

Main Inheritance Tax time limits in Probate matters

1. Introduction

This information sheet summarises the main inheritance tax ("IHT") time limits in probate matters. It is a checklist to highlight those limits which most frequently cause problems. The less usual periods (for example, the 2-year period for woodlands) are not covered in this information sheet. If you would like further advice, please let us know.

2. Summary

The four time limits which are covered by this note are:

- (1) 6 months: payment of IHT;
- (2) 12 months: valuation reduced for certain quoted shares sold at a loss;
- (3) 2 years: Deeds of Variation varying dispositions on death;
- (4) 4 years: valuation reduced for land sold at a loss.

These limits are dealt with in turn below.

3. 6 months: payment of IHT

IHT on death is due 6 months after the end of the month in which the death occurs. Personal representatives (*i.e.* executors or administrators) must, however, pay the IHT for which they are liable on delivery of their account, if they are to obtain a Grant of Representation (either a Grant of Probate or a Grant of Letters of Administration) before the end of the 6-month period. This is normally desirable to facilitate the administration of the estate. Certain property is known as property with the "instalment option", and it is possible to elect that the IHT attributable to such property should be paid by 10 equal yearly instalments. The most usual type of property with the instalment option is land and buildings. Where the transfer is on death, the first instalment is due 6 months after the end of the month in which the death occurs, even if the executors have paid IHT on property without the instalment option before that date, in order to obtain a Grant of Probate. The outstanding IHT (with interest to the date of payment) may be paid at any time. If the whole or any part of the instalment option property is sold, then the related tax still outstanding (with accrued

interest) becomes payable immediately. In the case of land (which is neither agricultural nor part of a business), the instalments are not interest-free, and interest is payable on the balance outstanding at each instalment date starting with the date on which the first instalment is due.

4. 12 months: falls in value of quoted shares

If the estate includes a holding of qualifying investments (usually quoted shares or securities) which are sold in the open market within 12 months after the death for less than their probate value, the executors (or the persons liable for the IHT attributable to the investment concerned) may claim that, for IHT purposes, the total of the gross sale prices (ignoring any expenses of sale) should be substituted for the probate value of the investments sold.

If a claim is made, all the investments sold within 12 months of the death have to be revalued in this way. A claim cannot be confined to those investments that have fallen in value. Thus the relief is available only if the executors (or other persons paying the tax) have sustained an overall loss. There are various anti-avoidance provisions. The relief is restricted if qualifying investments are purchased during the period beginning with the death and ending 2 months after the date of the last sale. This restriction (which is designed to discourage sales at low prices for tax relief purposes) operates only if the purchase is made by the executors in their capacity as executors.

For deaths on or after 16 March 1992, the relief is extended to cover shares which are cancelled or suspended within 12 months after the death, provided that the shares are still held by the person liable for the IHT.

5. 2 years: Deeds of Variation varying dispositions on death

A beneficiary who is entitled to any part of a deceased person's estate under the Will or intestacy or otherwise (for example, joint property passing by survivorship) may vary or rearrange the disposition of that property by means of a Deed of Variation. Provided that certain conditions are satisfied, IHT will be recalculated as at the deceased's death as if the variation had been made by the deceased. The main conditions are that the Deed must be

completed within 2 years after the death, *and* an appropriate election to the Inland Revenue must be made within 6 months after the date of the Deed of Variation.

The main IHT effect of a qualifying Deed of Variation is that the alterations made by the Deed are treated for IHT purposes as having been effected by the deceased person and *not* by the person who redirects the property. Thus, if property is redirected away from the deceased's spouse, more IHT may be payable on the deceased's death, but if it is directed to the deceased's spouse or to a charity, the IHT on death may be reduced.

The Deed of Variation must be genuine and not a sham. It can present a major tax planning opportunity. It should be considered in virtually all cases. For example, a beneficiary may be able to set up a discretionary trust arrangement from which he or she can be eligible to benefit, but which should escape IHT on his or her eventual death. Other taxes such as *capital gains tax* and *income tax* need to be considered.

Further details are available in the Information Sheet "Deeds of Variation".

6. 4 years: falls in value of land

If land or buildings forming part of an estate are sold in the open market by the executors (or the other persons paying the tax) within 4 years after the death, they may claim that the gross sale price (if lower) should be substituted for the value at the death. For deaths before 16 March 1990, the time limit was 3 years, not 4 years. Where there is more than one sale, relief is limited to the net loss on all sales of land by the executors. The relief does not apply if the sale price differs from the value on death by less than £1,000 or 5% of the value on death, whichever is lower. The relief for land is separate from the relief for quoted shares. A gain on one does not reduce a loss on the other.

The relief is similar to that available for quoted shares: see paragraph 4 above. The position requires careful analysis and there are potential traps. For example, if the IHT is payable by the executors, then the land must be sold by the executors. A premature transfer of the land from the executors to a beneficiary would nullify the relief. Similarly, the relief is restricted if the claimant purchases further land during the period beginning with the death and ending 4 months after the date of the last of the sales to which the relief applies.

7. Disclaimer

This information sheet is written as a general guide. As any course of action must depend on your individual circumstances, you are strongly recommended to obtain specific professional advice before you proceed. We do not accept any responsibility for action which may be taken as a result of having read this information sheet.

This information sheet has been prepared to highlight some key issues relating to the main Inheritance Tax time limits in Probate matters. It is intended to be for general guidance only and is not a substitute for specific advice. It is based upon our understanding of the legal position as at June 2000 and may be affected by subsequent changes in the law. Should you require any specific legal advice on the issues covered, please contact Edward Fardell on 01892 510000 or by email at Eddie.fardell@ts-p.co.uk.

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* All references to the term 'spouse' include a civil partner as defined by Section 1 of the Civil Partnership Act 2004