

# Trusts & Estates

Practical advice on tax planning opportunities and the law

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## Market value at death – do not be intimidated

A recent case heard before the Lands Chamber *Chadwick (Hobart's Executors) v HM Revenue and Customs Comrs* [2010] UKUT 82 (LC) was won by the taxpayer. This case gives hope to the importance of fighting genuine market value for figures for property valued at date of death IHT purposes in good faith and with strong research.

## Behaviour-based penalty regime

The behaviour-based penalty regime was introduced by Sched 24 Finance Act 2007 from 1 April 2008. Schedule 40 FA 2008 extended the behaviour-based penalty regime introduced in Sched 24 to IHT from 1 April 2009.

The taxpayers' appealed against this valuation and were forced to go to a tribunal.

The tribunal judge noted that the deceased had bought the property privately, rather than on the open market. Thus the purchase price, which was £268,450 did not conform to the definition of market value in s160 IHTA 1984, and should not have been taken into account by HMRC in arriving at their valuation.

The judge decided to use sales of similar properties, also used by HMRC, to reach a conclusion. The more expensive of these was in a different village from the property under appeal, which made a comparison more difficult, however the other two led the judge to agree with the taxpayers' valuation of £250,000.

The taxpayers' appeal was allowed.

With this victory for the taxpayer IHT at stake must have been £10,000. The calculation is £275,000 – £250,000 = £25,000 @ 40% = £10,000. There are many who might consider that this was a relatively low amount of tax over which to stand firm and debate the matter at Lands Tribunal.

Another factor that the case is considered to show is the need to encourage the district valuer to visit as soon after death as possible and to ensure that there is evidence, photographic etc, of the state of the property at the date of death and to record and detail refurbishments.

Differences in valuation is an area that HMRC are known to look at closely, eg under valuations when there are no IHT reliefs available and over valuations when there are reliefs available. The latter is so that the beneficiary will start with as high a base cost as possible.

There are many who have seen a much more aggressive approach by HMRC since the introduction of the penalty regime. What are the facts of the case?

## Disputed value

The executors of a will disputed HMRC's valuation of the deceased's property. Shortly after the deceased died, the executors obtained valuations from two local estate agents, both of whom valued it at £250,000. The property was subsequently refurbished and was then used as a holiday home.

Over a year later – and after the refurbishment – HMRC visited the property and proposed a value of £300,000. The appellants sent HMRC a detailed report in support of their valuation, in light of which the inspector said he would compromise at £275,000.

The reality is that on farms and estates for example where there is a dispute over the value of the property and eligibility for Business Property Relief (BPR) on some property included in the estate, eg let property, hope value and buildings used for non-agricultural purposes, there is often a 'deal' offered by HMRC of a payment of IHT to settle the case. Sometimes executors and beneficiaries who are involved in the decision making are exhausted or confused or simply just wanting to 'move on' and to be able to close the case and use the property. It is fair to say that they are often very vulnerable and a deal appears an easy solution.

The *Chadwick* case emphasises the need to fight every decision where there are valid arguments and good evidence has been obtained, even if the tax saving is £10,000.

It should be pointed out that the case was taken under the simplified procedure under which each side normally meet their own costs. It may be fair to suggest that perhaps the major costs had been incurred in obtaining the initial valuations, and that the additional costs of the appeal may have been modest. The lay executor represented himself, and the appeal costs in this particular case, may not have been too high. The economics might be different if professional representation is required.

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