

Summary: Intervention & Options

Department /Agency: HM Revenue and Customs	Title: Impact Assessment of Disclosure of Inheritance Tax Avoidance	
Stage: Consultation	Version: Final	Date: 22 July 2010
Related Publications:		

Available to view or download at:

<http://www.hmrc.gov.uk/consultations>

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What is the problem under consideration? Why is government intervention necessary?

The Government announced at the June 2010 Budget that draft regulations would be published over the summer to bring IHT, on transfers into trust, within the Disclosure of Tax Avoidance Schemes regime. HMRC is aware this area of IHT is an attractive target for new avoidance schemes and Finance Act 2010 included legislation to close down two such schemes. However HMRC is concerned that it does not know the full extent of this avoidance activity as it does not get information in a timely and structured way. This makes it difficult to legislate and target anti-avoidance activity effectively.

What are the policy objectives and the intended effects?

The Government would like to ensure that IHT charges associated with the transfer of property into trust are not avoided. This helps ensure that the tax system is fair and transparent and protects the Exchequer against lost tax revenue which undermines the Government's investment in UK public services. It will allow HMRC to identify new and innovative schemes at an early stage and the users of those schemes. Schemes can then be risk assessed and where appropriate legislated against and compliance resources targeted more effectively.

What policy options have been considered? Please justify any preferred option.

Option 1: do nothing.

Option 2: introduce the disclosure regime to IHT, as it applies to transfers into trusts. It is already used successfully for other taxes.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Expected three years from the date the regulations are introduced.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: 22 July 2010

Summary: Analysis & Evidence

Policy Option: 2	Description: Introduce the disclosure regime to IHT as it applies to transfers into trusts
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Costs for promoters of training staff and introducing new reporting systems. Costs to HMRC of introducing the new system.		
	One-off (Transition) Yrs			
	£ negligible			
	Average Annual Cost (excluding one-off)			
	£ 100,000	Total Cost (PV)	£ 100,000	
Other key non-monetised costs by 'main affected groups' Costs to HMRC and promoters of becoming familiar with the new rules.				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Benefits to HMRC from an enhanced ability to introduce timely anti-avoidance legislation and target compliance resources more effectively.		
	One-off Yrs			
	£ 0			
	Average Annual Benefit (excluding one-off)			
	£ not quantifiable	Total Benefit (PV)	£ not quantifiable	
Other key non-monetised benefits by 'main affected groups' Reduced HMRC and customer admin costs resulting from a more targeted approach to anti-avoidance legislation and compliance work. Reduced HMRC costs resulting from more effective prioritisation of resources.				

Key Assumptions/Sensitivities/Risks There are a small number of scheme developers in what is a fairly niche area. Learning costs are likely to be low as many will already be familiar with the main disclosure regime. Operational costs are limited to making the disclosure and supplying clients with HMRC issued Scheme Reference Numbers.

Price Base Year 2010	Time Period Years 1	Net Benefit Range (NPV) £ not quantifiable	NET BENEFIT (NPV Best estimate) £ not quantifiable
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	Effective April 2011			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?	£ n/a			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas emissions?	£ n/a			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro n/a	Small n/a	Medium n/a	Large n/a
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of	£90,000	Decrease of	£ n/a
		Net Impact	£90,000

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

Introduction

This impact assessment examines the costs and benefits of applying the Disclosure of Tax Avoidance Schemes (DOTAS) regime to Inheritance Tax (IHT), as it applies to transfers into trust.

Policy objectives and intended effects

The extension of the DOTAS regime to a targeted area of IHT is intended to counter avoidance by obtaining:

1. early notification of new and innovative schemes that have been developed and details of how they work to inform loophole-blocking; and
2. details of who has used such schemes to inform HMRC's compliance activities.

Background

IHT is a donor-based tax and is charged on those who pass on an asset (or their personal representatives) rather than on those who inherit it. The charge arises when there is a chargeable transfer and this can occur in one of two ways:

- On death. A deceased person's estate is treated as being transferred to another person immediately before their death and includes anything transferred into a trust by their will.
- During an individual's lifetime, when property is transferred into certain types of trusts (known as 'relevant property trusts'). This is known as the 'entry charge'.

Charges are subject to various exemptions and reliefs.

The current rates and thresholds applicable to IHT are:

Rate (%)	Threshold (£)
0	0-325,000
40 *	Over 325,000

* transfers into trust are chargeable at half this rate, i.e. 20%, except where the transfer is within seven years of the transferor's death

There is also a 6% charge every 10 years on trustees of relevant property trusts, on the value of the property above the 0% rate band (known as the nil rate band), and exit charges when assets are transferred out of trust.

Most lifetime gifts, unless they fall under some of the exemptions, will be 'Potentially Exempt Transfers' (PETs). PETs attract no charge to IHT when they are made and they become totally exempt from any charge to IHT if the donor survives for more than seven years after the gift is made.

The DOTAS regime was introduced in 2004 in relation to income tax, corporation tax and capital gains tax (the 'main regime'). It requires certain persons, normally the promoter of the scheme, to provide HMRC with information about how the scheme is intended to work, normally within five days of the promoter making the scheme available. Promoters include accountants, solicitors, banks and financial institutions, and specialist scheme providers.

The regime has been extended to cover Stamp Duty Land Tax in 2005 and National Insurance Contributions in 2007.

For the main regime, a Scheme Reference Number (SRN) is normally allocated by HMRC to each disclosed scheme. This number is passed to the promoter, who in turn passes it to users

of the scheme. Users are required to provide the SRN to HMRC, usually in their annual tax return.

Following a 2009 PBR announcement about addressing IHT avoidance more generally, HMRC held informal meetings with interested parties. Those discussions included applying the DOTAS regime to a targeted area of IHT, namely the charge arising on the transfer of property into trust. In the June 2010 Budget, the Government announced that it would consult on extending DOTAS to IHT and publish draft legislation.

HMRC is aware that the entry charge is an attractive target for new avoidance schemes and legislation was included in Finance Act 2010 to close down two known schemes. However HMRC is concerned that it does not know the full extent of this avoidance activity as it does not get information in a timely and structured way.

Options

Option 1: Do nothing

This is not acceptable for a number of reasons.

It is difficult to legislate and target anti-avoidance activity effectively without timely knowledge of the scheme. Effective legislation requires a close examination of the detailed arrangements in order to provide evidence and support for future proposals for change. It is also helpful to have an understanding of the extent a given scheme is used so that legislation carrying the highest risk to the Exchequer may be prioritised.

Where there is no entry charge, there is usually no need for a transferor to submit an IHT account or return. This prevents HMRC from opening an enquiry into the transaction and this is unfair to the compliant majority of taxpayers who do not take part in avoidance.

Option 2: Introduce the disclosure regime to IHT as it applies to transfers into trusts

The DOTAS regime does not currently cover IHT but has been successful in other tax areas. To date it has helped close off avoidance opportunities of over £12 billion. The regime has been extended to cover much of the tax base and applying it to IHT would be a further progression.

The proposed description of schemes that need to be disclosed contains a grandfathering rule. This would limit disclosure to new and innovative schemes by exempting those schemes which are the same or substantially the same as those which had already been made available by any person before the date the proposed regulations would come into effect. This should reduce the number of disclosures required.

The proposed regulations would impose the existing notification requirements and time limits of the main regime to promoters of prescribed IHT avoidance schemes. Subject to any subsequent changes, they must provide, within five days:

- the promoter's name and address;
- details of the regulations by virtue of which the scheme is notifiable;
- a summary of the scheme and its name;
- information explaining each element of the scheme; and
- the statutory provisions on which the tax advantage is based.

Where there is no promoter (for example where the scheme is developed in-house), where the promoter is not treated as such for the purposes of the regime (for example a lawyer who cannot make a disclosure without revealing legally privileged information), or where the promoter is overseas, it is usually the user who must provide the information.

Promoters would normally be issued with an SRN by HMRC within 30 days. A promoter who receives an SRN would then be required to pass it on to the client within 30 days. If the client is an intermediary rather than the end user of the scheme, he or she would have to pass on the

SRN to the end user within 30 days of first becoming aware of any transaction forming part of the notifiable scheme.

The end user would be required to report the SRN to HMRC though, unlike the main regime, not by means of a return. IHT does not impose an annual return requirement and as mentioned above, an IHT account or return may not be required where there is no chargeable transfer.

It is therefore proposed that the end user would report the SRN to HMRC on a form designed for this purpose. This would capture the required information about IHT scheme users and allow HMRC to target its compliance activity more effectively.

Evidence

The purpose of the disclosure regime is to close the information gap. It therefore follows that HMRC does not yet have complete information about the type and number of schemes currently available nor the extent of their use. Extending the DOTAS regime to this targeted area of IHT should address this gap. HMRC nevertheless does have evidence that there is continued interest in developing schemes that seek to avoid the IHT entry charge on property transferred into trust. This evidence is supported by information from external stakeholders.

Cost and benefits

Impact on promoters and users

Promoters would have to revise internal guidance and ensure that their staff become familiar with the extension to IHT.

There would be a small increase in the number of disclosures. An increase in disclosures would lead to a corresponding increase in the number of SRNs issued by HMRC, to be transmitted onwards by promoters (and reported on the new lists of clients) and reported back by scheme users.

Many promoters are likely to be familiar with the DOTAS regime already as it applies to other taxes. Those likely to promote IHT schemes will also be familiar with the IHT regime and have processes in place to comply with the new rules. However there may be a few promoters who have no experience of the DOTAS regime. They would have to familiarise themselves with the regime and draft guidance for their staff.

Users of disclosed IHT schemes would be required to complete and submit a stand-alone form to notify HMRC of the SRN and certain other information. They will have to do so within 12 months of implementing the first element of the scheme.

HMRC seeks views as to how great the compliance costs associated with these impacts would be.

Admin Burden

The admin burden is assessed through the 'Standard Cost Model', an activity-based costing model which identifies what activities a business has to do to comply with HMRC's obligations, and which estimates the cost of these activities, including agent fees and software costs. The cost has been estimated on the basis of a cost of notifying a scheme of around £3,700 per scheme (2005 prices) and assuming 25 schemes are notified to HMRC each year. Using these assumptions the admin burden has been estimated to be £90,000 per year (2005 prices).

Impact on HMRC

The main impacts on HMRC are:

- amendments to secondary legislation,
- updating guidance on how to comply with the new requirements,
- an increase in notification of SRNs,
- an increase in schemes to be reviewed
- developing and making available a form for users to notify HMRC of the SRN , and

- additional compliance activity.

It is expected that the associated costs will be absorbed within existing budgets and resources. The main uncertainty relates to the number of schemes that may be disclosed and the consequent impact on resource reviewing such schemes and compliance intervention. HMRC would like to use the consultation to ensure that the descriptions of schemes that have to be notified are sufficiently well defined to target only new and innovative schemes without impacting on straightforward tax planning.

In addition, IHT risk assessment already prioritises such risks in order to deploy resources efficiently and effectively. The resource costs relating to any additional compliance activity should be offset in part at least by a reduction in costs currently incurred on trying to identify schemes and users with insufficient information.

Exchequer Effects

The DOTAS regime is an information device and its main impact is to protect revenue by informing both legislation and compliance work. As reported earlier in this assessment, since 2004 DOTAS has informed legislation that has closed off over £12 billion in avoidance opportunities.

Two broad effects would be expected. Firstly an improvement in the flow of information with a consequent acceleration, for IHT schemes with significant tax risks, of legislation closing the scheme down. For schemes with the most substantial tax risks, the objective would be to make the legislation effective from a date before the scheme is implemented and tax revenue potentially lost. The second broad effect is that, if the legislation is perceived to be effective, promoters will not market IHT schemes that are at high risk of being closed down before they can be implemented.

We have drawn upon the evidence of IHT avoidance schemes recently closed by HMRC to assess the impact of the package and we estimate that it will protect revenue in the region of £20 million per year.

Other impacts

The extension of the DOTAS regime to this targeted area of IHT is intended to create some transparency about the marketing and use of schemes seeking to avoid, reduce or defer an IHT entry charge when property is transferred into trust. This would allow HMRC to counter schemes more effectively in order to reduce the tax gap and ensure greater fairness of treatment with the majority of taxpayers who do not use such schemes. It is not anticipated that it will distort competition.

The proposed measure would not create any new criminal or civil penalties. However, the extension of the regime would increase the number of promoters liable to an existing civil penalty for failing to notify a scheme and failing to pass on an SRN within the time limits. It would also increase the number of users liable to the existing penalty for failing to report an SRN within the time limit.

HMRC believes that most avoidance schemes are likely to be developed by a fairly small number of promoters, in the region of 50 to 60 with around 25 of those notifying a scheme in any one year. The base of estates that fall within charge to IHT is fairly small (in 2008-09 there were approximately 16,000 estates left on death paying IHT, representing 3% of the total). Lifetime transfer charges form a small proportion when compared to charges arising on death. As a result the numbers of schemes and users are likely to be low though the individual charges that the schemes potentially avoid may be significant.

Businesses of any size may develop and market avoidance products. The objective of obtaining early notification of schemes precludes excepting small businesses from the proposed measure. HMRC does not expect it will have a significant effect on small businesses, either in absolute terms or proportionately. HMRC is especially keen to hear from small businesses which may be affected.

This measure is in accordance with sustainable development principles and is compatible with the Human Rights Act. It will not have a significant impact on:

- legal aid,
- carbon costs,
- environmental issues,
- health,
- race equality,
- disability equality, or
- gender equality.

It is not expected that this proposed measure will have any disproportionate effect on rural areas.

Implementation plan

Implementation will be by way of statutory instruments subject to the negative Parliamentary procedure. It is expected they will come into effect in April 2011.

A further Impact Assessment will be published after this consultation at the same time as final draft legislation.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No