

Excepted Estates

Introduction

The general rule is that personal representatives must deliver an account to HM Revenue & Customs (HMRC) giving full details of the assets and liabilities of the deceased person's estate for the purposes of Inheritance Tax (IHT). This IHT account must normally be delivered within 12 months of the end of the month in which the death occurred. It is usually submitted in conjunction with the application for a grant of representation - either a Grant of Probate if there is a Will, or a Grant of Letters of Administration if there is no Will or if the named executors cannot or will not act.

The Probate Registry will not usually issue a grant of representation to the personal representatives of a deceased person until an IHT account has been produced to HMRC showing either that all IHT due on its delivery has been paid or that no IHT is payable. The only exception to this rule is for non-taxable estates which satisfy the requirements for an 'excepted estate'. In those cases, the personal representatives need to complete an IHT return of estate information which is submitted to the Probate Registry rather than to HMRC.

Where No Grant of Representation is Needed

Where no grant of representation has been obtained in the United Kingdom (UK) within a year after the end of the month in which the death occurred, the beneficiaries and others in whom any of the assets forming part of the estate have vested after the death are required to deliver an IHT account of those assets unless the estate is an excepted estate.

A grant of representation will not be needed if, for example, the only assets are jointly owned assets (e.g. a house or accounts at a bank or building society) held as joint tenants rather than as tenants in common. Further details are set out in the information sheet 'Jointly Owned Property: Joint Tenants or Tenants in Common'. Assets held in a joint tenancy pass automatically to the surviving owner(s).

Even if the assets held on a joint tenancy are exempt from IHT, the surviving owner(s) should still submit an IHT account to HMRC if the value of the deceased person's share in the joint assets exceeds the limit for an excepted estate.

Excepted Estates

For deaths on or after 6 April 2004 there are different categories of excepted estate. The valuation limits referred to below (apart from the IHT threshold) apply to estates where the deceased person died on or after 1 September 2006.

1 Standard (or low value) excepted estates

An estate will qualify as a standard excepted estate where the deceased person died domiciled in the UK and all of the following conditions apply:

- a the total gross value of the estate before deduction of any debts, together with the value of any assets passing under a trust as mentioned in 1b and of any gifts as mentioned in 1d, does not exceed the IHT threshold (£325,000 until 5 April 2015). Where any of the value of the estate relates to joint assets passing by survivorship, it is the value of the deceased person's beneficial share in

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- those assets which counts for the purposes of the IHT threshold limit;
- b any trust assets in which the deceased person had an interest in possession for IHT purposes are held in a single trust and do not exceed £150,000 in value;
- c any estate assets situated outside the UK have a total value of not more than £100,000; and
- d any lifetime gifts (other than exempt gifts) made within seven years of the deceased's death consisted only of cash, quoted shares, quoted securities or land and buildings (and contents given at the same time) with a total gross value not exceeding £150,000.
- d any estate assets situated outside the UK have a total value of not more than £100,000; and
- e any lifetime gifts (other than exempt gifts) made within seven years of the deceased's death consisted only of cash, quoted shares, quoted securities or land and buildings (and contents given at the same time) with a total gross value not exceeding £150,000.

3 Transferable nil rate band excepted estates

An estate which can benefit from a transferable nil rate band in respect of one earlier death only may also qualify as an excepted estate. The following conditions must be satisfied:

2 Exempt excepted estates

These are estates where there can be no liability to IHT as the gross value of the estate does not exceed £1,000,000 and there is no tax to pay because either the spouse* and/or charity exemption only is available to deduct against the assets. No other exemptions or reliefs can be taken into account.

The conditions for these estates are:

- a the deceased died on or after 6 April 2004 domiciled in the UK;
- b the gross value of the estate does not exceed £1,000,000 and the net chargeable value of the estate after deduction of liabilities and spouse and/or charity exemption does not exceed the IHT threshold;
- c any trust assets in which the deceased person had an interest in possession for IHT purposes are held in a single trust and do not exceed £150,000 in value unless the settled property passes to a spouse or charity (in which case the limit is waived);
- a the deceased died on or after 6 April 2010;
- b the gross value of the deceased's estate is not more than twice the IHT threshold (£650,000 until 5 April 2015) but is otherwise a standard excepted estate **OR** the net value does not exceed that amount but is otherwise an exempt excepted estate;
- c the deceased's spouse died before them on or after 13 November 1974 (5 December 2005 for civil partners) domiciled in the UK;
- d the predeceasing spouse's estate consisted of assets passing by Will or intestacy, or by survivorship, with the gross value of any foreign assets not exceeding £100,000; and
- e none of the predeceasing spouse's nil rate band was used by the earlier death.
- f the predeceasing spouse's estate for IHT did not include interests in trust assets, gifts with reservation of benefit and alternatively secured pension funds, or any chargeable lifetime transfers

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(business and agricultural reliefs being ignored for this purpose, along with the normal expenditure out of income exemption for amounts in excess of £3,000 per annum where the death occurred after 1 March 2011).

4 Foreign excepted estates

An estate will also qualify as an excepted estate where:

- a the deceased person died domiciled outside the UK (and had not been born or had never lived in the UK);
- b the deceased person had not been receiving any benefit from assets held by UK resident trustees, and had not made any gifts of UK assets within the seven years before the date of death;
- c the value of the UK assets passing under the deceased's Will or by survivorship does not in total exceed £150,000 and those assets consist only of cash, quoted shares or quoted securities.

5 An estate will not qualify as an excepted estate where the deceased person had:

- a within seven years of the death made chargeable or potentially exempt gifts other than gifts of cash etc, as mentioned above;
- b made a gift with reservation of benefit which either continued until death or ceased within seven years before the death, or made an election using Form IHT500 to come out of the pre-owned assets tax regime;
- c enjoyed an interest in possession such as a life interest in trust assets which were either comprised in more than one

- d trust or valued at the date of death in excess of £150,000;
- d assets situated outside of the UK worth more than £100,000; or
- e made a change in their pension arrangements in the two years before death (other than in favour of a spouse), or an interest in an alternatively secured pension fund.

Consequences of an Excepted Estate

If an estate satisfies all the conditions for an excepted estate, a full IHT account is not required. It will instead be necessary for a return of estate information (IHT205 or IHT207) to be completed and submitted to the Probate Registry, together with form IHT217 where there is a claim to transfer an unused nil rate band.

If it subsequently transpires that an estate is not an excepted estate, for example, if further assets are discovered which take the total gross value of the estate above the IHT threshold or above the £1,000,000 limit, the personal representatives must remedy the position by delivering an IHT account within six months of the discovery.

HMRC retain the right to call for a full IHT account in respect of any excepted estate within 35 days of the grant of representation being issued. In practice, this power is seldom exercised.

If HMRC do not call for an IHT account within the prescribed period, the personal representatives will be automatically discharged from any claims to IHT in respect of the assets returned. Automatic discharge does not have any effect in cases of fraud or failure to disclose material facts. Nor does it affect the IHT position where it

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is later discovered that there are further assets in the estate and that as a result the estate is no longer an excepted estate.

Disclaimer

This information sheet has been prepared to highlight some key issues relating to excepted estates. 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 May 2011 and may be affected by subsequent changes in the law. Should you require any specific legal advice on the issues covered, please contact Alan Dickins, Helen Stewart or Stuart Goodbody on 01892 510000 or by email at:

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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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