



HM Revenue  
& Customs

# Review of Deeds of Variation for Tax Purposes – Call for Evidence

**Summary of Responses**  
December 2015

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# 1. Executive Summary

This document responds to the call for evidence on the use of Deeds of Variation (DoV) for tax purposes published on 15 July 2015. The aim of this call for evidence was to gather information and views on how DoVs are used for tax purposes and what changes, if any, should be made to the current tax provisions.

HMRC is very grateful to all those who responded, or participated in meetings, and for taking the time to consider the issues raised by the call for evidence document.

## Overview of the responses

We received 214 responses from a wide range of individuals and organisations. Of these, 203 responded to the survey and 11 provided more general responses. The common theme from the call for evidence is that the potential reduction of tax liability is not the prime reason for using a DoV in the majority of instances and it is necessary to preserve the tax consequences of the DoV in its current state.

## Government response and next steps

The Government has listened to the views and comments put forward during the call for evidence process and will not introduce new restrictions on how DoVs can be used for tax purposes, but will continue to monitor their use.

## 2. Introduction

### Context for the call for evidence

At the Budget in March 2015, the Government announced it would conduct a review looking at the use of DoV for tax purposes. A call for evidence was published on 15 July 2015 and HMRC sought the views of a range of stakeholders, including individual members of the public who were either thinking of using a DoV or have already used one.

The call for evidence document can be found at the following link:

<https://www.gov.uk/government/consultations/review-of-deeds-of-variation-for-tax-purposes-call-for-evidence/review-looking-at-the-use-of-deeds-of-variation-dov-for-tax-purposes>.

We asked a series of questions about the way DoVs are currently used. The call for evidence ran for 12 weeks and closed on 7 October 2015.

### Online Questionnaire

The call for evidence took the form of a questionnaire, asking 9 closed questions with the option of expanding on the answers to the questions should stakeholders decide to do so. In addition to the conventional ways of responding to the call for evidence, HMRC encouraged potential respondents to the call for evidence to complete a short online questionnaire that asked for their opinions on the current use of DoV. We received 191 online responses to the survey with a further 23 paper responses. All the responses have been taken into consideration in HMRC's response.

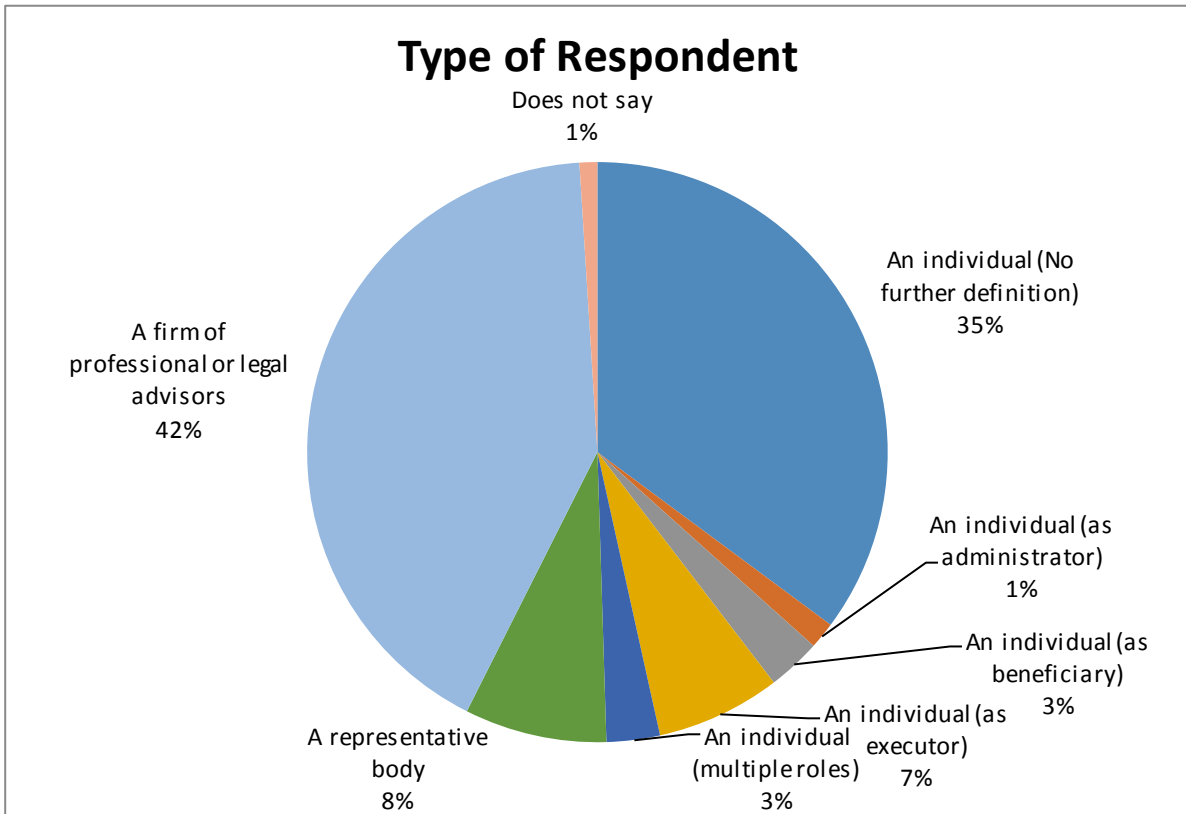
### Overview of the responses

We received 214 respondents to the call for evidence from a wide range of individuals and organisations. This included responses from accountancy bodies, legal representative bodies and charities. A full list of all the organisations who responded is at Annex A.

From the 214 responses we received 11 paper responses did not conform to the survey format. These responses do not form part of the charts contained in this paper, however they have been reviewed and the comments form part of the summary.

A breakdown by respondent type and sector is provided below.

**Figure 1: Type of Respondent**



## Background

An individual will normally leave a will determining how their estate is to be divided between beneficiaries on their death. Alternatively, where there is no will, the law of intestacy determines how the estate is to be divided. A DoV allows a beneficiary under a will or an intestacy to re-direct part, or all, of the estate they have received to another person. The DoV does not actually vary the terms of the deceased's will but operates as a gift from one person to another.

There are many non-tax reasons for using a DoV, such as clarifying uncertainty or oversight in a will, e.g. a grandchild may have been born since the original will was drafted who would otherwise be excluded from the estate. A variation cannot be made without the consent of everyone likely to be affected by it. If one of the affected persons is a minor child then their interests cannot be varied without the approval of the Court.

For inheritance tax (IHT), a DoV made within two years after a death is treated as if the variation had been made by the deceased. In other words, the re-directed inheritance is treated as having come from the estate and not as a personal gift from the original beneficiary.

A DoV can also be used to effect tax consequences in relation to the deceased's estate, the simplest example being a redirection of assets to an exempt person (such as to the surviving spouse or a charity).

For Capital Gains Tax (CGT), a DoV can eliminate a CGT charge which would otherwise arise on a gift, for example, if the asset has increased in value in the period between the death and the date that the gift was made. The consequences of the DoV are that the variation is treated for CGT purposes as not being a disposal and CGT applies as if the terms of variation had been included in the will.

## Reasons for using a DoV

HMRC recognises there are many non-tax reasons for using a DoV. The call for evidence documentation made it very clear that the review was limited in scope and only looking at the tax consequences of using a DoV.

## 3. Responses

In this chapter we set out the questions asked in the call for evidence and provide some detail on the responses received. We follow the order in the call for evidence document.

Where an individual noted that they worked for a professional firm but was answering the survey in their own capacity, they have been classed as an individual for the purposes of the summary.

### Consistent key messages

The consensus amongst respondents to the survey was that whilst tax consequences were incidental to the primary reasons for using a DoV, the removal of these would be likely to harm a number of stakeholders. There is therefore no compelling reason to change the existing tax rules. Many respondents felt that DoVs only provided the same reliefs available to those who had the facilities available to plan and keep a will updated. The removal of tax consequences would therefore disproportionately harm the less wealthy who did not have easy access to tax advisors or specialists to keep a will updated.

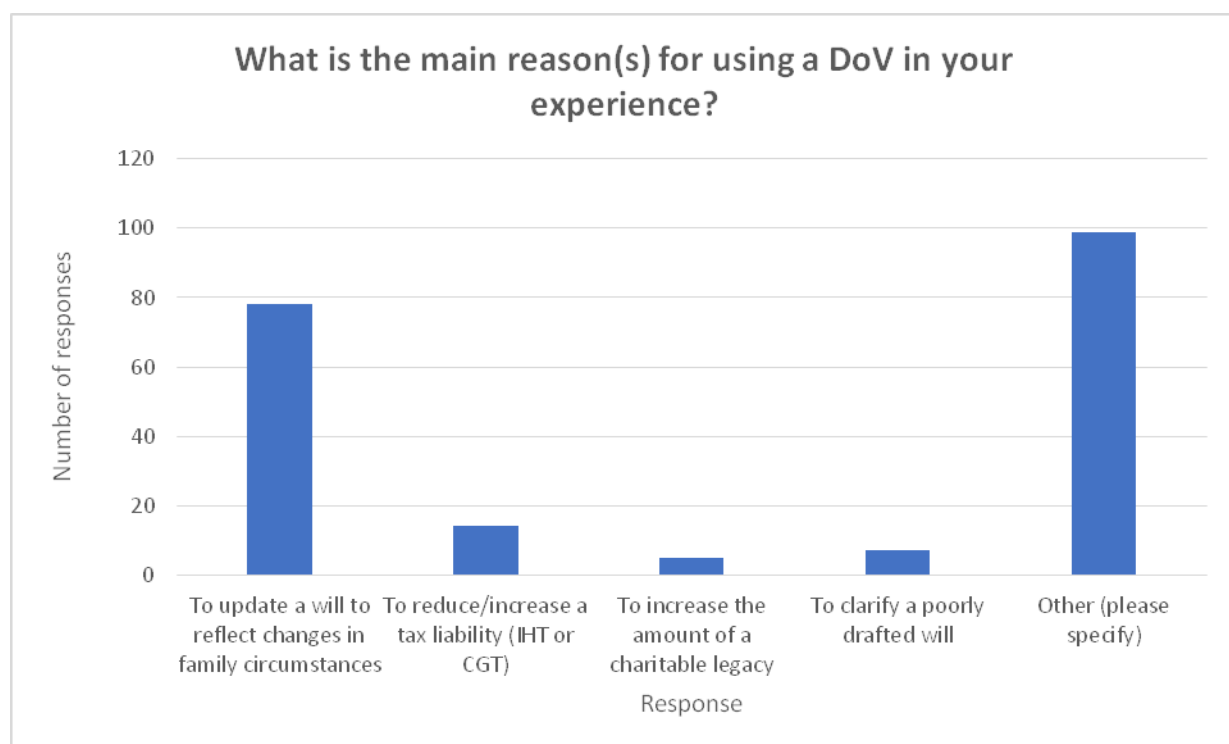
Reaction to the suggestion that the tax consequences of DoV might be removed was overwhelmingly negative, with a large majority of respondents advocating that these should be maintained.

## Responses to specific questions

In the call for evidence HMRC asked:

Call for evidence question	
<b>Question 2:</b>	<p><b>What is the main reason (or reasons) for using a DoV in your experience?</b></p> <ul style="list-style-type: none"> <li>• <b>To update a will to reflect changes in family circumstances</b></li> <li>• <b>To reduce/increase a tax liability (IHT or CGT)</b></li> <li>• <b>To increase the amount to a charitable legacy</b></li> <li>• <b>To clarify a poorly drafted will</b></li> <li>• <b>Other</b></li> </ul> <p><b>Please explain your answer:</b></p>

**Figure 2: Chart illustrating the main reason(s) for using a DoV**



Responses to the heading of “other” included answers that a DoV is used to update a will to reflect changes in legislation between the time the will was drafted and an individual’s death. Or where an individual has prepared an interim will, for example before an operation, but did not have an opportunity to sufficiently plan for it. A key theme was that it was not possible to identify the main reason for using a DoV, as there are a number of factors which might apply depending on the circumstances.



<b>Call for evidence question</b>	
<b>Question 3:</b>	<p><b>Are DoV ever used to support any contrived or artificial arrangements designed purely to reduce a tax liability?</b></p> <ul style="list-style-type: none"> <li>• <b>Yes</b></li> <li>• <b>No</b></li> <li>• <b>Sometimes</b></li> <li>• <b>Don't know</b></li> </ul>

In the vast majority of cases, both individuals and professional firms stated that DoVs are not used to support contrived or artificial arrangements to reduce a tax liability.

Of those small number of respondents who answered that DoVs are used for arrangements to reduce tax liability, there was a recognition that it was inevitable that any arrangements would be considered to reduce tax liability.

Where respondents answered that DoVs are not used to support any contrived or artificial arrangements, some of them highlighted the potential for s142 Inheritance Tax Act (IHTA) 1984 to safeguard against contrived arrangements, and emphasised that DoVs are regulated by the same considerations that would have been placed on wills with regards to IHT. The majority of firms who answered no agreed that they would not support DoVs being used in this way and that any tax liability reduction is an incidental result of the DoV.

Where individuals and firms have answered that they don't know whether DoVs have been used in such arrangements, the most common response is that they have never seen such arrangements in their personal experience. Some individuals who said that they have legal experience noted that they do not consider the reduction of tax by use of a DoV to be a contrived arrangement. For example, the use of a DoV to benefit from the reduction of IHT liability by use of the spousal exemption is legitimate.

<b>Call for evidence question</b>	
<b>Question 4:</b>	<p><b>If you have used or advised on a DoV for tax purposes, was the tax payable increased or decreased as a result?</b></p> <ul style="list-style-type: none"> <li>• <b>Increased</b></li> <li>• <b>Decreased</b></li> <li>• <b>It varies but will usually increase</b></li> <li>• <b>It varies but will usually decrease</b></li> <li>• <b>No difference</b></li> </ul>

The majority of responses have indicated that the use of a DoV will usually decrease the tax payable and this is true for both individuals and professional firms. Many firms have indicated that the use of a spousal exemption may lower any tax payable but that this would have been possible had the will been constructed differently originally.

Whilst the common theme was that tax consequences are not a main driver in the use of DoVs, some professional firms have suggested that a DoV would not be enacted where it might increase the exposure to tax.

Where respondents have noted that there is no difference in the tax payable as a result of the DoV, a majority have emphasised that the estate is distributed amongst the family to meet particular circumstances and that the estate still pays the same amount of tax.

<b>Call for evidence question</b>	
<b>Question 5:</b>	<p><b>Where a DoV had an inheritance tax effect, what was the result on the taxable value of the estate?</b></p> <ul style="list-style-type: none"> <li>• <b>The estate value became higher than the threshold</b></li> <li>• <b>The estate value stayed above the threshold</b></li> <li>• <b>The estate value became lower than the threshold</b></li> <li>• <b>The estate value stayed below the threshold</b></li> <li>• <b>Not applicable</b></li> <li>• <b>Don't know</b></li> </ul>

Where a respondent advised that an estate increased in value, and provided an explanation as to the reason, they indicated that this was because there was a change in beneficiary that would have otherwise been eligible for spousal exemption.

There was a consensus amongst respondents that there were a wide variety of tax effects on estates resulting from the use of DoVs. Respondents advised that this is more dependent on the size of the estate being dealt with rather than any significant change due to DoV.

Of the respondents who noted an IHT effect, the majority indicated that the estate value either stayed above the threshold or below it. A significant minority advised that the estate value became lower than the threshold.

**Call for evidence question**

<b>Question 6:</b>	<b>Do you think there is still a need for retaining the tax advantages of a DoV?</b> <ul style="list-style-type: none"><li>• <b>Yes</b></li><li>• <b>No</b></li><li>• <b>Not sure</b></li></ul>
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A large majority of respondents are of the view that there is still a need for retaining the tax advantages of a DoV. Only two individuals argued that these are no longer needed, on the grounds that it is the responsibility of the testator to ensure that wills are drafted correctly prior to death.

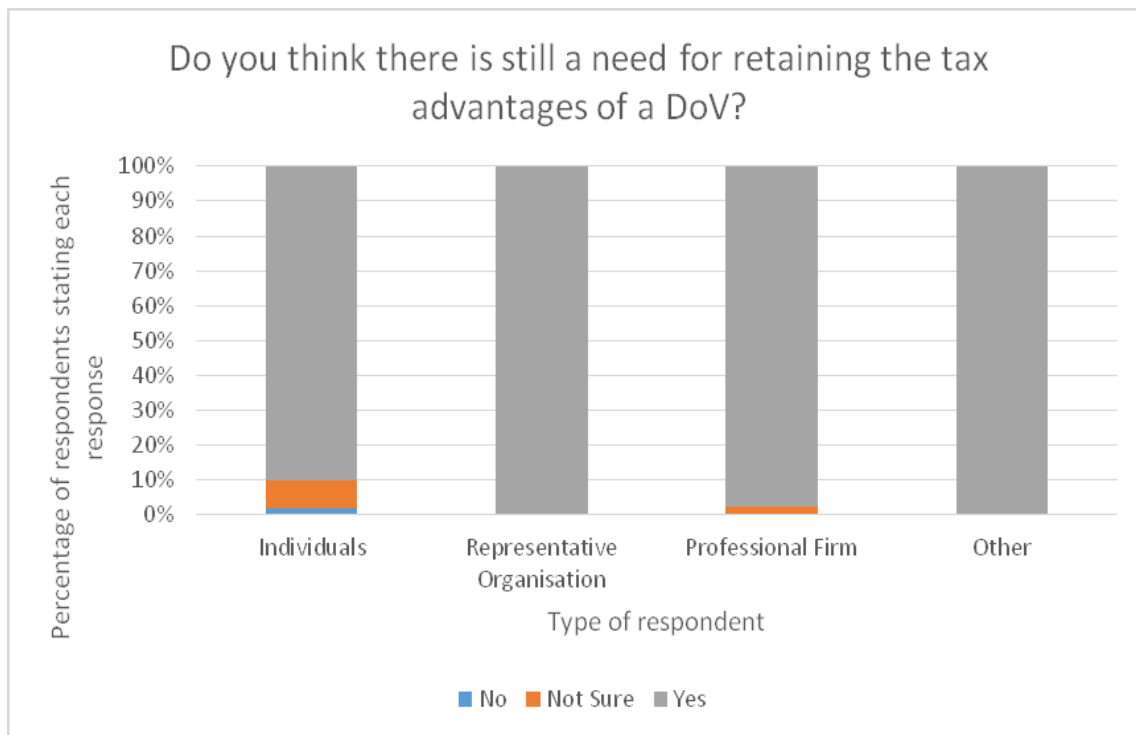
Respondents who were not sure whether the potential tax advantages needed to be maintained were predominantly found amongst individuals with some of the opinion that there has been no change which has necessitated a change in the tax impact.

Of those respondents who advocated maintaining the potential tax advantages for a DoV, a large number emphasised that any tax effect is incidental to the prime reason for making DoV.

A number of representative organisations responding to this question also highlighted that withdrawing the tax advantages of the DoV would result in less money going to charities. This is despite only a small proportion of respondents noting the desire to increase charitable legacies as the main purpose of entering a DoV.

Many professional firms amongst the respondents voiced the opinion that the withdrawal of the potential tax advantages of using the DoV would harm those who are not able to update their wills regularly, or who do not have professional advisors making them aware of changes in tax legislation. It was felt that this will predominantly harm the less wealthy whereas the more affluent will have taken more detailed tax planning steps.

**Figure 3: Chart illustrating the opinions of different classes of respondent on whether the tax advantages of DoV should be maintained.**



In the call for evidence HMRC asked:

<b>Call for evidence question</b>	
<b>Question 7:</b>	<b>Have changes to tax legislation over the years resulted in a greater or less use of DoV for tax purposes?</b> <ul style="list-style-type: none"><li>• <b>Greater use</b></li><li>• <b>Less use</b></li><li>• <b>Made no difference</b></li><li>• <b>Don't know</b></li></ul>

The majority of respondents, both individuals and professional firms, who suggested that changes to tax legislation have made no difference to the use of DoVs emphasised that DoVs are not primarily used for tax purposes and the underlying reasons for using them remain relevant.

Where respondents suggested that there is a greater use of DoVs, there is a common suggestion that greater complexity of legislation means that wills often do not accurately reflect the wishes of the deceased or take advantage of recent changes in legislation.

Where respondents indicated less use of DoVs, a large majority cited the introduction of the transferable nil-rate band in 2007, which has made making a DoV to make maximum use of the spousal exemption less necessary.

A majority of respondents stated that changes to tax legislation had made no difference to the use of DoV for tax purposes. Of the remaining responses more respondents stated that they had seen lesser use than greater use.

In the call for evidence HMRC asked:

Call for evidence question	
Question 8:	What do you think the impact will be if the law was changed to abolish or restrict the use of DoV for tax purposes?

Selected responses to question 8 are presented below:

*“The families of those who die without a Will or with an inadequate or badly drafted Will are likely to suffer most as there will not be the same opportunity to correct the situation in a sensible and tax-neutral way or without possible adverse tax consequences. People who do not keep their Wills constantly under review and keep abreast of changes in the law may be unfairly penalised or prejudiced as their families will have fewer opportunities to take advantage of new incentives (such as the reduced rate for charitable giving and the forthcoming residence nil rate band)... ”*  
– **A Firm of Professional Advisors**

*“It would make the tax position more complex because if DoVs continued to be used for legal purposes, but the tax treatment followed the original will, this would lead to a divergence between reality in practice and the tax treatment. This would lead to increased record keeping for tax purposes and inequity as individuals would be taxed on funds they had not received”* - **A Firm of Professional Advisors**

*“The tax advantages are only the same as can be achieved through a well drafted Will. Changing the legislation will mean that individuals will need to review their Wills more regularly and will penalise those individuals that do not have access to a solicitor on a regular basis. It is most likely to affect the estates of elderly taxpayers where Wills have not been updated to reflect changing family circumstances”*-**A Firm of Professional Advisors**

*“It will increase the cost of wills and increase the use of complicated tax avoidance schemes such as trusts and lifetime gifts. The cost of access to wills for the public will rise as practitioners will need to add additional layers of complication in even the simplest of wills to protect themselves from professional negligence claims.”* – **A Representative Body**

*“The main impact is likely to be additional confusion and additional professional fees being incurred by the deceased’s family and beneficiaries”* – **A Firm of Professional Advisors**

HMRC sought views on any additional points or issues which respondents wanted to make in relation to the use of DoV for tax purposes.

HMRC asked:

Call for evidence question	
Question 9:	Do you have any other comments you wish to make about the use of DoV for tax purposes?

Selected responses to question 9 are presented below.

*“With regard to the charitable sector, the use of a DoV remains vital for maintaining one of its most (if not the most) valuable streams of revenue and undermine the ability of some charities to function at all!” – A Representative Body*

*“In our experience, they are not used to create an artificial or contrived tax avoidance schemes. They are simply used to amend a will where this might be beneficial for the family, and the amendments are usually very straightforward. Yes, this might create a tax saving in certain instances, but not always, and our system as it stands is to be welcomed for its humanity, and recognition and appreciation that testators are not always able to obtain good advice or update their wills as may be required before they die” – A Firm of Professional Advisors*

*“[We]... believes that if an up to date tax efficient will is in place taking account of current family circumstances at the time of death there would be little need for a DoV. However while every responsible adult should make it their duty to hold a valid will, this sadly is not the case with less than a third of the adult population taking such measures” – A Representative Body*

*“If the current tax rules relating to DoVs were to be abolished or restricted we don’t believe that it would raise any significant revenue for the public purse. It would further complicate what is already a complex tax system for individuals and risk imposing an unnecessary and (in our view) unjustifiable tax burden on families who have recently been bereaved.” – A Firm of Professional Advisors*

## 4. Next steps

### The Government's response

The Government is grateful for the wide range of responses that have been submitted in response to the call for evidence and would like to thank the individuals, groups and organisations who have taken the time to contribute.

The Government remains committed to tackling abuses of the tax system and has a strong record. It was important that, as with all other taxes, the use of DoVs for tax purposes were reviewed to make sure that they are not being abused. The Government will not introduce new restrictions on how DoVs can be used for tax purposes but will continue to monitor their use.

The call for evidence has provided valuable assistance in helping the Government to further understand some of the key reasons why individuals choose to use a DoV. The Government has listened to the views and they have supplemented HMRC's internal review of cases involving DoVs. As has always been acknowledged, there are legitimate reasons for using a DoV, including dealing with changes in family circumstances and oversights.

The responses also highlighted the fact that the tax consequences flowing from the use of a DoV may not be the main reason why an individual chooses to use one. HMRC will continue to monitor the use of DoVs to ensure that they continue to be used legitimately and are not abused.



## Annex A: List of respondents to the call for evidence

Respondents	
PricewaterhouseCoopers LLP	The Law Society
Johnston Carmichael	The Chartered Institute of Taxation
Deloitte LLP	The National Farmers Union
Mishcon de Reya	Manak Solicitors LLP
The Association of Accounting Technicians	STEP
Michael Anvoner & Company Solicitors	Jennifer Margrave Solicitors LLP
The Charity Law Association	Macfarlanes LLP
The Central Association of Agricultural Valuers	Bircham Dyson Bell
Historic Houses Association	Solon & Co Ltd
Burges Salmon	Penningtons Manches LLP
Maurice Turnor Gardner LLP	Mills & Reeve LLP
Grant Thornton UK LLP	The Association of Taxation Technicians
Citroen Wells	DN Tax Service
Boodle Hatfield LLP	The Fry Group
Turcan Connell	Wise and Co
Lings solicitors	BKL
Rawlinson & Hunter	Ensors Chartered Accountants LLP
Patricia J Arnold & Co Ltd	Will & Probate Services (Estate Planning) Ltd
Old Mill Accountancy LLP	Townends Accountants LLP
International Fund for Animal Welfare (IFAW)	Hayes Solicitors Limited
Michelmores LLP	Willpower (Will writers & Probate Advisers) Ltd
Devon and Somerset Law Society (DASLS)	Whitehead Monckton
The Royal National Lifeboat Institution (RNLI)	Mayo Wynne Baxter
Solicitors for the Elderly	Everett Tomlin Lloyd and Pratt
Bond Dickinson LLP	H & C Lawyers ( South West)
Marie Curie	Magee Gammon, Chartered Accountants
Legacy Link Consultancy Limited	Bright & Sons, Solicitors
Berkeley Associates Tax Advisers Limited	Langley Wellington LLP, Gloucester
CLIC Sargent	Hartley & Worstenholme
Reynolds Accountants Limited T/A Reynolds and Co	Clarke Willmott LLP

**Note:** In line with HMRC policy of not identifying individuals, the names of those who responded to the call for evidence in their capacity as an individual have been omitted from the above list.