

# Tax tip-off

**JULIE BUTLER** emphasises the important responsibilities of beneficiaries and executors when dealing with estates and inheritance tax liabilities.

The case of *Timothy Clayton Hutchings v HMRC* [2015] UK FTI 009 was heard by the First-tier Tribunal in early 2015. It is an interesting and ground-breaking case because it is the first where a third party – a beneficiary rather than the executors – has been punished with a penalty under FA 2007, Sch 24 ('Penalties for errors'). Although Mr Hutchings realised that, as a beneficiary of a lifetime transfer, the estate had to pay inheritance tax, he was not happy that the penalty was assessed on him personally. This had been done on the basis that he had failed to provide the detail of the lifetime gift to the executors.

## The need for strong procedures

The facts were that, seven months before his death, Robert Hutchings had gifted an undeclared Swiss bank account containing £443,669 by way of a transfer to his son Timothy's own Swiss account. Robert's executors had carried out the correct checks as to whether there were lifetime gifts with the family and potential beneficiaries by writing to them all at least twice to ask about these. However, the lifetime gift to Timothy came to light only when HMRC received an anonymous tip-off. Many families can be in dispute after the stress involved with the death of a loved one and tip-offs about undisclosed items do happen.

Despite the executors' requests, Timothy had not disclosed the gift and he had also omitted interest on his Swiss bank account from his own tax returns. He said that these amounts had not been disclosed because he thought that monies held in Switzerland did not come into the scope of UK tax. He also considered that the letters from the executors were badly written.

### KEY POINTS

- The *Hutchings* case highlights the need for full disclosure.
- A third party was liable to a penalty under FA 2007, Sch 24.
- The possibility of information being provided to HMRC by other family members.
- Possible reluctance of family members to make full disclosures of property transfers must be overcome.
- Executors should fully document their enquiries.



The First-tier Tribunal determined that the prerequisites for a penalty to be charged under FA 2007, Sch 24 para 1A had been met. At first, the penalty had been set at 65% of the inheritance tax due, but was then reduced to 50%. The tribunal determined that no further reduction in penalty was due.

In his defence, Timothy criticised the executors. However, the tribunal did not consider these applicable because the executors had proved that they had carried out good work on ascertaining lifetime gifts and had documented the requests accordingly.

## Robust checks required

This case emphasises the need for executors to carry out robust research work on all areas of the estate, but particularly on lifetime transfers. Further, the evidence should be fully documented. It also shows that beneficiaries (if they are genuinely confused) should ask the right questions about any lifetime gifts and, indeed, any element of the estate that they do not understand. It is vital, therefore, that they disclose to the executors all lifetime gifts made in the seven years before death and even before that if they are concerned. In this way, responsibility is placed with the executors and their advisers rather than the beneficiaries themselves.

Further, *Hutchings* clearly shows the strain that is placed on executors. They have a responsibility to make thorough checks around the whole of the estate's assets together with aspects such as the lifetime transfers of the deceased. Those involved in probate work and advising executors will be able to use this landmark case as a clear warning of what happens if details of lifetime gifts are deliberately withheld. Although the 65% penalty in this case was reduced to 50%, it was still a substantial amount.

## Disclosure and evidence

In practice, and for various complex reasons, a client who has since died might have made gifts to a relative without telling the executors or other relatives. Family members may be reluctant to disclose full details of lifetime transfers because

