

Tax tip-off

JULIE BUTLER emphasises the important responsibilities of beneficiaries and executors when dealing with estates and inheritance tax liabilities.

The case of *Timothy Clayton Hutchings v HMRC* [2015] UK FT 009 was heard by the First-tier Tribunal in early 2015. It is an interesting and ground-breaking case because it is the first where a third party – a beneficiary rather than the executors – has been punished with a penalty under FA 2007, Sch 24 ('Penalties for errors'). Although Mr Hutchings realised that, as a beneficiary of a lifetime transfer, the estate had to pay inheritance tax, he was not happy that the penalty was assessed on him personally. This had been done on the basis that he had failed to provide the detail of the lifetime gift to the executors.

The need for strong procedures

The facts were that, seven months before his death, Robert Hutchings had gifted an undeclared Swiss bank account containing £443,669 by way of a transfer to his son Timothy's own Swiss account. Robert's executors had carried out the correct checks as to whether there were lifetime gifts with the family and potential beneficiaries by writing to them all at least twice to ask about these. However, the lifetime gift to Timothy came to light only when HMRC received an anonymous tip-off. Many families can be in dispute after the stress involved with the death of a loved one and tip-offs about undisclosed items do happen.

Despite the executors' requests, Timothy had not disclosed the gift and he had also omitted interest on his Swiss bank account from his own tax returns. He said that these amounts had not been disclosed because he thought that monies held in Switzerland did not come into the scope of UK tax. He also considered that the letters from the executors were badly written.

KEY POINTS

- The *Hutchings* case highlights the need for full disclosure.
- A third party was liable to a penalty under FA 2007, Sch 24.
- The possibility of information being provided to HMRC by other family members.
- Possible reluctance of family members to make full disclosures of property transfers must be overcome.
- Executors should fully document their enquiries.



The First-tier Tribunal determined that the prerequisites for a penalty to be charged under FA 2007, Sch 24 para 1A had been met. At first, the penalty had been set at 65% of the inheritance tax due, but was then reduced to 50%. The tribunal determined that no further reduction in penalty was due.

In his defence, Timothy criticised the executors. However, the tribunal did not consider these applicable because the executors had proved that they had carried out good work on ascertaining lifetime gifts and had documented the requests accordingly.

Robust checks required

This case emphasises the need for executors to carry out robust research work on all areas of the estate, but particularly on lifetime transfers. Further, the evidence should be fully documented. It also shows that beneficiaries (if they are genuinely confused) should ask the right questions about any lifetime gifts and, indeed, any element of the estate that they do not understand. It is vital, therefore, that they disclose to the executors all lifetime gifts made in the seven years before death and even before that if they are concerned. In this way, responsibility is placed with the executors and their advisers rather than the beneficiaries themselves.

Further, *Hutchings* clearly shows the strain that is placed on executors. They have a responsibility to make thorough checks around the whole of the estate's assets together with aspects such as the lifetime transfers of the deceased. Those involved in probate work and advising executors will be able to use this landmark case as a clear warning of what happens if details of lifetime gifts are deliberately withheld. Although the 65% penalty in this case was reduced to 50%, it was still a substantial amount.

Disclosure and evidence

In practice, and for various complex reasons, a client who has since died might have made gifts to a relative without telling the executors or other relatives. Family members may be reluctant to disclose full details of lifetime transfers because

these can cause arguments within the family. There may, for example, be confusion between loans and gifts and the exact nature of monies given by a parent to one of their children. Documentation and evidence is crucial.

The practical tip arising from this case is that all executors must document the full work they carry out on lifetime gifts and, to put it bluntly, all beneficiaries must be chased for information on possible lifetime transfers. All those involved in estates should now be aware of the possibilities of an anonymous tip-off to HMRC and the penalty that could result. Beneficiaries must be honest, transparent and clear in all disclosures.

Land agents and probate valuations

In farming there are many examples of penalties that could arise to a third party, not just on lifetime transfers omitted by a beneficiary. One may be when a farm valuation fails to disclose non-business use, say agricultural barns that contain private vintage car collections, personal antiques or private horse boxes, but full agricultural property relief is claimed. Much will depend on the instructions to the land agents from the executors. The IHT400 form lists some specific actions with which executors must confirm that they have complied. Again, this highlights the fact that executors must fully understand the need for correct and full disclosure. Should the omission be highlighted after submission of the original IHT400 there must be full disclosure of the additional detail. Some non-professional executors might keep disclosure to a minimum of private use, for example. If there has been an omission the IHT400 must be corrected.

The probate valuer must provide a valuation at the market value under IHTA 1984, s 160. However, agricultural property relief is restricted to the agricultural value under IHTA 1984, s 115(3) and relief should not be claimed on full market value unless the valuer states that the two values are the same. It is no longer enough to rely on the 'district valuer sorting the matter out' because this can cause unnecessary delays. There must always be full disclosure and reliefs must be restricted where applicable.

Protection for the executors

The responsibilities of executors are onerous and they should protect themselves by ensuring that the residuary beneficiaries sign the estate accounts. The executors must install controls and evidence at every level to achieve full disclosure by all those connected with the estate. Invariably, the accounts working papers will contain information that is needed. From a practical viewpoint, three sets of accounts must be submitted with the IHT400. It is a reality check of how important, for example, farm accounts are in agreeing the inheritance tax position because they must be submitted to assist HMRC's understanding of the business affairs of the deceased.

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