

Landed Estates Update

Sowing the seeds for future prosperity

Tax reliefs for Heritage Property

Welcome to the current edition of Landed Estates Update, our publication for those advising on Landed Estates. In this issue we will be focusing on the tax reliefs for Heritage Property. The reliefs are available to ensure that significant land, property and objects that are important to the cultural life of the country are protected for the benefit of the public, whilst remaining in private ownership as far as possible.

What is Heritage Property relief?

Heritage Property relief principally gives conditional exemption from Inheritance Tax (IHT) on qualifying property. In certain situations, Capital Gains Tax (CGT) relief is also available where the property is disposed of.

In order to secure the relief a number of conditions must be met which aim to preserve the asset and give the public the opportunity to view it. When conditional exemption is granted, IHT only becomes payable if the property is subsequently sold or if the conditions are breached. In this case IHT is calculated on the market value at that time, and not when the conditional exemption was granted.

What property qualifies?

There are six categories of property that can qualify as Heritage Property:

- 1 Any object that appears to be pre-eminent for its national, scientific, historic or artistic interest e.g. works of art, books, chattels, fireplaces, decorative ceilings.
- 2 Any collection or group of objects which, taken as a whole, appears to be pre-eminent for its national, scientific, historic or artistic interest.
- 3 Any land which is of outstanding scenic, historic or scientific interest.
- 4 Any building for which special steps should be taken to preserve it by reason of its outstanding historic or architectural interest.

- 5 Any area of land which is essential for the protection of the character and amenities of a building mentioned above.
- 6 Any object which is historically associated with such a building.

On receiving a claim for relief HMRC will consult with bodies such as The Arts Council for England, Natural England and English Heritage in deciding whether property qualifies as heritage property.

What are the conditions to be met?

The following conditions have to be met to ensure that relief is given:

- 1 All objects must be kept permanently in the UK, unless permission is given for them to be taken overseas for a particular purpose e.g. to be displayed at an exhibition.
- 2 To take agreed steps to preserve the property. Generally a Heritage Management Plan will be drawn up in consultation with the appropriate bodies.
- 3 To secure reasonable public access to the property. Access should generally not be by prior appointment, and details of the access times should be

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made public. Objects can either be viewed in the home of the owner or arrangements can be made for them to be displayed in say a museum or art gallery.

The amount of public access is unlikely to be less than one month per year and reasonable charges can be made for the right of access.

How is conditional exemption for IHT obtained?

Conditional exemption must be claimed, within two years of the date of the transfer giving rise to the liability to IHT e.g. death. The only exception is for trustees who must have agreed with HMRC that the property is designated as Heritage Property before a ten year anniversary of a trust to qualify for the exemption when calculating the ten year charge.

There are plans for a future finance bill to amend this to give trustees two years from the date of the ten year anniversary to claim the exemption.

Heritage Maintenance Funds

A Heritage Maintenance Fund is a trust that is created to maintain, repair and preserve outstanding land, buildings and their historically associated contents and to facilitate public access to them.

Providing that the trust meets the qualifying criteria then there is a favourable tax regime for the trust. For IHT purposes the transfer of funds to the trustees is exempt, and once in the trust, the property is not subject to on going IHT charges.

A maintenance fund can be set up to support property that is already designated for conditional exemption. It can also be set up for property that is not designated, and provided that the qualifying conditions are met, designation can be applied for. This can be a useful way of determining if property will qualify.

Other reliefs

As well as the conditional exemption from IHT, further relief against IHT is available on a gift or sale to a qualifying body, broadly those whose object is to preserve heritage property for the public benefit. When a gift is made to a qualifying charity the conditional exemption becomes absolute and there is no claw back of IHT.

Private treaty sales

If conditionally exempt property is sold on the open market, any IHT exemption is lost and CGT may be payable. If however a sale is negotiated with a qualifying body then the conditional exemption becomes absolute for IHT purposes and the gain is also exempt from CGT.

However the amount paid by the purchasing body is known as the 'special price'. The special price is the agreed sale price less the IHT and CGT that would be payable on a public sale plus a 'douceur'. The douceur is broadly 25% of the total tax for objects and 10% for land and buildings, but is subject to negotiation between the parties.

For example if a painting was sold on the open market for £400,000, on which CGT of £80,000 and IHT of £128,000 was payable, the vendor would receive £192,000 net of tax. On a private treaty sale to a qualifying body the douceur would be £52,000 resulting in the vendor receiving £244,000 and a saving of £156,000 for the purchaser.

Acceptance of property in lieu of tax

Heritage property can also be used to settle IHT liabilities. As with the private treaty sale a market value is agreed with HMRC, from which the special price is calculated. If the special price exceeds the outstanding IHT liability HMRC will not pay the excess back. Agreement to accept property in lieu is required from the Secretary of State and they will decide which body is to own the property.

Heritage property – exempt from CGT?

In the case of HMRC v The Executors of Lord Howard of Henderskelfe (deceased) [2014] EWCA the Executors successfully argued, following the sale of 225 year old masterpiece by Sir Joshua Reynolds for c£9million, that it was plant, and therefore a wasting asset, and exempt from CGT.

The painting was owned by the Executors, but used in the trade of Castle Howard Estate Limited, who owned Castle Howard and ran the business of exhibiting the castle. The painting was seen as a key attraction for visitors and as such was part of the 'apparatus' of the business and

a permanent part of the business. It was however critical that the picture was not used in the trade of the owner i.e. the Executors as the CGT exemption would then not have applied as capital allowances could have been claimed.

HMRC were refused leave to appeal to the Supreme Court in January 2015 and have changed the law in the Finance Act 2015. From 6 April 2015 the wasting asset exemption will only apply if the asset has been used in the business of the owner. In most cases it will be possible for capital allowances to be claimed so the CGT exemption will not apply.

Conclusion

The heritage property reliefs are a potentially useful way of enabling assets to remain within the family, when a significant IHT charge might otherwise prevent it. Whilst the qualifying conditions have to be adhered to, these may be a small price to pay for continued enjoyment of the property.

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Nicholas specialises in Private Client tax advising individuals and trustees on all aspects of their tax affairs including minimising income tax liabilities, Capital Gains Tax Planning and Inheritance Tax Planning.

Nicholas started his career with Procter & Gamble making Fairy Liquid before joining PricewaterhouseCoopers in Reading for 5 years. During this time he qualified as a Chartered Accountant and Chartered Tax Adviser, working extensively with the estates and bloodstock team. In September 2006 he joined Hazlewoods, returning to Gloucestershire where he grew up. Nicholas is a member of the Gloucestershire committee of the CLA and away from work he enjoys horse racing, hunting and riding.



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