EXPLANATORY MEMORANDUM TO

THE INHERITANCE TAX (DELIVERY OF ACCOUNTS) (EXCEPTED ESTATES) (AMENDMENT) REGULATIONS 2021

2021 No. 1167

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) and is laid before the House of Commons by Command.

2. Purpose of the instrument

2.1 Before a grant of representation is made, or (in Scotland) confirmation issued, to a personal representative of a person who has died, Inheritance Tax (IHT) accounts (returns detailing the estate property transferred on, and in the seven years before, death) must be delivered to HMRC and any IHT that is due must be paid (subject to any instalment payment agreement).

2.2 The personal representative of an estate where no IHT is due is excused from delivering IHT accounts where the estate qualifies as an 'excepted estate'. Instead, simplified information is sent to the relevant Court service.

2.3 This instrument reduces the reporting requirements for excepted estates; and amends the circumstances when an estate is an excepted estate and the personal representative is excused from delivering an IHT account to HMRC.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Section 216 of the Inheritance Tax Act 1984 provides that the personal representatives of a deceased person must deliver to HMRC an account specifying all property that formed part of the deceased's estate or chargeable transfers in the seven years before death and the value of that property.

6.2 Section 256 of that Act provides the Commissioners for HMRC with powers to make regulations dispensing with the delivery of accounts under section 216 as specified in or determined under the regulations.

6.3 The regulations for this purpose are the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004 (S.I. 2004/2543) as amended (the "2004 Regulations").

7. Policy background

What is being done and why?

7.1 This instrument implements a commitment given in Command Paper "Tax Policies and Consultations Spring 2021" (CP 404, March 2021), following recommendations by the Office of Tax Simplification, to reduce administrative burdens for those dealing with IHT.

7.2 The instrument extends the 2004 Regulations so that from 1 January 2022 over 90% of non-taxpaying estates each year will not have to send IHT forms to HMRC when a grant of representation or confirmation is required.

7.3 The instrument also clarifies the requirements for estates where the deceased was never domiciled in the United Kingdom; and aligns the period in which HMRC may make enquiries into excepted estates.

Explanations

<u>What did any law do before the changes to be made by this instrument?</u>

7.4 The 2004 Regulations provide for three broad categories of excepted estate.

7.5 Firstly, small estates – those where the estate's gross value for IHT purposes does not exceed the IHT threshold. Eligibility is conditional on, amongst other things, that the estate for IHT purposes included no more than £150,000 of trust property; and in the seven years before death the deceased did not make chargeable transfers other than certain specified transfers not exceeding £150,000 before deduction of agricultural or business property relief.

7.6 Secondly, exempt estates – those where the gross value exceeds the IHT threshold but the net value after liabilities and spouse or charity exemptions does not exceed the IHT threshold. Eligibility is conditional on, amongst other things, the gross value of the estate not exceeding £1 million; that the estate for IHT purposes included no more than £150,000 of trust property but ignoring property that passes on death to a spouse or to charity; and in the seven years before death the deceased did not make chargeable transfers other than certain specified transfers not exceeding £150,000 before deduction of agricultural or business property relief.

7.7 Thirdly, foreign person estates – those where the deceased was never domiciled in the United Kingdom (UK) and the UK estate comprises only cash or quoted shares or other securities. Eligibility is conditional on certain supplementary conditions being met.

7.8 For the purposes of the 2004 Regulations, the IHT threshold is either £325,000 (the amount of the IHT nil rate band) or £650,000 if none of the £325,000 threshold was used when the first of a married couple or civil partnership died.

7.9 The 2004 Regulations also specify the alternative information to be produced to the Court services where an account is not required to be delivered; requirements on the Court services to transmit that information to HMRC; and that the personal representative providing the specified information is discharged from tax after 35 days of a grant of representation being made in England, Wales or Northern Ireland and 60 days of confirmation being issued in Scotland.

Why is it being changed?

7.10 This instrument changes the conditions for small estates and exempt estates in order to enable a greater number of estates to qualify; and simplifies the alternative information that is to be produced.

7.11 Following consultation with the Court services, the instrument also amends the timescales for that information to be processed by them and passed to HMRC; and makes consequential changes to the time from when a person providing the specified information is discharged from tax.

7.12 It also clarifies the requirements for foreign person estates where the deceased owned indirect interests in UK residential property or made gifts of UK property in the seven years before death to ensure that these estates are not excepted from delivering IHT accounts where IHT is due.

What will it now do?

7.13 For small estates, this instrument uprates the value limit in relation to both trust property and specified transfers from £150,000 to £250,000.

7.14 For exempt estates, the value limit in relation to the gross value of the estate is increased from £1 million to £3 million; the value limit in relation to chargeable trust property is increased from £150,000 to £250,000 but the total amount of trust property including exempt amounts is limited to £1 million; and the value limit in relation to specified transfers is increased from £150,000 to £250,000.

7.15 The instrument also amends the definition of 'IHT threshold' to include cases where some of the available threshold was used when the first of a married couple or civil partnership died and a claim is made for the unused percentage to be made available against the current estate.

7.16 The instrument also simplifies the alternative information that is to be produced for both small estates and exempt estates and makes consequential amendments to definitions throughout the 2004 Regulations.

7.17 For foreign person estates, this instrument provides that an estate does not qualify as an excepted estate where the deceased either owned indirect interests in UK residential property or made gifts of UK assets totalling in excess of £3,000 in the seven years before the date they died.

7.18 The time requirements on the Court services to transmit prescribed information to HMRC is being extended to one month; and the time when a person providing the specified information is discharged from tax is being aligned at 60 days.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no current plans to consolidate the 2004 Regulations.

10. Consultation outcome

10.1 By virtue of subsections 256(3A) and (3B) of the Inheritance Tax 1984, this instrument may only be made in relation to England and Wales after consulting the Lord Chancellor; in relation to Scotland after consulting the Scottish Ministers; and in relation to Northern Ireland after consulting the Lord Chief Justice of Northern Ireland or relevant nominated person.

10.2 Detailed discussions have been conducted with officials on consequential changes to grant of representation and confirmation forms and processes resulting from this instrument.

10.3 HMRC has also consulted informally on this instrument with members of its Capital Taxes Liaison Group, a forum for HMRC and representatives of tax advisers and the accountancy profession, law societies, the Treasury and others to discuss Capital Gains Tax, Inheritance Tax and trusts. Feedback has helped strengthen, in particular, the amendments relating to foreign person estates.

11. Guidance

11.1 A technical note is being made publicly available at the time of laying alongside a Tax Impact and Information Note on the gov.uk website (see paragraph 12.3 below).

12. Impact

12.1 The impact on businesses, charities and voluntary bodies is that businesses that administer estates are expected to significantly reduce their costs. Around 60% of the 240,000 estates a year affected by this measure (approximately 145,000 a year) are administered by probate practitioners and solicitors with ongoing savings. This impact will be kept under review through stakeholder engagement. One-off costs include becoming familiar with the changes. There are not expected to be any continuing costs. There is no, or no significant, impact on charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument will be published on the website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses that act as professional personal representatives.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the instrument reduces burdens generally, by removing the need to complete HMRC forms.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is through information collected from compliance checks into IHT by HMRC.

14.2 The instrument does not include a statutory review clause under section 28 of the Small Business, Enterprise and Employment Act 2015 because subsection 28(1) applies the section only where an Act confers a power or duty on a Minister of the Crown to make secondary legislation, whereas this instrument is made under powers conferred on the Commissioners for HMRC.

15. Contact

15.1 Alan Hackney at HMRC Telephone: 03000 562716 or email: alan.hackney@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Sarah Kelsey, Deputy Director for Assets, Residence and Valuation, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.