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SPECIAL FOCUS

ASIA PACIFIC

From London, with love

What has led to the influx of family
offices into London?

VULNERABLE CLIENT
BALANCING BEST
INTERESTS WITH
PERSONAL WISHES 13

RETIRING ABROAD
A PLACE IN THE SUN
COULD SCALD THE
UNPREPARED 26

SOFIA TAYTON
ELDERLY CARE CAN
NO LONGER BE
IGNORED 32



Make your home work for you

There are many tax and commercial advantages to trading off an historic home that is open to the public, explains *Julie Butler*

It is possible for houses and buildings of outstanding architectural or historic interest to be made accessible to the public, in order to 'escape' possible inheritance tax (IHT). The reason for this is that national heritage assets can escape IHT liability. This can also include objects historically associated with the building.

The tax relief can also apply to land which is needed for the protection of the character and amenities of certain buildings, providing that they are of outstanding historic or architectural interest.

Land as national heritage

With the current availability of 100 per cent agricultural property relief (APR) for IHT on farmland and buildings, there are many tax advisers who direct clients along the more straightforward route of APR or business property relief (BPR). However, on some such

land, there is the backup support that heritage land exemption can be applied, should APR or BPR fail.

The time limit to claim an exemption for the property to be designated as national heritage under section 30 Inheritance Tax Act 1984, is two years. This highlights the need for landowners and tax advisers to ensure that the claim for APR is robust. Should there be doubts regarding APR/BPR, there are opportunities to move to the heritage exemption as the method of tax relief.

Heritage exemption

In order to qualify as heritage property, there must be access available for the public. It is the accessibility requirement that can make the heritage property exemption very attractive to some taxpayers, but also very unattractive to others. Prior to 31 July 1998 access could be by prior appointment.

Undertakings regarding heritage property after this date have to enjoy a degree of open access. The Finance Act 1998 changes also meant that the undertakings could be published (IHT 1984 section 31 (4FB)). Such publication obviously means a loss of privacy for the owners of the property. The required publication can take the form of entry on HMRC's heritage website.

The key to decision making regarding the move to a heritage property claim can rest with how that accessibility is defined for the owner of the property. With regard to buildings, the public access can vary according to the assessment of public interest, the size and location of the building, and its contents.

For smaller buildings, a working rule is 28 days per year. For larger buildings, the need to be open to the public is from 60 to 156 days per year. Access can

be curtailed if it is needed for preservation issues. For land, public access should have existing rights of way and permissive paths, supplemented by new access where necessary. Where there is, for example, outstanding flora and fauna, again access may be limited to protect the land.

Historic manor houses

As so many of the historic manor houses were attached to the farmland that served them, there is often a working farm and it provides an opportunity to claim APR as mentioned above. The national heritage point can be a support, protecting tax relief. Other ways to deal with tax planning on these properties is through lifetime gifts or sales.

There is the opportunity for the older generation to 'downsize' and claim principal private residence relief for CGT (capital gains tax) on the house, if appropriate. They can also claim IHT relief through either APR or a potentially exempt transfer, with the advantage being taken of the seven year rule. The sale could be to a third party to raise funds for care costs and so on. It could also be a part gift or sale to a family member, who could borrow on the strength of the value of the gift. Stamp Duty Land Tax must also be considered on any sales and purchases.

Making money from access to public

While the potential commerciality of Stonehenge for example, can be appreciated by the number of visitors, HMRC often contend that the activities of historic house ownership fall short of trading, and the profits (if any) should be treated as income, not otherwise charged under the Income Tax (Trading and Other Income) Act 2005 sections 687-689 (Corporation Tax Act 2009 sections 979-981 for companies).

This may be because;

- the house is maintained mainly as a private residence;
- the historic features are not significant;
- there are insufficient openings;
- there is insufficient organisation or prospect of profit; or

- because the other tests of 'trading' are not, in HMRC's view, satisfied.

Under this class of relief, deductions are more restricted than if trading treatment were applied (refer to loss-making hobby rules for farming), and are generally limited to the additional expenses incurred by openings. Income tax losses arising from the operation are available for relief, but only against current or future income falling under this class.

Trading class of heritage property

In order to qualify within this most advantageous trading class, the house must be maintained wholly or mainly as a show place; managed on a fully commercial basis; open on a substantial number of days a year, with proper accounts and a systematic organisation. The appropriate investment of capital is helpful as showing a trading motivation.

Where the tests are satisfied, losses may be off set against total income for the current or succeeding year, or carried forward against future years' profits from the same source. Generous annual investment allowances may be claimed on eligible assets used and these are deductible, as are losses.

The general effect is to make the net cost of ownership fully tax deductible. The effect of this rule is to limit the value of trading income treatment as described above. Loss relief is denied if the trade is not carried out on a commercial basis and with a view to profit. In practice, HMRC tend to invoke this rule after losses have been sustained for five or six years in succession.

Other attractions to the heritage property

It is common for owners of historic houses to encourage visitors by providing other additional attractions, such as garden centres, local craft shops and wildlife centres etc. These may often be carried on as a trade and give rise to trading income. If the opening of the historic house or garden is also

established as a trade, it may become material to determine whether the other activities are a separate trade, or part of a wider trade comprising the house opening and the other attractions (especially if losses would otherwise arise on the house opening).

The other activities are likely to be part of the house opening business, where both are promoted together and are opened at the same time, and where there is no physical separation from the house and gardens to the attraction, for example a separate entrance and car park.

In the case of *Scales (Inspector of Taxes) v George Thompson & Co Ltd* [1927] 13 TC 83, it was suggested that two activities would be one trade only where there was interdependence, shared resources, inter-connection and unity between the two activities.

There is no doubt that UK tourists have a thirst for historical houses and many refreshment operations associated therewith can prove extremely popular in the local community, with good easy parking and a stunning location (together with accounts that show a profit). The tax reliefs can be advantageous and needs to be explored by the tax adviser as appropriate.

Practical tips

The heritage property tax reliefs can be advantageous and must be considered by tax planners when appropriate. The decision making can be very subjective regarding heritage property and needs to be thought through very carefully in relation to all reliefs available. ■

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