

Assessing value

Julie Butler on development land values at death and the aggressive stance taken by HMRC



ABOUT THE AUTHOR

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In order to understand the inheritance tax (IHT) on development land values, perhaps the starting point is how is 'hope value' calculated at the date of death? The first consideration is how is 'hope value' defined? Hope value, in this context, is the difference between market value and agricultural value.

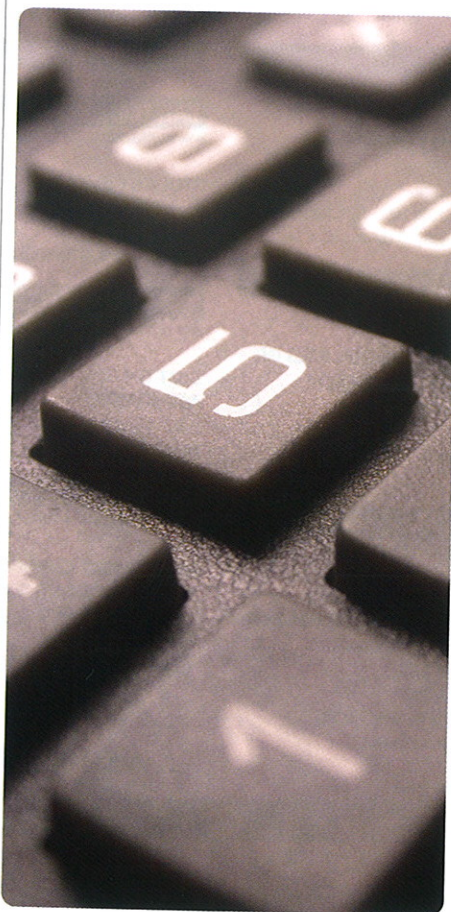
Section 160 *Inheritance Tax Act* (IHTA) 1984 dictates that probate assets i.e. assets held at death are valued at market value, i.e. the price that would be achieved between willing buyer and willing seller. A question that might be asked is, are there currently 'cheque books at the ready' to purchase blocks of potential development land? The lack of available buyers and the impact on hope value would apply particularly to land without planning permission. It can be argued that not many lenders would be prepared to lend monies to purchase speculative blocks of potential development land as they can be difficult to resell.

Due to uncertainty of the value of development land many personal representatives (PR) have perhaps relied on the fact that the district valuer (DV) will question the value and therefore why not submit a reasonable estimate and finalise the matter by negotiating with the DV?

There are tax-planning issues around the variance of probate values of potential development land. On the assumption that the beneficiaries will want to sell the land for development the high probate value creates 'base cost' for capital gains

tax (CGT). Again on the assumption that 100 per cent Business Property Relief (BPR) for IHT purposes will be obtained on the death value the beneficiaries will want as high a value as possible to obtain as high a

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CGT base cost as possible. However, what happens if the BPR claim fails? Clearly a low value would then be required – the current 40 per cent IHT rate is far more punishing than the CGT rate of 18 per cent (standard) or 28 per cent (higher) or the entrepreneur's relief (ER) rate of 10 per cent. There will be a need for serious judgement calls.

The need to take reasonable care in obtaining a professional valuation was established in *Cairns v Revenue and Customs* [2009] UK FTT 00008 (TC). It had been suggested by HM Revenue & Customs (HMRC) that three different professional valuations are obtained by the PRs. However the key issue is the quality and depth of steps taken to support the valuations submitted.

As HMRC have adopted a behaviour-based penalty regime through Schedule 24 *Finance Act 2007* there is greater focus on a need for accuracy and good recording applying from 1 April 2008 and emphasising the need for compliance and good behaviour and penalties for those who do not comply. Schedule 40 FA 2008 extended the above regime to IHT from 1 April 2009 so it is considered to be 'goodbye benign correspondence and hello to aggressive stance' with penalties which range from 15 per cent to 100 per cent of the tax and are based on a range of behavioural failures.

Of particular concern is that penalties can be levied by a deliberate act of a third party. Perhaps the land agents or a member of the family supplied incorrect details to the valuer? Insufficient work to maps, etc. However, HMRC have to demonstrate that the third party intended to cause that other person's return or document to be inaccurate. ■