

LOW INCOMES TAX REFORM GROUP

HM Revenue and Customs Modernising Powers, Deterrents and Safeguards Compliance Checks: The Next Stage RESPONSE TO CONSULTATIVE DOCUMENT

Executive Summary

The only tax covered by this consultation with which LITRG is interested is inheritance tax (IHT), and this response therefore deals solely with IHT.

IHT, unlike other taxes so far aligned or proposed for alignment in this consultation document, is for the most part non-transactional and unconnected with a business activity.

For low-income unrepresented taxpayers, the most likely trigger for IHT is on the death of an individual, and unrepresented personal representatives prepare the IHT account and obtain probate for a significant number of the 80% of estates for which accounts are rendered.

LITRG has said in response to previous consultations that alignment for alignment's sake is not necessarily the right way forward. We specifically question here whether it is appropriate to align the compliance rules for IHT with other taxes.

In connection with the record keeping, time limits and the new powers and safeguards proposed in this consultation, special situations do occur that are applicable only to IHT.

Moreover, aligning IHT with the mainstream compliance regime will place at a disadvantage low-income unrepresented taxpayers who now often find the Capital Taxes Office well appreciates their position, as it has done for many years. This good relationship could easily be lost within a tightly regulated compliance system.

1. Introduction

1.1. *About us*

- 1.1.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.

- 1.1.2. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

2. General comments

- 2.1.1. This next stage of the Compliance Checks consultation seeks views on five new areas of taxation but our response concentrates on only one area, Inheritance Tax (IHT).
- 2.1.2. We would initially question whether it is appropriate for HMRC to extend the compliance checking framework and its associated safeguards to IHT, and what evidence there is to suggest that in this area HMRC are losing out under the current regulatory system.
- 2.1.3. Unlike other taxes so far aligned, or proposed for alignment in this consultation document, IHT is for the most part non-transactional and unconnected with a business activity.
- 2.1.4. For low-income unrepresented taxpayers, the most likely trigger for IHT is on the death of an individual, an event which is unlikely to be well anticipated or prepared for.
- 2.1.5. Additionally the person who deals with the 'event' is already a 'third party' and in many cases, particularly with smaller estates (which according to the latest statistics published by HMRC cover over 80% of estates notified for probate) an unrepresented one.
- 2.1.6. The main aim of this third party is to obtain probate or letters of administration so as to be able to settle the estate. In doing so, he/she is also involved with the Probate Office in settling the paperwork, including IHT forms, and paying any tax due on the estate.
- 2.1.7. Estates (even when handled by professionals) can take a long time to settle, and the current filing and payment dates do recognise this. This recognition may be lost if IHT were aligned with taxes where those considerations do not apply.
- 2.1.8. We comment later on the complexity of record-keeping, where HMRC appear to have already appreciated that record keeping is a complex area for which special considerations will be required.
- 2.1.9. Finally, for the unrepresented, good customer service and guidance together with an appreciation of the situation an unrepresented executor or personal representative finds himself in is crucial and one which the Capital Taxes Office has developed well over the years and appears to be appreciated by many who deal with it. This good relationship could easily be lost within a tightly regulated compliance system.
- 2.1.10. As we have indicated above, our interest lies solely with IHT and therefore we have not responded to all questions posed by the consultation document.

3. Questions

Question 3: HMRC would welcome views on whether applying the compliance checking framework legislated in FA 2008 and described in Chapter 4 to other taxes would be appropriate.

- 3.1.1. For the reasons specified under point 2 above, we do not believe it would be appropriate to apply the existing compliance checking framework to IHT. It is often hard to see where some of the aims and aspirations of HMRC (as listed under 2.4 and 3.5 of the consultation document) could relate to IHT.
- 3.1.2. In addition the table at 3.14 does suggest that IHT already has comparable safeguards in operation, and some, see 3.1.12 below, may better protect the special situation of personal representatives, particularly where they are unrepresented.
- 3.1.3. Those few cases where better safeguards could apply under Sch 36 FA2008 viz a right of appeal or addition of the ‘reasonably’ requirement under section 219 IHTA 1984 could just as easily be accommodated by amending the current IHT legislation.
- 3.1.4. Certain aspects of the current compliance checking framework, as discussed further below, would have no place within the IHT procedures, and alignment, rather than correct an imbalance as suggested at 5.6, would cause confusion and in some cases such as record keeping requirements could be entirely disproportionate.

Question 4: HMRC would welcome views on the safeguards which would apply when checking other taxes. Are there specific safeguards which should be considered for certain taxes?

- 3.1.5. We consider that the existing safeguards within the IHT legislation and any additional ones that might be considered appropriate should be retained within the IHT legislation itself. HMRC are not always dealing here with people who are already taxpayers or familiar with the tax system and need to be conscious of what can be reasonably required of personal representatives. As already mentioned, there are many instances in the current legislation and guidance which do acknowledge this.
- 3.1.6. HMRC already have accepted this narrowing of areas of responsibility a personal representative holds regarding the deceased taxpayer’s affairs. As HMRC have acknowledged, Article 6 of the European Convention on Human Rights would prevent penalties incurred by the deceased taxpayer being imposed on personal representatives. We note that the Impact Assessment considers that there are no Human Rights implications, but where a compliance issue relates to an action by the deceased then the personal representatives should be protected from penalties unless it can be shown that there had been earlier collusion.

Question 5: HMRC would welcome views on where the current record-keeping requirements for these taxes could be improved.

Question 6: HMRC would welcome views on whether it is appropriate or helpful to set out details of records which it is helpful to keep after an IHT chargeable

event. If so would this advice be best placed in regulations or guidance and are there records which should or should not be specified?

Question 7: HMRC would welcome views on whether it is appropriate or helpful to set out details of such IHT records; whether these would be best placed in regulations or guidance; and what records should or should not be specified.

- 3.1.7. In the case of IHT, 'good records' (5.11) may come from the deceased taxpayer's papers or from records created and collated by the personal representatives.
- 3.1.8. The quality or quantity of records kept by the deceased is outside the control of the personal representative with whom HMRC are now dealing.
- 3.1.9. As for the personal representatives, we consider the current requirement to meet, quantify and report obligations accurately is sufficient.
- 3.1.10. People who take on the role of personal representatives without professional support are likely to find good clear guidance and support more accessible and more easily understood than prescriptive regulations. The existing guidance works well in helping unrepresented personal representatives to discharge their IHT obligations.
- 3.1.11. Paragraphs 5.14 to 5.19 of the consultative document describe scenarios that illustrate why special adjustments would need to be made to the existing FA2008 record keeping requirements if IHT were to be accommodated within an aligned regime, and why therefore such an alignment may not be desirable.

Question 9: HMRC would welcome views on replacing the powers described above with the new compliance checking framework. Are there particular reasons why certain taxes should not be brought into the new framework?

- 3.1.12. It is difficult to see how the replacement of existing IHT powers will materially improve the position for either HMRC or the personal representative but may disadvantage the latter.
- 3.1.13. In particular we would cite section 219(1A) which requires Special Commissioners (viz Upper Tribunal) to pre-authorise a request for information; not just rubber-stamping it, but satisfying themselves that 'in all the circumstances the Board are justified in proceeding under this section'

Question 10: HMRC would welcome views on applying powers to involved third parties and on the draft legislation.

- 3.1.14. As the draft legislation does not in Clause 13 indicate where a third party becomes an 'involved' third party for the purposes of Inheritance Tax it is difficult to comment on how this concept would apply. Apart from the personal representatives are beneficiaries to be considered 'involved third parties'? We obviously would have reservations particularly if those to whom this applies are the elderly or vulnerable.

Question 13: HMRC would welcome views on the options for applying the aligned time limits in FA 2008 to the other taxes.

HMRC would also welcome views on whether there are circumstances where the change in time limits could disadvantage vulnerable taxpayers, and how could this risk best be addressed?

- 3.1.15. We do not find that the proposals around aligning time limits sit easily with the various time limits mentioned in Annex C, or with various other claims e.g. Disclaimers or Deeds of Variation that can legitimately be made and would affect the IHT liability of the Estate.
- 3.1.16. Unlike IT or CT, the IHT rules recognise that following an initial calculation of the tax due it would be quite normal for further adjustments to become necessary during the administration period.
- 3.1.17. As noted in Annex C there are time limits relating to a subsequent event but not a notification period, and particularly in the case of a fall in land values, four years for notification of a claim to be made would be insufficient.
- 3.1.18. Where an unrepresented personal representative is dealing with the estate, who may be for example an elderly widow, widower or bereaved civil partner, we can envisage cases where repayments are concerned when the reduction to four years would be a disadvantage and create an unfair burden at a time when they are most vulnerable.
- 3.1.19. We commented at 2.1.3 above that there is, on death, no transaction or business activity connected to the chargeable event in IHT. Acquiring the information needed to complete the IHT return(s) takes time, particularly for someone with no legal representation. However because of the over-riding need to obtain probate in order to proceed with settling the estate, the return may often need to be compiled from initial information but then amended several times over a period of several years.
- 3.1.20. This is normal practice, indicating neither a mistake, nor careless or deliberate behaviour. It is not a delaying tactic, nor should it be seen as a compliance risk.
- 3.1.21. Changes to time limits could put the significant number of unrepresented personal representatives dealing with IHT at a significant disadvantage compared with those who can afford the services of a solicitor or other professionally qualified person. We refer particularly to those on low incomes, elderly, disabled or otherwise vulnerable.
- 3.1.22. In connection with the effect these changes might have on personal representatives who are vulnerable through age or disability, we note that although the consultation document poses the question in para 5.62, the IA asserts that there will be no significant disability impact from the changes.
- 3.1.23. Until we have some indication from HMRC what transitional arrangements are to be considered it is difficult to comment further. We do however agree that for any compliance changes publicity, guidance and support (preferably face to face) are the best vehicles for reaching those who might otherwise default from ignorance.

Question 14: HMRC would welcome views on retaining a penalty where a person fraudulently or negligently provides incorrect information or documents by including it in Schedule 36 to FA 2008.

- 3.1.24. The introduction of paragraph 40A to Schedule 36 in the draft legislation makes a transition from the 'fraudulently or negligently' condition of section 247(1) IHTA 1984 to one of 'careless or deliberate'.
- 3.1.25. If HMRC follow their own guidance on 'careless' behaviour by weighing each case according to the circumstances and capacity of the individual then we believe this would give a safeguard for those who are unrepresented in their dealing with HMRC.
- 3.1.26. However as we have discussed with HMRC in other areas of the Powers consultation 'deliberate' does not always mean the same as 'fraudulent' and we would want to be assured that similar consideration of circumstances and capacity is applied.

LITRG
9 February 2009