

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 eight time limits which are covered by this information sheet are:

- 1 6 months: payment of IHT;
- 2 12 months: filing IHT account;
- 3 12 months: share sales loss relief;
- 4 2 years: transfer of unused nil rate band;
- 5 2 years: transfer of unused residence nil rate band;
- 6 2 years: claim for reduced rate of IHT;
- 7 2 years: Deed of Variation and Deed of Appointment altering dispositions on death;
- 8 4 years: land sales loss relief.

6 months: payment of IHT

IHT payable as a result of a death is due 6 months after the end of the month in which the death occurs. There is no penalty as such for late payment, but interest is charged with effect from the end of that 6-month period and any accrued interest must be paid at the same time as the tax itself. 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).

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 a house, but it applies to land and buildings generally (except insofar as they qualify for agricultural relief or business relief). 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 already paid IHT on assets without the instalment option in order to obtain a grant of representation.

The remaining instalments may be paid (with interest) at any time before they fall due unless the instalment option property is sold, when they become payable (with interest) immediately. If the property remains unsold and the personal representatives continue to pay by instalments, they must clear with each instalment the whole of the interest which has accrued on the total unpaid tax since payment of the previous instalment.

12 months: filing IHT account

If the estate is taxable, the IHT account must be filed within 12 months after the end of the month in which the death occurs. If it is filed late, penalties are chargeable.

12 months: share sales loss relief

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

Head Office
Heathervale House
2-4 Vale Avenue
Tunbridge Wells
Kent TN1 1DJ
T 01892 510000
F 01892 540170

Thames Gateway
Corinthian House
Galleon Boulevard
Crossways Business Park
Dartford
Kent DA2 6QE
T 01322 623700
F 01322 623701

Main Inheritance Tax time limits in Probate matters

(continued)

persons liable for the IHT) may claim relief by substituting 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 such a claim is made, all of the investment sales 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 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.

The relief also covers 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: transfer of unused nil rate band

The “nil rate band” (“NRB”) is the term used to describe the amount (currently £325,000) of the IHT-free allowance which is applicable to all estates. In the case of married couples or civil partners, that allowance may be increased on the second death by such proportion (if any) of the NRB applicable on the first death as was “unused” in the sense that it exceeded the value of dispositions on death and/or within the previous 7 years other than to the surviving spouse* or to charity.

The increase is not however applied automatically and must be claimed within 2 years after the end of the month in which the second death occurs.

2 years: transfer of unused residence nil rate band

The rules relating to the “residence nil rate band” (“RNRB”) are exceedingly complex but, broadly speaking, the term is used to describe the amount of an additional IHT-free allowance which applies if a person’s estate includes their home (or possibly sale proceeds of the home) and it passes to their children or other direct descendants.

In the case of married couples or civil partners, the RNRB may be increased on the second death by such proportion (if any) of the RNRB available on the first death as was “unused” in the sense that it exceeded the value of any home (or interest in a home) comprised in the estate which then passed to their children or other direct descendants.

The increase is not however applied automatically and must be claimed within 2 years after the end of the month in which the second death occurs.

2 years: Claim for reduced rate of IHT

Where the deceased has left 10% or more of their estate to a qualifying charity the rate at which IHT is charged may be reduced from 40% to 36%. The reduced rate is not applied automatically and must be claimed within 2 years of death.

Main Inheritance Tax time limits in Probate matters

(continued)

2 years: Deed of Variation and Deed of Appointment altering dispositions on death

A beneficiary who is entitled to any 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'.

Where the deceased's Will includes a discretionary trust, the trustees may be able to exercise their power of appointment within two years of the date of death to appoint assets from the trust to trust beneficiaries without incurring further IHT.

4 years: land sales loss relief

If the estate includes a house (or other land or buildings) which is sold in the open market within 4 years after the death for less than its probate value, the executors (or the other persons paying the tax) may claim relief by substituting the gross sale price for the probate value and have the IHT

recalculated accordingly. 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.

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.

If you require further information, please contact Helen Stewart on 01892 510000 or by email at helen.stewart@ts-p.co.uk

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

© Thomson Snell & Passmore LLP All Rights Reserved