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EXTENDING THE INHERITANCE TAX RELIEF WINDOW FOR DECEASED ESTATES THAT SELL SHARES

Representation by Association of Taxation Technicians in respect of Spring Budget 2024

1 Introduction

- 1.1 Where executors of estates sell shares which have fallen in value since the date of death, they can claim relief from Inheritance tax (IHT) for the value that has been lost, provided that the shares are sold within 12 months of the date of death. However, many estates are struggling to obtain the required grant of probate in time due to ongoing delays in the processing of probate applications. These delays are outside of their control. The ATT considers that executors need to be given a longer period in which to sell shares from the estate and claim relief for a loss on sale. We think that the existing 12-month window needs to be extended to 18 or 24 months from the date of death, ideally permanently but at least on a temporary basis until probate office delays are resolved.
- 1.2 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.

3 Background to our recommendation

- 3.1 On death, assets held by the deceased are valued and included in their estate for IHT purposes at what is known as their *probate value*¹. However, until the executors have obtained a grant of probate, they cannot normally sell or dispose of any of the estate assets and are exposed to fluctuations in their value. Where certain qualifying investments, including shares², are sold for less than their 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. The value of the estate is then reduced, and any IHT paid on the value that has been lost is refunded.
- 3.2 Members report to us that delays at the Probate Office mean that it is not always possible to obtain a grant of probate within 12 months of death. The opportunity to sell shares which have fallen in value and recover IHT is then lost. Since the delays are not the fault of the executors, we consider that this is unfair.
- 3.3 Probate is taking longer to obtain compared to previous years. Members report that third parties such as banks and investment managers are taking longer to provide the necessary information - which slows down the application process. HMRC have told us that applications are received later than used to be the case. Once submitted, it is taking longer for applications to be processed at the Probate Office. GOV.UK is currently advising that probate applications will be processed within 16 weeks³ – just under four months. This means that executors are struggling to obtain probate in time to dispose of shares which have fallen in value within 12 months of death. To ease pressures on executors we would like an extension to the sales period so that estates are not disadvantaged and denied a relief which otherwise they could have claimed.
- 3.4 Where executors wish to claim the relief, *all* sales in the qualifying period post death must be taken into account - including those which give rise to a gain. This means that if some shares are sold at a gain but some at a loss, then the amount of relief for losses is restricted to the overall net loss. Where some shares have dropped in value but others have risen, if executors wish to maximise their loss relief they must defer selling shares that have increased in value until 12 months after the date of death. If the time limit is increased from 12 to 24 months, then executors may be nervous of deferring sales where prices have risen for that long. We therefore think that increasing the time limit should not automatically have a substantial cost in terms of IHT lost, but will help with fairness, where the overall share portfolio has declined in value during a period in which the executors were unable to take action.
- 3.5 For completeness, a similar rule exists to give relief for losses on land and property, but executors have four years from the date of death to make sales of property and claim relief for losses.

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

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.

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>

23 January 2024**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 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 9,800 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.