

2010 No.

INHERITANCE TAX

**The Inheritance Tax (Delivery of Accounts) (Excepted Estates)
(Amendment) Regulations 2010**

<i>Made</i>	- - - -	***
<i>Laid before the House of Commons</i>		***
<i>Coming into force</i>	- -	***

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

In accordance with section 256(3A) of that Act(c), 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 2010.

(2) These Regulations shall come into force on [] 2010, and shall have effect—

- (a) for the purposes of regulations 4, 6, 7(1), 7(3), 8 and 9 in relation to deaths occurring on or after [], and
- (b) for all other purposes in relation to deaths occurring on or after [].

(3) In these Regulations “the principal Regulations” means the Inheritance Tax (Delivery of Accounts) (Excepted Estates) Regulations 2004(d);

(a) 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.

(b) 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.

(c) 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).

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

Amendment of the principal Regulations

2. The principal Regulations are amended as follows.

Amendment of regulation 4

3. Regulation 4 (excepted estates) is amended as follows.

4. In paragraph (2)—

(1) At the end of sub-paragraph (d) omit “and”.

(2) After sub-paragraph (e) insert—

“; and

- (f) where a valid claim is made pursuant to sections 8A and 8B of the 1984 Act^(a) (transfer of unused nil-rate band between spouses and civil partners) in sub-paragraph (e) the expression “IHT threshold” shall mean the nil rate band maximum^(b) as increased (calculated in accordance with section 8A(3) and (4) of the 1984 Act) but only where the criteria specified in paragraphs (5A) and (5B) are met.”.

5. In paragraph (3)—

(1) At the end of sub-paragraph (e) omit “and”.

(2) 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;”.

(3) After sub-paragraph (f) insert—

“; and

- (g) where a valid claim is made pursuant to sections 8A and 8B of the 1984 Act (transfer of unused nil-rate band between spouses and civil partners) in sub-paragraph (f) the expression “IHT threshold” shall mean the nil rate band maximum as increased (calculated in accordance with section 8A(3) and (4) of the 1984 Act) but only where the criteria specified in paragraphs (5A) and (5B) are met.”.

6. After paragraph (5) insert—

“(5A) The criteria specified in this paragraph is as follows—

(a) immediately before the death of a person (referred to for the purposes of this paragraph, paragraph (5B) and regulation 6(4) as a “deceased person”) that deceased person was the spouse or civil partner of the person specified in paragraph (2) or (3) (referred to for the purposes of this paragraph, paragraph (5B) and regulation 6(4) as “the survivor”),

(b) the survivor survived the deceased person, and

(c) either—

(i) in a case where the deceased person was a spouse, the deceased person died on or after 13 November 1974, or

(ii) in a case where the deceased person was a civil partner, the deceased person died on or after 5 December 2005.

(5B) The criteria specified in this paragraph is as follows—

(a) the deceased person died domiciled in the United Kingdom;

(a) “the 1984 Act” is defined in the principal Regulations as the Inheritance Tax Act 1984 (1984 c. 51); sections 8A and 8B were inserted by section 10 and schedule 4 of the Finance Act 2008 (2008 c. 9).

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

- (b) the value of the deceased person’s estate is attributable wholly to property passing—
 - (i) under the 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 deceased person’s death was situated outside the United Kingdom;
- (d) the deceased person was not a person by reason of whose death one of the alternatively secured pension fund provisions applies;
- (e) the deceased person died without having made any chargeable transfers during the period of seven years ending with the deceased person’s death;
- (f) a claim is made pursuant to sections 8A and 8B of the 1984 Act—
 - (i) under which (subject to regulation 7(C)) the amount by which the nil rate band maximum 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 deceased person; and
- (g) subject to sub-paragraph (b) of regulation 6(5), the information specified in regulation 6(4) has been provided.”.

7.—(1) In paragraph (7)—

- (a) after “paragraphs (2)(d) and (e)” delete “and” and insert “,”,
- (b) after “(3)(d) and (e)” insert “and (5B)(e)”.

(2) After paragraph (7) insert—

“(7A) For the purposes of paragraphs (2)(d) and (e) and 3(d) and (e) the aggregate of the 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)(a) 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 taken into account in determining the value transferred by a chargeable transfer.”.

(3) After paragraph (7A) insert—

“(7B) The terms of paragraph (7A) shall apply to this paragraph as if “paragraph (5B)(e)” were substituted for “paragraphs (2)(d) and (e) and 3(d) and (e)”.

(7C) For the purpose of paragraph (5B)(f)(i) of regulation 4, in calculating the percentage increase in the nil rate band maximum under section 8A of the 1984 Act, sections 104 (business property relief) and 116 (agricultural property relief) of the 1984 Act shall not apply in determining the value of VT(b).”.

Amendment of regulation 6

8. After regulation 6(3) (production of information) of the principal Regulations insert—

(a) Section 21 was amended by section 882(1) and Schedule 1 paragraphs 393 and 395 of the Income Tax (Trading and Other Income) Act 2005 (2005 c.5).

(b) “VT” is defined in section 8A(2) of the Inheritance Tax Act 1984.

“(4) For the purpose of sub-paragraph (g) of regulation 4(5B) the information specified is as follows—

- (a) the full name of the deceased person,
- (b) the last known address of the deceased person,
- (c) the date of death of the deceased person,
- (d) the date and place of the marriage or civil partnership (as the case may be) between the 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 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 deceased person.

(5) The information referred to in paragraph (4)—

- (a) must be produced to the Board in such form as the Board may prescribe, and
- (b) shall not need to be produced to the Board if such information has been produced in an account under section 216 of the 1984 Act in relation to the survivor.”.

Amendment of regulation 7

9. In regulation 7(1) (production of information) of the principal Regulations after “regulation 6(2)” insert “and regulation 6(4)”.

	<i>Name</i>
	<i>Name</i>
Date	Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Order)

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

Regulation 1(2) states when these Regulations come into force and specifies the date from which individual regulations take effect. Regulation 1(3) defines various terms that are used in these Regulations.

The amendments to the principal Regulations are to regulation 4, regulation 6 and regulation 7.

Regulations 3 to 7 amend regulation 4 of the principal Regulations.

Regulation 4 amends regulation 4(2) of the principal Regulations. Sub-paragraph (2) inserts a new sub-paragraph (f), which provides that where a valid claim to transfer the unused nil rate band of a previously deceased spouse or civil partner of the relevant person has been made, a reference to the inheritance tax threshold includes any transferred allowance arising as a result of that claim, provided that the criteria specified in new regulations 4(5A) and (5B) are met.

Regulation 5 amends regulation 4(3) of the principal Regulations. Paragraph (2) inserts new sub-paragraph (ea) into regulation 4(3), to provide that a further circumstance that must apply for the purpose of regulation 4(3) is that the amount transferred on the person’s death by a spouse, civil partner or charity transfer must be greater than nil. Paragraph (3) makes a similar insertion as is provided for under regulation 4(2).

Regulation 6 inserts new regulation 4(5A) and (5B) into the principal Regulations. They specify the criteria that are required to be met for the purposes of new sub-paragraphs (2)(f) and (3)(g) of regulation 4 of the Principal Regulations.

The criteria under new paragraph (5A) are that a person (defined in the Regulations as a “deceased person”) must have died leaving a spouse or civil partner (defined in the Regulations as “the survivor”). In a case where the deceased person left a spouse, the deceased person must have died on or after 13 November 1974. In a case where the deceased person left a civil partner, the deceased person must have died on or after 5 December 2005.

Paragraph (5B) specifies the further criteria that are required to be met. Sub-paragraph (a) specifies that the deceased person must have died domiciled in the United Kingdom. Sub-paragraph (b) specifies that the value of the deceased person’s estate must be attributable wholly to property passing under that person’s will or intestacy or by survivorship. Sub-paragraph (c) specifies that of that property, not more than £100,000 is attributable to property outside the United Kingdom. Sub-paragraph (d) specifies that the deceased person was not a person by reason of whose death one of the alternatively secured pension fund provisions applies. Sub-paragraph (e) specifies that the deceased person must have made no chargeable transfers in the seven years before his death. Sub-paragraph (f) specifies that a claim for a transfer of the inheritance tax threshold of a previously deceased spouse or civil partner of the survivor must have been made pursuant to section 8A of the Inheritance Tax Act 1984, under which (subject to new regulation 7(C) which is inserted by regulation 7(3) of these Regulations) the amount of the inheritance tax threshold of the survivor’s estate is increased by 100 per cent. Sub-paragraph (f) specifies further that the claim must be made in respect of not more than one deceased spouse or civil partner. Lastly, sub-paragraph (g) provides that the information referred to in new regulation 6(4) (inserted by regulation 8 of these Regulations) must have been provided.

Regulation 7(1) inserts a reference to sub-paragraph (e) of new regulation 4(5B) into regulation 4(7) of the principal Regulations.

Regulation 7(2) inserts paragraph (7A) into regulation 4 of the principal Regulations. This new paragraph provides that transfers in any period from 6th April in a year until the following 5th April, which are exempt transfers under the “normal out of income exemption” pursuant to section 21 of the Inheritance Tax Act 1984, will still be included for the purposes of calculating a chargeable transfer under paragraphs (2)(d) and (e) and (3)(d) and (e) of paragraph 4 of the

principal Regulations, but only where they are made within 7 years of the death of the relevant person and are also over £3,000 in aggregate value in that period.

Regulation 7(3) inserts new paragraphs (7B) and (7C) into regulation 4 of the principal Regulations.

New paragraph (7B) provides that the terms of new paragraph (7A) apply for the purpose of sub-paragraph (e) of new regulation 4(5B) on the same basis as they apply to paragraphs (2)(d) and (e) and (3)(d) and (e) of regulation 4 of the principal Regulations.

New paragraph (7C) provides that in calculating the amount by which the nil rate band maximum at the time of the survivor's death is increased under sub-paragraph (5B)(f) of regulation 4, in determining the value transferred by 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.

Regulation 8 amends regulation 6 of the principal Regulations. It inserts a new paragraph (4) into regulation 6, which lists the information that must be provided pursuant to sub-paragraph (g) of new regulation 4(5B) of the principal Regulations and a new paragraph (5), which provides that such information must be provided in such form as the Commissioners for Her Majesty's Revenue and Customs may decide and that it need not be provided if it has already been set out in an inheritance tax account.

Regulation 9 amends regulation 7(1) of the principal Regulations, to refer to new regulation 6(4) as well as regulation 6(2).

A full Impact Assessment has [not been produced for this instrument as no impact on the business or charity sectors, and a negligible impact on the public sectors, is foreseen.]