



FIELD COURT TAX CHAMBERS

IHT: enveloped UK residential property¹

A curious result appears to follow from HMRC's recent guidance on the new inheritance tax rules in relation to enveloped UK dwellings

It is well known that where a foreign domiciled person has shares in an offshore company which owns a UK asset, the shares have always been excluded property. The shares are foreign assets in the beneficial ownership of an individual not domiciled in the UK (IHTA 1984 s 6(1)). Analogous rules apply for settled property.

Not any more – at least not quite. Since 6 April 2017, the shares in the offshore company are no longer excluded property to the extent that their value is attributable to UK residential property.

It is not always easy to identify how much of the value of a company's shares is attributable to the UK residential property. You have to enter the dim world of share valuation – but the general idea is clear enough. In a simple case where you have an offshore company which holds a single asset, such as a flat in the UK worth £2m (and no loans), the value of the shares in the company will probably be about £2m. The whole of that value will be attributable to the UK property and the shares will no longer be excluded property.

It was with these thoughts in mind that I read the HMRC guidance note of 2 February 2018 (see bit.ly/2GQuBku).

The note gives an example of a non-dom who owns all the shares in a Jersey company which has only one asset, a flat in London worth £2m. HMRC explains that the whole of the value of the shares in the company is attributable to the UK residential property and the shares are not excluded property since 6 April 2017. OK, fine. No surprises there.

However, it goes on to say:

“if the company had other assets that were the same as the UK residential property then the amount attributable to the UK residential property would be halved and only £1m would be within the scope of IHT.”

I think something has gone wrong here.

If the company has other assets that were the same as the UK residential property, which would seem clearly to mean other assets worth £2m, then the company would have assets of £4m. So how much of the shares in this company worth £4m is attributable to the UK residential property? Leaving aside refinements over valuations, that would still be £2m.

¹ This article was first published in the InBrief section of Tax Journal published by LexisNexis on 2nd March 2018

Unless I have misunderstood, the guidance note has gone a bit awry and a correction will be along soon.

However, if the guidance note is correct, an odd conclusion arises. If, immediately before an occasion of charge, you add lots of other assets to the company, the proportion relating to the UK residential property goes down. Following HMRC's example, if you put in other assets totalling £10m, then the proportion of the assets representing UK property goes down to 16.67% – which would be just about the amount of the nil rate band, which might be rather helpful.

But, as HMRC is fond of saying: if it looks too good to be true, it probably is.

One question seems to be missing here: what is it a proportion of? It may have gone down but it is a smaller proportion of a correspondingly more valuable company, and you end up with the same value attributable to the residential property.

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