

TISA RESPONSE TO

Draft ISA regulations & guidance: additional permitted subscriptions for spouse/civil partner of deceased ISA investor

20th February 2015



INTRODUCTION

TISA is a not-for-profit membership association operating within the financial services industry.

TISA's membership comprises over 145 member firms involved in the supply and distribution of savings and investment products and services. These members represent many different sectors of the financial services industry, including banks, stockbrokers, asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, consultants and advisers, software providers, financial advisers and pension providers.

Having a legacy of focusing predominantly within the tax incentivised products area, TISA has in recent years moved into the broader savings and investment world, extending our status of 'trusted advisor' to the authorities over a much greater remit. This has been welcomed by our members and the authorities as a natural progression.

TISA has a highly successful track record in working cooperatively with government, regulators, HMT, DWP and HMRC to improve the performance of the industry and the outcomes for consumers. Policy and regulation continues to be the major focus for our members with regard to corporate responsibility.

TISA and its members' remit is evolving into a clearer focus on pro-active consultation in the regulatory world in order to influence policy and associated regulation before its creation, rather than reacting to issue policy directives. This will help to ensure a more considered policy creation from the authorities.

What makes TISA unique is that we cover the entire industry, incorporating cross sector policy, industry and technical expertise. Whilst we maintain a solid partnership with government, the regulators and wider industry, we remain independent and develop neutral views and opinions. This impartiality is reflected in our ability to drive development projects which improves industry performance and puts us in the unique position of being able to constantly challenge the status quo to bring about material improvement. At the forefront in all of our recommendations and actions is to consider national and consumer outcomes.

RESPONSE TO CONSULTATION

Summary of response

TISA is supportive of the proposal to allow the surviving spouse to add to their own ISA the value of the deceased spouse's ISA. This is of great benefit to consumers and reflective of the often combined savings strategies of investors who are married or in a civil partnership.

The initial proposal offered little flexibility in consumer choice, insisting that all such subscriptions had to be made with the ISA manager of the deceased and then, if the surviving spouse wanted to transfer to another ISA manager, the ISA would have to be transferred.

Following a series of industry meetings with HMT and HMRC, a proposal to allow the transfer of an additional permitted subscription (APS) allowance to another ISA manager, before subscriptions are made, has been developed by HMRC. An industry response to this proposal has been provided separately to HMRC.

This consultation response will assume the addition of this proposed transfer process as it addresses many areas of uncertainty, query and perceived operational difficulty.

Response in detail

1. Communication to customers / consumers

It has previously been confirmed that HMRC are not requiring ISA managers to make any communications to customers regarding this change and that HMRC will be updating their website and informing the bereavement section of the change.

It was felt that a 'how to' customer guide would be a useful publication and industry noted this could be produced as part of a transfer guideline working group should this process be approved. Sight of any HMRC customer facing communications and information would be useful to this group to ensure a consistent approach and language is used.

2. Areas of clarification / guidance required in the proposed transfer process (issues identified in BBA/BSA/TISA meetings representing industry view)

Requirement for ISA manager to process transfers / subscriptions

It was requested that it is explicit in guidance that, per the proposal, ISA managers do not have to accept any APS allowance subscription or transfer in request however ISA managers **must** allow and process a request to transfer out an APS allowance to another ISA manager.

Non-written applications / transfer forms

It was requested that it is explicit in guidance that any and all forms may be completed both in writing and not in writing in line with current process.

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Internal transfer reporting

It has been noted by some managers that in a small number of cases where an internal transfer is carried out, the APS allowance reporting ISA100 flag may be lost as it would with an external transfer. As this is likely to affect a small number of cases it was requested that HMRC confirm this is acceptable?

Clarification of time limits

It was discussed that there is no requirement for the new ISA manager to confirm the transfer of the APS allowance is within the specified time limits (180 days or 3 years) as this is covered by investor declaration however some clarification of exact details and terminology of when beneficial ownership is transferred would be useful for investor information.

Retention of transfer request (deceased spouse ISA manager)

It was requested that it is specified in guidance the period the deceased spouse ISA manager is required to retain a copy of the APS allowance transfer request.

Date of transfer

It was agreed by that a transfer date should not be included as part of the APS allowance transfer process as the underlying ISA is not being transferred.

Evidence / notification of death

It was queried whether the deceased spouse ISA manager should have sight of the death certificate (rather than simple notification of death) before accepting any APS allowance subscriptions or transfer request.

If the deceased spouse ISA manager received an APS allowance transfer request and had not received sight of an death certificate (whether required as a commercial decision by internal procedures or guidance / regulations) could the APS allowance transfer be pended to 'stop the clock' for the 30 day transfer period while this was obtained?

Client reporting of APS allowance subscriptions

It was requested that it is referenced in the guidance that client statements and contracts may show APS allowance subscriptions as a transfer (initial and further installments).

Deceased spouse NINO

It was requested that the NINO of the deceased is not a required field for APS allowance subscription or transfer as in many cases the surviving spouse is not likely to have this information. It would be practical if alternative identifying information, such as an account number, may be provided to identify the deceased spouse ISA (and for transfer cases that where this is not provided, managers could have dialogue to identify the relevant account).

Acceptance of APS allowance subscriptions

It was felt that each ISA manager should be able to make the commercial decision whether to accept any subscriptions under an APS allowance before the information is transferred within the 30 day time period with the potential to unwind or void any excess subscriptions made rather than it being prohibited under the process. Should managers wish to use an

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APS allowance transfer application rather than separate transfer and application forms they should be allowed to do so.

Potential transfer of APS allowance to previous manager

A scenario that was considered to be extremely rare was discussed where an investor may have transferred out an APS allowance and subsequently wish to transfer in a different APS allowance (further explanation below).

If the deceased had ISAs with both Manager A and Manager C, and the surviving spouse initially transferred the APS allowance held with Manager A to Manager B, we assume (but please confirm) that there would be nothing in the regulations to subsequently prevent the still unused APS allowance held with Manager C from being transferred to Manager A. In other words, even though Manager A would have previously confirmed to Manager B it would not accept any APS subscriptions in the future, we assume this would only be in relation to the APS allowance Manager A had transferred out, and that the wording on the declaration Manager A makes to Manager B (and if needed the regulations) will need to reflect this.

Identification of transferred APS allowance

If a surviving spouse has transferred their APS allowance and has not subscribed are they able to transfer the APS allowance again to another ISA manager? The current process would prohibit this however it may be more practical for ISA managers to simply check whether a subscription has been made than whether the APS allowance has previously been transferred.

On balance, the industry preference is that an unused APS allowance should not be able to be transferred more than once

Evidence of marriage / civil partnership

If an ISA manager receives an APS allowance transfer request but has not been informed of the death, it was felt that the manager should reject the transfer and contact the customer to explain that the death must be notified first. Confirmation required that this would be the preferred method.

Value of investments at in-specie transfer

Confirmation required on the value to be used to identify the subscription value for in-specie transfers, whether it is the last known price or the value as at date of transfer (and whether it should be the quarter up/mid market price that is used). Also that it should be the closest possible value under or at the APS allowance that should be transferred, unless directed otherwise by the investor.

3. Remaining areas of clarification / guidance required in the overall process

Risk and investment information

Confirmation that risk and investment information for the relevant type of account or investments can be provided per the ISA manager's standard process with documentation stating where relevant that customers should take investment advice.

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Definition of living together

The current declaration may be difficult for customers to understand, suggested wording:

I (the investor) declare I was living with the deceased within the meaning of section 1011 of the income tax act 2007 at the date of the deceased's death (we were not separated under an order of a court or a deed of separation and were not separated in circumstances where the separation was likely to become permanent)

ISACOM100 reporting

Clarification required of the reporting format change for the placement of the APS allowance subscription reporting flag.

JISA Impact

It is requested that it is explicitly stated in guidance that the APS allowance does not apply to JISAs (held by either the deceased or surviving spouse).

Valuation provided as at date of death

It is requested that it is explicitly stated in guidance that the APS allowance based on the valuation at the date of death does not include dividend income that has been accrued but not paid and that ISA managers should use their existing process for creating a valuation at date of death to provide the APS allowance.

Value of in-specie transfers

It is requested that the guidance relating to the value for APS allowance subscriptions made by in-specie transfers refer to guidance 10.20 to identify the price used. Also additional clarification is required to the date the price is taken from (i.e. the last known price).