

## Main Inheritance Tax time limits in Probate matters

### Introduction

This information sheet summarises the main Inheritance Tax ("IHT") time limits in probate matters. It highlights those which are particularly important. Other time limits (for example, the 2 year period in respect of IHT relief for woodlands) are not dealt with here.

The four time limits which are covered by this information sheet are:

**1 6 months: payment of IHT;**

**2 12 months: probate valuation reduced for certain quoted shares sold at a loss;**

**3 2 years: Deed of Variation altering dispositions on death;**

**4 4 years: probate valuation reduced for land sold at a loss.**

### 6 Months: Payment of IHT

IHT payable when someone dies 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 non-instalment option property (see below) before they can obtain a grant of representation (either a Grant of Probate or a Grant of Letters of Administration) and realise assets before the end of the 6 month period.

With certain assets, known as instalment option property, it is possible to elect to pay the IHT by 10 equal annual instalments. The most common type of asset with the instalment option is land and buildings. Where the IHT liability arises on a person's death, the first instalment is due 6 months

after the end of the month in which the death occurs, even if the personal representatives have paid IHT on assets without the instalment option before that date, in order to obtain a grant of representation.

The outstanding IHT (with interest) may be paid at any time. If the instalment option property is sold, the outstanding instalments (with interest) become payable immediately. In the case of land (which is neither agricultural nor part of a business), the instalments of IHT 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 falls due.

### 12 Months: Fall in Value of Quoted Shares

If the estate includes qualifying investments (usually quoted shares or securities) which are sold in the open market within 12 months after the date of death for less than their probate value, the executors (or other persons liable for the IHT) may substitute the total of the gross selling prices (ignoring any expenses of sale) for the probate value of the investments sold, and have the IHT recalculated accordingly.

If a claim of this nature is made, all of the investments sold within 12 months of the death have to be taken into account. It cannot be confined to those investments that have fallen in value. So the relief is beneficial only if the executors (or other persons liable for the tax) have sustained an overall loss.

There are various anti-avoidance provisions. The relief is restricted if qualifying investments are purchased during

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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 a low price for tax relief purposes) operates only if the purchase is made by the executors in the same capacity and not, for example, as beneficiaries.

For deaths on or after 16 March 1992, the relief is extended to cover shares which are cancelled or suspended within the 12 month period so long as those shares are still held by the persons liable for the IHT.

### **2 Years: Deed of Variation Altering Dispositions Under a Will or Otherwise**

A beneficiary who is entitled to part of a deceased person's estate under a Will, intestacy or otherwise (for example, by survivorship) may vary or redirect that entitlement by means of a Deed of Variation. Provided that certain conditions are satisfied, IHT on the estate will be recalculated as if the variation had been made by the deceased. The main condition is that the deed (with appropriate tax statements) must be completed within 2 years of the date of death.

So if an asset is redirected away from the deceased's spouse\*, more IHT may be payable on the deceased's estate, but if it is directed to the deceased's spouse or to a charity, the IHT liability will be reduced.

A Deed of Variation can present a major tax planning opportunity and should be

considered in virtually all cases. Further details are available in the information sheet 'Deeds of Variation'.

### **4 Years: Fall 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 substitute the gross sale price (if lower) for the probate value and have the IHT recalculated on this basis. For deaths before 16 March 1990, the time limit was 3 years.

Where there is more than one sale, relief is limited to the net loss on all sales of land by the executors. But the relief does not apply if the sale price differs from the probate value 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. 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 lose the opportunity for relief. Similarly, the relief is restricted if the claimant purchases further land during the period beginning with the date of death and ending 4 months after the date of the last of the sales to which the relief applies.

## Main Inheritance Tax time limits in Probate matters (continued)

### 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.

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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.

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