Individual Savings Accounts (ISA): transfer of benefits to a surviving spouse or partner

Technical

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Both the CIOT and ATT have commented on the draft Individual Savings Account (Amendment) Regulations 2015 that provide for the transfer of ISA benefits to the surviving spouse or civil partner when the holder dies. The chancellor announced in the autumn statement that their spouse or civil partner would receive an additional ISA allowance up to the value of the deceased's ISA savings at the time of death.

Both bodies had a number of concerns about how it will work in practice (see the submissions on the CIOT website and on the ATT website).

The main issues from the responses are:

- Where the subscription for the additional allowance includes non-cash assets (stocks and shares), the spouse or civil partner must 'inherit' all or part of those assets. It is unclear what is meant by 'inherits' because the term is not defined. There are particular questions around intestacy, deeds of variation, appointments under the writing back provision of IHTA 1984s 144 and life interest trusts where the surviving partner is the life tenant.
- The tax treatment of ISA assets during administration of the estate particularly where assets are sold by the PRs (requiring potentially awkward apportionments). Legislating for the extension of the favourable tax treatment throughout the administration period, in accordance with the government's commitment to do so, would help to address these issues.
- The restrictiveness of some of the eligibility criteria which will need to be met in order for the additional allowance to be claimed; primarily the fact that the ISA account created by the additional subscription is to be managed by the same account manager who managed the deceased's account. The responses highlighted cases where this condition could pose problems.

- Another condition with potential issues is the provision that the surviving spouse or civil partner and the deceased ISA holder must have been living together at the date of the deceased’s death. Currently there is no further guidance provided by HMRC as to how ‘living together’ will be defined. Both bodies raised the concern about an elderly couple where one was living in a care home at the time of their death. The ATT raised the wider issue of modern living arrangements where there is an increasing trend for married couples who live apart for much of the time. The ATT response posed the question to HMRC as to how they saw these types of couples fitting into this (and indeed other policies) where occupation of the same house is a key determining factor.