EXPLANATORY MEMORANDUM TO

THE INHERITANCE TAX (DELIVERY OF ACCOUNTS) (EXCEPTED TRANSFERS AND EXCEPTED TERMINATIONS) REGULATIONS 2008

2008 No. 605

THE INHERITANCE TAX (DELIVERY OF ACCOUNTS) (EXCEPTED SETTLEMENTS) REGULATIONS 2008

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1. This explanatory memorandum has been prepared by the Commissioners for HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

2.1 These Regulations make provision in relation to delivery of accounts for inheritance tax (IHT) purposes in respect of

- immediately chargeable lifetime transfers made on or after 6 April 2007, and the termination on or after 6 April 2007 of an interest in possession in certain specified trusts; and
- charges arising on or after 6 April 2007 on assets held in, or leaving, a settlement in which no qualifying interest in possession subsists..

2.2 For chargeable events on or after 6 April 2007, they replace respectively the "Inheritance Tax (Delivery of Accounts) (Excepted Transfers and Excepted Terminations) Regulations 2002" and the "Inheritance Tax (Delivery of Accounts) (Excepted Settlements) Regulations 2002" ("the 2002 Regulations").

3. Matters of special interest to the Select Committee on Statutory Instruments

The Regulations, which are wholly relieving, have effect from 6 April 2007 to meet the public undertaking that they will be operative for the current tax year.

4. Legislative Background

4.1 Statutory references are to the Inheritance Tax Act 1984.

4.2 Section 216 requires that an IHT account must be delivered unless excepted by Regulations made under section 256.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Taxpayers have to deliver an account to HM Revenue & Customs where an individual makes a transfer during their lifetime which does not qualify as a potentially exempt transfer (PET) (very broadly a transfer other than to another individual or certain types of trust), or where a chargeable event arises in connection with a "relevant property" trust (RPT).

7.2 The Finance Act 2006 restricted the extent to which lifetime transfers into trust qualify as PETs and extended the categories of settlement that are liable to charge as a RPT. This potentially increases the number of IHT accounts that would have to be delivered in accordance with the 2002 Regulations where there is no IHT payable.

7.3 These Regulations are designed to reduce significantly the number of IHT accounts that would otherwise need to be delivered where there is not tax at stake, and little or no compliance risk. They reflect comments received in response to proposals published on the HM Revenue & Customs' website in 2007.

7.4 The Regulations increase the monetary limits below which an account does not have to be delivered, and link them to movements in the IHT nil rate band, and they align the treatment of excepted transfers and excepted terminations.

7.5 The Regulations have effect for chargeable events occurring on or after 6 April 2007. That is the start date HM Revenue & Customs mentioned when the initial proposals were published in 2007, so that accounts that would otherwise be due for chargeable events that have occurred earlier in the current tax year are covered by the new rules (IHT accounts are broadly due 12 months after the end of the month in which the chargeable event occurs).

7.6 The Regulations provide as follows:

<u>Excepted transfers and terminations</u>

7.7 Where the property given away, or in which the interest subsists, is wholly attributable to cash or quoted stocks and securities, the disposal will qualify as an excepted transfer or termination provided the cumulative total of all chargeable transfers made by the transferor in the seven years before the transfer does not exceed the IHT nil rate band.

7.8 Where the property given away, or in which the interest subsists, is wholly or partly attributable to property other than cash or quoted stocks and securities, the disposal must pass two tests. Firstly, the value transferred by the chargeable transfer concerned together with the cumulative total of all chargeable transfers made by the transferor in the seven years before the transfer must not exceed 80 per cent of the relevant IHT nil rate band. Secondly, the value transferred by the transfer of value giving rise to the chargeable transfer concerned must not exceed the nil rate band that is available to the transferor at the time the disposal takes place.

7.9 Where trustees bring to an end the life tenant's interest in settled property, the life tenant is treated as making a transfer of value. If the life tenant has not made any chargeable transfers of their own, they can give notice to the trustees that the exemptions they are entitled to are available for use against the property in which their life interest is being terminated. Where the value transferred is covered by the exemptions available, the termination is an excepted termination.

Excepted settlements

7.10 There are three general conditions that have to be met for a RPT to qualify:

- the settlor must be domiciled in the UK at the time the settlement was set up and has remained so domiciled throughout the existence of the settlement until either the occasion of charge or the settlor's earlier death;
- the trustees of the settlement must be resident in the UK throughout the existence of the settlement; and
- there must be no related settlements for IHT purposes (these are other settlements created by the settlor on the same day as the RPT).

7.11 Subject thereto, for IHT charges arising on the ten-year anniversary of a RPT or when assets are distributed from a RPT, the RPT will qualify as an excepted settlement where the value of the notional aggregate chargeable transfer does not exceed 80 per cent of the IHT nil rate band. Similarly, where an IHT charge arises in connection with an age 18-25 trust, that trust will qualify as an excepted settlement (subject to the general conditions in 7.9) where the value of the notional aggregate chargeable transfer does not exceed 80 per cent of the nil rate band.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

Enquiries about this instrument may be made to John Marchant at HM Revenue & Customs:
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