

Tax Representation



TAXREP 57/07

INHERITANCE TAX: REPORTING FOR LIFETIME TRANSFERS AND SETTLEMENTS AFTER FINANCE ACT 2006

Memorandum submitted in August 2007 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment published in July 2007 by HMRC

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The Tax Faculty of the Institute of Chartered Accountants in England and Wales

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Finance Bill 2007

INHERITANCE TAX: REPORTING FOR LIFETIME TRANSFERS AND SETTLEMENTS AFTER FINANCE ACT 2006

INTRODUCTION

1. We welcome the opportunity to comment on HMRC's proposals to extend the existing rules that excuse taxpayers from delivering returns where there is no tax to pay in respect of chargeable lifetime transfers and "relevant property", published on 12 July 2007 at <http://www.hmrc.gov.uk/cto/etes.htm>.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

GENERAL COMMENTS

3. We approve of the intention to relax the burden of filling in forms for tax, and linking automatically to the nil rate band the threshold for excusing taxpayers from the need to report. However, while any relaxation of the burden of form filling is greatly to be welcomed, HMRC's proposals contain some details that seem unnecessarily complicated, for example the number of tests in paragraph 3 of HMRC's paper.
4. Where transfers are to individuals they are potentially exempt and so do not need to be reported. This needs to be made clear.
5. As there is a 12 month window for reporting, why can the new rules not apply from say 1 September 2006? That almost covers the period of the new regime after Royal Assent. There is no need to wait until 6 April 2007 since this change should have started with the new regime.

DETAILED COMMENTS

Annex A: Excepted transfers and terminations

Para 2

First bullet point

6. On first reading, "the value of the asset in the hands of the transferor" appears to refer to what is being transferred, and a change in the emphasis from "chargeable transfer" to "gift" would be a welcome simplification for those not familiar with IHT who do not always appreciate that "chargeable transfer" is not necessarily the same value as "gift". However, on the basis of the examples in para 6, it appears that the value referred to is the value of the asset out of which the transfer is being made. Thus para 3, first and second bullet points appears to introduce new and additional tests rather than replace a complicated test with a simpler one.

Para 2

Second bullet point

7. We welcome the proposal to raise the cash limits. It is also sensible to link them automatically to movements in the nil rate threshold as this is fair to taxpayers and the Exchequer and will save HMRC from having to introduce legislation amending the cash limits each time the nil rate band changes.

*Para 3
Generally*

8. The first bullet seems to include two tests, one being the value of the asset before the transfer and the other to do with the transfer itself; the latter test being covered in both the first and second bullet points.

*Para 3
First bullet point*

9. As to the first test, we are unclear as to why the value of the asset before the transfer of value is made should determine whether a return is needed. As drafted, the first test in this bullet is unhelpful for anyone making a cash gift as it requires a valuation of the bank account out of which the gift is made, so, for example, a transferor with a bank account which has in it over £210,000 before a gift is made out of it will not be excused from delivering an account even if the gift is only £50,000. This test needs to be abandoned.

*Para 3
First and second bullet points*

10. As to the second test, HMRC need to take account of the loss to the estate concept. This can be done by having only one test, which is in essence the test in the second bullet, which would take as its measure the loss to the estate if greater than the value of what is transferred, otherwise the value of what is transferred – ie the gift.

Paras 4 and 5

11. We suggest that:
- (i) £10,000 rather than £5,000 should be the figure to which rounding up is done, and
 - (ii) the wording of the formula should be on the lines of “if any resulting figure is not an exact multiple of £10,000 it should be rounded up to the next such multiple” instead of “rounded up to the next £5,000”.
12. On the basis of the current proposed wording “rounded up to the next £5,000”, we question whether the table at the end of para 5 is correct. Where a given percentage makes a figure that is exactly a multiple of £5,000, does not “rounded up to the next £5,000” mean adding £5,000 to the strict percentage figure? On this basis, the figures in the “Rounded up” column should be £215,000 instead of £210,000 and £260,000 instead of £255,000. We are in no doubt that the figures shown are what is intended but that is not our reading of the formula.

Para 6

13. Both these examples seem to be cases which should not need to be reported on their own. In Example 1, unless the valuation is out by over 36% to give a value of around £545,000, there will be no charge. In both examples it is irrelevant what the original value is since that has not been given away.

Para 7

14. We question the need for this restriction, and would welcome clarification of its rationale and why it should continue.

Annex B: Excepted settlements

Para 1

First bullet point

15. As the charging provisions for pre-27th March 1974 settlements are more favourable we see no reason for excluding them, and if these settlements are not to be brought within these provisions would welcome clarification of why.

Para 1

Third and fourth bullet points

16. In the light of concerns about some UK tax legislation, under European freedom of movement, etc. principles, we would welcome confirmation that this has been taken into account if the conditions in these two bullets are to be imposed.

Para 4

17. We repeat our comments, above, concerning the final words “rounded up to the nearest £5,000”.

PCB

29.8.07

WHO WE ARE

1. The Institute of Chartered Accountants in England & Wales is a professional body representing some 128,000 members. The Institute operates under a Royal Charter with an obligation to act in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy (which includes taxation).
2. The Tax Faculty is the centre for excellence and an authoritative voice for the Institute on taxation matters. It is responsible for tax representations on behalf of the Institute as a whole and it also provides services to more than 11,000 Faculty members who pay an additional subscription.
3. Further information is available on the ICAEW Tax Faculty website at www.icaew.com/taxfac or telephone 020 7920 8646.

THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99**; see <http://www.icaew.co.uk/index.cfm?route=128518>.