

Time limits for IHT collection (Lecture P1249 – 7.28 minutes)

Time limits: Income tax and CGT

Many tax advisers will be familiar with the time limits for HMRC to issue income tax or capital gains tax (CGT) assessments where (for example) income or gains have not been disclosed or have been under-declared.

For income tax and CGT purposes, there are four main time limits for HMRC to issue assessments:

1. Normal time limit of four years after the end of the tax year to which it relates (TMA 1970, s 34(1));
2. Six-year time limit where a loss of tax has been brought about carelessly;
3. 12-year time limit where the lost tax involves an offshore matter or an offshore transfer which makes the lost tax significantly harder to identify (TMA 1970, s 36A);
4. 20-year time limit where the taxpayer brought about the loss of tax deliberately (TMA 1970, s 36(1), (1A)).

Separate legislation applies four, six and twenty-year assessment time limits for corporation tax purposes (FA 1998, Sch 18, para 46).

IHT clearance certificates

For inheritance tax (IHT) purposes, taxpayers (i.e. normally personal representatives and trustees) can apply to HMRC for a 'clearance certificate' on a form IHT30 (which can be downloaded from HMRC's website; tinyurl.com/HMRC-IHT30).

However, the application can only be submitted when the person liable for the IHT is sure, to the best of their knowledge, that there will be no further changes to the asset values submitted to HMRC, and that all material facts have been disclosed.

Furthermore, taxpayers generally need to wait at least two years from the transfer, although HMRC have discretion to consider a clearance application within the two-year period.

IHT time limits

The general rule is that there is no liability to pay additional IHT on any property after four years from the later of the date on which the payment (or for instalments, the last payment) was made and accepted, and the date on which the tax (or the last instalment) became due, where the tax attributable to that property was paid in accordance with an IHT account delivered to HMRC and the payment was made and accepted in full satisfaction of the IHT (IHTA 1984, s 240(2)).

However, if the loss of IHT was brought about carelessly (i.e. there is a failure to take reasonable care to avoid the loss), the time limit for recovering any additional IHT is six years.

An extended time limit of 12 years applies to IHT underpayments involving an offshore matter, or an offshore transfer that makes the lost tax significantly harder to identify (IHTA 1984, s 240B).

If the loss of tax was brought about deliberately, the time limit is extended to 20 years.

No time limit

The normal time limits for IHT mentioned above apply where an IHT return has been submitted to HMRC, and payment was made in full satisfaction of the IHT attributable to the return.

What if no IHT return has been submitted? The normal time limit in such circumstances is extended to 20 years from the date of the chargeable transfer. This time limit applies if the loss of tax was not brought about deliberately by the person liable for the tax, or by a person acting on their behalf (e.g. an agent) (IHTA 1984, s 240(6), (7)).

However, if no IHT return was submitted and the loss of tax was brought about deliberately, there is no time limit for HMRC to recover the tax underpayment.

Furthermore, HMRC guidance points out that a 20-year time limit generally applies if an IHT return was submitted but the return omitted an asset, where there is consequently an unpaid IHT liability in respect of that asset. However, if the omission, and therefore the loss of tax, was deliberate, there is no time limit for the recovery of the unpaid tax (see HMRC's Inheritance Tax manual at IHTM30462).

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