

PBR & OTHER RECENT CHANGES

By

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PBR - IHT TRANSFER OF NRB

- (1) Deaths on or after 9/10/07
- (2) Applies to spouses and civil partners only
- (3) Date of death of first partner - irrelevant
- (4) NRB itself is not transferable

PBR - IHT TRANSFER OF NRB

Example 1

First Death - no NRB used

Second Death - NRB £350k

Available NRB on Second Death £700k

PBR - IHT TRANSFER OF NRB

Example 2

First Death - Chargeable Estate £150k

NRB £300k

Second Death - NRB £350k

Available NRB = £350k + $150/300 \times 350$ k

i.e. £525,000

PBR - IHT TRANSFER OF NRB

(a) X dies on 14/4/07 - Estate £250k

Leaves £120k to son balance to spouse Z

NRB is £300k therefore 60% is unused

(b) Z marries W who dies 14/5/08 leaving

60% of NRB unused

(c) Z dies on 14/6/09 - Estate of £700k

NRB is £325k

Z's transfer is 60% of £325k (X) plus 60%

of £325k (W) = £390k, limited to £325k

Therefore chargeable £700k - $[325 \times 2] = £50k$

PBR - IHT TRANSFER OF NRB

- (a) Multiple Spouses - Max. claim 2 x NRB
- (b) Relief by claim by PRS on submitting IHT200 (evidence of unused NRB req'd)

PBR - IHT TRANSFER OF NRB

- (1) Will or Intestacy
- (2) Excepted Estate Limit unaffected
by transfer of NRB
- (3) First Death Under CTT (13/3/75 -18/3/86)
- (4) First Death Under Estate Duty

PLANNING POST PBR

- (a) Maximise spouse exemption on first death?
 - (i) Link of NRB to house prices
 - (ii) IPDI for spouse/absolute bequest
 - gifts/appointments
 - (iii) Possible repeal of S18
- (b) Debt or charge scheme for house redundant
- (c) BPR/APR to Discretionary Trust or absolute transfer

PLANNING POST PBR

- (a) DOV for deaths in last 2 years
- (b) Appt out of 2 year discretionary trust
- (c) Death > 2 years ago - Re-marry?

PLANNING POST PBR

USING NRB ON FIRST DEATH?

- (i) Protection of home from care fees
- (ii) If estate includes fast appreciating assets
- (iii) Non-Tax Reasons - Discretionary Trust
for children/grandchildren

WILLS WITH NRB TRUSTS

- (a) Appt to surviving spouse out of NRB absolutely or IPDI.
- (b) Followed by gifts - watch settlement rules!
- (c) Assumes happy families - the ideal will.

PBR - CGT CHANGES

- (1) 2008/09 Single Rate of 18%
- (2) Withdrawal of
 - Taper Relief
 - Indexation Allowance
 - Kink Test
- (3) Reintroduction of Retirement Relief

CGT - CHANGES - LOSERS

- (a) Holders of Business Assets
- Unincorporated businesses - goodwill
 - Property let to trading co's (non PLC)
 - Property let to unincorporated business
 - Trading co. shares
 - Most AIM shares
 - EMI options

CGT - CHANGES - LOSERS

(b) Long-held assets

e.g. farmers/landowners land held @ 1982

e.g. land - 100 acres £2,000 p.a. in 1982

Sold £10,000 p.a.

CGT CHANGES - LOSERS

| | Sale 07/08 | | Sale 08/09 |
|--------------------|------------------|-------|----------------|
| | £ | | £ |
| Proceeds | 1,000,000 | | 1,000,000 |
| 1982 value | (200,000) | | (200,000) |
| Indexation | <u>(220,000)</u> | | <u>-</u> |
| | 580,000 | | 800,000 |
| Taper Relief (75%) | <u>(435,000)</u> | | <u>-</u> |
| | 145,000 | | 800,000 |
| Exemption | <u>(9,200)</u> | | <u>(9,200)</u> |
| | 135,800 | | 790,000 |
| @ 40% | £54,320 | @ 18% | £142,344 |

CGT CHANGES - LOSERS

- (c) Rolled over gains @ 10%
- (d) QCB holders (with frozen taper)

CGT CHANGES - WINNERS

Holders of non business assets

Holders of EIS shares with deferred gains

CGT CHANGES - PLANNING

- (1) Accelerating disposals to 07/08
 - Transfer to family trust
 - Consideration on loan
 - Tax due 31/01/09

- (2) Defer disposals of non-business assets until 6/4/08

SNELL v HMRC

(1) Dec. 94 - Decides to sell company

(2) Dec. 96 - Sells co. for > £7 million

Payable in loan notes

(3) 2/4/97 - Moves to IOM then Cayman

(4) 8/7/97 - Redeems most of loan stock

SNELL v HMRC

S.135 TCGA '92

- (i) Exchange for bona fide commercial reasons.
- (ii) Not part of scheme or arrangement one of main purposes was avoidance of CGT

SNELL v HMRC

HELD

(i) For Snell

(ii) For HMRC

SNELL v HMRC

Nolan in Willoughby

“the hallmark of tax mitigation is that the taxpayer takes advantage of a fiscally attractive option afforded to him by the tax legislation and genuinely suffers the economic consequence that Parliament intended to be suffered by those taking advantage of the option”

SNELL v HMRC

Intention is the Key

Intention was deferral - Relief

Intention was exemption - No Relief

SNELL v HMRC

Consider:

- (a) Deferral to set against future losses.
- (b) Deferral to set against CGT exemptions.
- (c) Deferral to exemption by death.
- (d) Subsequent decision to emigrate.

BRER GORDON AND THE TAR BABY

S.16A TCGA 1992

- (1) For the purposes of this Act, “allowable loss” does not include a loss accruing to a person if-
- (a) it accrues to the person directly or indirectly in consequence of, or otherwise in connection with, any arrangements, and
 - (b) the main purpose, or one of the main purposes, of the arrangements is to secure a tax advantage.

BRER GORDON AND THE TAR BABY

(2) For the purposes of subsection (1)-

“arrangements” includes any agreement, understanding, scheme, transaction or series of transactions (whether or not legally enforceable), and “tax advantage” means-

(a) relief or increased relief from tax,

(b) repayment or increased repayment of tax,

(c) the avoidance or reduction of a charge to tax or an assessment to tax, or

(d) the avoidance of a possible assessment to tax,
and for the purposes of this definition “tax” means capital gains tax, corporation tax or income tax.

BRER GORDON AND THE TAR BABY

Definitions

Arrangements

Purpose

Tax Advantage