

This reasoning always seemed to be bizarre to me and a rather unworthy attempt to bring into charge through the back door an amount which was clearly meant to be exempt. I suppose we should not complain as we have no compunction about arguing that a receipt is free of tax on grounds which have as their only justification the purity of the rule of law. Anyway, philosophy aside, one wonders why an ordinary dividend cannot itself be regarded as a capital gain. It is a distribution and therefore not chargeable to tax as income by reason of section 208 so why can it not be a part disposal of the shares under section 22, TCGA 1992 being a capital sum derived from an asset?

The Inland Revenue suggests that franked investment income or group income cannot be treated as a capital distribution but it is difficult to see why not. In section 22, 'capital sum' is defined as any money or monies which is not excluded from the consideration in the computation of the gain. This definition does not prevent a dividend being treated as a capital sum although it does seem rather circular.

Section 22 is subject to other exceptions in the TCGA such as section 122(5)(b) which excludes a distribution which in the hands of the recipient constitutes income for the purposes of income tax. Again the exemption in section 208 means that a dividend cannot be excluded here. There seems to be no good reason why a dividend should be treated any differently from any other distribution so perhaps we will soon learn that dividends should be charged to capital gains tax.

Reproduced from the UK Tax Bulletin of Haarmann Hemmelrath, September 2002, written by Peter Vaines.

Inheritance Tax

13. Potentially exempt transfers: watch the seven year trap

Do bear in mind that for inheritance tax purposes the beneficial treatment of business property is afforded by a relief rather than an exemption. On death this makes little practical difference but the situation can be quite different if a lifetime gift of qualifying property is made. In that case the normal seven-year clock starts to run. If the donor dies within that period the relief is given only if certain conditions are met as at the date of death. One of these conditions is a requirement that the property still be owned by the donee as at the date of death.

There is a particular pitfall if property is settled on Accumulation and Maintenance trusts. In that case the original donees are of course the trustees. But once a beneficiary has taken a right to income (often at age 18) the Revenue view is that it is thereafter the beneficiary who owns the property and not the original donee. Relief is thus denied if the donor subsequently dies before seven years have elapsed from the original gift. In such circumstances it may be appropriate to take out term insurance for the period of exposure.

From Brass Tax, published by Berg Kaprow Lewis.

14. Tax planning for married couples and the Civil Partnerships Bill

Concerns over inheritance tax often fail to overlook the benefit of the surviving spouse exemption, the nil rate band and the Deed of Variation.

For most happily married couples on the first death the inheritance tax position is cleared by these exemptions. It is an opportunity to make use of the nil rate band and pass £250,000 down to the next generation free of tax if it is available. The balance can be taken by the surviving spouse subject to a large number of other considerations and if this has not already been dealt with in the Wills there is the scope of the Deed of Variation provided that all the beneficiaries agree.

It is generally considered that the surviving spouse, the last man (woman) standing, is the inheritance tax vulnerable person. They will not have the benefit of surviving spouse exemption principle unless they re-marry, which could of course have complications for the family, and there are potentially quite a lot of charges to be considered. The practical tax planning point is that all taxpayers should have Wills, all families should be mindful of the ability to use the Deed of Variation and plan to protect the position on the second death. It is accepted that this is a very morbid subject and one that most people try and avoid. However, with increasing property values inheritance tax is something that can affect most homeowners and something that should not be overlooked. The key practical issue is, are the practitioner's clients aware or is it a subject never discussed?

It is intended to introduce a 'Civil Partnerships' Bill in the next session of Parliament. This links to press reports on the hardship suffered by unmarried partners and those in gay relationships, in tax matters and also eviction from their homes after their partner's death. It will be interesting to see if the moves which allow homosexual men and women to register their relationships in private civil ceremonies will lead to the surviving partner being entitled to the surviving spouse relief.

So what of the long standing partnership between men and women which are not sanctioned by marriage? What of the valuable loss of the surviving spouse exemption? With house prices increasing the spouse exemption could be the only way to retain the joint house and other joint assets.

So what are the practical tax planning points? The dedicated tax adviser must suggest 'marriage' but the other complexities are very great so at the very least clients must be warned of the tax problems of no surviving spouse exemption and made aware of 'death bed' arrangements for all couples. With regard to other relationships watch with interest the actions of the Equality Minister Barbara Roche! Again the key practical tax planning issue is client awareness. Perhaps the 'civil partnerships' bill will be a useful trigger to remind all couples, young and old, of the need for a Will and to try and tax plan now for both nil rate band and inheritance tax band and surviving spouse exemption.

Contributed by Julie Butler, senior partner of Butler & Co.

VAT

15. Sale of new freehold buildings

The Government expects to raise £165 million a year through legislation that will close a commercial property tax loophole. As outlined in the Pre-Budget Report, companies that sell the freehold of newly constructed commercial buildings are currently liable for VAT if the sale takes place in the first three years of the building's life. However, sellers