

NewsLetter

For Trusts & Estates Practitioners

Inheritance Tax treatment of usufructs

Recently, there have been a number of exchanges on Internet forums about whether the creation of a usufruct (the right to the use and enjoyment of another's property) gives rise to a settlement under section 43(2) Inheritance Tax Act (IHTA) 1984. Some of these exchanges have suggested that HMRC's treatment of a usufruct for Inheritance Tax purposes might be changing or has changed. HMRC does not agree with some of the views expressed – its treatment of usufructs has not changed.

HMRC has always been of the view that the definition of a settlement in section 43(2) IHTA 1984 means that a usufruct will more than likely fall to be treated as a settlement for Inheritance Tax purposes; although HMRC recognises that the arrangements differ between jurisdictions and the circumstances of each need to be considered. The effect is to treat a usufruct as giving rise to an interest in possession in the property concerned.

Prior to March 2006, the consequence of this was that a usufruct retained by the transferor did not give rise to a loss to their estate as the transferor remained beneficially entitled to the property

under section 49(1) IHTA 1984. The property would continue to form part of the transferor's estate on death. If the usufruct was created in favour of another, the transaction would give rise to a potentially exempt transfer equal to the value of the property concerned and if in favour of the spouse/civil partner, exemption under section 18 IHTA 1984 would be available. HMRC is not aware that this approach was ever challenged.

Post March 2006, the consequences are rather different and the creation of a usufruct will now give rise to an immediately chargeable transfer equivalent to the value of the property concerned and to relevant property. It may give rise to a reservation of benefit in the property. If the usufruct is in favour of the spouse/civil partner, exemption will no longer be available. These changes are the natural consequence of the changes made to the Inheritance Tax treatment of settled property in 2006.

Whilst the Inheritance Tax consequences of creating a usufruct over property are now much less favourable, HMRC remains of the view that, generally, a usufruct should be treated as giving rise to a settlement for Inheritance Tax purposes.

Welcome

Welcome to the April 2013 edition of the HMRC Trusts & Estates Newsletter.

If you have any issues that you would like addressed in a future edition, please email the [Customer Service Team](#).

Since the December 2012 edition of the Newsletter HMRC Trusts & Estates has had a change of Business Head.

The next edition of the Newsletter will be August 2013.

Ann Roberts
Head of HMRC Trusts & Estates.

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Changes to the 2012/13 Trust and Estate Tax Return

The main changes to the 2012-13 Trust and Estate Tax Return and supporting notes can be found in this guidance note on the HMRC website.

[Link to 'Changes to the 2012-13 Trust and Estate tax return'](#)

New Inheritance Tax form IHT 408

A new form IHT 408 Household and personal goods donated to charity is now available on the HMRC Website and from the Probate and Inheritance Tax Helpline – 0845 3020 900.

For deaths on or after 6 April 2012 proof must now be provided to show that the charity has received the goods being given to it and the revised IHT408 includes this additional requirement.

[Link to IHT408](#)

Dealing with the Income Tax and/or Capital Gains Tax liability of a deceased person's estate

HMRC Trusts & Estates have received feedback from some practitioners that it is difficult for personal representatives to understand how they should deal with the tax liability of a deceased person's estate.

The tax liability of most death estates during the administration period is straightforward. Where a trust has not been set up (by will or the rules of intestacy that apply in England and Wales), the liability can be dealt with by:

HMRC
Pay as you Earn & Self Assessment
PO Box 4000
Cardiff
CF14 8HR

Personal representatives (executors or administrators) provide that office with a calculation of the amount of tax due and may then make a one-off informal payment of the total tax liability for the whole period of administering the deceased's estate,

provided certain conditions are met. The main condition is that the total tax liability (Income Tax plus Capital Gains Tax) for the entire administration period is £10,000 or less. The other conditions are that:

- the probate/confirmation value of the estate is not more than £2.5m, and
- the proceeds of assets sold by the personal representatives in any one tax year are not more than £250,000, and
- the estate is not regarded as complex, so it can be dealt with without the personal representatives having to complete a Self Assessment return.

Further guidance on the conditions for using the informal payment procedures can be found in the Trusts, Settlements and Estates Manual (TSEM).

All informal payments made by cheque for the period of administration should indicate on the reverse the following:

- name of the deceased
- the last private address of the deceased
- the deceased's National Insurance number or Self Assessment Unique Taxpayers Reference (UTR).

HMRC Trusts & Estates Edinburgh - complex cases

HMRC Trusts & Estates Edinburgh is responsible for dealing with all aspects of the period of administration where the case is regarded as a complex case (subject to the exceptions at TSEM7366). We would regard a case as complex if:

- the tax liability for the whole of the administration period is in excess of £10,000, or

- the estate has a value at the date of death in excess of £2.5m, or
- the proceeds of assets sold by the personal representatives in any one tax year exceed £250,000.

If the estate does not fall into any of the above categories but it cannot easily be dealt with under the informal payments procedures, contact HMRC Trusts & Estates Edinburgh for advice on who should deal with the administration period liability.

The address is:
HMRC Trusts and Estates
Meldrum House
15 Drumsheugh Gardens
Edinburgh
EH3 7UQ

Further information

Further information can be found in the Trusts, Settlements and Estates Manual at TSEM7200 onwards.

For help or advice about Income Tax and Capital Gains Tax on a deceased person's estate you can also contact the Trusts and Deceased Estate Helpline - 0845 604 6455.

[TSEM7200 - Table of contents: deceased persons](#)

[TSEM7366 – complex case exceptions](#)

[TSEM 1420 - Introduction to trusts: new trusts: the correct trust office: UK resident trust](#)

Changes to Handling Post in HMRC Trusts & Estates – For open enquiry cases

In February 2013 the HMRC Trusts & Estates offices joined the growing number of HMRC businesses that use a new scanning facility in Netherton, Merseyside. You may have noticed our new postal address on some of our letters to you, and if you have you will also have noticed a second 'Case Ref' reference number beginning with the letters CFS or CFSS. The scanned images are delivered to HMRC staff on a new system called Caseflow which is being used to manage the case throughout the enquiry process. This additional reference number identifies the case within the Caseflow system. It is very important that you quote this reference prominently on your reply to any correspondence from us. If it isn't included in your response this may cause delays whilst HMRC trace the correct case.

Very importantly the scanning facility is only being used for cases where HMRC has opened an enquiry into an account or return. If HMRC doesn't have an open enquiry into your case your letters will continue to be delivered to our local offices. When HMRC tells you that an enquiry has been completed you will no longer need to include the Caseflow reference if you write to us. Once a letter has been received in Netherton and scanned onto Caseflow HMRC immediately checks that it has been clearly scanned and is complete with all attachments. The original item is kept in a storeroom in Netherton for 3 months in case there is a need to retrieve it. The team in Netherton may contact you occasionally to check if you want an original item to be returned. Some original items such as

passports will automatically be returned following scanning. The introduction of this scanning facility doesn't mean that HMRC can accept correspondence sent electronically, for example by email. Please do continue to write and HMRC Trusts & Estates hope you find this new process easy to work with.

The contents of this newsletter are not binding on HMRC and reflect news and views current at the time of writing