

LOW INCOMES TAX REFORM GROUP

HM Revenue and Customs
Modernising Powers, Deterrents and Safeguards
Compliance Checks: The Next Stage
Draft Legislation and Commentary (Record-keeping and Time Limits)
RESPONSE TO CONSULTATIVE DOCUMENT

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. As noted in our response¹ to the November 2008 Compliance Checks consultative document, although this next stage of the Compliance Checks consultation seeks views on five new areas of taxation, our response concentrates on only one area, Inheritance Tax (IHT). This response should be read in conjunction with that earlier response.
- 2.1.2. As previously noted, we question whether it is appropriate for HMRC to extend record-keeping requirements and aligned time limits to IHT due to the nature of the tax and the time at which it arises (ie, for the most part, on death).
- 2.2. *Preparation for changes*
- 2.2.1. If IHT is to be included in the aligned regimes for record-keeping and time limits (but we argue further below why exceptions should be considered for IHT), how the changes could be publicised is a difficult question to answer. Para 1.7 of the consultative document states:

¹ http://www.litr.org.uk/uploadedfiles/document/1_642_LITRGPowerscompliancechecksresponse_Feb09.pdf

“1.7 The current intention is that both draft Schedules 1 and 2 would be brought into effect under an order made by the Treasury. This would not be before April 2010. This will allow time for HMRC to ensure that adequate publicity and guidance for taxpayers is available. It will also provide time for the necessary training of HMRC and non HMRC staff. Any changes to HMRC computer systems could also be in place before the new law takes effect.”

- 2.2.2. What publicity is planned for IHT? It is notoriously difficult to convey messages about IHT to the general public given its close relationship to death – it therefore seems unlikely that the public would pay attention to a campaign about IHT record-keeping and time limits unless they are directly dealing with an estate at the time. HMRC will no doubt be able to increase awareness among professionals who deal with IHT, but this is a tax that is often dealt with by unrepresented people. Even those who seek professional assistance with drafting a will are unlikely to focus on IHT record-keeping. HMRC needs to be realistic in its expectations of what can be achieved here.
- 2.2.3. In terms of having guidance in place, messages to be conveyed in relation to a death need to be carefully considered. Guidance, which has been properly consulted on with relevant stakeholders, must therefore be ready in good time for implementation of the changes. Failure to do so can put the bereaved at a disadvantage, as attested by the withdrawal in the last year of the DWP's leaflet D49, the only generally available text that deals with tax on death, before publication of its replacement (the DWP1027).
- 2.2.4. Finally, we question whether April 2010 really allows sufficient time to effect changes to HMRC's computer systems as we are regularly advised that such changes require a much longer lead-in time than seems to be envisaged here.

3. Questions

3.1. ***HMRC would welcome views on the approach for recordkeeping requirements particularly for IHT?***

- 3.1.1. Referring back to our response to the November 2008 consultative document (paras 3.1.7ff), we reiterate our general comments from the earlier consultation in terms of record-keeping. Our comments on the draft legislation are given below.

Clause 1

- 3.1.2. We note that there is no provision in the draft clause 1 or the draft schedule for transitional measures. With IHT, the point at which a future tax liability could be incurred or requirement to deliver an account may however already have passed. How would the record-keeping rules therefore apply?
- 3.1.3. For example, a gift is made in April 2009 which is a potentially exempt transfer. No records are kept at the time. The transferor dies in April 2011 which brings the April 2009 gift into charge. The IHT account delivered following the death will fall within the new record-keeping requirements, and should report the April 2009 transfer. But we understand that because the draft section 218B only imposes a duty to *preserve* records in relation to the *account*, not to the transfer itself, the personal representatives will not suffer a penalty for not having records contemporaneous with the gift. We seek confirmation that our interpretation is correct. Should these

provisions come into effect, we would also like to be consulted on HMRC internal and external guidance which will need to be very clear in terms of how these provisions operate.

- 3.1.4. We believe there should be transitional measures, for example to cover cases such as personal representatives who have yet to file an account at the date the provisions are introduced but who would have been collating information regarding the estate of someone who died prior to their introduction.

Schedule 1, para 3(3)

- 3.1.5. A 'relevant person' appears to be widely defined. For example, the recipient of a gift can later become liable for IHT (section 199(1)(b) IHTA 1984) but many people may not keep records of gifts they receive. Indeed, they may not always understand or be made aware of the provenance of a legacy or gift so as to keep adequate records. If HMRC expects such people to fall within these rules, a significant amount of public awareness building would therefore be required. Alternatively, the definition of relevant person needs to be tightened to focus on the main taxpayer.

Schedule 1, paras 4 and 5 – “Relevant documents” and “Supporting documents”

- 3.1.6. These draft paragraphs seem to send the reader around in ever-decreasing circles: first, saying that they have to keep relevant documents, then documents supporting the relevant documents, then documents used in preparing the supporting documents. Will further detail on the requirements be given in regulations or guidance? We would prefer that any expansion of the basic legislation is given in regulations with a right of appeal against penalties for non-compliance.

Schedule 1, para 6 – “Relevant day”

- 3.1.7. With IHT, much longer record-keeping requirements are potentially imposed than for other tax regimes. Where chargeable lifetime transfers are made, IHT liability can be affected for the next 14 years; and where potentially exempt transfers are made, again a charge can arise on death at any time in the next 7 years. The draft provisions impose a further two-year record-keeping requirement based either upon the date of tax payment or delivery of the account. Whilst record-keepers might have all the best intentions, records may be destroyed, lost etc over such a period of time.

Penalties for failure to preserve documents

- 3.1.8. Following on from the above, the draft penalty section 245ZA does not however seem to exclude the possibility of a penalty where records have been lost or destroyed either by accident or by the record-keeper mistakenly thinking they were no longer required. There also does not appear to be a right of appeal against the penalty. We think that the legislation must be amended to include an appeal right.
- 3.1.9. The draft clause also states that a 'penalty not exceeding £3,000' can be incurred. How is this to operate? On what basis is the amount of the penalty to be decided? In what circumstances will it be mitigated?

- 3.2. ***HMRC would welcome views on the approach for applying the aligned time limits in FA 2008 to other taxes.***

- 3.2.1. Again, we previously noted in our submission to the November 2008 consultation that we think IHT is sufficiently different to other taxes such that alignment of time limits is

inappropriate in many respects (see paras 3.1.15ff of that response). For example, dealing with an estate involves a lengthy information-gathering process which often results in claims being submitted later where new information comes to light.

Although we note that the draft section 2(3)(b) states that the Treasury Order 'may include transitional provision', this is a perpetual issue rather than a transitional one, and there are therefore arguments for preserving the status quo for claims up to six years for IHT.

- 3.2.2. In terms of the draft legislation, the application of the draft schedule 2, para 11(3)(4) would need to be carefully considered in the context of the personal representatives' responsibilities. It states:

"(4) Proceedings in a case involving a loss of tax brought about carelessly by a person liable for the tax (or a person acting on behalf of such a person) may be brought at any time not more **than 6 years after** the later of the dates in subsection (2)(a) and (b)."

- 3.2.3. Personal representatives face a difficult task of collating information regarding the deceased's affairs. Demonstrating due diligence in so doing is challenging, particularly for those who are unrepresented and aiming to deal with the administration themselves. HMRC guidance for personal representatives therefore needs to be very clear in terms of how they can later demonstrate that a loss of tax was not brought about 'carelessly' in the event of it being discovered within this proposed six year time frame. HMRC's internal guidance must also instruct officers to be sympathetic to the difficulties when seeking to raise an assessment.

LITRG

5 March 2009