



RUDGE REVENUE REVIEW

ISSUE XXV

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12th May 2020

A HIGHER BURDEN

A SEPARATE SYSTEM

- 1.1 Those who deal regularly with self-assessment returns and only occasionally with submitting Inheritance Tax ('IHT') accounts, might easily assume that the self-assessment administrative system of returns, enquiries, information notices, assessments, limitation periods and appeals also applies, in essence, to IHT. It does not. IHT has had its own administrative system, separate from the system which applies to the other major direct taxes, since it was introduced, then named Capital Transfer Tax, in 1974.
- 1.2 It is a system which has significant differences from the self-assessment system and one which, in many respects, is more heavily weighted against the taxpayer and in favour of HMRC. Instead of returns it has accounts. It has no statutorily based system of investigation equivalent to the enquiry provisions of self-assessment. It has no real equivalent to assessments, the function of which is only partially paralleled by 'determinations'. The limitation provisions applying to IHT are very different to those provided in respect of Income Tax and Capital Gains Tax by the Taxes Management Act 1970 ('TMA 1970').¹

LIABILITY

- 2.1 Liability to pay IHT chargeable under the tax's charging provisions is governed by Part VII of the Inheritance Tax Act 1984 (all statutory references are to this Act unless otherwise stated). These provisions can impose liability on multiple persons in respect of the same occasions of charge.

PAYMENT

- 3.1 Under self-assessment there is no duty to pay tax, other than by way of deduction, in the absence of an assessment; whether it be a self-assessment or an assessment by HMRC. Under IHT, in contrast, a duty to pay tax arises automatically on the expiration of a period after an event occurs which is made chargeable to IHT. The general rule is stated:-
- '... the tax on the value transferred by a chargeable transfer shall be due six months after the end of the month in which the chargeable transfer is made or, in the case of a transfer made after 5th April and before 1st October in any year otherwise than on death, at the end of April in the next year.'*²
- 3.2 Specific provisions similarly make tax payable six months after the end of the month in which occurs various specific occasions of charge or an event resulting in an increase in a charge.³
- 3.3 The only persons on whom a duty to pay IHT is imposed by reference, not to the occurrence of an event which gives rise to a charge, but to the delivery of an account⁴ (see below) in respect of a chargeable event are personal representatives.⁵

¹ Under TMA 1970 ss.34, 36 & 36A

² IHTA 1984 s.226(1)

³ IHTA 1984 s.226(3), 226(3A), 226(3B), 226(3C) and (4)

⁴ See para. 6.1

⁵ IHTA 1984 s.226(2)

RECOVERY OF TAX PAYABLE

- 4.1 Although, as we have seen,⁶ in general the duty to pay IHT arises on the expiry of a period after the occurrence of an event creates a charge to IHT, it is provided that:-
*'The Board may in the first instance, and without prejudice to the recovery of the remainder of the tax, accept or demand payment of an amount by reference to the value stated in an account delivered to the Board under section 216 or 217 above.'*⁷
- 4.2 It is not entirely clear what is the consequence of the Board having a right *'to demand payment of an amount'*. The intention would seem to be to confer on HMRC a right to recover the amount demanded but the provision does not, read literally, do that. No doubt the Courts would remedy the inadequacies of the drafting by applying a looser, purposive construction of this provision.
- 4.3 In general, under s.242, the Board may only proceed to recover IHT from a person which has either been agreed in writing with that person or which has been determined and specified in a determination. In the latter case it cannot take recovery proceedings if the determination is subject to an appeal. This gives, by a different route, a similar result to those provisions of Income Tax and CGT under which a liability to pay such tax arises only in respect of an assessment which has either been made by the taxpayer or agreed with him or which has become final either because it has not been appealed or it has been determined by the Tribunal or the Court.

THE INLAND REVENUE CHARGE

- 5.1 Where any IHT, or interest thereon, is payable and is *'for the time being unpaid'*, a charge in favour of HMRC is imposed for the amount unpaid on:-
(a) *any property to the value of which the value transferred is wholly or partly attributable, and*
(b) *where the chargeable transfer is made by the making of a settlement or is made under Part III of this Act, any property comprised in the settlement.*⁸
- 5.2 This is still called, despite the Inland Revenue having been replaced by HM Revenue & Customs in 2005, an 'Inland Revenue Charge'. The Inland Revenue Charge does not extend to a debt due for penalties imposed by HMRC. There is no requirement for HMRC to register such a charge.⁹
- 5.3 It will be seen that the charge for unpaid IHT on the value transferred by a chargeable transfer is imposed on property to the value of which the value transferred is wholly or partly attributable (emphasis added). The result is that real property and interests in real property in a deceased person's free estate, which are comprised in the chargeable transfer on the deceased's death and subject to the Inland Revenue Charge, are subject to the charge for the whole of the unpaid IHT chargeable on the chargeable transfer arising from the deceased's death, including any such IHT in respect of personal or moveable property which is not itself subject to the Inland Revenue Charge.

⁶ See para. 3.2 above

⁷ IHTA 1984 s.226(5)

⁸ IHTA 1984 s.237

⁹ *Howarth's Executors v IRC* [1997] STC (SCD) 162

- 5.4 Where the chargeable transfer is made on death, personal or moveable property situated in the UK which was beneficially owned by the deceased immediately before his death and vests in his personal representatives is not subject to the charge.¹⁰
- 5.5 A purchaser of personal property situated in the UK, or of any property situated outside the UK, takes it free from the Inland Revenue Charge if he had no notice of the facts giving rise to the charge.¹¹ In the case of a potentially exempt transfer which becomes chargeable on the death of the transferor within seven years of the transfer, the charge does not apply to property to which the transfer was wholly or partly attributable, or to an interest in any such property, where the property or interest has been disposed of to a purchaser before the transferor's death. Where such property has been otherwise disposed of before the death of the transferor property which at the death represents such property or an interest in that property is subject to the charge.¹² Where property subject to a charge is disposed of to a purchaser in circumstances where the charge does not cease, the charge ceases six years after the later of either:-
- the date on which the tax became due; or
 - the date on which a full and proper account of the property was first delivered to the Board in connection with the transfer concerned.¹³

ACCOUNTS

- 6.1 The primary duty to deliver an account in respect of IHT is imposed, on various persons who are liable to IHT¹⁴ but, in respect of a deceased estate where there is delay in obtaining a grant of representation (or a confirmation), the duty may also fall, on the person beneficially entitled to the property,¹⁵ or to an interest in possession in it, or who is a potential beneficiary of the property. If a duty does arise on such a person¹⁶ the persons subject to a duty to deliver an account under s.216(1) are not relieved of that duty.

INVESTIGATION

- 7.1 As we have said,¹⁷ the IHT legislation does not contain a statutory power for HMRC to raise an enquiry into an IHT return as is provided by TMA 1970 s.9 in relation to the self-assessment regime. In order to identify charges to IHT which have either not been the subject of an account or which have been understated in an account, HMRC uses information which it obtains from its general activities, from informal requests for information and under the information powers conferred by FA 2008 Sch. 36.
- 7.2 It should be noted that the terminology in respect of such matters used in relation to IHT is different to that of self-assessment. The self-assessment regime uses the term 'enquiry' whereas the word 'enquiry' does not appear in IHTA 1984 at all. The IHT Manual uses the terms 'enquiry' and 'investigation' interchangeably and also refers to 'compliance checks'. In this article we use the term 'investigation' to refer to all active steps which HMRC takes to determine whether a charge to IHT has arisen which has either not been the subject of an account or which has been understated in an account and, if so, the amount of that charge.

¹⁰ IHTA 1984 s.237(3)

¹¹ IHTA 1984 s.238(1)(c)

¹² IHTA 1984 s.237(3A)

¹³ IHTA 1984 s.238(2)

¹⁴ IHTA 1984 s.216(1)

¹⁵ IHTA 1984 s.216(2)

¹⁶ IHTA 1984 s.216(2)

¹⁷ See para. 1.2 above

- 7.3 HMRC has woken up to the fact that a large amount of revenue can be raised from investigating IHT accounts. According to a response to a Freedom of Information Act request made by the wealth management firm, Quilters in 2019, in recent years, HMRC has opened an average of 5,500 IHT investigations annually. As approximately 22,000 estates were charged to IHT in 2018/19, that indicates that about a quarter of all chargeable occasions are subject to active investigation.
- 7.4 HMRC says¹⁸ that every IHT account received is risk assessed by a risk assessor, HMRC distinguishes between what it calls ‘compliance checks’ and what it calls ‘enquiry cases’. According to the IHT Manual ‘enquiry cases’ are those where the risk assessors have decided that they need to:-
- *‘question the veracity of one or more aspects of an account*
 - *identify omissions from an account*
 - *ask for an account to be submitted where this has not been done within the time limit and [they] have information that suggests a tax charge arises’.*¹⁹
- 7.5 HMRC say that the main purpose of an investigation into an IHT account *‘is to make sure that significant amounts of tax are not lost as a result of errors, omissions, under-valuations or improper claims for relief.’*²⁰ HMRC’s instructions to its staff direct that *‘if a case is selected for further investigation you should not simply check the accuracy of the information provided in the account. You should also check other information sources to try to build up a picture of the transferor and their financial affairs as a whole to identify any potential errors, omissions, under-valuations, tax avoidance and tax evasion.’*²¹
- 7.6 It goes on to direct that HMRC officers *‘should frame [their] questions carefully so that the taxpayers are clear about precisely what information [they] need and all information is requested at the outset. Questions should be phrased in such a way that they can, if necessary, be lifted to form the basis of a [FA 2008 Sch. 36] information notice.’*²² In practice, questions are rarely ‘carefully’ framed although it is true that the questions from information requests are often copied uncritically into Sch. 36 information notices causing severe difficulties for taxpayers who take seriously their statutory duty to comply with those notices.
- 7.7 In the *Trusts and Estates Newsletter: Special Edition April 2018* HMRC announced that it will notify taxpayers within fourteen weeks of receiving an account if it is to carry out what it calls a ‘compliance check’ into it. It states that in ‘some straightforward cases’ HMRC will not need to look at the account in any more detail after sending its initial calculation of the IHT chargeable. Written notice will be given within one to two weeks if this is to be the case or if an account is going to be looked at in more detail.
- 7.8 In that newsletter HMRC states that:-
- ‘if you have not heard from us by [fourteen weeks after the submission of an account] you can assume we do not have any questions to ask about the information and values you have [given]’*
- 7.9 It goes on to say, rather unhelpfully, that:-

¹⁸ Inheritance Tax Manual para. IHTM29031

¹⁹ Inheritance Tax Manual para. IHTM29011

²⁰ Inheritance Tax Manual para. IHTM09021

²¹ Inheritance Tax Manual para. IHTM09022

²² Inheritance Tax Manual para. IHTM09052

'it is up to you to decide how to administer the estate, but you may choose to distribute some of the assets now'

- 7.10 It is sometimes thought erroneously that this has the effect of placing a limitation of time upon information requests or even upon the issue of determinations. It does not. There is no practical prospect that a judicial review application would be successful in stopping HMRC from requiring further information or from issuing or applying a determination in respect of an event which is the subject of an incorrect account by establishing that a taxpayer had relied on these statements.
- 7.11 FA 2008 Sch. 36 governs the provision of information for a large range of taxes including IHT.²³ HMRC may serve a notice requiring a person to provide information or to produce a document provided *'the information or document is reasonably required by the officer for the purpose of checking the taxpayer's tax position.'*²⁴ FA 2008 Sch. 36 para. 2 provides a similar power to obtain information in respect of third parties.
- 7.12 'Tax position' is very broadly defined and means:-
'... in relation to a person, ... the person's position as regards any tax, including the person's position as regards—
(a) past, present and future liability to pay any tax,
(b) penalties and other amounts that have been paid, or are or may be payable, by or to the person in connection with any tax, and
*(c) claims, elections, applications and notices that have been or may be made or given in connection with the person's liability to pay any tax, and references to a person's position as regards a particular tax (however expressed) are to be interpreted accordingly.*²⁵
- 7.13 An information notice *'for the purpose of checking the tax position of a person who has died' must be made within four years of the person's death'*.²⁶ There is no restriction within Sch. 36 as to the age of the information or documents which a person may be required to produce except that para. 20 imposes an internal administrative review in respect of notices to provide documents which are more than six years old. Paragraph 18 provides that *'an information notice only requires a person to produce a document if it is in the person's possession or power.'*
- 7.14 The general requirement that the information or document must be *'reasonably required for the purpose of checking [a] taxpayer's position'* has the result that information concerning chargeability to tax which cannot give rise to a recoverable liability cannot be within the scope of the power. For this reason limitations of time on assessment (to Income Tax or CGT) or recovery (IHT) place an indirect limitation of time on the information which can be required under FA 2008 Sch. 36 paras. 1 and 2.

²³ FA 2008 Sch. 36 para. 63

²⁴ FA 2008 Sch. 36 para. 1

²⁵ FA 2008 Sch. 36 para. 64

²⁶ FA 2008 Sch. 36 para. 22

NOTICES OF DETERMINATION

- 8.1 IHTA 1984 s.221 provided that:-
*'Where it appears to the Board that a transfer of value has been made or where a claim under this Act is made to the Board in connection with a transfer of value, the Board may give notice in writing to any person who appears to the Board to be the transferor or the claimant or to be liable for any of the tax chargeable on the value transferred, stating that they have determined the matters specified in the notice.'*²⁷
- 8.2 The matters which may be specified in a notice of determination are all or any of the following:-
- (a) *the date of the transfer;*
 - (b) *the value transferred and the value of any property to which the value transferred is wholly or partly attributable;*
 - (c) *the transferor;*
 - (d) *the tax chargeable (if any) and the persons who are liable for the whole or part of it;*
 - (e) *the amount of any payment made in excess of the tax for which a person is liable and the date from which and the rate at which tax or any repayment of tax overpaid carries interest; and*
 - (f) *any other matter that appears to the Board to be relevant for the purposes of this Act.'*²⁸
- 8.3 Unless the notice of determination is either varied by agreement, or is the subject of an appeal, it:-
*'... shall be conclusive for the purposes of this Act against the person on whom the notice is served; and if the notice is served on the transferor and specifies a determination of the value transferred by the transfer of value or previous transfers of value, the determination, so far as relevant to the tax chargeable in respect of later transfers of value (whether or not made by the transferor) shall be conclusive also against any other person, subject however to any adjustment under section 240 or 241 below [which concern underpayments and overpayments].'*²⁹
- 8.4 In effect, HMRC can either collect IHT in accordance with an account or it can raise a determination where it believes that IHT is chargeable whether an account has been delivered or it has not. Any such determination can be the subject of an appeal by the taxpayer to the Tribunal and from there to the Courts.

LIMITATION PERIODS

- 9.1 There is no time limit on HMRC's power to issue a notice of determination.
- 9.2 Time limits do operate on HMRC's power to recover tax. Where tax attributable to the value of any property is paid under an account duly delivered to the Board and the payment has been made and accepted in satisfaction of the tax, proceedings to recover any additional tax may only be commenced within:-

²⁷ IHTA 1984 s.221(1)

²⁸ IHTA 1984 s.221(2)

²⁹ IHTA 1984 s.221(5)

- a) twenty years of the payment of the tax in respect of a case involving a loss of tax brought about deliberately by a person liable for the tax (another twenty year period may apply in cases concerning the General Anti-Abuse Rule);³⁰
- b) six years of the payment of the tax where the loss of tax is brought about carelessly but not deliberately;³¹ and
- c) four years of the payment of the tax where the loss of tax has been brought about otherwise.³²

9.3 A loss of tax is brought about carelessly by a person if the person fails to take reasonable care to avoid bringing about that loss.³³

9.4 Where no account has been delivered, or the property by reference to which tax is chargeable has been omitted from an account, there is no limitation period where the loss of tax has been brought about deliberately and it is twenty years otherwise.³⁴ This is more onerous than the equivalent limitation period in respect of assessments to Income Tax and CGT.

AN EXAMPLE

10.1 The absence of comprehensive limitation provisions coupled with the provisions imposing the Inland Revenue Charge can result in an IHT liability emerging after decades and being charged on assets, the owners of which have been previously unaware of the liability. Consider the following example.

10.2 In 1993 Rupert settled a house ('Misfortune Manor') and farmland on discretionary trusts. The land qualified for 100% Agriculture Property Relief ('APR') but Misfortune Manor did not. Rupert was aware of that but chose to regard it as if it did. Thinking, erroneously, that if all the property settled were wholly exempt he would have no duty to submit an account, he did not do so, with the result that he failed to account for IHT chargeable on the transfer into the settlement. In 2002, the trustees exercised a power to advance the trust property to Rupert's daughter, Hortensia, at which point the trustees claimed APR on the farmland but not on Misfortune Manor as was correct. The farmland was sold and Hortensia gave Misfortune Manor to her son, Henry, who lived in it until 2010 when he sold it and purchased a rental property ('Let House').

10.3 In 2017, many years after Rupert's death, HMRC issued a notice of determination in respect of the settlement of Misfortune Manor in 1993 on the basis that the loss of tax due to Rupert's failure to submit an account was caused deliberately so that there was no limitation on HMRC's power to recover the IHT chargeable on the settlement. Under s.237, until Misfortune Manor was sold in 2010, it had been subject to the Inland Revenue Charge. On the sale, that charge transferred to the sale proceeds and, when these were applied by Henry in acquiring Let House, transferred again to that property. To Henry's dismay, in 2018, a quarter of a century after the settlement, HMRC began proceedings to enforce the charge and to collect, with interest, the unpaid IHT.

[This article is based on an article of the same name which appeared in *Taxation Magazine* on 6th February 2020.]

³⁰ IHTA 1984 s.240(5)

³¹ IHTA 1984 s.240(4)

³² IHTA 1984 s.240(2)

³³ IHTA 1984 s.240A(2)

³⁴ IHTA 1984 s.240(6) & (7)