Meeting points

Tolley conference:
Tax planning for landed estates,
30 April 2008. (Part 2)
Reported by Simon McKie.

Chairman:
- Alexander Dickinson

Speakers:
- **Rhodri Thomas**
- **William Begley**
- **Christopher Finlay**
- **Susan Johnson**
- **Fiona Graham**
- **Michael Thomas**

Chattels and heritage property

One of the highlights of the conference was the lecture by **Susan Johnson** on the taxation of chattels and heritage property. Susan saw the FA 2006 changes to the inheritance taxation of settlements as a major threat to the preservation of heritage property.

Readers will be aware that taxpayers have been put in a difficult position by HMRC's failure to update their guidance on heritage property in IR67, *Capital Taxation and the National Heritage*, which is now considerably out of date. The guidance is in the process of being redrafted and in autumn 2007 an initial draft was sent to the Historic Houses Association and to the Heritage Group of Lawyers for their review. Having been amended in the light of their comments, it is now being sent out to various 'stakeholders' for their comments. There will be a further draft for wider consultation.

Susan pointed out that conditional exemption is not available on a disposal to a spouse or to a charity. It is difficult to see when you would want to claim conditional exemption rather than charitable exemption, but I suppose one might want to claim conditional exemption on a disposal to a spouse if the spouse were a non-domiciliary. A claim for conditional exemption should be considered:

(a) when a house is already open to the public (where, however, business property relief is likely to be more attractive);
(b) as a protective claim when considering whether APR or BPR applies;
(c) when a charge arises on a heritage chattel which has previously been exempt;
(d) where the heritage chattel was previously exempt under estate duty or under transitional capital gains tax legislation and the charge at that previous time was low so that if the undertaking is later breached the chargeable amount will also be low.

Claims may be made within two years after the chargeable event unless the chargeable event is a decennial charge under IHA 1984, s 64 in which case the claim must be completed before the charge arises. Completion means both the owner's undertakings being agreed and the property being designated, and that process takes a very long time. So it is necessary to plan years in advance if one hopes to obtain conditional exemption in relation to a decennial charge.

One of the conditions of the exemption is that reasonable access is given to the designated property. The nature of that access will differ according to the class of property concerned. The public may be given access to a chattel by its being lent to a public institution or to the owner of another house open to the public for display in that house, but in either case it is often difficult to persuade the owner of the premises in which the chattel is to be displayed to hold it for only a part of the time.

Alternatively, the asset can be held in the owner's own house and the public given access to the house for a minimum period. HMRC will not agree a minimum period of less than 30 days a year although Susan had recently negotiated an access condition of six months every five years. In relation to a house, the minimum period during which the house must be open is 100 days.

One of the conditions of the exemption is that publicity be given to the existence of the conditional exemption and of the undertaking given in relation to it. HMRC's website contains three lists of properties subject to conditional exemptions, being:

(a) works of art;
(b) land, buildings and contents; and
(c) collections of works of arts and other objects.

Inclusion on these lists may make one a target for burglary and so, in agreeing undertakings, it is important to negotiate that one does not have to disclose the address of the house if it is not otherwise open to the public or provide a list of historically associated chattels.

Although there is no standard form for the undertakings, they do tend to follow a common pattern.

Heritage management plans

Susan Johnson explained that another of the requirements for the exemption is that a 'heritage management plan' is made. Such a plan is a statement of the owner's policy for managing the asset and of his priorities in so doing. Where the designations are in relation to land, it includes various practical matters such as a condition survey and the methods to be used

KEY POINTS

- FA 2006, chattels and heritage property.
- Heritage management plans.
- Agricultural and business property reliefs.
- Landed estates and indirect tax implications.

for conservation, an overall plan and a map showing the boundaries of the property and access points. Amongst all this, the plan also has to include the landowner's policy towards his tenants. What this has to do with preserving heritage property, I find it difficult to see.

Eligibility for government grants for the maintenance of heritage property may be jeopardised if the maintenance becomes a legal obligation of the owner under the agreed heritage management plan.

IHTA 1984, s 27 and Sch 4 provide for inheritance tax exemptions on settled funds held on trusts which only permit their application for the purposes of maintaining heritage property and which will be held for a charity when the heritage trusts cease. One might have thought that the relief would not be claimed if the trust were a charitable trust and, if it were not, that it would fail as a purpose trust. In fact, the normal form of such a trust is that the property is held for a beneficial class of individuals on trusts under which the trust property can only be used for expenditure on the heritage property or for charitable purposes.

IHTA 1984, s 230 provides a power for the Board to accept land or national heritage chattels in lieu of tax. Typically, the property given will not itself suffer inheritance tax and will be treated as meeting a tax liability equal to 70% of the property's value. Thus, the taxpayer receives a total allowance of 110% (70% + 40%) of the property's value because the property itself does not bear inheritance tax.

Capital gains tax

Fiona Graham presented the penultimate lecture on 'Capital Gains Tax: The Changing Landscape' (pun, no doubt, intended). She pointed out that it was previously very rare for there to be a gain on agricultural land. Agricultural land values were on average £2,000 per acre in 1982 and only began to rise above this in 1995. With indexation allowance available up to 1998 by which time the allowance was 105%, it was rare for there to be a chargeable gain on agricultural land. With the abolition of indexation relief, however, and the increase in land values, there will now be significant gains. Previously, keeping track of capital improvements had not really been worthwhile particularly as indexation relief could not create a loss. Now, however, every pound deducted from expenditure is likely to be a pound less chargeable gains so it will be important to investigate the history of deductible expenditure on the land.

Fiona went on to say that the abolition of TCGA 1992, s 77 has made it possible to create bare trusts for minor children once again so as to utilise their capital gains tax annual allowance. She reminded the audience that where a sub-fund election is made, there is a deemed disposal of the assets in the sub-fund at their market value. The election may be made up to two years after 31 January following the year of assessment in relation to which it is made. So one could make an election now in relation to 2005-06 and future years. If the assets are going to be disposed of in the near future, this enables trustees to decide whether some part of the gain should be subject to the pre-6 April 2008 rules or to the new rules. It provides a retrospective arbitrage.

Landed estates and indirect tax

Michael Thomas concluded with an impressive lecture on landed estates and indirect tax. He explained that shoots are rarely profitable; they are often registered for VAT because their inputs exceed their outputs and some of their outputs, such as sales of dead birds, will be zero rated. HMRC are directing their attention to such enterprises where they do not consider them to be genuine businesses.

In relation to stamp duty land tax (SDLT), he pointed out that HMRC accept 'double completion sub-sales' whereby the sub-sale is completed immediately following completion of the original agreement as falling within the sub-sale provisions of FA 2003, s 45. In my view, that is not a tenable construction of the legislation. It is an example of HMRC's deleterious habit of attempting to correct bad legislation by disingenuous constructions. Michael went on to explain that HMRC say that the completions must take place within seconds or minutes of one another and not within hours or simply on the same day. Double completions of sub-sales are useful where the original purchaser wants secrecy, keeping confidential from the vendor the fact that there is to be a sub-sale.

The conference was particularly useful for placing tax planning for landed estates in the wider commercial context. It both served as a useful reminder of much which was familiar to its audience and brought out a significant number of points. ■

The first part of these meeting points were in *Taxation*, 11 September 2008, page 271.