end of ATED means that it is not necessary to value every asset owned by the wealthiest individuals. This may further assets in relation to valuation and liquidity issues (see Daly and Loutzenhiser, 2020; Loutzenhiser and Mann, 2020).

(g) A number of exemptions and reliefs apply[70], with the broad intention of limiting the tax to private residential dwellings and excluding, for instance, social housing, schools, hotels, heritage properties etc.

(h) Value is determined as the cost of acquisition, subject to five-yearly revaluation[71] based, at the time of the introduction of ATED on values on 1 April 2012, now 1 April 2017, with a further revaluation in 2022. As valuation is only undertaken at fixed intervals[72] and based upon past values rather than present ones, compliance costs (both for taxpayers and HMRC) are substantially lower and the overall administration and compliance of the tax are far less burdensome. A periodic revaluation approach, with fixed valuation bands and five-yearly revaluations – and at the same time an increasing fixed rate charge by an inflationary measure each year works well in the short-term, but it does mean over time that more and more properties will be brought within ATED's scope. Moreover it is levied on a gross not a net basis which is materially different from any wealth tax.

[70] S.132ff FA 2013.
[71] S.102 FA 2013.
[72] Generally five years, although longer with some occasions (such as sales, extensions, lease-renewals etc.) which trigger a fresh valuation date.

(i) Filing

(i) A company must file an ATED return within 30 days of first coming within the scope of tax[73], either within 30 days of acquisition of a property or, if property is held 1st April on 30th April. All returns are filed electronically.

(ii) ATED is a daily tax[74]. The tax was presumably structured in this way - rather than picking a single point of time (e.g. midnight on 31 March) - to allow for changes in ownership structures (in particular the original aim of encouraging de-enveloping of such properties) at a point part-way through a year and also to discourage forms of avoidance which de-enveloped just before that fixed point. This daily nature of the tax does cause complications and a net wealth tax would, we suggest, not need to operate on this basis (and, we understand, does not for other countries with a wealth tax as the complications would be very significant).

(iii) ATED is also unusual in that it is assessed at the start of a tax year, effectively in advance, and is payable in advance of the year in question.[75] Payment in advance was presumably chosen partly to tax as early as possible, but probably more so because it was introduced as an anti-avoidance measure (so giving a year's grace might be perceived as giving undue avoidance opportunities). Again, payment in advance causes complications and a net wealth tax (not being an anti-avoidance measure) might choose payment in arrears instead.

(iv) This combination of a daily tax payable in advance, leads to a number of administrative complications. In particular (a) repayments have to be claimed if circumstances change (e.g. reliefs become due or properties are removed from envelopes) part-way through a year[76]; and (b) reliefs have to be claimed provisionally[77].

(j) These complications could be avoided with a net wealth tax if it is payable at a single point in time (rather than daily) and if payment relates back to the previous year rather than being in advance of the following year. On the basis that income tax self-assessment is payable in arrears (albeit with a payment on account mechanism) then it would appear conceptually possible for a net wealth tax to follow the same model.

(k) Following the introduction of ATED, relief declaration returns (RDRs)[78] were introduced to reduce the administrative burden of providing multiple returns and information about properties where tax was not due because ATED reliefs applied.

(l) The need for RDRs for ATED largely arose from the fact that ATED is payable in advance of the year in question. As ATED is a daily tax payable in advance, one has to make assumptions both as to whether a property is likely to remain within the charge throughout the forthcoming year AND whether a relief is likely to apply to it throughout

[73] S.159(2) FA 2013.
[74] ATED is payable on the ownership of a single-dwelling interest by a chargeable person on a day – s94(2) FA13.
[75] S.163 Finance Act 2013.
[76] HMRC is, in one of the author's experience, not well set-up to deal with repayments and anecdotal evidence could be given of significant delays of months (if not years) in actually receiving repayment. HMRC might well counter by noting that any government body charged with paying out money needs to be particularly cautious of the possibility of fraudulent repayment claims (as with e.g. VAT Missing Trader Intra-Community (MTIC) fraud).
[77] S.100 FA13.
[78] S.159A FA13.

(or for some part of) that year. As noted above, this process for provisionally claiming reliefs only applies if the circumstances pertain today and look likely to continue to pertain. It does not apply where those circumstances are likely to pertain only from and after some future date.

(m) Both interest[79] and penalties[80] apply to late filing and HMRC has a statutory power to enquire into an ATED return[81].

(n) Payment

ATED is payable on the filing date.[82] For an amended return, the due date for tax remains the filing date of the original return and therefore interest runs from that date.[83]

(o) The requirement to file returns and pay tax at the beginning of the tax year, the use of five-yearly revaluation and the adoption of wide rate bands is consistent with the intention that ATED should be a deterrent to holding residential property within companies and does not seek to achieve an accurate ad valorem level of tax (there is, for instance, a single rate of ATED of £236,250 for all properties valued at over £20 million). There is no reason why a similar approach could not be applied to a net wealth tax (and some administrative advantages from doing so) but, depending on the bands and rates adopted, it would be likely to be regarded as creating significant inequity.

(p) Finally, ATED is a wholly digital tax. It is only possible to file and pay electronically through HMRC's ATED online service[84]. ATED demonstrates that a well-designed digital process can be effective (although it also demonstrates that the process either needs a couple of years' lead-time or at least leniency and alternative processes during the initial 'soft-landing'). The converse, we suspect, is that a higher proportion of ATED returns are undertaken by agents than would be the case for other forms of self-assessment. From HMRC's perspective the quality-control which a professional agent brings is probably welcome.

[79] Ss.101 and 102 FA 2009
[80] S.34 pt. 2 FA 2013
[81] See Ss.162ff and sch. 33 and 34 FA 2013 for HMRC's powers generally in relation to ATED.
[82] S.163 FA 2013.
[83] S.163(3) FA 2013.
[84] S.162 and sch. 33 FA 2013.

A1.5 Stamp duty land tax (SDLT)

Scope: Transactions in UK land
Number of taxpayers: 1,150,800 transactions[85]
Tax raised: £11.94 billion[86]
Tax gap: £175 million (1.4% of theoretical liabilities)[87]

(a) SDLT replaced stamp duty in 2003 on most transactions in land[88] as an ad valorem charge on sales and leases of property. It broadly set out to tax the same transactions as stamp duty but to do so by way of an assessed and returned tax, subject to similar returning, payment, interest and penalty regimes as other taxes.

(b) Stamp duty, which originated in 1694 as a duty on documents was a 'voluntary' duty, in that it was not subject to any assessing mechanism and its collection and payment relied solely on the unenforceability in law of any document which was not duly stamped. Stamp duty remains in vestigial form on some limited types of document.[89]

(c) As a transactional tax, filing and payment for SDLT is not linked to the tax year and, as in most cases the tax charged as a percentage of the sale price or lease consideration, valuation issues do not arise. SDLT therefore, like stamp duty before it, has a low cost of collection.

(d) Filing

(i) The purchaser of an interest in land is required to notify HMRC of a notifiable transaction within 14 days[90] generally of completion. A land transaction return or LTR must be filed electronically or on paper. HMRC then issues an SDLT5 to the purchaser when the LTR is accepted. The SDLT5 enables the purchaser to register his title to the land and so prove his ownership. An LTR can be amended by the purchaser within 12 months of the filing date.[91] If a repayment will result, the amended LRT must be accompanied by the sales contract.[92]

(ii) As with IHT, SDLT is connected to a commercial requirement to prove title and this provides the incentive for payment[93]. Further SDLT is generally collected and paid by the professional dealing with the conveyancing of the property so that the administration of the tax is executed by a professional third party intermediary.

(e) Payment

(i) Payment of SDLT is due on the filing date i.e. 14 days after the relevant transaction.[94] Interest is due on any late payment of SDLT and on any penalty

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85 https://www.gov.uk/government/statistics/uk-stamp-tax-statistics
86 ibid.
87 Measuring Tax Gaps 2020 p.90.
88 FA 2003, pt. 4.
89 Stamp Act 1891 and Sch.20 FA 2003 and for certain transitional situations see Sch.19 FA 2003.
90 Prior to 1 March 2019 the limit was 30 days: S76 FA 2003.
91 Sch.10 para. 6(3) FA 2003.
92 Sch.10 para. 6(2A) FA 2003.
93 S.79 FA 2003.
94 S.86 FA 2003.

imposed.[95] If no return is filed, HMRC can make a determination of SDLT within four years of the transaction.[96] In the case of suspected fraud, negligence or where HMRC could not reasonably be expected to be aware of the insufficiency of tax, HMRC can issue a discovery assessment, within four years from the date of the transaction; six years in the event of carelessness; and 20 years in the case of fraud.[97]

[95] S.87 FA 2003.
[96] Sch.10 para. 25 FA 2003.
[97] Sch. 10 para. 31 FA 2003

A1.6 Council tax

Scope: Owners or occupiers of UK residential property
Number of taxpayers: 25 million (approx.)[98]
Tax raised: £31.578 billion[99]
Tax gap: not published

(a) Council tax is payable by the occupiers or owners of residential property.[100] It is paid to local authorities in England, Wales and Scotland annually, typically in ten or twelve monthly instalments. Like ATED it operates as a fixed-charge (albeit the amounts differ between local authorities) based upon certain valuation bands. In England and Scotland these valuation bands are labelled A to H (in Wales from A to I) determined by valuations made in 1991 (or on the assumption of 1991 values. 2003 in Wales).[101]

(b) The scale of the revaluation task and political concern with the consequences of ensuring adjustments (as has been the case with business rates revaluations where revaluations are undertaken on a roughly 5-yearly basis) mean that governments have shied away from revaluation, even though discrepancies in valuations and bands are now widespread and visible.

(c) Council tax is unlikely to be a suitable model for a net wealth tax, and highlights the difficulties with basing a tax on periodic valuations.

(d) The fact that council tax is (correctly) described as a payment for local services and with a default of monthly payments may help its public acceptability.

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[98] Not separately published but assumed to be the same as the number of residential properties: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886251/Dwelling_Stock_Estimates_31_March_2019_England.pdf
[99] https://www.gov.uk/government/statistics/collection-rates-for-council-tax-and-non-domestic-rates-in-england-2019-to-2020
[100] S.6(2) Local Government Finance Act 1992 (LGFA).
[101] S.5 LGFA.

A2 Dispute mechanisms in the UK tax system

While the *assessment* processes for existing taxes (ATED, IHT, CGT/IT, Stamp Taxes) vary significantly, the *disputes* process for these taxes tends to be very similar – with only minor differences between taxes. The disputes process for a net wealth tax would almost certainly, we suggest, follow this existing model. The main difference would potentially be around valuation disputes – which are dealt with separately in Daly and Loutzenhiser (2020).

The broad scheme of existing dispute processes is as follows – references are given to the CGT/income tax legislation by way of example:

(a) The taxpayer[102] self-assesses their tax liability[103] (See below if the taxpayer fails to do so).

(b) The taxpayer generally has a relatively short period (12 months for CGT/income tax) to amend their return.[104]

(c) HMRC has a power to correct obvious mistakes.[105]

(d) If the taxpayer self-assesses then HMRC has a relatively short window (12 months for CGT/income tax) in which to launch an 'enquiry'.[106]

(e) If an enquiry is launched then it is open-ended until brought to a conclusion by a 'closure notice'.[107]

(f) During the enquiry HMRC has power to request information and documents from the taxpayer and, subject to some restrictions, from third parties.[108] Additionally, questions may during this period be referred to the independent tax tribunal[109] (although this is rare in practice).

(g) The 'closure notice' is usually issued by HMRC. But taxpayers may apply to the tribunal to force HMRC to issue a closure notice (if the taxpayer believes that HMRC is dragging its feet).[110] The tribunal should by default order HMRC to issue a closure notice unless there are reasonable grounds for HMRC to continue its enquiries.[111]

(h) A more recent procedure allows 'partial closure notices' to be issued (the partial closure notice is to allow specific issues to be formally litigated while allowing other issues to remain subject to enquiry).[112]

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[102] Other parties, such as partnerships, may also be required by legislation to file returns where these are pertinent to the liabilities of third parties (in the case of partnerships, for the partners in that partnership).
[103] Ss8 and 9 Taxes Management Act 1970 (TMA).
[104] S.9ZA TMA.
[105] S.9ZB TMA.
[106] S.9A TMA.
[107] S.28A TMA.
[108] Sch.36 FA 2008.
[109] S.28ZA TMA.
[110] S.28A TMA.
[111] S.28A(6) TMA.
[112] S.28A(1A) TMA.

(i) As part of the 'closure notice', HMRC will make any amendments to the self-assessment which it considers necessary.

(j) If the taxpayer fails to self-assess (or omits material information from their self-assessment) then HMRC has a longer window in which to make a 'discovery assessment'. The time limits for this are generally four years if the taxpayer took reasonable care; six years if the taxpayer failed to take reasonable care and twenty years if the taxpayer acted deliberately.[113]

The above process marks the preliminary stage of an HMRC investigation. During this phase HMRC has wide powers conferred by schedule 36 Finance Act 2008.

From the point at which either a 'closure notice' is issued or a 'discovery assessment' is made, the process moves into a more formal, semi-litigious, phase. HMRC's additional powers under schedule 36 are curtailed during this phase. A broad outline of the steps is as follows:

(a) The taxpayer may ask HMRC to 'review' the decision of the original officer.114 The review is conducted by another HMRC officer who is 'independent' of the original officer. In practice it is rare for the second HMRC officer to disagree with the first one's conclusions, although not unheard of.

(b) The taxpayer may appeal to the independent Tax Tribunal.[115] Cases typically proceed to the First Tier Tribunal and on appeal from there to the Upper Tier Tribunal (equivalent in status to the High Court), although some cases may go straight to the upper tier.

(c) From there appeals may proceed to the Court of Appeal and ultimately to the Supreme Court.[116]

(d) To the extent to which the case involves the exercise of a power or discretion by HMRC then a case might in rare cases proceed by way of Judicial Review via the administrative courts.

A few more general comments are worth making on the existing dispute-resolution process:

(a) Although the above describes the formal legalistic processes, for practical purposes a large part of both the pre- and post- closure notice processes take place largely by way of correspondence with HMRC. Similarly schedule 36 notices, formally exercising HMRC's powers, are in practice usually dispensed with and information provided voluntarily by taxpayers. Taxpayers may not in practice therefore notice much difference in the serving of a closure notice as correspondence about the position may continue both before and after it.

(b) However, the legalistic nature of the processes has led to a large number of procedural appeals being taken to the Tax Tribunal in recent years (for instance about the validity

[113] For inheritance tax there same time limits broadly apply but if the taxpayer deliberately failed to file a return at all then there is no time limit. For offshore matters the lower time limits are extended to 12 years.
[114] S.49B TMA.
[115] Pt V TMA.
[116] Until the end of the Brexit transitional phase, they might in theory also go to the European Court of Justice if European law is in point. If Human Rights issues are involved then, while UK courts can decide Human Rights issues themselves, the UK courts might make a sideways referral to the European Court of Human Rights (independent of the European Union).

of discovery assessments; the correct service of notices; and whether computers can take automated decisions in relation to some aspects of the process). It may be commented, therefore, that the existing processes may not always be the best model for the administration of a new tax.[117]

(c) The process is slow. Correspondence with HMRC can take several months between each round of letters. Cases may not reach tribunal for perhaps five to eight years after the events in question.

(d) The ability for HMRC to issue discovery assessments is seen by taxpayers as a second bite of the cherry and the supposed safeguards (of requiring HMRC to enquire within one year) proposed when self-assessment was introduced in 1996 are seemingly overridden in all but the most straightforward cases. In practice HMRC has up to four years to commence proceedings in almost all cases (and sometimes longer).

[117] We note that an existing ten-year strategy consultation has recently been launched regarding tax administration generally: https://www.gov.uk/government/publications/tax-administration-strategy/building-a-trusted-modern-tax-administration-system

A3 Outline of IHT tax planning techniques

In very broad terms, the following are the most common current forms of IHT planning:

(a) Spending/consuming capital assets (sometimes called 'SKI-ing' – Spending the Kids' Inheritance).

(b) Giving assets away and surviving at least three and ideally seven years to rely on the potentially exempt transfer (PET) rules.

(c) Setting up trusts within the £325,000 nil-rate band every seven years per individual (so £650,000 a couple).

(d) Retaining a larger family home in order to benefit from the residence nil-rate band (RNRB).

(e) Giving away the home or chattels and paying rent for use of the same.

(f) Specifically acquiring business assets (often from a bespoke provider of IHT-qualifying portfolios) that qualify for business property relief (BPR).

(g) Allowing pensions to remain undrawn and living off other resources.

(h) Borrowing (e.g. against the security of the family home) and consuming or giving away the borrowed-monies.

(i) Using life-insurance to pay the tax.

(j) More complex arrangements involving life-insurance (discounted gift trusts; gift-and-loan trusts; reversionary trusts) which rely either on the low surrender value of the life-insurance and/or the carve-out principle (see below).

At more complex levels, further IHT planning might include:

(a) Giving away a share in your family home to the children who live there with you part time or full time (s102B(4) FA 1986). This has a specific statutory relief.

(b) Carving-up interests and relying on a loss of marriage-value (e.g. splitting a family company into 5 x 20% shareholdings – the aggregate value of which, discounted for minority holdings, is considerably less than the value of the whole).

(c) Restructuring of businesses or farms to ensure that they fall within the conditions for business or agricultural reliefs.

(d) Family investment companies.

(e) More complex arrangements involving the exemption for employee benefit trusts (EBTs) – which often push very close to and fairly often exceed the boundaries of acceptable planning.[118]

[118] One case involving this planning was recently overturned under the General Anti-Abuse Rule – GAAR Advisor Panel opinion of 2 March 2020.

A4 The Enforcement Powers of HMRC

HMRC is one of the UK's largest law enforcement agencies and one of the biggest debt collection agencies in the UK.[119] To perform these functions, HMRC has the following enforcement powers.[120]

Section 9 of the Commissioners for Revenue & Customs Act 2005

The specific powers in relation to civil and criminal investigations are set out below; however, it is important to note first the extent of HMRC's overarching powers under the Commissioners for Revenue & Customs Act 2005. Under section 9, HMRC may do anything which it thinks necessary or expedient in connection with the exercise of its functions; or incidental or conducive to the exercise of its functions.[121] This is a very significant power: there are no such powers to deal with murderers, rapists and armed robbers. The risk is that such powers may support informal enquiries that enable HMRC to conduct an investigation without any of the safeguards which had been provided to the taxpayer to balance the severity of the enquiry regime.

Criminal investigations

(a) HMRC's criminal investigation powers are more extensive than its powers in a civil enquiry. For example HMRC can, with a warrant, enter and search any premises and may use reasonable force to execute a warrant.

(b) HMRC has the following powers[122] in the case of a criminal investigation:

- Seize and retain anything covered by a search warrant, including power to require production of electronic matter in a readable form.
- Search persons found on premises during a search.
- Arrest (without warrant) for offences of a serious nature.
- Enter and search premises to effect an arrest.
- Search suspects following arrest for evidence and to enter, search and seize evidence on premises where an arrested person was found immediately before arrest.
- Enter and search premises and seize evidence of arrested persons.

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[119] Enforcement & Compliance: the view from HMRC *Taxation 5 February 2015* Author: Jennie Granger, Director General Enforcement & Compliance

[120] This section covers enforcement powers but there is a narrow line between powers to enforce taxpayer behaviours and the applicability of powers or the imposition of reporting requirements that achieve the same result and voluntary codes such as the Banking Code, where public pressure ensures compliance which is not legally compelled.

[121] See R. (on the application of JJ Management LLP) v HMRC [2019] EWHC 2006 (Admin) (25 July 2019); JJ Management Consulting LLP v HMRC [2020] EWCA Civ 784

[122] Under Police & Criminal Evidence Act 1984 [PACE] ss.8,17,19, 24,32; and Sch.1 of Taxes Management Act 1970.

- Require the production of material acquired or created for business or professional purposes held in confidence[123] (but not under legal privilege) under the Police and Criminal Evidence Act 1984 (PACE) or in case of material not held in confidence where they have reasonable grounds to suspect serious tax fraud[124] on application to a circuit judge. In non-PACE cases, notice must be given to the recipient, who is entitled to be heard, unless the court is satisfied that this would seriously prejudice the investigation.[125]

(c) HMRC does not have the power to take fingerprints, charge or bail suspects.

(d) HMRC also has powers under the Serious Organised Crime and Police Act 2005[126] and the Proceeds of Crime Act 2002[127].

Civil tax investigation

(a) In the case of civil tax investigations, HMRC has the power128 to:

- obtain information and documents not covered by legal professional privilege, journalistic privilege and certain personal records;
- inspect premises and other property;
- gather data from data-holders.

(b) Information notices

(i) HMRC has the power to require taxpayers and third parties (including non-UK residents in certain circumstances[129][130]) to provide information and documents that are reasonably required for checking the tax position of a known person or a person or class of persons whose identity or identities is not known[131] to the HMRC[132]. HMRC can also require a third party to provide a taxpayer's name, address and date of birth from information supplied by HMRC, such as a bank account number.[133] HMRC cannot require the production of a document where the whole document originates more than more six years before the notice.

(ii) In some circumstances, these powers can be exercised without approval from the tribunal in advance[134] without notice to the taxpayer, without the taxpayer having reasonable opportunity to make representations to HMRC or to attend

123 E.g. Client material of accountancy firms or financial institutions.
124 TMA 1970 S. 20BA or Value Added Tax Act 1994 Sch.11 para.11.
125 TMA 1970 Sch.1AA para.3.
126 Serious Organised Crime and Police Act 2005 Ss60-70.
127 FA 2013 Sch.48 S.224.
128 FA 2008 Sch.36.
129 HMRC v PQ [2019] UKFTT 371 (TC) (12 June 2019),
130 R. (on the application of Jimenez) v First Tier Tribunal (Tax Chamber) [2019] EWCA Civ 51 (31 January 2019) currently on appeal to the Supreme Court.
131 *UK addresses holding Non-UK accounts, Re Application by Revenue and Customs [2009] UKFTT (TC) (3 September 2009):* On 12 August 2009, the tribunal gave HMRC permission to issue over 300 identity unknown notices to financial institutions, requiring disclosure of details of non-UK bank accounts held by persons with a UK address.
132 Extended by FA 2011 Sch.24 to relevant foreign direct tax and foreign VAT.
133 Sch.36 para.5A FA 2008.
134 Sch.36 para 3(2) FA 2008.

any hearing for approval[135] and with very limited right to appeal[136]. Article 6 of the European Convention on Human Rights, which provides for a right to fair trial, and implicitly a right not to incriminate oneself, does not protect the taxpayer.[137]

(c) Power to inspect premises

(i) HMRC may inspect premises (including vehicles) and other property (being business assets and documents) of the taxpayer and third parties[138] to check the tax position of a person and for the purposes of valuation[139]. Inspections can be made without advance warning with approval of the tribunal[140]. There is no appeal against an inspection.[141]

(ii) There is no power to force entry or search and the power does not extend to premises used only as a dwelling.

(d) Bulk and specialist data-gathering powers[142]

These powers cover data relating to periods ending within four years of the date of notice, UK and foreign taxes and any organisation that keeps records. A tribunal does not need to approve the exercise of these powers, but where it does so, there is no right of appeal. HMRC considers these powers cover information that the Law Society believes is legally privileged.[143]

(e) In addition to the above, HMRC has wide powers to obtain information from financial institutions and other third parties including:

(f) Financial institution notices[144]

To require banks and other financial institutions to provide documents and information about a taxpayer where the information is required to check a known taxpayer's tax position or to recover a tax debt in respect of UK or foreign tax. These extend and supplement HMRC's existing powers to obtain information from financial institutions under the various international agreements and the common reporting standards regime.

(g) Mandatory disclosure

To require intermediaries to report certain cross-border arrangements under the EU directive on administrative cooperation 2018/822 (DAC 6).[145]

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135 Ex Parte John Ariel v HMRC [2017] UKFTT 87 (TC), Without Notice Application v HMRC [2017] UKFTT 0148 (TC)),Perfectos Printing Inks Co Ltd v Revenue and Customs Commissioners [2020] UKFTT 81 (TC) (19 December 2019).
136 Sch. 36 para.29(3) FA 2008.
137 Allen v UK [2002] ECHR 858; Gold Nuts Ltd & Ors v Revenue & Customs [2016] UKFTT 82 (TC).
138 Pt 2 Sch. 36 FA 2008; these powers are more restricted; see Sch.36 para 10A FA 2008
139 Accompanied by a relevant person to carry out the valuation.
140 Sch.36 para 12 FA 2008.
141 Sch.36 para 58 FA 2008.
142 FA 2011 Sch. 23.
143 The Law Society: News: Beneficial ownership of offshore companies and trusts – HMRC data-holder Notices to firms (17 January 2017)
144 Following Royal Assent on 22 July 2020 to FA 2020.
145 For more information see https://www.gov.uk/hmrc-internal-manuals/international-exchange-of-information/ieim600000

(h) Naming and shaming

HMRC has the power to publish the details of tax defaulters and evaders that incur tax penalties as a result of certain deliberate acts or omissions and the tax loss exceeds £25,000.[146] These provisions have been amended to allow additional protections to taxpayers making voluntary disclosures and to allow the publishing of individual's details where a business entity incurs the penalty and the individual obtained a tax advantage.[147]

(i) Tax agents, high risk promoters and enablers

HMRC has the power to:

(i) impose penalties on individual tax agents who have engaged in dishonest conduct with a view to bringing about a tax loss, publish their details (including details about the organisation for whom they work) and obtain their files;[148]

(ii) obtain information following disclosures under the disclosure of tax avoidance schemes (DOTAS) regime and from certain high risk promoters and enablers of tax avoidance schemes. HMRC may in some circumstances publish the details of promotors, enablers and their activities.

Collection of tax

Finally, HMRC has powers in connection with the collection of taxes including powers for the direct recovery of debt from a taxpayer's bank, building society or ISA accounts and in the case of certain 'schemes' to require the payment of tax alleged to be underpaid before the conclusion of litigation to determine whether or not the tax is due by means of accelerated payment notices (APNs). HMRC can also subject a taxpayer to penalties in these situations where they take a case to the tribunal and lose by issuing follower notices.[149] There is no right of appeal; the taxpayers only remedy is by way of Judicial Review.

Other powers

HMRC also has powers in respect of businesses supervised by it under the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 in order 'to encourage compliance and respond to non-compliance'.[150] These powers are to:

- inspect business premises;
- issue a penalty;
- refuse or remove fit and proper status from an individual;
- refuse or remove an approval from an individual;
- refuse, suspend or cancel a business's registration;
- issue a notice to request information or attendance at a meeting;

[146] S.94 FA 2009.
[147] S.164 FA 2016.
[148] Sch.38 S.223 FA 2013.
[149] Legislation introduced in FA 2014 Pt 4.
[150] https://www.gov.uk/government/publications/money-laundering-supervision-enforcement-measures/money-laundering-supervision-civil-measures

- issue a public statement naming and censuring a business or person;
- prohibit an individual from holding a managerial role;
- seek a court order to enter a premises or to restrain a person from committing a breach.

Review of HMRC powers

In December 2018, the House of Lords Economic Affairs Committee issued its report *Powers of HMRC: treating taxpayers fairly*[151] concluding 'HMRC is right to tackle tax evasion and aggressive tax avoidance. However, a careful balance must be struck between clamping down and treating taxpayers fairly. Our evidence has convinced us that this balance has tipped too far in favour of HMRC and against the fundamental protections every taxpayer should expect'. In a written answer on 22 July 2019[152], the financial secretary to the Treasury Jesse Norman announced: 'I have … asked HMRC to evaluate the implementation of powers introduced since 2012 in relation to the powers and safeguards principles, engaging with stakeholders, including taxpayers and their representatives. This will be published in early 2020.'

[151] https://publications.parliament.uk/pa/ld201719/ldselect/ldeconaf/242/242.pdf
[152] Hansard Vol. 663, col 78WS.

Appendix B: Probate Costs and Timescales

The data in this Appendix was taken from the websites of the UK's leading private client firms. The firms were selected from the listings at https://www.paminsight.com/epc/storage/app/uploads/public/5f6/c6b/bc9/5f6c6bbc9b73b775328701.pdf tiers 1 and 2. While it is inevitably subjective, this list was chosen as a representative sample of the law firms representing the wealthiest clients – and therefore those likely to be subject to a wealth tax.

The data – which the Solicitors' Regulatory Authority requires law firms to publish – was accessed between 1 and 14 October 2020.

Firm	Timescale to grant of probate (months)	Timescale from grant of probate (months)	Total timescale (months)	Costs (excl. VAT and disbursements) as range	Costs (excl. VAT and disbursements) where expressed as %
Boodle Hatfield[i]	3-12	6-24	9-36	**Pre-Grant** £8,000 to £10,000 (simple) £10,000 to £25,000 (complex) **Post-Grant** £6,000 to £8,000 (simple) £10,000 to £50,000 (complex)	
Burges Salmon[ii]	1-2 (simple) 4-6 (medium) 5-6 (complex)	2-3 (simple)	3-6 (simple) 12-18 (medium) 12-24 (complex)	£7,500 to £12,500 (simple) £20,000 to £30,000 (medium) £50,000 to £100,000 (complex)	
Charles Russell Speechly[iii]	4-18	3-6	7-24	£2,500 to £150,000+	
Farrer[iv]	3-6	1-2	4-8	£15,000 - £30,000 (simple)	
Harbottle & Lewis[v]			6-12 (simple)	£3,500 - £6,000 (simple)	
Macfarlanes[vi]	4-12	(not given)		**Applying for Grant** £20,000 - £70,000 **Administering the estate** £10,000 - £100,000	
Maurice Turnor Gardner[vii]	Up to 6 months (simple)	Up to 6 months (simple)	Up to 12 months (simply)	**With valid UK Will** £2,500 – 5,000 (excepted estate) £5,000-10,000 (simple) £10,000 – 20,000 (more complex)	

Firm	Timescale to grant of probate (months)	Timescale from grant of probate (months)	Total timescale (months)	Costs (excl. VAT and disbursements) as range	Costs (excl. VAT and disbursements) where expressed as %
				Additional charge for supplementary deeds relating to distribution of the estate = £2,000 – £3,000 **No Will** £3,000 – £7,000 (excepted estate) £7,000 - £12,000 (simple estate) £12,000 – £25,000 (more complex estate)	
Mishcon de Reya[viii]	6-17 (if timescales given are consecutive and do not overlap)	9-30	15-47 (if timescales given are consecutive and do not overlap)	£6,000 (simple, UK probate) £60,000 (complex)	
Russell Cooke[ix]				£6,000 to £8,000 (low complexity) £13,000 to £15,000 (medium complexity) £19,000 to £22,000 (high complexity)	
Stephenson Harwood[x]					
Taylor Wessing[xi]	3-4 (straightforward)	3-5 (straightforward)	6-9 (straightforward)	Up to £15,000 (relatively straightforward estate)	
Turcan Connell[xii]					
Wedlake Bell[xiii]				£10,000 to £12,000 (simple). Potential for fixed fee.	1-4% of gross value of estate calculating on hourly basis (more complex)
Withers[xiv]	3-4	3-8	6-12	Fixed fees below £5 million	2% fee (plus £750) for estates above £5m (1% pre-grant and 1% post-grant)

Firm	Timescale to grant of probate (months)	Timescale from grant of probate (months)	Total timescale (months)	Costs (excl. VAT and disbursements) as range	Costs (excl. VAT and disbursements) where expressed as %
BDB Pitmans[xv]	3	3-12	6-12		Charged hourly but generally 1-3% of estate gross value.
Bryan Cave Leighton Paisner[xvi]					
Collyer Bristow[xvii]	3-6	3-6	6-12	£5,000 to £15,000 Full Process. Charged Hourly.	
Cripps Pemberton Greenish[xviii]	1-4	4-7	5-11	**Pre-Grant** £2,500 to £6,000 (excepted estates) £3,500 to £8,000 (IHT payable) **Post-Grant** Hourly rates dependant on estate	
Irwin Mitchell[xix]		6-24 (international)			2.5% of gross estate (minimum 2,500)
McDermott Will & Emery[xx]					
Michelmores[xxi]	1-3 (simple) 2-4 (medium) 4-6 (complex)	12-18 (moderately complex)			2-3% gross value of the estate
Mills & Reeve[xxii]	3-6	12 (simple) 9-18 (more complex)		£5,000 to £10,000 (simple UK) £15,000 to £30,000 (complex) £40,000 to £75,000 (highly complex)	
New Quadrant[xxiii]	2-3	6-12	8-15 months	£3,750 to £6,250 (simple)	
Payne Hicks Beach[xxiv]	2-3 (simple) 3-6 (complex)	3-6 (simple) 6-12 (complex)	5-9 9-18	Charged hourly.	Where estate is between £1 million- £3 million, fees are unlikely to exceed 3% of value of estate.
Penningtons Manches[xxv]	3-6 (simple)	Case dependent		£5,000 to £11,000 (non-contentious)	

Firm	Timescale to grant of probate (months)	Timescale from grant of probate (months)	Total timescale (months)	Costs (excl. VAT and disbursements) as range	Costs (excl. VAT and disbursements) where expressed as %
				£11,000 to £29,000 (complex non-contentious) Bespoke (complex non-contentious estate)	
Royds Withy King[xxvi]	1	6-12	7-12	£12,000 to £25,000 (medium) 25,000+ (high complexity)	
Thomson Snell & Passmore[xxvii]	2-3	12-14	14-17		2% -2.5% of the gross estate
Womble Bond Dickinson[xxviii]		6-12 (simple) Complex – case dependent.		£2,000 to £4,000 (simple) Hourly basis (complex)	
Wrigleys[xxix]				Charged hourly and not a percentage of the value of the estate Estimate is from £3,000 (To obtain the Grant and to administer the estate)	
AVERAGE (ignoring 'simple' where given) **Mean** **Median** **Mode**	 3.1- 6.8 3-6 3-6	 5.9-13.7 6-12 6-12	 9-20.5 9-18 9-18	 £22,800 to £68,700 (ignoring 'simple' where given)	 1.9%-2.8%

[i] https://www.boodlehatfield.com/media/1792/administration-of-estates-an-overview.pdf
https://www.boodlehatfield.com/media/1974/probate-and-administration-of-estates-cost-and-service-information-for-uncontested-estates-in-the-uk.pdf
[ii] https://www.burges-salmon.com/expertise/core-expertise/private-client-services/probate/probate-pricing-and-service-information/
[iii] https://www.charlesrussellspeechlys.com/en/sra-price-transparency/private-wealth/#:~:text=support%20where%20appropriate.-,Experience%20will%20vary%2C%20with%20our%20most%20junior%20staff%20having%20no,senior%20solicitor%20or%20a%20partner.&text=range%20of%20costs-,Probate%20fees%20are%20%C2%A3155%20if%20the%20application%20is%20made,worth%20more%20than%20%C2%A35%2C000.
[iv] https://www.farrer.co.uk/globalassets/policies/probate-and-estate-administration---a-guide-to-our-pricing.pdf
[v] https://www.harbottle.com/private-client/probate-trust-management/
[vi] https://www.macfarlanes.com/price-transparency/probate-and-administration-of-uncontested-estates-based-wholly-in-the-uk/
[vii] https://www.mauriceturnorgardner.com/sra-transparency-rules/#probate
[viii] https://www.mishcon.com/fee/probatefees
[ix] https://www.russell-cooke.co.uk/probate/pricing/
[x] No information found.
[xi] https://www.taylorwessing.com/en/legal/regulatory-information/regulatory-information-on-costs
[xii] (Scottish firm. Presumably no similar regulatory obligation on part of Law Society of Scotland).
[xiii] https://wedlakebell.com/regulatory-pricing-information/probate-uncontested/
[xiv] https://www.withersworldwide.com/en-gb/probate-price-and-service-information
https://marketing.withersworldwide.com/reaction/emsdocuments/PDFs/Probate_Fees2.pdf
[xv] https://www.bdbpitmans.com/wp-content/uploads/18-12-Uncontested-probate-Typical-Legal-costs.pdf
[xvi] No information found.
[xvii] https://collyerbristow.com/wp-content/uploads/2020/01/Probate_pricing_2020.pdf
[xviii] https://www.crippspg.co.uk/wp-content/uploads/2019/04/Pricing-transparency-probate-May-2019.pdf
[xix] https://www.irwinmitchell.com/personal/probate/our-prices-probate
[xx] No information found.
[xxi] https://www.michelmores.com/sites/default/files/Michelmores%20Probate%20Template_0.pdf
[xxii] https://www.mills-reeve.com/getmedia/46fc3611-06b8-478f-a92f-c9407254160c/our-probate-fees
[xxiii] https://www.newquadrantpartners.com/transparency-in-price-and-service/
[xxiv] https://www.phb.co.uk/docs/general/ProbateFees.pdf
[xxv] https://www.penningtonslaw.com/expertise/private-client-and-tax/contentious-probate-and-trust-disputes/probate-fees-applying-for-the-grant-of-representation,-collecting-and-distributing-the-estate
[xxvi] https://www.roydswithyking.com/solicitors-for-life/probate-and-estate-administration/probate-solicitor-calculator/
[xxvii] https://www.ts-p.co.uk/for-you/probate#:~:text=Probate%20costs%20depend%20on%20the,VAT%20of%20the%20gross%20estate
[xxviii] https://www.womblebonddickinson.com/uk/probate-pricing-transparency-guideline
[xxix] https://www.wrigleys.co.uk/families-individuals-and-trustees/wills-probate-and-powers-of-attorney/probate/probate-fees/