6.9.4 Sale of a private residence by PRs

Any capital gain arising on the disposal by an individual of an interest in a dwelling-house, which has been the only or main residence of that individual throughout the whole period of his ownership (or the whole period except for all or any part of the last 18 months of the period of ownership), is exempt from capital gains tax. Similar relief is available to trustees, subject to satisfying a number of conditions.

With respect to the sale of a dwelling house by personal representatives during the period of administration, any gain arising may similarly be exempt from CGT. Exemption applies if, immediately before and immediately after the deceased's death:

- the dwelling house was the only or main residence of one or more individuals; and
- that individual, or one of those individuals, has a relevant entitlement, or two or more of those individuals have relevant entitlements; and
- the relevant entitlement accounts for, or the relevant entitlements together account for, 75% or more of the net proceeds of sale.

"Relevant entitlement" means an entitlement as legatee of the deceased person to, or to an interest in possession in, the whole (or any part) of the net proceeds of sale.

"Net proceeds of sale" means gross sale proceeds realised by the PRs, less incidental costs allowable as a deduction, under s. 38(1)(c) of TCGA 1992, in computing the gain accruing to the PRs (but on the assumption that none of the proceeds is required to meet the liabilities of the deceased's estate (including any liability to inheritance tax)).

To obtain relief, a claim needs to be made by the PRs under TCGA 1992, s. 225A(6). Any claim to main residence relief where there are two or more residences must be lodged by both PRs and the individual or individuals entitled to occupy the dwelling house (or part of the house under TCGA 1992, s. 225A(5)(b)).

Example

The deceased, prior to his death, lived with his daughter in his house. To ensure that no CGT would arise on any sale by the PRs during the administration period, the deceased would need to leave his daughter, under his will, a beneficial interest in the house of at least 75% (or a corresponding interest in possession).

Suppose, however, that the deceased had two daughters, and that the other daughter did not live with him. He decides to leave his house to them equally (i.e. 50/50). In this case, any gain arising on a sale made by the PRs would fall subject to CGT, as TCGA 1992, s. 225A is not satisfied. In this scenario, it may make sense for the daughter who inherits 50% but does not live in the house to execute a deed of variation (under IHTA 1984, s. 142) in favour of the residing daughter, redirecting all or sufficient of her interest so as to ensure that the residing daughter becomes entitled to at least 75% of the net sale proceeds.

In the above example, it is worth noting that, on the deceased's death, his house is acquired by the daughter or daughters at its market value. The loss of exemption from CGT on any sale by the PRs may not be particularly significant if the movement in the market value of the house between the deceased's death and the date of sale is not significant.

If the house did not need to be sold by the PRs during the administration period, but (in the above example) the two daughters wished to sell it, then the PRs should assent the house to the two daughters (50/50) who should themselves effect the sale (i.e. the PRs do not sell the house). This would mean that any capital gain attributable to the 50% owned by the residing daughter would be exempt with the other daughter exposed to a CGT charge on her 50%, but subject to deduction of the annual exempt amount.

Law: TCGA 1992, s. 225A
Cases: *Lewis v Rook* [1992] STC 171; *Goodwin v Curtis* [1998] STC 475 CA

6.9.5 Sales by PRs at below probate values

Disposals during the administration period by the PRs may give rise to capital gains and/or capital losses. The gains or losses computed are based on the difference between the value of the assets at the

date of death (i.e. probate value, assuming values at death are ascertained for inheritance tax) and sales consideration.

Any capital gains are subject to capital gains tax on the part of the PRs at the rates of 20%/28%.

Where capital losses arise on any sales it may be possible for the sales values at the date of sale to be substituted for their probate values for inheritance tax (or, if greater, the best consideration which could reasonably have been obtained for them at the time of sale). Such substitution may therefore result in a decrease in any IHT liability arising on the deceased's estate, which may be reclaimed if IHT thereon has already been paid. However, any such substitution also has the effect of substituting the lower values (i.e. sales values) for CGT purposes (in essence reducing any capital losses on sale to nil, thus precluding any claim to CGT loss relief on the part of the PRs).

It is therefore necessary for the PRs to consider, *inter alia*, the trade-off between IHT and CGT.

The reason for such relief is that sales may be required during the administration period, for example to fund the inheritance tax liability arising on the deceased's estate, and such "forced" sales may be required to be undertaken at a time when sales would not otherwise be made due to adverse market conditions. (Note that the inheritance tax charge on the deceased's estate is required to be paid within six months of the end of the month in which death occurred).

Appropriate person

The relief requires that any sales must be made by an "appropriate person" defined as "the person liable for inheritance tax attributable to the value of those investments or, if there is more than one such person, and one of them is in fact paying the tax, that person".

Normally, the appropriate person will be the PRs and it is therefore crucial that the PRs do not vest/assent any of the assets in beneficiaries prior to any such sales; if they do so, the relief will not be available (as the sales would then have been made by the beneficiaries not the PRs) unless the beneficiary concerned pays the

inheritance tax in relation to the assets sold (which, generally speaking, is usually not the case).

Law: IHTA 1984, s. 178

Claims by personal representatives

Where the PRs wish to substitute sales values for probate values, a claim must be lodged by the PRs on Form IHT 35 *Claim for relief – loss on sale of shares* and/or IHT 38 *Claim for relief – loss on sale of land* within:

- four years after the end of the period of 12 months after the date of death, in the case of a claim for a loss on the sale of shares; or
- seven years after the end of the period of 12 months after the date of death, in the case of a claim for a loss on the sale of land.

It should be noted that, with respect to these reliefs, HMRC's view is that an appropriation under AEA 1925, s. 41 is not a sale if the will has removed the requirement under the section for consent to the appropriation to be obtained by the PRs. However, HMRC do regard as a sale an appropriation made under s. 41 with consent.

Law: IHTA 1984, s. 178-189, 190-198; FA 2009, s. 99 and Sch. 51, para. 9
Guidance: IHTM 34153

Qualifying investments and interests in land

The ability to substitute sales consideration for probate values is not available with respect to all assets in the deceased's estate but is restricted to sales of interests in land and sales of qualifying investments. The conditions attached to each of these two categories are slightly different.

Qualifying investments

Qualifying investments are defined as shares quoted at the date of death on a recognised stock exchange (and holdings in authorised unit trusts); shares traded on AIM are not included, although those on NASDAQ are included.

The sale of such investments must be made within 12 months of the date of death and must be carried out by an appropriate person.