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EXTENDING THE WINDOW FOR INHERITANCE TAX RELIEF FOR LOSSES ON SHARE SALES FROM DECEASED ESTATES

Budget Representation by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to make representations in relation to the 2023 Budget.
- 1.2 Due to ongoing processing delays with probate applications¹, executors are losing the opportunity to claim relief from IHT under s179 IHTA 1984 when the value of certain shares and investments held by an estate fall in value after death. The current rules allow for executors to effectively replace the probate value with the sale value for IHT purposes where shares which have fallen in value since the date of death are sold within 12 months of the date of death. However, many estates are struggling to obtain the grant of probate (or letters of administration) - which are needed before any estate assets can be sold - in time due to delays in the processing of probate applications. The ATT therefore considers that the current 12 month window is too short and needs to be extended to a two year period, or at least an 18 month period from the date of death, on a permanent or temporary basis.
- 1.3 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.

2 Our recommendation

- 2.1 We would like to see the period of 12 months permitted in s179 IHTA 1989 extended to at least 18 months and ideally two years.
- 2.2 This extension could be made on a temporary basis for a period of (say) two years to allow the Probate Office time to resolve processing issues, and be reviewed again at that point.

¹ In Scotland, the equivalent of the probate process is known as Confirmation. We have referred to probate above, but the same issues arise in Scotland as in the rest of the UK.

3 Background to our recommendation

- 3.1 On death, shares or investments held by the deceased are valued and included in their estate for Inheritance Tax (IHT) purposes at what is known as the *probate value*. As investment values can fluctuate, for certain qualifying investments² which are sold for less than the probate value within 12 months of the date of death, the executors are allowed to elect to use the sale value in place of the probate value. Where executors wish to claim the relief, all sales in this period must be taken into account, including those which give rise to a gain, so if some shares are also sold at a gain, then the amount of relief for losses is restricted. Thus, the relief is based on the net loss after all sales within 12 months are considered. A similar rule exists for land and property, but here executors have four years from the date of death to make sales.
- 3.2 We have received a number of reports from members that delays in obtaining probate mean that it is not always possible to obtain a grant of representation within 12 months of death and therefore the opportunity to sell shares which have fallen in value and recover IHT is lost. Since the delays are not the fault of the executors, we consider that this is unfair.
- 3.3 The probate delays arise for a number of reasons – the primary cause of delay relates to processing backlogs at the Probate Office due to high demand. There also appear to be processing delays at HMRC. Members also report that third parties are taking longer to supply the necessary information for them to prepare probate applications in the first place. GOV.UK is currently advising that probate applications will be processed within 16 weeks³ – just under four months – which is significantly restricting the window of opportunity for executors to dispose of shares which have fallen in value since the date of death and recover overpaid IHT. Accordingly, we would like to see an extension to the sales period so that estates caught up in the backlog are not disadvantaged and denied relief which otherwise they could have claimed.

4 Contact details

- 4.1 We would be pleased to join in any discussion relating to this representation. Should you wish to discuss any aspect of this representation, please contact our relevant Technical Officer, Helen Thornley on atttechnical@att.org.uk.

The Association of Taxation Technicians

26 January 2023

5 Note

- 5.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the

² Qualifying investments generally means shares or securities which are quoted at the date of the death, holdings in a unit trust which at that date is an authorised unit trust, shares in an open-ended investment company and shares in any common investment fund established under section 42 of the Administration of Justice Act 1982

³ <https://www.gov.uk/applying-for-probate/after-youve-applied>

development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government, and academia.

The Association has more than 9,000 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.