Meeting points

LEXISNEXIS PRIVATE CLIENT TAX PLANNING CONFERENCE

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Reported by: Simon McKie

Speakers reported:
Nicholas Hughes, BDO Stoy Hayward
Andy Sharp, Specialist Taxation Services
Arabella Saker, Allen & Overy LLP
Andrew Goldstone, Mishcon de Reya

Transferable nil-rate band

Nicholas Hughes made the point that although the transferable inheritance tax nil-rate band applies even if the first spouse or civil partner had died while capital transfer tax or estate duty was in force, there are unlikely to be many claims in respect of estate duty because there was no spouse exemption until 1972.

He pointed out that the transferable nil-rate band can be offset against failed potentially exempt transfers and against the additional charge on death on chargeable transfers.

Death bed planning

It is usually good deathbed planning to ensure that a terminally ill spouse owns all of the property which qualifies for 100% business property relief or agricultural property relief, said **Nicholas Hughes**. In this way a capital gains tax uplift to market value will be obtained. Business property relief will apply on death even though the deceased may not satisfy the two-year minimum ownership requirement in s 106 because s 109 takes into account the ownership period of the transferring spouse. A similar provision exists for agricultural property relief in s 121.

Bereaved minor's trusts

In **Nicholas Hughes'** view it will almost never be preferable to provide for a bereaved minor's trust rather than an 18 to 25 trust. The 18 to 25 trust:

- offers all the advantages of a bereaved minor's trust, and an inheritance tax exit charge is avoided if the beneficiary receives his share outright on or before his 18th birthday;
- provides added flexibility to delay absolute entitlement to age 25;
- with a requisite power of advancement, allows capital entitlement to be postponed indefinitely albeit that this would result in a relevant property trust being constituted.

Pilot trusts

Nicholas Hughes said that it may be a good idea to create pilot trusts during one's lifetime to receive property under one's will. In this way one avoids creating related settlements under the will. For example a testator might establish seven lifetime discretionary trusts on different days each with a small capital sum. By the will he would then leave his £2 million estate equally between seven trusts. The trusts are not related settlements (*CIR v Rysaffe Trustee Company (Channel Islands) Limited* [2003] STC 536) and therefore the decennial and exit charges on one trust will not take account of the property added to the other trusts, although the lifetime transfers of value made on establishing the trusts are all taken into account.

Gift aid and IHT

Nicholas Hughes explained that in *Saint Dunstans v Major* [1997] STC (SCD) 212 a residuary beneficiary varied a will providing that £20,000 be paid to a charity, Saint Dunstans. This secured an £8,000 inheritance tax saving. He also claimed gift aid relief (hoping to receive what was then referred to as a double dip) but this was disallowed on the grounds that he had benefitted from the payment by virtue of the inheritance tax saving (FA 1990, s 25(2)(e)).

A double dip of gift aid from income tax and inheritance tax savings may, however, be obtained by different beneficiaries. For example, consider a pecuniary legatee who varies a will so that £20,000 left to him as a legacy is instead paid to a charity with a resulting inheritance tax saving for the residuary beneficiary.

What is more share aid rules provide that the amount of the gift on which tax relief is claimed is to be reduced by the value of any benefit received by the donor. Therefore a residuary beneficiary could vary his entitlement to shares in favour of a charity and secure a 40% inheritance tax saving on the value of the shares and 40% income tax relief on 60% (100% – 40%) of that value.

Disclosure

Andy Sharpe said that HMRC's disclosure of taxpayer information to other Government agencies and third parties is now much greater than it was just a few years ago. HMRC can now disclose information to no less than 40 Government agencies. Five years ago this figure was only seven.

In 2005, the latest year for which information is available, more than 11,000 requests were made to, or received from, overseas authorities through the Centre for Exchange of Information. In 2002 that total had been just 80 requests. That shows the enormous increase in the exchange of information among states which has no doubt continued since that time.

Family limited partnerships

Arabella Saker said that this was a good time to set up family limited partnerships (FLPs). The difficulty in doing so is often the capital gains tax liability which arises on the transferring of assets into the partnership or on changes in partnership interests.

With asset values lower that problem is reduced. It is particularly helpful for property family limited partnerships.

Relevant person

Andrew Goldstone pointed out that 'a relevant person' for the purposes of the remittance basis charge includes a man and woman living together as husband and wife (LTAHAW) and two people of the same sex living together as if they were civil partners. In the context of welfare benefits, HMRC list the following factors as relevant for determining whether two people 'live together as husband and wife or as if they were civil partners':

- whether or not the couple live in the same household;
- the stability of their relationship;
- financial support;
- sexual relationship;
- dependent children; and
- public acknowledgement.

This information is in HMRC's *Applicants Compliance Guide* (para ACG09010, 'LTAHAW: Definition of LTAHAW').