

Multiple trusts – tax-efficient thoughts (Lecture P1329 – 19.57 minutes)

The legislation introduced by F(No2)A 2015, which is found in Ss62A – 62C IHTA 1984, was aimed at making the continued use of multiple trusts less attractive. Given that HMRC were defeated in *CIR v Rysaffe Trustee Company (CI) Ltd* (2003) when they attempted to tax five identical settlements as a single composite settlement under S64 IHTA 1984, it was surprising that FA 2006, which made sweeping changes to the IHT relevant property regime, contained no specific provisions to counter these tax planning arrangements.

It was left to George Osborne some years later to limit the advantages of multiple trusts by ensuring that, where value is added to two or more settlements simultaneously, the value of such additions must be taken into account for the purpose of calculating the IHT charges for 10-year anniversaries and exits from 18 November 2015 onwards.

Unfortunately, from the HMRC standpoint, these new rules are not as effective as they might have been, given that the requirement to include the same-day additions to the various settlements is restricted to the historical value of each addition. In other words, where the value of the added property has kept on climbing, the incremental element is not captured by the tax calculation.

Are there any other reasons why a well-to-do settlor should consider the possibility of creating a multiplicity of (smaller) settlements rather than just one?

Experience suggests that there may be a number of situations where multiple trusts can be beneficial:

- If a large private company shareholding such as a 76% stake is being settled, it would be worthwhile – on valuation grounds – dividing that asset between, say, four trusts so that each settlement only holds a minority interest of 19%. The aggregate value of four 19% holdings will be worth far less than a single 76% holding. This will be particularly useful where the shares are not relevant business property. There are no provisions in the IHT code for aggregating values where the same settlor has funded several different trusts from the outset, i.e. there is no equivalent of the related property regime in S161 IHTA 1984. However, might the adviser have to think about submitting a DOTAS report? Presumably this would not be necessary if the settlor had four grandchildren, each of whom was to be the beneficiary of a separate trust.
- Where a decision has been made to settle property, such as shares into different settlements, should all the transfers be made on the same day so that there are related settlements under S62 IHTA 1984 or same-day additions under S62A IHTA 1984? Alternatively, should there be a series of transfers made on different days which will of course mean that the property transferred later in the sequence will have to be aggregated with the settlor's chargeable transfers made earlier in the sequence? There is no set rule, but, in practice (assuming that the shares will continue to grow in value), shares which are eligible for business relief should normally be subject to a series of successive transfers, whereas investment company shares, which are not classified as relevant business property, should be transferred via same-day trusts or additions.
- A non-UK domiciliary who settles property situated outside the UK is establishing an excluded property settlement (S48(3) IHTA 1984). As long as the trust property remains excluded property, it does not matter whether it is comprised in a single settlement or in

several. However, if it is possible that the trust might in the future hold UK situs property (e.g. a UK house), there can be advantages in having a number of different settlements, particularly if the settlor has a clean IHT bill of health for the previous seven years. Ownership of the UK house can be split between two or more trusts. Remember that each trust will have its own nil rate band in the event of a 10-year anniversary or exit charge.

- Settling property which qualifies for business relief into multiple trusts is a sensible tax planning step if there is a risk of the settlor dying within seven years and the business property being sold. The replacement property rules in Ss113A and 113B IHTA 1984 require the transferee who sells the business asset to use the entire sale proceeds to purchase replacement business property within a three-year period in order to ensure that the chargeable transfer continues to attract business relief. If the relevant business property is split between, say, two trusts, each trust can decide whether to invest their share of the sale proceeds in further business property or not (as the case may be). This will allow the trustees of Trust 1 to invest in non-business assets (if they wish to) without jeopardising the relief for Trust 2.

Contributed by Robert Jamieson