CHAPTER 22

INHERITANCE TAX ADMINISTRATION

22.1 General administration of IHT

Responsibility for the general administration of inheritance tax rests with HMRC Inheritance Tax.

Over the course of the next 2 chapters, we shall look at various practical matters concerning the filing of inheritance tax returns and the payment of the IHT itself.

In this chapter, we shall look closely at S.216 IHTA 1984, which specifically deals with the **submission of IHT returns.** We shall also look at related matters, such as the HMRC's **powers to obtain information** and the **penalty provisions** for late or incorrect returns. The rules regarding payment of tax and the instalment option will be covered in the next chapter.

Note that for the exams you only need to know the new rules in FA 2009 in respect of penalties for late filing of returns.

22.2 Delivery of IHT returns

IHTA, 1984 s.216

If an individual makes a **chargeable lifetime transfer,** details of the transfer must be disclosed on an IHT return to HMRC. **The return should be submitted by the donor on form IHT 100.**

If an individual makes a potentially exempt transfer, **no return is required unless the PET becomes chargeable.** Details of PETs do not need to be included on the donor's normal self assessment return.

If the donor dies within 7 years such that the PET becomes chargeable to IHT, it must be reported to HMRC at that point because tax may be due on the failed PET. Under S.216, the donee has a responsibility to disclose details of the PET and to submit an IHT return to HMRC.

An IHT return will be due in respect of the death estate. The persons responsible for completing and submitting the return, are the Executors. The return will include details of **all assets in the estate for IHT purposes**, together with any **liabilities owed by the deceased at the date of death**.

The Executors have no statutory obligation to include details of assets deemed to form part of the death estate under the Gifts with Reservation rules. These are usually reported by the donee as it will be the donee (not the Executors) who pays the tax.

There is, however, space on the form IHT 400 for the Executors to report details of Gifts With Reservation as these will affect the total tax payable.

Because the IHT payable by the Executors is affected by any lifetime transfers made by the deceased in the 7 years before death, **details of these chargeable transfers must also be included** in the Executors' IHT return.

The Executors therefore have a statutory duty to disclose details of both **chargeable lifetime transfers and potentially exempt transfers** made by the deceased in the 7 years before his death. IHTA 1984, s.216(3)

Therefore, where a PET has been made by a donor in the 7 years prior to his death, details of this failed PET must be included within **2 different returns** – one to be filed by the donee, the other to be filed by the Executors of the estate.

In this instance, a person is **not** required to deliver a return in respect of any property, if a "full and proper account" of that property has already been delivered by another person. This means that if details of the PET are included in the Executors' IHT return, **no separate return needs to be submitted by the donee**. The same principle applies for chargeable lifetime transfers within 7 years of death. As details of these transfers will be included on the Executors' return, no separate return needs to be submitted by the trustees of the discretionary trust. IHTA 1984, s.216(5)

Form IHT 400 is now used for all death estates. There is an exception for "excepted estates" (see below).

22.3 Due dates for IHT returns

IHTA 1984, s.216(6)

The statutory due date for the delivery of an IHT return, is **12 months from the end of the month in which the chargeable transfer took place**. This chargeable transfer will either be a gift to a discretionary trust or the death of the transferor.

In the case of IHT returns on death, the due date is extended to **3 months from the date the Executors first start to act**. In most cases, the Executors will start to act from the date of death, so this extended due date is rarely an issue.

One of the first duties of an Executor will be to **apply for probate**. Probate is the formal process by which the Executors obtain legal title to the assets of the deceased. In order to make a formal application for probate, the Executors must have **evidence that the IHT return has been submitted to HMRC**.

Therefore, in practice, the form IHT 400 is usually submitted well before the statutory due date to ensure that probate is granted.

If the return turns out either to be incorrect or incomplete, the Executors may submit amended or "corrective" accounts on form C4. Such accounts should be submitted within 6 months of the Executors discovering that the original return is incorrect. IHTA 1984, s.217

The "self-assessment" system that exists for income tax and corporation tax, does not apply formally for IHT. However, the Executors will calculate the IHT payable on the face of the form IHT 400, and payment of the tax is usually remitted with the IHT return.

There is often therefore no need for HMRC to raise a formal assessment to collect the inheritance tax. Instead, HMRC will confirm receipt of the return and the IHT, and the Executors will use this formal confirmation when applying for probate.

22.4 "Excepted" estates and "excepted" transfers

SI 2004/2543

There is **no requirement to make a return** to HMRC under S.216 IHTA 1984 in the case of excepted estates. In simple terms, **an "excepted estate" is an estate on which no IHT is payable**. The definition of an excepted estate is contained in Statutory Instrument 2004/2543 There are **three types of excepted estate**.

The first type (quite common) is where:

- the deceased died **domiciled** (or deemed domiciled) **in the UK**; and
- the estate does not include any assets subject to a reservation; and
- the estate does not include any "settled property", i.e. assets in a trust in which the deceased had an entitlement to income worth more than £150,000; and
- the foreign assets in the estate are not worth more than £100,000; and
- the only lifetime transfers made in the 7 years before death were **specified lifetime transfers which do not exceed £150,000**. A specified transfer is one of cash, personal chattels, quoted shares or land (in deciding whether the £150,000 limit has been breached, no account is taken of any APR or BPR); and

- the **IHT threshold has not been exceeded**. The IHT threshold is generally the **nil band in the year of death**. However, if the death occurs after 6 April but before 6 August in a tax year and the application for a grant of representation is made before 6 August, the nil band in the previous tax year is used. In deciding whether the IHT threshold has been exceeded, it is necessary to aggregate **the gross value of the death estate, the value of specified lifetime transfers and the value of specified exempt transfers (primarily those to a spouse or charity) in the 7 years before death**. No account is taken of any BPR or APR.

The second type of excluded estate (also quite common) is where:

- the deceased died **domiciled** (or deemed domiciled) **in the UK**; and
- the estate does not include any "settled property" more than £150,000; and
- the foreign assets in the estate are not worth more than £100,000; and
- the only lifetime transfers made in the 7 years before death were **specified lifetime transfers which do not exceed £150,000**; and
- the **aggregate of: the gross value of the death estate, the value of specified lifetime transfers and the value of specified exempt transfers in the 7 years before death, does not exceed £1,000,000**. Again, no account is taken of any BPR or APR; and
- **the IHT threshold has not been exceeded**. In this case, the aggregate value which was used for the £1m test less first any spouse and charity exemptions and second the total liabilities of the estate, must not exceed the IHT threshold (defined as for the first type of excluded estate).

The third type (less likely to be found in practice) is where:

- the deceased was never domiciled or deemed domiciled in the UK; and
- the UK estate consists only of cash and quoted investments not worth more than £150,000.

Although there is **no requirement to make a return** to HMRC under S.216 IHTA 1984 in the case of excepted estates, a relatively **simple form needs to be submitted when probate is applied for**. This is **Form IHT 205** for the first two types of excepted estate and **Form IHT 207** for the third type.

The form contains certain **specified details about the deceased and the estate**. The information on the form is then passed to HMRC.

If no notice is issued by HMRC to the Executors within 35 days of probate being issued, there is an **automatic discharge from any tax charge on the estate**. If however, the Executors later discover that the **excepted estates rules do not apply** (for example if a lifetime transfer comes to light or the value of the estate is larger than they originally thought), the Executors have a **duty to file a corrective account within six months of the discovery**. This also applies if the estate is varied, for example so that the spouse exemption condition is no longer met.

Around 95% of all estates are free of inheritance tax. This is due to a combination of factors such as the nil band, the many exemptions and reliefs, in particular 100% business property relief.

In addition, no return needs to be made in respect of an **excepted transfer**. If a donor makes a chargeable lifetime transfer, he will normally be required to file an IHT return.

SI 2008/605

No return is required where

1) the transfer comprises **cash or quoted shares**, and the aggregate of the value of the transfer together with chargeable transfers in the previous 7 years **does not exceed the nil rate band**; or

2) the aggregate of the value of the transfer together with chargeable transfers in the previous 7 years **does not exceed 80% of the nil rate band**, & the value of the transfer (ignoring BPR & APR) does not exceed the available net nil rate band.

22.5 Failure to file returns

Where a transferor or an Executor fails to make a return as required by S.216, HMRC may issue a Notice of Determination. This enables HMRC to start legal proceedings to recover any IHT due. HMRC will also consider making a Determination where they require **additional information** from the taxpayer to enable the IHT liability to be finalised.

IHTA 1984, s.221

The Notice of Determination is in effect an assessment which charges IHT on a transfer of value which has been "determined" by HMRC. HMRC has power to issue a Determination either in **accordance with a return** submitted or in **estimated figures**. Under S.221 IHTA 1984, HMRC may make a Determination "to the best of their judgement". The Notice of Determination is often intended to act as a "lever" to obtain information from the transferor or the Executors.

The recipient can **appeal** against a Determination by notice in writing. The appeal must be made within 30 days and must specify the grounds for the appeal. Strictly speaking, appeals should be made to the Tribunal, although in practice they will be dealt with by HMRC. Appeals will ultimately be determined by agreement with HMRC.

IHTA 1984, s.222

22.6 Powers to obtain information

The Inheritance Tax Act gives HMRC **power to obtain information** and to **call for certain documents**. S.219 IHTA 1984 gives HMRC power to issue a Notice requiring **any person to supply them with information as specified within the Notice**. S.219 is very wide ranging in that HMRC can issue the Notice to "any person", i.e. not just the person responsible for submitting the IHT return. Therefore S.219 notices can be issued to **third parties**, with the exception of barristers or solicitors whose professional privilege should not be compromised.

IHTA 1984, s.219

Because S.219 gives HMRC very wide powers, the **consent of the Tribunal is required before a Notice can be issued**. The Tribunal will only give consent if it can be satisfied that HMRC is justified in proceeding with the Notice. The recipient has a **minimum period of 30 days to produce the information as specified** in the Notice, and there are penalties for a failure to comply.

IHTA 1984, s.219(1A)

HMRC also have powers under S.219A to call for documents. The main difference between the two provisions, is that under S.219A, a Notice may **only be issued to a person who has delivered, or is liable to deliver, an inheritance tax return**. Therefore S.219A Notices may **not be issued to third parties**. Because powers under Section 219A are more limited, HMRC **does not require the consent of the Tribunal** to issue a Notice. Once again the recipient has a minimum of **30 days to comply** with the Notice. A recipient has a right to **appeal** against the issue of a S.219A Notice. The appeal should be made to the Tribunal.

IHTA 1984, s.219A

22.7 Certificates of discharge

IHTA 1984, s.239

Once an Executor has fulfilled his obligations under the Inheritance Tax Act, he may **apply to the Board of HM Revenue & Customs for a "Certificate of Discharge"**.

The Certificate discharges the Executor from any further claims for tax on property within the estate. Once an Executor has a Certificate of Discharge, it is highly unlikely that he or she will be held to be personally liable for any additional tax due from the estate.

IHTA 1984, s.239(3)

Certain conditions must be satisfied before a Certificate of Discharge will be issued.

The Certificate will only be issued when **all returns have been submitted and when all taxes have been finally settled**.

The Executors must **apply** for a Certificate. A Certificate will not normally be issued until **2 years from the date of death**, although they may make an exception and issue the Certificate if all returns have been filed and it is clear to the Board that all tax liabilities have been settled.

IHTA 1984, s.239(2A)

A Certificate will not discharge an Executor or Personal Representative from liability in cases where **tax has been lost either due to fraud or a failure to disclose** material facts.

IHTA 1984, s.239(4)

In practice, **potentially exempt transfers** made by the deceased in the 7 years before death are often a headache for the Executors. Since the late 1980s, there is **no formal requirement for an individual to disclose details of PETs to HMRC whilst he is still alive**. There is no box on the self assessment return for an individual to tell HMRC about PETs he has made in the previous tax year. PETs **only need to be disclosed to HMRC if the donor dies within 7 years**. At this point, the donor is obviously not in a position to give details of his PETs, so this responsibility is left either to the Executors or to the donee.

The Executors have a **statutory duty to provide details of PETs** on the form IHT 400, and this normally absolves the donee from having to do the same.

As we know, tax on PETs in the 7 years before death is **normally borne by the donee**. However, where HMRC has been unable to collect the IHT from the donee, they reserve the right to pursue the Executors for the tax. In this event, the Executors would settle the tax from the residue of the estate, thereby reducing the share of the residuary legatee.

HMRC recognise that this is not particularly fair, and will only chase the Executors for the tax when all attempts to extract the IHT from the donee have proved unsuccessful.

Actually obtaining information regarding transfers made by the deceased in the 7 years prior to death, can often be a very arduous task for the Executors. It is less of a problem for chargeable lifetime transfers as details of such transfers must be reported by the donor to HMRC. However, ascertaining details of PETs often requires some detective work on the part of the Executors.

The Executors have a duty to make the "fullest enquiries that are reasonably practicable in the circumstances" so as to discover lifetime transfers. Having done all in their power to discover such transfers, the Executors must then make a full disclosure of these transfers to HMRC. Even at this point, HMRC recognise that the Executors may not have been able to track down all PETs made by the deceased in the 7 years before death.

IR letter to Law Society March 1991

HMRC has therefore confirmed that if the Executors have made the **fullest enquiries to ascertain lifetime transfers**, have **obtained a Certificate Of Discharge**, and have **distributed the estate** before a lifetime transfer comes to light, the Executors would **not normally be pursued** for tax on these transfers. In these instances, HMRC would pursue the donee and if no tax was still forthcoming, the liability would be waived.

22.8 Penalties for late returns

The penalty provisions contained in Sch 55 FA 2009 apply to inheritance tax accounts.

Under the FA 2009 rules, an **intial penalty of £100** will apply if a return is late, even where there are no amounts outstanding. Additional **daily penalties of £10 per day may** be levied in respect of returns which are more than 3 months late. The daily penalty can be imposed for a maximum of 90 days. FA 2009, Sch 55 Paras 3 & 4

If a return is **more than 6 months late**, there will be an additional penalty of **5% of** any liability to tax which would have been shown in the return (ie the amount which would have been shown to be due and payable by the taxpayer), or **£300 if greater**. FA 2009, Sch 55 Para 5

An additional penalty of **5% of any liability to tax** (or £300 if greater) will also be levied if the return **is more than 12 months late**. If the return has not been submitted within 12 months and by failing to make the return the taxpayer is deliberately withholding, but not concealing information, which would enable HMRC to assess the tax liability, the maximum amount of the penalty increases to **70%** (or £300 if greater). If the withholding of information is deliberate and concealed, the maximum amount of the penalty is **100% of the tax liability** (or £300 if greater). FA 2009, Sch 55 Para 6

Penalties that apply where a person has deliberately withheld information, can be reduced for both prompted and unprompted disclosure of the information. FA 2009, Sch 55 Para 14

Disclosure takes place where a taxpayer **tells HMRC** about the relevant information, **gives HMRC reasonable help** in quantifying the tax unpaid as a result of the information being withheld and **allows HMRC access to records** to check the amount of unpaid tax.

Disclosure is unprompted if it is made when there is no reason to believe that HMRC have discovered or are about to discover the information.

The actual reduction in the penalty depends on the quality of the disclosure, including timing, nature and extent.

The table below details the maximum and minimum penalties that could apply:

Behaviour	Max penalty	Min penalty with unprompted disclosure	Min penalty with prompted disclosure
Deliberate but not concealed	70%	20%	35%
Deliberate and concealed	100%	30%	50%

The minimum penalty is £300 if greater.

HMRC have the power to reduce the penalty if there are special circumstances.

The maximum aggregate penalty (calculated as a percentage of the liability to tax) that can be charged in respect of the late filing of a return is **100% of the liability to tax**. FA 2009, Sch 55 Para 17(3)

Late payment penalties must be **paid within 30 days** of the date the notice of assessing the penalty is issued, or interest will be charged. FA 2009, Sch 55 Para 18

The decision to issue a penalty or the amount of the penalty payable **can be appealed against** by the taxpayer. FA 2009, Sch 55 Para 20

22.9 Reasonable Excuse

Penalties will not be charged if the taxpayer has a reasonable excuse for the failure. An insufficiency of funds is not a **reasonable excuse** (unless due to events outside the taxpayer's control). Relying on a third party is also not a reasonable excuse, unless the taxpayer took reasonable care. FA 2009, Sch 55 Para 23

The term "reasonable excuse" is not defined in the legislation and HMRC's view is that each claim should be considered on its own unique merits. HMRC has previously issued advice as to what may, or may not, be considered as a "reasonable excuse".

Examples of when a "reasonable excuse" claim may be accepted are:

- if the taxpayer did not receive the tax return;
- if the return or payment was posted in good time but arrived late/never arrived due to disruption to the postal service or other factors beyond the taxpayer's control;
- if the taxpayer (or a member of his or her family) suffered serious illness or bereavement which prevented the taxpayer attending to his tax affairs in the proper time;
- if the taxpayer's records were lost or destroyed and could not be replaced in time to meet the statutory deadline;
- if the taxpayer's payment cheque is dishonoured due to bank error and the taxpayer sought to rectify the error immediately.

HMRC would **not** be likely to accept the following excuses as "reasonable":

- pressure of work or other commitments (except illness or bereavement) on the part of the taxpayer or his agent;
- failure by an agent to complete the return in time/advise on tax payments in time;
- the tax return is too complicated to complete;
- insufficient funds to pay the tax;
- the lack of reminders from HMRC before a filing date or payment date;

- not enough information available (reasonable estimates should be made in these instances).
- ignorance of basic law

22.10 Other Penalties

A penalty can be levied under S.245A for a **failure to comply with a Notice** issued either under S.219 (power to require information) or under S.219A (power to call for documents).

If a person fails to comply with a Notice issued under S.219, he is liable to an **initial penalty of up to £300**, and a **further penalty of up to £60 a day** after the failure has been declared by the Tribunal. An application must be made by HMRC to the Tribunal if this daily penalty is to be sought.

IHTA 1984, s.245A(2)

A failure to comply with a S.219A Notice gives rise to a slightly lower penalty. Here HMRC can charge an **initial penalty of up to £50**, and a **daily penalty of up to £30** after the issue of a Penalty Notice by the Tribunal.

IHTA 1984, s.245A(3)

22.11 Penalties for incorrect returns

A new penalty regime was introduced in Finance Act 2007. The new regime applies for transfers and deaths after 31 March 2009.

The new penalties will apply where a tax return or claim for a relief etc, contains either:

a) a **careless inaccuracy,** or
b) a **deliberate inaccuracy** (whether or not concealed),

which leads to:

- An understatement of tax; or
- A false or inflated statement of a loss; or
- A false or inflated claim to a tax repayment.

FA 2007, Sch 24 Para 1(2)

The new penalty regime has been designed so that:

- If taxpayers take "reasonable care" when completing their returns, they will not be penalised for an innocent error. Taxpayers will have to settle any underpaid tax and will be charged interest if the tax is paid late, but no penalty will be added on top;
- If taxpayers do not take reasonable care, errors will be penalised;
- The penalties charged will be higher if the error is deliberate.
- Disclosing errors to HMRC as early as possible will reduce any penalty due.

Different levels of penalty will apply depending on the seriousness of the offence which gives rise to the error.

There are 3 categories of offences giving rise to errors as identified below:

Careless action = failure to take reasonable care

FA 2007 Sch 24 Para 3

Deliberate but not concealed action = the inaccuracy is deliberate but the taxpayer does not make arrangements to conceal it.

FA 2007 Sch 24 Para 3

Deliberate and concealed action = the inaccuracy is deliberate and the taxpayer made arrangements to conceal it (e.g. by submitting false evidence in support of an inaccurate figure).

FA 2007 Sch 24 Para 3

"Reasonable care" varies according to the person, their circumstances and their abilities. HMRC expects every person to keep sufficient records to enable them to submit a complete and accurate tax return.

If a return contains more than one error, **a penalty is charged for each error.**

A penalty can also be levied if a person who is not liable for tax (i.e., a third party) provides **false information** to HMRC. In this instance, the maximum penalty is **£3,000**.

IHTA 1984, s.247

22.12 The amount of the penalty

The penalties are expressed as a **percentage of the potential lost revenue**.

The potential lost revenue is the amount of tax due or payable as a result of correcting the inaccuracy.

FA 2007 Sch 24 Para 5

The table below details the maximum and minimum penalties that could apply.

FA 2007, Sch 24 Para 10

Reason for penalty	Penalty	Possible reduced penalty for unprompted disclosure	Possible reduced penalty for prompted disclosure
Careless action	30%	0%	15%
Deliberate but not concealed action	70%	20%	35%
Deliberate and concealed action	100%	30%	50%

Example 1

Frank died on 5 March 2011. He was UK domiciled and left an estate of £250,000 to his son. The estate was made up of cash and a UK house. Frank had given farmland worth £120,000 to his son in 2007 on which APR of 100% was available.

Is a return required in relation to Frank's estate and if so when should it be submitted by?

Example 2

Harry died in October 2010. The IHT return was submitted on 12 January 2011 and IHT of £67,000 was paid.

It was subsequently discovered that, due to a computational error, the IHT should actually have been £75,000. The additional tax was paid as soon as the error came to light.

What is the penalty for which the Executors could be liable?

Example 3

Doug made a chargeable lifetime transfer for inheritance tax purposes on 1 June 2010. HMRC requested details of the transfer in order to be able to calculate any tax due, but as Doug wished to delay payment of the tax he did not supply the information.

He eventually filed the return on 1 August 2012. The tax liability was £10,000.

Explain the late return penalties which will apply.

Answer 1

The estate is NOT "excepted"

	£
Lifetime transfer (before APR)	120,000
Gross value of estate	250,000
	370,000

> £325,000 ∴ not "excepted"

Even though no Inheritance Tax will be payable in respect of Frank's estate, as it is not "excepted", **an IHT return will be required**

It should be submitted 12 months from the end of the month of death, i.e. by **31 March 2012**.

Answer 2

The error would be due to careless action.

Penalty: 30% x tax lost	£2,400

Since the additional tax was paid as soon as the error came to light, it is likely the penalty would be reduced, either to 0% (unprompted disclosure) or 15% (prompted disclosure).

Answer 3

The return was due to be filed by 30 June 2011.

As it was not filed by the due date, a £100 fixed penalty will be charged.

As the return was outstanding more than 3 months after the due date, HMRC could impose daily penalties of £10 per day for a maximum of 90 days.

An additional penalty will be charged as the return is outstanding for more than 6 months. This is calculated as 5% of the liability to tax, ie £500.

As the return is more than 12 months late, a further 5% penalty (£500) will also be charged.

Finally, as the return is not submitted within 12 months and Doug deliberately withheld information necessary to assess the tax due, an additional maximum penalty of 70% of the tax due will apply (£10,000 x 70% = £7,000). This penalty may be reduced to 35% for any disclosure.

The maximum total penalties are therefore;

£(100 + 900 + 500 + 500 + 7,000) = £9,000.