

Heritage protection

Most people want to protect their own heritage, but according to **Julie Butler**, lawyers must consider how it appears on the balance sheets and discover possible tax breaks



The Accounting Standards Board (ASB) published Financial Reporting Exposure Draft (FRED) 40 in December 2006 to develop proposals set out in a discussion paper in January 2006. The comment date for FRED 40 was 20 April 2007.

Heritage assets are assets that have historic, artistic, scientific, technological, geophysical or environmental qualities and are held and maintained principally for their contribution to knowledge and culture. The term would include landscape and coastlines, as well as historic buildings, archaeological sites and collections held by museums and galleries.

It is relatively obvious that a large area of the landscape and rural historical buildings are owned by small trading farmers and landed estates. Generally these entities are not limited companies due to tax disadvantages, for example, no business asset taper relief (BATR), trapped losses, complex inheritance

tax (IHT) considerations etc. On the basis that unincorporated trading vehicles should follow the corporate lead valuations, heritage property is something that must be considered.

Legal entities have to account for heritage assets separately from the disclosure requirements of Financial Reporting Standard (FRS) 15 and would be required to carry them at valuation, where it is practicable to obtain valuations. These valuations would not have to be performed by an external valuer, and there is no specific interval between valuations, provided that the value is appropriate at the balance sheet date. Changes in value would be recognised in the Statement of Total Recognised Gains and Losses (STRGL). On disposal, the value would be adjusted to net proceeds, with any resulting adjustment also being recognised in the STRGL.

Where it is not practical to adopt a valuation approach, any acquisitions or disposals should not be reported in a way that implies they are gains or losses, and there should be a primary statement that reconciles total gains and losses to changes in

total reported net assets. This appears to imply that items can be added or deducted from the balance sheet but will not appear in the profit and loss account (P&L) or STRGL.

The net effect appears to be that gains on heritage assets will not be able to be used to increase profit and help with the hobby farming position; they are a capital asset.

For charities, donated assets should be recorded in the P&L at current value unless it is impracticable to obtain a current value and accounted for as above, depending on whether valuation can be obtained or not.

It is expected that if the proposals are accepted they will result in an amendment to the statement of recommend practice (SORP) for accounting and reporting by charities.

What are the tax reliefs?

Heritage property includes land and buildings and the landowner might seek to claim IHT deferral relief in the appropriate manner. Obviously, tax planning exercises that include a claim under business property relief (BPR) and agricultural property relief (APR) would be much more satisfactory, as it is a 100 per cent direct saving and not a deferral. However, there would be circumstances where both BPR and APR fail, and the property might qualify as heritage – the tax relief opportunities should not be overlooked if this occurs. Farms and landed estates expect a lot of change and must adjust accordingly. It can be considered that such a move, for instance, a claim for heritage property, particularly with the need to allow reasonable access for viewing, counts as a diversified activity. This can be integrated with other diversified activities such as tourism.

What property qualifies?

Relevant property should be one of the following (section 31(1) of the Inheritance Tax Act (IHTA) 1984, as amended by the Finance Act 1998):

- pictures, prints, books or other publications (or collections of such) that appear to the board to be of pre-eminent value for their national, scientific, historic or artistic interest;
- land that is of outstanding scenic or scientific interest, in the opinion of the board;
- any building for the preservation of which special precaution should, in the opinion of the board, be taken by reason of its outstanding historic or architectural interest;
- any area of land that, in the opinion of the board, is essential for the protection of the character and amenities of such a building; or
- any object that, in the opinion of the board, is historically associated with such a building.

What is the relief?

As with woodlands relief, the relief for heritage property is a deferral of the charge, rather than the abolition of liability that arises from 100 per cent BPR/APR. Unlike woodlands relief, 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 that the value is attributable to the property accepted as “heritage property” (section 30 of the IHTA 1984). To obtain this exemption, a claim must be submitted. A

claim can be made in respect of the following:

- any transfer on death; and
- any other transfer of value, provided that the transferor or the transferor’s spouse, or the transferor and 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, making the property subject of a conditionally exempt transfer (section 26A of the IHTA 1984).

In the case of a potentially exempt transfer (PET) of heritage property, 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 the (sections 3A-C of the IHTA 1984). However, if the property has been transferred to the government in satisfaction of IHT (IHTA 1984 of the IHTA 1984), the transfer becomes exempt (section 26A of the IHTA 1984).

Undertakings

Undertakings are required in respect of the maintenance of land and buildings 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 (section 32(4) of the IHTA 1984). Is this something with which the farming community will be able to cope?

Disposal

When a disposal of property has been designated as heritage property for the purpose of IHT relief, the conditional exemption is reviewed. Current practice requires the designated heritage property status to remain in force if the disposal does not materially affect the heritage entity.

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 (section 33(1) of the IHTA 1984). The value will be measured by the sale proceeds or market value, as appropriate (section 33(3) of the IHTA 1984).

Tax is calculated by reference to the circumstances of the “relevant person”, which will be the person who made the last conditionally exempt transfer, save that when there have been two or more such transfers within the past 30 years, in which case, HM Revenue and Customs may select either of the transferors (section 33(5) of the IHTA 1984).

Breach of undertaking

On a breach of undertaking (or 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.

Action plan for professional advisers

Ensure that clients who have potential heritage property are aware of the tax advantages and those who have already claimed the exemption are aware of the need to comply with conditions of the new potential disclosure requirements.

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