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**NI Young Solicitors' Association
&
Navigator Financial Planning**

Estate Planning & Business Property

Pre-Owned Asset Tax

18th March 2008



Agenda

- Shares
- Family businesses
- Farms & farmhouses
- Pre-Owned Asset Tax

Gifting (non-quoted) shares

- IHT
- CGT
- Planning idea
 - Gift to trust
 - Elect to holdover the gain
 - Trustees allocate to beneficiary
 - Elect to holdover gain
 - Beneficiary acquires shares at donor's base cost



Shares in own business

- Business Property Relief
- Held for at least 2 years
 - Replacement
 - Deceased spouse
 - Previous qualifying transfer & death
- Full CGT uplift on death
- No need to give asset away
 - Gifts to trust do not trigger IHT lifetime charge
- No territorial restriction

Rates of relief

- 100% relief
 - Trading company
 - Partnership
 - Sole proprietorship
- 50% relief
 - Property used by business in which transferor has control
- Very valuable relief

Property

- Beware
 - Gifting shares while retaining property
 - Reduce BPR from 50% to Nil
- Idea
 - Property owned by partner
 - Move to balance sheet of partnership
 - Improve BPR from 50% to 100%



Wholly or mainly

- *“A business ... [is] not relevant property if ... the business carried on by the company consists wholly or mainly of one or more of ... dealing in securities, stocks or shares, land or buildings, or making or holding investments.”*
- **All or nothing**

Wholly or mainly

- More than 50% of what?
 - Overall context
 - Capital employed
 - Time spent by staff
 - Turnover
 - Profit
- “Factors considered in the round”
- Property letting, however actively managed, is not a trade

Excepted assets

- Not used for purpose of business through whole of past 2 years
- Not required for future use at transfer
- “Trading business” is not specified
 - Investment asset used for purpose of investment business may qualify
- Personal benefit of transferor
- Excessive cash balances

Clawback

- Death within 7 years
 - Still business property
 - Reinvested into other business property

What happens on death

- **Issues for business**
 - Loss of a director
 - Non-working shareholder(s)
- **Issues for beneficiaries**
 - Loss of income
 - Asset of no practical value
 - Business in which no interest or knowledge

Cross-option agreement

- Option is key
 - Avoids loss of BPR
 - Flexibility
- Planning idea
 - Bequeath shares to will trust
 - Cash remains outside estate
- Life policy
 - Be careful with business trusts
 - Consider cross-option between **company** and directors

Automatic accrual

- Professional partnerships
- Share of partnership accrues to surviving partners
 - Partnership is automatically dissolved on death
- Each partner insures own life at chosen value
- Partnership agreement

Lifetime transfers

- Why?
 - Non-tax issues
 - IHT issues
 - CGT issues
- Why not?
 - Non-tax issues
 - IHT issues
 - CGT issues

Agricultural property

- HMRC seeking to limit relief
 - Let land
 - Conacre
 - Farmhouses

Conacre lettings

- Seeking to limit value of APR to the agricultural value
 - McClean v CIR (2008)
 - APR on agricultural value only
 - Excess disallowed for BPR

Farmhouses

- Farmer lives in house in order to farm
- Who is really doing the farming?
 - Retired or disabled
- Character appropriate to the farm
- House with land rather than farm with house
- “Elephant test”
- Financial viability
- Involvement by person claiming relief

Pre-Owned Asset Tax

- Effective April 2005
- Income Tax charge
- Introduced to combat circumvention of the GROB rules
 - Can only apply if gift is NOT a GROB
 - Does not apply to property remaining in donor's taxable estate

Exemptions

- Similar to exemptions from GROB
 - Joint owner & occupation
 - Gift and full market rent
 - Deed of variation

Two tests

- Disposal test
 - Asset given away but still enjoyed
 - Double trust arrangements
- Contribution test
 - Gifts of cash converted into other assets
 - “Granny flat” problem
 - 7 year gap

Calculation

- Intangibles
 - Valued annually on 6th April
 - Official rate of interest applied (6.25%)
- Land & chattels
 - 6th April 2005 or first day individual becomes subject to tax charge
 - Again after 5 years
 - Rental value
- Added to individual's income for year
 - De minimis limit

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