
The Personal Tax Planning Review

HOLD-OVER RELIEF AND TRANSFERS OF VALUE

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This article addresses the following simple questions. Let us assume that an individual owns assets which qualify for 100% business property relief (BPR) from inheritance tax. The individual has settled those assets on discretionary trusts for his family. First, can the individual claim hold-over relief from capital gains tax under TCGA 1992 s.260 on the disposal into the trust? Secondly, would hold-over relief be available on an appointment of the assets out of the discretionary trust at a time when they continued to qualify for 100% BPR?

These questions are not purely academic. It is true that in general an asset which qualifies for 100% BPR will also enjoy hold-over relief under TCGA 1992 s.165. However, this will not always be the case. Take a company which is quoted on the Unlisted Securities Market. A taxpayer's 15% shareholding may qualify for 100% BPR under IHTA 1984 s.105(1)(bb) when aggregated with his wife's 10% holding. However, that company would not be the taxpayer's "family company" for the purposes of TCGA 1992 s.165(2)(b)(ii) : see *ibid* Schedule 6 para 1(2). Therefore, hold-over relief would not be available under s.165. Even where hold-over relief is available under that section, it may be restricted if the company in question has non-business assets: see TCGA 1992 Schedule 7 para 7. However, if hold-over relief were available under s.260, there would be no restriction. It is also clear that, where there is the possibility of relief under sections 165 and 260 applying, s.260 takes precedence: s.165(3)(d).

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Hold-over relief is available under s.260, inter alia, on a disposal which is:

"... a chargeable transfer within the meaning of the Inheritance Tax Act 1984 (or would be but for s.19 of that Act) and is not a potentially exempt transfer (within the meaning of that Act) ..."

Section 260(2)(a).

A "chargeable transfer" is defined by IHTA 1984 s.2(1) as meaning:

"... a transfer of value which is made by an individual but is not ... an exempt transfer".

The definition of a "transfer of value" is contained in IHTA 1984 s.3(1) as follows:

"... a transfer of value is a disposition made by a person (the transferor) as a result of which the value of his estate immediately after the disposition is less than it would be but for the disposition; and the amount by which it is less is the value transferred by the transfer".

The effect of the business property relief under IHTA 1984 s.104(1)(a) is that the value transferred by a transfer of value is treated as reduced by 100%. In other words, the value transferred is treated as reduced to zero. However, in the author's view, the individual has still made a "transfer of value". There is no doubt that the value of his estate is less than it was before he made the transfer into the discretionary settlement. His disposition, therefore, remains a transfer of value although the value transferred by it is zero. If the disposition is a transfer of value then it must be a chargeable transfer, as it is neither an exempt transfer nor a PET. As a result, hold-over relief is available under TCGA 1992 s.260.

I now turn to an appointment out of a discretionary trust by the trustees. The first relevant provision is IHTA 1984 s.2(3):

"... references in this Act to chargeable transfers, to their making or to the values transferred by them shall be construed as including references to occasions on which tax is chargeable under Chapter III of Part III of this Act ... to their occurrence or to the amounts on which tax is then chargeable ..."

It is assumed that this deeming extends to the reference to "chargeable transfer" in TCGA 1992 s.260 although it is not in the 1984 Act. Therefore, if the appointment out of property qualifying for 100% BPR is an occasion on which tax is chargeable under Chapter III of Part III, hold-over relief will be available under s.260.

It is clear from IHTA 1984 s.103(1)(b) that the effect of 100% BPR is to reduce "the amount on which tax is chargeable" to zero. There is still an occasion on which tax is chargeable, it is just that amount upon which it is chargeable is zero. It has to be admitted that this sounds a little odd. However, it is no more odd than saying that there is an "occasion on which tax is chargeable" on an exit from a discretionary trust where the rate of tax is zero. The answer may be that, under s.65(1)(a), there "shall be a charge to tax" :

"where the property comprised in a settlement or any part of that property ceases to be relevant property (whether because it ceases to be comprised in the settlement or otherwise);"

Therefore, an exit from a discretionary trust is an occasion on which tax is *chargeable* (not necessarily charged), even though the charge is actually zero in the circumstances of that case.