

IHT planning

Julie Butler considers the IHT consequences of repair to property before and after date of death



ABOUT THE AUTHOR

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A recent Land Tribunal case *Tapp v HMRC 2008 EW Lands TMA/284/2008* has highlighted the importance of market value of property at date of death and interaction of the state of repair.

In the *Tapp* case the District Valuer (DV) only visited the property two years after the date of death.

Market value

The basis of valuation for inheritance tax (IHT) is market value (s.160 *Inheritance Tax Act* (IHTA) 1984), i.e. the price that would be paid by a willing buyer to a willing seller.

Clearly the valuation should be undertaken as soon after the date of death as possible. If a professional valuation is not undertaken, photographic evidence of the property and the state of repair should be obtained. Clearly beneficiaries and/or executors who do arrange to have repair work carried out should keep records of work done ready for the valuation.

The valuation is clearly important for IHT planning and establishing IHT liability. The tax relief on the expenditure must also be considered – is this a capital gains tax (CGT) expense for the improvement or is this a cost to offset against income?

Repairs to farms

The fact that repairs to farms may attract 100 per cent agricultural property relief (APR) and/or business property relief (BPR), whilst non-business property does not benefit from these

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reliefs, could be the subject of some death-bed or later-years planning. For example:

1. Farmer J owns a farm worth GBP2 million including a farmhouse worth GBP500,000. It is anticipated HMRC could accept agricultural value of 60 per cent so GBP200,000 may not qualify for APR and BPR. Farmer J has recently sold development land and has GBP400,000 cash due to savings and this sale. The obvious tax planning is to rollover the gain into more land. Entrepreneurs' Relief would not be available as a material sale has not been made. The cash is clearly 'IHT vulnerable', i.e. will not be covered by the nil-rate band. Rollover can save CGT and ensure the replacement property for IHT. The rollover could be improvements to the farm.
2. Farmer O owns a farm worth GBP3 million including a farmhouse that could be subject to restriction. Farmer O has savings and investments of GBP600,000 and the farm is in a bad state of repair due to the deteriorating health of Farmer O. If cash is used on repairs and improvements the value of the farm should increase and be subject to APR and BPR as appropriate at 100 per cent.

The recent *Tapp* case shows an example of late DV visits and questions over repairs indicating the need for photographic evidence at various stages. There are tax planning opportunities for the use (and timing thereof) of 'inheritance tax vulnerable' cash. There is also the question of the complexity of what exactly is 'market value' at the time of writing.

There are those who argue that market values may be uncertain (under the 'willing buyer, willing seller' principle) in today's economic climate.

There is no doubt that 'repair and market uncertainty' can be used as tax planning tools. ■