

# Executors' Briefing

## Tax and the Family Home

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**In many estates, the deceased's home is the principal asset whose value often tips the estate over the inheritance tax (IHT) threshold.**

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The status of the deceased's house/flat as "family home" attracts little special tax treatment beyond the additional "residence nil rate band" for IHT purposes if it is left to "direct descendants". But a house within an estate does illustrate well the main issues of valuation for IHT on death and Capital Gains Tax (CGT) implications when the property is sold by the personal representatives.

Where IHT is chargeable on death, the market value at that point will need to be agreed with HMRC so the liability can be calculated. Personal representatives should not be lazy or penny pinching. A formal valuation should be obtained from a suitably qualified surveyor – so doing will win most of any valuation battle. The District Valuer (D.V.) engaged by HMRC is more likely to accept a value returned on the back of a professional valuation, even if they consider it a little on the low side. Nothing is gained by plucking a low figure out of the air and hoping for the best. All you will do is prompt protracted negotiations with the D.V. on value. It is a myth that "probate" value is something less than the correct IHT standard of "market" value.

A sale shortly after death will prompt HMRC to argue that the sale price, if higher, should be substituted for the value returned; the price achieved on a sale to third party is real evidence of true market value. It may be possible to successfully argue that the price achieved is the product of a marked recent increase in house prices in the area where the property is situated and that the returned value should stand. The increase

in value would then, instead, be charged to Capital Gains Tax (CGT). Because CGT is charged at 28% (and on the net proceeds rather than the gross value) with the benefit of an annual exemption for personal representatives (currently £12,300\*), there is a saving if the increase in value is charged to CGT rather than to IHT (at 40%).

Conversely, if the personal representatives sell the property at less than the value returned for IHT within 4 years of death, then they can claim to substitute the sale price for the returned value and reclaim IHT. No allowance is given for disposal costs (estate agents/solicitors). Furthermore, if the deceased owned any other real estate and that was sold in the estate, that transaction also needs to be brought into account for IHT at its gross post death sale price.



IHT attributable to a property can be paid by annual instalments over 10 years with interest (currently 4.25%). When the property is sold, the remaining instalments become immediately due.

Any property value agreed for IHT purposes will then also be fixed as the "base value" for CGT purposes on subsequent sale by personal representatives, by the person to whom the property was specifically left in the Will, or to a residuary beneficiary to whom the property was "appropriated" on account of their residuary share.

Appropriation can result in substantial tax savings. If my mother leaves her estate to me and my brother and sister equally and her house is to be sold, we and the personal representatives may resolve not simply to sell the house as part of the estate but to appropriate the property to the three of us as part of our entitlement to residue. It will be put into our names – and if the three of us are also the personal representatives (as is likely) then we will need to formally transfer the title of property (as personal representatives) to ourselves (as beneficiaries).

For CGT purposes, our "base value" will similarly be the date of death value (not the value at the date of appropriation). When we sell, not only do we each have a CGT annual exemption (as opposed to just one for the personal representatives), but, if we are lower rate taxpayers, part of the gain might be charged to CGT at 18%. Further, if any one or more of us has been living in the property as our main residence since father's

death, the whole gain may be tax free under Private Residence Relief (PPR). PPR is not available to personal representatives on a sale from the estate- even if, individually, one or more of them is in occupation- there needs to be a formal appropriation and transfer if PPR is to be claimed by such occupier.

In considering whether the deceased's property should be sold or appropriated to residuary beneficiaries, the impact of owning that property needs to be considered if the beneficiary is currently thinking of buying a property – he/she may find themselves liable for the additional 3% stamp duty surcharge on buying what will be a second property. Though there is an exemption from the additional 3% on buying within 3 years of inheriting a less-than-50% share in a deceased's property, that will still not allow the buyer to benefit from any "first time buyer" rates.

### A final point on CGT:

On any chargeable disposal of residential property (including a disposal by personal representatives) a CGT return needs to be made and tax paid within 60 days of completion of the sale.

*\* The CGT annual exemption is available to personal representatives for two-and-a-part tax years post death. It will fall to £6,000 for the 2023/24 tax year and £3,000 from 6 April 2024 onwards.*



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