

DEVELOPMENT LAND VALUES AT DEATH AND THE AGGRESSIVE STANCE TAKEN BY HMRC

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In the new world of compliance and penalties the practitioner needs to remind clients that the application of the 'open market value' rule for inheritance tax (IHT) on death requires valuations to properly take into account the 'hope value'.

In order to understand IHT on development land values, the starting point is how should 'hope value' be calculated at the date of death? How is 'hope value' defined? Hope value is the difference between market value and agricultural value.

The Law

Section 160 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 money to purchase speculative blocks of potential development land as they can be difficult to resell.

Due to the 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?

Tax Planning

There are tax planning issues around the variance in 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 a high 'base cost' for capital gains tax (CGT). Again on the assumption that 100% 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 CGT base cost as possible.

However what happens if the BPR claim fails? Clearly a low value would then be required - the current 40% IHT rate is far more punishing than the future CGT rate of 18% or the entrepreneur's relief (ER) rate of 10% on the first £2 million. There will be a need for serious judgement calls.

Reasonable care

Taking reasonable care in obtaining a professional valuation has always been necessary but was reinforced in *Cairns v Revenue and Customs [2009] UK FTT 00008 (TC)*. It had been suggested by 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, rather than the quantity of valuations.

HMRC have adopted a behaviour based penalty regime through Schedule 24 FA 2007 so there is a greater focus on accuracy and good records applying from 1 April 2008 with emphasis on 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 goodbye "benign correspondence" and hello "aggressive stance" with penalties which range from 15% to 100% of the tax 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.

Conclusion

Even where the asset in the estate is to be sold during the administration, HMRC have made it clear that they expect the Probate Value initially declared to be based on expert valuation advice. The cost may seem unnecessary but it will prevent HMRC raising the question of penalties being due.

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