

## **Liability to pay IHT**

Synopsis: The liability for IHT and payment dates.

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### **Persons liable**

#### **Lifetime transfers – Section 199(1) IHTA 1984 and Section 204(6) IHTA 1984**

The persons primarily liable for inheritance tax (IHT) on a lifetime transfer that is chargeable when made in order of priority are...

- The donor
- The donee, that is the person whose estate is increased by the transfer.
- So far as the tax is attributable to the value of any property, any person who takes the property or a beneficial interest in possession in it at any time after the transfer, for example a nominee, a trustee or a life tenant.
- Where property is transferred into settlement, any person for whose benefit any of the property or its income is applied, for example a person who receives a benefit from a discretionary trust.

Note that the donor is primarily liable for any tax due when the chargeable transfer is actually made, and the others listed above are only liable if the tax remains unpaid after it ought to have been paid.

- Where a potentially exempt transfer (PET) becomes chargeable (or additional tax becomes payable on a chargeable lifetime transfer (CLT)) on death of the donor within seven years the person primarily liable to tax is the donee.
- The donor's spouse or civil partner may also be liable, if, having made a transfer of value, the donor then gifts all remaining assets to their spouse or civil partner. In such an event, the spouse or civil partner would be liable for tax to the extent of the value of the gift.
- The donor's personal representatives have secondary liability which will arise if no one else is liable for the tax or if such tax has not been paid within 12 months after the end of the month in which the death of the donor occurs and the liability arose because the donor died within seven years of transfer.

### **Transfers under a settlement**

The persons primarily liable for IHT on a chargeable transfer arising from settled property are the trustees of the settlement.

If tax remains unpaid after the due date the following persons are also liable:

- Any person entitled, whether beneficially or not, to an interest in possession in the settled property, for example the trustees of a sub-settlement.
- Any person for whose benefit any of the settled property or its income is applied at or after the time of the transfer, for example a person who received a benefit from a discretionary trust.
- The settlor, where a chargeable transfer is made during their life and the trustees are not resident in the United Kingdom. This rule does not apply to a settlement made before 11 December 1974 if the trustees were resident in the United Kingdom when the settlement was made and have not been so resident at any time between 10 December 1974 and the time of the transfer.

### **Death estate**

The persons liable are...

- The deceased's personal representatives for the tax attributable to property which was not settled and to settled land in the United Kingdom which vests in them. This places the liability on the executors and administrators who deal with property passing under a person's Will or intestacy.
- The trustees of the settlement, for settled property.
- The beneficiaries, or any other person in whom the property passing on death is subsequently vested, for example, the trustees of a settlement created by the Will
- A person benefiting from property already settled at the time of death or who receives income from such property, for example a person benefiting from a trust which becomes discretionary on the death of a life tenant.

Any person entitled, as a result of a death, to part only of the income of any property is regarded for this purpose as entitled to an interest in the whole of the property. So, the whole tax attributable to the property can therefore be recovered from any one of the beneficiaries – Section 200(1) IHTA 1984 and Section 200(3) IHTA 1984.

In Scotland, it is not the executors who are liable for the tax. The liability falls either on a person claiming legitim, or, in so far that the tax is attributable to the value of any property, any person in whom the property is vested, beneficially or otherwise, at any time after death, or a person who after the death is beneficially entitled to an interest in possession in the property.

### **Limitations on liability**

Personal representatives are liable only for the assets they have received as personal representatives, or might have received but for their own neglect or default. Their liability for tax attributable to settled land in the United Kingdom is separately limited to so much of the

land as is available to them for payment of tax, with similar provisions regarding neglect or default.

Trustees' liability is limited to the property they have received, accounted for, or had available to them, in their capacity as trustees, or would have had but for their neglect or default.

### **Payment of tax**

Tax is in general due to be paid six months after the end of the month in which the transfer or event giving rise to the tax liability occurred.

An exception to this is the case of a CLT on which there is an immediate charge and which is made after 5 April and before 1 October. In such a case the IHT is due on 30 April in the following year.

Despite the general six-month limit, the tax on a deceased person's own estate has to be paid before delivery of the account to the Probate Registry (in Scotland, Commissary Office or local Sheriff Court) even if this takes place before the end of the six-month period.

The IHT account must be filed by the personal representatives within 12 months of date of death. However, if tax is payable on the estate, interest starts to run on any unpaid tax from six months after the end of the month of the deceased's death.

It is possible for personal representatives to request that the deceased's bank or building society settle the liability to IHT on the deceased's estate directly from the deceased's account in accordance with the Direct Payment Scheme which has been in operation since 2003. Such requests may be made before probate is granted to enable personal representatives to avoid the need to borrow, thereby reducing the costs of administering the estate.

Tax on PETs which become chargeable is due six months after the end of the month in which the death occurs.

In certain cases, tax may be paid by instalments (please see below). Where the personal representatives apply personally for a grant of representation, they will be told by the Probate Registry how much tax must be paid before the grant can be obtained. It may be possible to arrange for certain National Savings held by the deceased to be transferred direct to the Revenue in payment of tax. Enquiries about this should be addressed to the HMRC Inheritance Tax.

### **Interest on overdue tax**

In general, interest is charged on unpaid tax from the due date to the date of payment, irrespective of the reason for the delay in payment.

The rate of interest is varied from time to time by Statutory Instrument.

Interest paid on overdue IHT is not allowable as a deduction from income or profits for any tax purposes – Section 233 IHTA 1984.

### **Payments on account**

As interest runs from the due date of the tax eventually found to be due, whether or not it had been agreed by that date, persons liable for the tax may make a payment on account to minimise the ultimate charge to interest.

Certificates of tax deposit, which enable money to be set aside for payment of a future tax liability, may be used in payment of IHT. Interest is receivable on these certificates from the date of purchase until the date on which the tax, in respect of which they are surrendered, falls due. Certificates may also be encashed, but a lower rate of interest is then paid.

### **Interest on repayments of tax**

Where tax or interest has been paid in excess of the amount found to be due, interest is allowed on the amount overpaid. The interest is calculated from the date of payment until the order for repayment is issued. The rate of interest on repayments is the same as would have been charged if the tax had been unpaid. Such interest is not treated as income for any tax purposes – Section 235 IHTA 1984.

### **Payment by instalments – Sections 227 - 229 IHTA 1984**

Subject to various qualifications, tax attributable to certain types of property may be paid by instalments in the case of:

- A transfer on death;
- A lifetime transfer, if the tax so attributable is borne by the person benefiting from the transfer; and
- A charge on settled property, if either the property remains in settlement or the tax is borne by the beneficiary.

If a PET becomes chargeable on the death of the donor within seven years, the tax so attributable may qualify for payment by instalments if the qualifying property is owned by the beneficiary at the date of death of the donor (or at the time of their own death, if earlier) or the beneficiary has acquired qualifying replacement property.

In the case of unquoted shares or securities, they should also remain unquoted throughout the period from the date of the transfer to the death of the donor (or, if earlier, the death of the donee) to qualify for the instalment facility.

The types of property which qualify for payment by instalments are...

- Land and buildings, wherever situated;
- Certain shares and securities;
- The net value of a business or an interest in a business, including a profession or vocation but not a business carried on otherwise than for gain,

such as a hobby (this does not include individual assets of a business as distinct from the business as a whole);

Tax attributable to shares or securities in a company may be paid by instalments if...

- They gave the donor, trustees or the deceased control of the company at the time of the transfer; or
- They are unquoted and either:

- it can be shown that the tax attributable to their value could not be paid in one sum without undue hardship (on the assumption, except in the case of a transfer on death, that they are to be retained by the person liable for the tax);

or

- in the case of a transfer on death, at least 20% of the tax for which the same person is liable in the same capacity is attributable to assets (including the shares in question) which qualify for payment by instalments;

or

- in the case of unquoted shares only, the value transferred attributable to them exceeds £20,000 and the shares transferred represent at least 10% of the nominal value of the company's share capital or (if they are ordinary shares) at least 10% of the nominal value of the ordinary share capital.

A person who intends to pay tax by instalments must give written notice that they wish to do so. The payments are of ten equal yearly instalments. The first instalment is due on the date when the whole tax would have been due if it were not being paid by instalments.

Where an election to pay by instalments has been made, all the tax due may be paid in one sum at any time with any interest due to the date of payment. The balance unpaid becomes payable if...

- The property is sold;
- The relevant business, or an interest in it, is sold;
- A payment is made, under a partnership deed or otherwise, of any sum in satisfaction of an interest in a business;
- In the case of a CLT, there is a further chargeable transfer of the property other than on death;

or

- In the case of settled property, it ceases to be held in settlement.

Where only part of the property is for example sold, a proportionate part of the tax is immediately payable.

### **Interest on instalments**

In general, interest is payable on instalments from the date on which the first instalment is due. In the case of the first instalment interest is charged, on that instalment only, from the due date to the date of payment.

In the case of each subsequent instalment, interest is charged...

- On the whole unpaid portion of the tax, for one year; and
- On that instalment only, from its due date to the date of payment.

### **Interest-free instalments**

In some cases, interest is charged only while the instalments are in arrears. In other words, each instalment is interest-free if paid on time. Instalments are interest-free on these terms if the tax is attributable to...

- Shares or securities in certain circumstances;

or

- A business or interest in a business;

or

- Land which qualifies for agricultural relief.

This facility does not extend to the shares or securities of a company whose business consists wholly or mainly of holding investments, dealing in land etc. unless such a business is a market maker or discount house carrying on business in the United Kingdom.

### **Timber**

In general, tax charged on timber may qualify for payment by instalments along with the tax on the underlying land or on the value of a business which includes the timber. Tax charged on a disposal of timber following an election for woodlands relief on an earlier death does not qualify for payment by instalments.

If a lifetime transfer, chargeable when made of woodlands, also results in a deferred charge to tax on timber by reference to a previous death, the tax on the lifetime transfer itself (but not the deferred charge) may be paid by ten equal yearly instalments, the first of which is due six months after the end of the month in which the transfer took place – Section 229 IHTA 1984.

In this particular case, the right to pay by instalments does not cease if the timber is later sold. Instalments are interest-free if paid on time – Section 234 IHTA 1984.

### **Ongoing reform**

As a result of recommendations by the (now defunct) Office of Tax Simplification, changes have been introduced to reduce the administrative burden of IHT reporting. Reporting regulations were simplified so that from 1 January 2022 more than 90% of non-tax paying estates will no longer have to complete an IHT account for deaths when a grant of representation is required.

For deaths up to and including 31 December 2021 it is still necessary to send full details of the estate's value even if no tax is due, if amongst other things, the person who died...

- gave away over £150,000 in the seven years before they died;
- left an estate worth more than £1 million; and
- had inherited part of the inheritance tax threshold from a previous spouse or civil partner.

However, if the person died on or after 1 January 2022, the £150,000 and £1 million limits are increased to £250,000 and £3 million respectively. The definition of inheritance tax threshold is also amended to include cases where some of the available threshold was used when the first of a married couple or civil partnership died and a claim is made for the unused percentage to be made available against the current estate. These changes only apply in England, Wales and Northern Ireland.

For more information about the new rules and to use HMRC's inheritance tax checker tool, please see [here](#) and [here](#).

HMRC has said that it also intends to make changes to inheritance tax regulations for 'excepted settlements' and 'excepted transfers and excepted terminations' so that more non-taxpaying trusts, and transfers into trusts, meet the requirements that mean a return is not required.

In addition, the current temporary practice of accepting IHT tax returns for trusts and estates without physical signatures by the relevant parties has been made permanent.

The normal process for signing an IHT account requires all legal personal representatives (LPRs) or trustees to physically sign the form IHT400 or IHT100. However, an easement introduced during the COVID-19 pandemic continues to apply. HMRC now accepts printed signatures on IHT400 and IHT100 forms, when there is a professional agent acting, and both...

- the names and other personal details of the LPRs or trustees are shown on the declaration page; and
- the account includes a clear and unambiguous statement from the agent to confirm that all the LPRs or trustees have seen the account and have agreed to be bound by the declaration.

HMRC suggests the following wording for this statement...

"As the agent acting on their behalf, I confirm that all the people whose names appear on the declaration page of this Inheritance Tax Account have both...

- seen the Inheritance Tax Account, and

agreed to be bound by the declaration on (page 14 of the IHT400) or (page 8 of the IHT100." (amend as applicable)

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