

# Heritage Property

Julie Butler FCA of Butler & Co looks at this little known but important inheritance tax relief.

**D**o you have a client who owns 'Heritage Property' (HP) that they would like to pass to their heirs or interested parties in their lifetime or death without the payment of inheritance tax (IHT)? Are all clients aware of the large amount of property that qualifies?

## What property qualifies?

Relevant property should be one of the following (s 31(1), IHTA 1984 as amended by FA 1998):

1. Pictures, prints, books, etc which (or collections of which) appear to the Board to be of pre-eminent value for their national, scientific, historic or artistic interest.
2. Land, which, in the opinion of the Board, is of outstanding scenic or scientific interest.
3. Any building for the preservation of which special steps should, in the opinion of the Board, be taken by reason of its outstanding historic or architectural interest.
4. Any area of land, which, in the opinion of the Board, is essential for the protection of the character and amenities of such as a building.

5. Any object which, in the opinion of the Board, is historically associated with such a building.

Are any of these of use to clients?

## What is the relief?

The relief for heritage property is a deferral of the IHT charge, rather than the abolition of liability that arises from 100 per cent business/agricultural property reliefs. Relief for heritage property is available on lifetime transfers of value and transfers of value made by trustees, as well as the deemed transfer made by death.

The relief operates to make a transfer of value an exempt transfer, to the extent to which the value is attributable to property accepted as 'heritage property' (s 30, IHTA 1984). In order to obtain this exemption, a claim must be made. A claim can be made in respect of:

- any transfer on death; and
- any other transfer of value provided that the transferor or his or her spouse, or the transferor and his or her spouse between them, have been beneficially entitled to the property throughout the six

years ending with the transfer; or the transferor acquired the property on death and the property was then the subject of a conditionally exempt transfer (s 30(3), IHTA 1984).

## PET or Heritage Property?

In the case of a PET of HP, no claim for conditional exemption can be made until the death of the transferor and no claim at all can be made if the property has been sold before then (ss 3A-3C, IHTA 1984). However, if the property has, between transfers been transferred to the Government in satisfaction of IHT (s 230, IHTA 1984), the transfer becomes exempt (s 26A, IHTA 1984).

For property that could qualify as HP the client and the professional advisor has a dilemma as to whether to ignore HP and risk CGT implications and the seven-year rule for gifts.

A similar exemption applies where there is an occasion giving rise to tax in relation to HP held on discretionary trusts (s 78, IHTA 1984). Exemption may be claimed both in respect of the ten-year charge (s 79A, IHTA 1984) and the exit charge.

### The undertaking

Undertakings are required in respect of the maintenance of a building designated as heritage property for the repair and preservation of its character, for the retention of objects associated with the building concerned and, also, for reasonable access to allow viewing of the heritage property by the public (s 31(4), IHTA 1984).

Are clients prepared for the 'reasonable access' requirement?

### The disposal

Where there is a disposal of property that has been designated as HP for the purpose of the IHT relief, the conditional exemption is reviewed. Current practice is that if the disposal does not materially affect the HP, the designated HP status remains in force.

### Are the 'recipients' aware?

When a chargeable event occurs and the conditional exemption ceases, tax is charged on an amount equal to the value of the property at the time of the chargeable event (s 33(1), IHTA 1984). The value will be measured by the sale proceeds or market value as appropriate (s 33(3), IHTA 1984).

The tax is calculated by reference to the circumstances of the 'relevant person'. This will be the person

who made the last conditionally exempt transfer, save that where there have been two or more such transfers within the last 30 years the Inland Revenue may select whichever of the transferors they choose (s 33(5), IHTA 1984).

It can be possible for a recipient to not be fully aware of the undertakings and to sell the property to an interested party without being aware of the potential tax change.

### Breach of undertaking

On a breach of undertaking, eg failure to preserve or maintain for expiry without a new undertaking, unless a disposal occurs to a defined heritage organisation) a charge to IHT crystallises on the basis of the then value of the property, but (broadly) by reference to the rate applicable to the person who made the last conditionally exempt transfer. However, where there has been more than one such transfer since 7 April 1976, the Inland Revenue can choose any of the transferors. It is understood that in applying this rule, the Inland Revenue do not have to regard conditionally exempt transfers before 7 April 1976 (when the current regime broadly took effect).



**Julie Butler FCA**

### Action plan

- A practical 'log' of all HP held by clients should be maintained to check that undertakings are being maintained (deliberate pun!).
- All clients must be warned of the tax implications of sale and advice given as to tax planning surrounding the sale.

*Julie Butler FCA is the senior partner of Butler & Co, Bowland House, West Street, Alresford, Hampshire, SO24 9AT. Tel: 01962 735544. Email: j.butler@butler-co.co.uk Julie is the author of the LexisNexis Butterworths Tolley titles Tax Planning for Farm and Land Diversification ISBN: 07545 17691 and Equine Tax Planning ISBN: 0406966540. To order a copy call 0208 662 2000.*