Legacy Administration and Tax

For Solicitors

CANCER RESEARCH UK

Together we are beating cancer

Introduction

This note is intended to give a short overview of the common tax related issues arising in charity legacy administration and provide practical tips to Executors and their professional advisors.

It contains information regarding Income Tax, Capital Gains Tax, Inheritance Tax and *Re Benham* clauses in Wills. It also provides some guidance in dealing with tax matters arising during the administration of an estate where charities are involved.

All figures are correct as of March 2024 and is based on the law of England & Wales.

Income tax and Form R185

Most estates will receive some income during the administration, on which tax will be payable. Many of our estates are quite modest in value and any income tax payable will derive from interest accruing on the monies in the deceased's bank accounts, on which tax arising tends to be small.

When income is paid net we ask the Personal Representatives (PRs) to provide us with Form R185 for each tax year in the administration in order for us to reclaim the tax paid, but only if it is cost effective to do so. We appreciate that the individual sums are generally small but the total annual amount is a welcome addition to our charitable endeavours.

At the other end of the scale, if there are assets sold in a single tax year in an estate worth more than £500,000, the estate will usually have to be reported to HMRC as a 'complex estate' and estate income tax returns to be completed for the administration period. If the assets are appropriated to the charity prior to sale, this can be avoided and can save considerable delay and expense in the administration.

Capital Gains Tax ('CGT') and appropriation of assets

Capital Gains Tax ('CGT') is the most relevant in the administration of estates when selling shares/investment portfolios of property.

PRs do not pay CGT if the asset is transferred ('appropriated') to a beneficiary prior to sale, as the beneficiary is deemed to have acquired the asset at probate value. If the beneficiary then sells the asset themselves, they have to pay any CGT arising directly. As charities are exempt from CGT, if we subsequently sell at a gain, no CGT is payable. The PRs can appropriate the asset to us by way of a simple memorandum

of appropriation, which we can provide in draft on request. They can then sell on our behalf as bare trustee and no CGT is payable by either party. Once an asset has been appropriated, it must be held purely for the benefit of the charity, so it cannot be used to settle liabilities in the estate or for the payment of other legacies.

Please note that an asset can be partially appropriated, which can be useful if the beneficiaries in an estate are a mix of charities and individuals. This may also be helpful if not all of the assets can be appropriated because funds are required, for instance, to pay debts. The memorandum of appropriation can be drafted in such a way as to partially appropriate. This tends not to arise frequently but we will be very happy to advise further if need be.

Land/property can be appropriated to us to avoid CGT but please note that if property is to be appropriated the Charities Act 2011 may need to be complied with – see the separate Property briefing note or please contact your legacy officer.

Inheritance Tax ('IHT')

Legacy gifts to charities are generally exempt from IHT. As a consequence, IHT due on non-charitable gifts in the residue of an estate will normally be borne solely by the non-charitable beneficiaries and should be taken out of their percentage share of the residue. However, we appreciate that there are exceptions to the rules. Your client, if they leave their estate to both exempt and non-exempt beneficiaries, may decide that they want to share the IHT equally between all of the beneficiaries, as in the case of Re Benham. We are very happy to discuss this point further with executors if they believe that the Will of their client includes a Re Benham clause. The will wording must be very specific. In addition, if IHT is due on 'free of tax' pecuniary or specific legacies, as the Nil Rate Band has been exceeded, we are always grateful to receive a copy of any grossing up calculations, as this helps us fully understand the distribution shown in the estate accounts.

As you will be aware, the IHT rate of 40% can be reduced to 36% when 10% of the net estate is left to charity. If you client is considering leaving less than 10% of their estate to charity, it is sometimes possible to increase the value of that gift to take advantage of the 36% IHT rate, at the expense of HMRC. It is also possible to vary the gift by way of a Deed of Variation to achieve the same effect. If this may be of interest to you, please get in touch with your legacy officer.

Please note that the advice contained in this document is of a general nature and is not a substitute for legal advice of specific advice relating to particular cases. If you have any queries, please contact your legacy officer.

About Cancer Research UK

We're the world's leading cancer charity dedicated to saving and improving lives through research. We fund research into the prevention, detection and treatment of more than 200 types of cancer through the work of over 6,000 scientists, doctors and nurses. In the last 50 years, we've helped double cancer survival in the UK and our research has played a role in around half of the world's essential cancer drugs. Our vision is a world where everybody lives longer, better lives, free from the fear of cancer.



Cancer Research UK is a registered charity England and Wales (1089464), Scotland (SC041666), the Isle of Man (1103) and Jersey (247).