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STATUTORY INSTRUMENTS

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**2011 No. 214**

**INHERITANCE TAX**

**The Inheritance Tax (Delivery of Accounts)  
(Excepted Estates) (Amendment) Regulations 2011**

<i>Made</i>	- - - -	<i>2nd February 2011</i>
<i>Laid before the House of Commons</i>	- - - -	<i>4th February 2011</i>
<i>Coming into force</i>	- -	<i>1st March 2011</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 256(1), (1A) and (3) of the Inheritance Tax Act 1984 (1) and now vested in them(2).

In accordance with section 256(3A) of that Act(3), they have consulted the Lord Chancellor, the Scottish Ministers and the Lord Chief Justice of Northern Ireland.

**Citation, commencement, effect and interpretation**

1.—(1) These Regulations may be cited as the Inheritance Tax (Delivery of Accounts) (Excepted Estates) (Amendment) Regulations 2011.

(2) These Regulations shall come into force on 1st March 2011 and, subject to paragraph (3), shall have effect in relation to deaths occurring on or after that day.

(3) Regulations 2, 4, 5 and 6 shall have effect in relation to deaths occurring on or after 6th April 2010.

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- (1) 1984 c. 51. By virtue of section 100(1) and (2) of the Finance Act 1986 (c. 41), on and after 25th July 1986 the Capital Transfer Tax Act 1984 may be cited as the Inheritance Tax Act 1984, and any reference in that Act to capital transfer tax is to have effect as a reference to inheritance tax, except where the reference relates to a liability to tax arising before 25th July 1986. Section 256(1) of the Inheritance Tax Act 1984 was amended by section 293(2) of the Finance Act 2004 (c. 12), section 256(1A) of the Inheritance Tax Act 1984 was inserted by section 293(3) of the Finance Act 2004 and section 256(3) of the Inheritance Tax Act 1984 was amended by section 293(5) of the Finance Act 2004.
- (2) The powers under section 256(1) of the Inheritance Tax Act 1984 are stated to be exercisable by the Board. The Board is defined in section 272 of that Act as the Commissioners of Inland Revenue. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, insofar as is appropriate in consequence of section 5, a reference to the Commissioners of Inland Revenue shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
- (3) Section 256(3A) of the Inheritance Tax Act 1984 was substituted by paragraph 176 of Schedule 4 to the Constitutional Reform Act 2005 (c. 4).

(4) In these Regulations “the principal Regulations” means the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004(4).

### **Amendment of the principal Regulations**

2. In regulation 2 (interpretation) of the principal Regulations for the definition of “IHT threshold” substitute ““IHT threshold” has the meaning given in regulation 5A;”.

3.—(1) Regulation 4 (excepted estates) of the principal Regulations is amended as follows.

(2) At the beginning of paragraph (2)(d) insert “subject to paragraph (7A),”.

(3) In paragraph (3)—

(a) At the beginning of sub-paragraph (d) insert “subject to paragraph (7A),”.

(b) At the end of sub-paragraph (e) omit “and”, and

(c) After sub-paragraph (e) insert—

“(ea) the total value transferred on that person’s death by a spouse, civil partner or charity transfer is greater than nil; and”.

(4) In paragraph (6) after ““specified transfers” means” insert “, subject to paragraph (7A),”.

(5) After paragraph (7) insert—

“(7A) For the purpose of paragraphs (2)(d) and (e), (3)(d) and (e) and (6) any transfers of value made by that person in any period from 6th April in any year until and including the following 5th April which—

(i) are exempt transfers by virtue of section 21 (normal expenditure out of income) of the 1984 Act(5),

(ii) are made less than seven years prior to the death of that person, and

(iii) are in total more than £3,000,

shall be treated as chargeable transfers.”.

4. After regulation 5 (spouse, civil partner and charity transfers) of the principal Regulations insert—

#### **“IHT threshold**

5A.—(1) Subject to paragraph (2), for the purposes of these Regulations “IHT threshold” means the amount shown in the second column in the first row of the Table in Schedule 1 to the 1984 Act (upper limit of portion of value charged at rate of nil per cent)(6) and in the first column in the second row of that Table (lower limit of portion charged at next rate) applicable to—

(a) chargeable transfers made in the year before that in which a person’s death occurred if—

(i) that person died on or after 6th April and before 6th August, and

(ii) an application for a grant of representation or, in Scotland, an application for confirmation, is made before 6th August in that year; or

(b) chargeable transfers made in the year in which a person’s death occurred in any other case,

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(4) S.I. 2004/2543, amended by S.I. 2005/3230 and 2006/2141.

(5) “the 1984 Act” is defined in the principal Regulations as the Inheritance Tax Act 1984 (c. 51); section 21 was amended by paragraphs 393 and 395 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5).

(6) the Table in Schedule 1 to the 1984 Act was substituted by section 155(1)(b) and (4) of Finance Act 2006 (c. 25).

and for this purpose “year” means a period of twelve months ending with 5th April.

(2) Where the criteria specified in paragraphs (3) and (4) are met “IHT threshold” means the IHT threshold as defined in paragraph (1) as increased by 100 per cent.

(3) The criteria specified in this paragraph are as follows—

- (a) immediately before the death of a person (referred to for the purposes of this paragraph and paragraphs (4), (5) and (6), as a “first deceased person”) that first deceased person was the spouse or civil partner of the person specified in regulation 4(2) or (3) (referred to for the purposes of this paragraph as “the survivor”);
- (b) the survivor survived the first deceased person;
- (c) either—
  - (i) in a case where the first deceased person was the spouse of the survivor, the first deceased person died on or after 13th November 1974, or
  - (ii) in a case where the first deceased person was the civil partner of the survivor, the first deceased person died on or after 5th December 2005; and
- (d) a claim is made pursuant to section 8A(7) of the 1984 Act—
  - (i) by virtue of which the nil-rate band maximum(8) at the time of the survivor’s death is treated, for the purpose of the charge to tax on the death of the survivor, as increased by 100 per cent, and
  - (ii) which is made in respect of not more than one first deceased person.

(4) The criteria specified in this paragraph are as follows—

- (a) the first deceased person died domiciled in the United Kingdom;
- (b) the value of the first deceased person’s estate is attributable wholly to property passing—
  - (i) under the first deceased person’s will or intestacy, or
  - (ii) by survivorship in a beneficial joint tenancy or, in Scotland, by survivorship in a special destination;
- (c) of that property, not more than £100,000 represented value attributable to property which immediately before the first deceased person’s death was situated outside the United Kingdom;
- (d) the first deceased person was not a person by reason of whose death one of the alternatively secured pension fund provisions applies;
- (e) the first deceased person died without having made any chargeable transfers during the period of seven years ending with the first deceased person’s death; and
- (f) the value transferred by any chargeable transfer made on the death of the first deceased person was not reduced by virtue of section 104(9) (business property relief) or section 116(10) (agricultural property relief) of the 1984 Act.

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(7) Section 8A was inserted by Schedule 4 to the Finance Act 2008 (c. 9).

(8) “the nil-rate band maximum” is defined in section 8A(7) of the Inheritance Tax Act 1984.

(9) Section 104 was amended by paragraph 4 of Schedule 8 to the Finance Act 1987 (c. 16) in relation to transfers of value made after 16th March 1987 and by paragraphs 1 and 8 of Schedule 14 to the Finance (No. 2) Act 1992 (c. 48) in relation to transfers of value made after 9th March 1992.

(10) Section 116 was amended by paragraphs 4 and 8 of Schedule 14 to the Finance (No. 2) Act 1992, section 155 and Schedule 29, Part 11 to the Finance Act 1995 (c. 4), section 185 and Schedule 41 Part 6 to the Finance Act 1996 (c. 8), and section 122(1) and (4) of the Finance Act 2009 (c. 10).

(5) For the purpose of paragraph 4(e), sections 104 (business property relief) and 116 (agricultural property relief) of the 1984 Act shall not apply in determining whether the first deceased person has made a chargeable transfer.

(6) Subject to paragraph (7), for the purpose of paragraph (4)(e) any transfers of value made by the first deceased person in any period from 6th April in any year until and including the following 5th April which—

- (i) are exempt transfers by virtue of section 21 (normal expenditure out of income) of the 1984 Act,
- (ii) are made less than seven years prior to the death of that person, and
- (iii) are in total more than £3,000,

shall be treated as chargeable transfers.

(7) Paragraph (6) shall have effect in relation to deaths occurring on or after 1st March 2011.”.

5.—(1) Regulation 6 (production of information) of the principal Regulations is amended as follows.

(2) For paragraph (1) substitute—

“(1) Subject to paragraph (3), a person who by virtue of these Regulations is not required to deliver to the Board an account under section 216(11) of the 1984 Act of the property comprised in an excepted estate, must produce the information specified in paragraph (2) and, where the criteria specified in regulation 5A(3) and (4) are met, paragraph (2A), to the Board in such form as the Board may prescribe.”.

(3) After paragraph (2) insert—

“(2A) The information specified for the purpose of paragraph (1) is—

- (a) the full name of the first deceased person,
- (b) the last known address of the first deceased person,
- (c) the date of death of the first deceased person,
- (d) the date and place of the marriage or civil partnership (as the case may be) between the first deceased person and the survivor, and
- (e) either—
  - (i) a statement specifying whether a grant of probate, grant of letters of administration or grant of confirmation was issued in relation to the estate of the first deceased person and the date and place of issue of such grant, or
  - (ii) a statement specifying that no grant of probate, grant of letters of administration or grant of confirmation was issued in relation to the estate of the first deceased person.

(2B) In paragraph (2A) “first deceased person” and “survivor” shall have the meaning given to them in regulation 5A(3)(a).”.

(4) In paragraph (3)—

- (a) for “if the information” substitute “to the extent that the information”, and
- (b) after “in paragraph (2)” insert “and, where applicable, paragraph (2A)”.

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(11) Section 216 was amended by paragraph 11 of Schedule 26 to the Finance Act 1985 (c. 54), paragraph 29 of Schedule 19 to the Finance Act 1986 (c. 41), paragraph 4 of Schedule 7 to the Finance (No.2) Act 1987 (c. 51), section 105(1) of the Finance Act 1999 (c. 16), paragraphs 1 and 7 of Schedule 22 to the Finance Act 2006 (c. 25), paragraphs 19 and 24 of Schedule 19 to the Finance Act 2007 (c. 11) and paragraphs 6 and 12 of Schedule 28 to the Finance Act 2008 (c. 9).

6. In regulation 7(1) (production of information) of the principal Regulations after “regulation 6(2)” insert “and (2A)”.

2nd February 2011

*Steve Lamey*  
*Lesley Strathie*  
Two of the Commissioners for Her Majesty’s  
Revenue and Customs

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004 (S.I. 2004/2543) (“the principal Regulations”).

Regulation 1(2) and (3) states when these Regulations come into force and specifies the date from which individual regulations take effect. Regulation 1(4) defines “the principal Regulations”.

Regulation 2 amends the definition of “IHT threshold” in regulation 2 of the principal Regulations to provide that the term has the meaning given in new regulation 5A of the principal Regulations.

Regulation 3 amends regulation 4 of the principal Regulations.

Paragraph (2) provides that regulation 4(2)(d) is now subject to regulation 4(7A) as well as regulation 4(7). Paragraph (2)(a) makes a similar provision in respect of regulation 4(3)(d).

Paragraph 3(c) inserts new sub-paragraph (ea) into regulation 4(3) of the principal Regulations. This adds a new condition in paragraph (3) so that on the relevant person’s death, at least part of that person’s estate must pass to the person’s spouse/civil partner or to a charity.

Paragraph (4) amends regulation 4(6) of the principal Regulations to provide that the definition of “specified transfers” is now subject to paragraph (7A).

Paragraph (5) inserts paragraph (7A) into regulation 4 of the principal Regulations. This new paragraph provides that transfers by a person which total over £3,000 in any period from 6th April in a year until the following 5th April and which are exempt transfers under the “normal out of income exemption” pursuant to section 21 of the Inheritance Tax Act 1984, will be treated as chargeable transfers for the purposes of paragraphs (2)(d) and (e), (3)(d) and (e) and (6) of regulation 4 of the principal Regulations, but only where they are made within 7 years of the death of the relevant person.

Regulation 4 inserts new regulation 5A into the principal Regulations. This new regulation provides as follows.

Paragraph (1) sets out the definition of “IHT threshold”.

Paragraph (2) provides that, where the criteria set out in sub-paragraphs (3) and (4) are met, the expression “IHT threshold” means “the IHT threshold” as increased by 100 per cent.

Paragraphs (3) and (4) set out the criteria that must be met in order for the IHT threshold to be increased by 100 per cent pursuant to paragraph (2).

Paragraph (5) provides that for the purposes of paragraph (4)(e) of new regulation 5A, in determining whether the relevant person has made a chargeable transfer, any business property relief or agricultural property relief, under sections 104 and 116 of the Inheritance Tax Act 1984 respectively, shall not apply.

Paragraph (6) provides that transfers in any period from 6th April in a year until the following 5th April, which total over £3,000 and are exempt transfers under the “normal out of income exemption” pursuant to section 21 of the Inheritance Tax Act 1984, will be treated as chargeable transfers for the purpose of paragraph (4)(e) of new regulation 5A, but only where they are made within 7 years of the death of the relevant person. Paragraph (7) provides that paragraph (6) has effect in relation to deaths occurring on or after 1st March 2011.

Regulation 5 amends regulation 6 of the principal Regulations. Paragraph (2) substitutes the existing paragraph (1) with a new paragraph (1). This substituted paragraph provides that in a

case where a person is not required to deliver an inheritance tax account to the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") by virtue of these Regulations, that person must produce to the Commissioners the information specified in regulation 6(2) and where appropriate regulation 6(2A) of the principal Regulations.

Paragraph (3) inserts new paragraphs (2A) and (2B) into regulation 6 of the principal Regulations. Paragraph (2A) lists the additional information that must be produced to the Commissioners in the circumstances set out in regulation 6(1) of the principal Regulations. Paragraph (2B) defines two terms that are used in paragraph (2A).

Paragraph (4) makes two minor amendments to paragraph (3) of regulation 6 of the principal Regulations, in consequence of the amendments set out in regulation 5(2) and (3) of these Regulations.

Regulation 6 amends regulation 7(1) of the principal Regulations, to refer to new regulation 6(2A) of the principal Regulations as well as regulation 6(2).

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.