Correspondence between HMRC Inheritance Tax Policy and STEP about the scope of IHTA s240
September 2022

1. **Question 1**
Does s240(2) only operate the four year time limit if tax is actually payable? Suppose someone submits an account with no tax to pay on the basis of BPR or spouse exemption and they do not apply for a clearance certificate? Do HMRC have 20 years to raise proceedings and if not why not?

HMRC Answer: HMRC take the view that s240 operates whether or not tax is initially payable. Treating a nil amount submitted in accordance with an IHT return notionally as a 'payment', does no harm to the operation of s240. If the true IHT liability is 'nil', then in relation to that taxpayer the case will never be within s240, since the section deals with underpayments and cases where too little tax has been paid and this can never occur in a true nil liability case. But if on examination the nil account is incorrect, any tax that is payable is 'additional tax' and to be treated the same as for any other underpayment. The time limits within s240 operate in the same way as if tax had been paid.

2. **Question 2**
What is meant by "payment [in accordance with an account duly delivered to the board] is made and accepted in satisfaction of the tax."?

Does this mean either:

- **if a taxpayer pays tax on the basis of an account submitted, the four year period starts to run from that time and if HMRC don't raise any enquiries or indicate that they don't accept the account is accurate within the four years they are out of time to query it later (if they raise enquiries in the four years then the time limit does not start running); or**

- **that HMRC have to confirm positively that they accept the views taken in the account (but then if they do not respond at all on that point how will the taxpayer ever know they have accepted it?).**

HMRC Answer
In the majority of cases, and unless HMRC have written to the customer to say otherwise, the issue of form IHT421 (E&W and NI) and SL189 (Scotland) will constitute HMRC acceptance of the tax/nil value returned, the 4 year period (or longer, as appropriate) begins to run at this point in relation to cases where it is later discovered that additional tax should have been paid.

Note that our view remains as set out in IHTM30462 ('where an account has been delivered but which omitted an asset that is later disclosed, IHTA84/S240(2) does not apply (as the tax attributable to the value of the undisclosed asset cannot have been paid in accordance with the account that was delivered)').

HMRC published a special edition newsletter in April 2018 to announce a new 12 week timeline, after which customers could assume that HMRC did not have any questions to ask about the information and values returned on form IHT400. The 12 week window only applies where HMRC have advised the customer that we are looking at the account in more detail. If we don't advise the customer that we are going to do a compliance check in this time, they can

assume that we have no questions to ask about the information or values they have given in the form IHT400 so the 4 year period (or longer, as appropriate) begins to run at this point.

In the rare event that HMRC fails to or does not issue form IHT421/SL189 the onus would be on the customer to apply for a certificate of discharge under s239(2). If you have not heard from us at all time does not start running. The certificate of discharge will constitute final acceptance and HMRC will not be able to raise any further queries provided no assets are omitted. On the latter point either:

(i) the additional tax is attributable to the value of property included in the account, in which case HMRC can't pursue the additional tax at all after the clearance is granted (s 239(3)(b)), or

(ii) the additional tax is attributable to 'further property which is afterwards shown to have been included in the estate…' in which case it is neither protected by the clearance (s 239(4)(b)) nor within s 240(2), because no tax attributable to the value to that property has been paid in accordance with an account, and so the default 20-year time limit in s 240(7) applies.

3. Question 3

What if you do not hear from HMRC and it is in relation to an IHT 100 account as HMRC are not compelled to issue a certificate of discharge then under s239 anyway? For example the IHT100 claims no tax is due to NEI exemption or foreign domiciled status and nothing further is heard. It would be unreasonable to conclude that there was a 20 year time limit.

HMRC Answer

In the April 2022 HMRC Trusts and Estates newsletter, HMRC announced a new 12 week timeline for IHT100s for Trust and Lifetime charges, after which customers could assume that HMRC did not have any questions to ask about the information and values returned on form IHT100. The 12 week window only applies where HMRC have advised the customer that we have received the form and provided a date 12 weeks in the future. If we don't contact the customer in this time, they can assume that we have no questions to ask about the information or values they have given in the form IHT100 so the 4 year period (or longer, as appropriate) begins to run at this point. Where HMRC don't write to the customer to confirm receipt of the IHT100 form, the onus will be on the customer to seek clearance.

Note that the above position on death does not apply to excepted estates. As set out at IHTM06043, under the excepted estates regulations if an applicant provides the information required there is a provision for automatic discharge after 60 days of obtaining the grant of probate or confirmation (previously 35 days in relation to England and Wales and Northern Ireland deaths before 1 January 2022). The effect of the discharge is the same as if a clearance certificate under s239 IHTA 1984 had been issued and Regulation 8 discharges "all persons" from any further claim for tax subject to Regulation 8(2) and Regulation 9 of The Regulations.

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