Legacy Best Practice Briefing

Legacy Administration and Tax
May 2019- guidance for solicitors

Together we will beat cancer
Reference
This document should be referred to as follows:
Legacy Best Practice Briefing: Legacy Administration and Tax

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Cancer Research UK
Cancer Research UK is the world’s largest independent cancer charity dedicated to saving lives through research. We support research into all aspects of cancer through the work of over 4,000 scientists, doctors and nurses. In 2017/2018, we spent £423 million on research institutes, hospitals and universities across the UK. We receive no funding from Government for our research.

Cancer Research UK is a registered charity in England and Wales (1089464), Scotland (SC041666) and the Isle of Man (1103)

http://www.cancerresearchuk.org/
Executive summary

This briefing note is intended to give a short overview of the common tax related issues arising in charity legacy administration and provide practical tips to Executors and their professional advisors.

It contains information regarding Income Tax, Capital Gains Tax, Inheritance Tax, the Nil Rate Band (and Residence Nil Rate Band) and Re Benham clauses in Wills. It also provides some guidance in dealing with tax matters arising during the administration of an estate where charities are involved.

Please note that the advice contained in this document is of a general nature and is not a substitute for legal advice or specific advice relating to particular cases. If you have any queries, please contact your legacy officer.

All figures are correct as at May 2019 and is based on the law of England & Wales.
Legacy taxes

Income tax and Form R185
Most estates will receive some income during the administration, on which tax will be payable. Many of our estates are quite modest in value and any income tax payable will derive from interest accruing on the monies in the deceased’s bank accounts, on which the tax arising tends to be small.

When income is paid net we ask the PRs to provide us with Form R185 for each tax year in the administration in order for us to reclaim the tax paid, but only if it is cost effective to do so. We appreciate that the individual sums are generally small but the total annual amount is a welcome addition to our charitable endeavours.

At the other end of the scale, if there are assets sold in a single tax year in an estate worth more than £500,000, the estate will usually have to be reported to HMRC as a ‘complex estate’ and estate income tax returns to be completed for the administration period. If the assets are appropriated to the charity prior to sale, this can be avoided and can save considerable delay and expense in the administration.

Capital Gains Tax (‘CGT’) and appropriation of assets
Capital Gains Tax (‘CGT’) is most relevant in the administration of estates when selling shares/investment portfolios or property.

PRs do not pay CGT if the asset is transferred (‘appropriated’) to a beneficiary prior to sale, as the beneficiary is deemed to have acquired the asset at probate value. If the beneficiary then sells the asset themselves, they have to pay any CGT arising directly. As charities are exempt from CGT, if we subsequently sell at a gain, no CGT is payable. The PRs can appropriate the asset to us by way of a simple memorandum of appropriation, which we can provide in draft on request. They can then sell on our behalf as bare trustee and no CGT is payable by either party. Once an asset has been appropriated, it must be held purely for the benefit of the charity, so it cannot be used to settle liabilities in the estate or for the payment of other legacies.

Please note that an asset can be partially appropriated, which can be useful if the beneficiaries in an estate are a mix of charities and individuals. This may also be helpful if not all of the asset can be appropriated because funds are required, for instance, to pay debts. The memorandum of appropriation can be drafted in such a way as to partially appropriate. This tends not to arise frequently but we will be very happy to advise further if need be.

Land/property can be appropriated to us to avoid CGT but please note that if property is to be appropriated it is very likely that the Charities Act 2011 will need to be complied with - see the separate Property briefing note or please contact your legacy officer.
Inheritance Tax (‘IHT’)

Gifts to charity are generally exempt from IHT.

If IHT is due on ‘free of tax’ pecuniary or specific legacies, we are always grateful to receive a copy of any grossing-up calculations, as this is helpful to us for auditing purposes.

IHT on non-charitable gifts in the residue of an estate will normally be borne solely by the non-charitable beneficiaries and should be taken out of their percentage share of the residue. However, in re Benham it was accepted by the Court that the wording of the Will was such as to confirm that the intention of the deceased was to share the IHT between all the charitable and non-charitable residuary beneficiaries equally. Note that a re Benham clause in a Will has to be very specific; the usual turn of phrase along the lines of ‘the residue after payment of all debts and taxes to A and B’ is not sufficient to cause the IHT to be apportioned to the charities. We are very happy to discuss this in further detail with PRs if this is helpful.

In some situations, the IHT rate of 40% can be reduced to 36% when 10% of the net estate is left to charity. If your client is considering leaving less than 10% of their estate to charity, it is sometimes possible to increase the value of that gift to take advantage of the 36% IHT rate, to ensure that the charity bequest increases at the expense of HMRC. It is also occasionally possible to vary the gift by way of a Deed of Variation to achieve the same effect. If this may be of interest to you, please get in touch with your legacy officer.

We hope that the foregoing brief overview is helpful to you and we look forward to working with you to make the administration process as straightforward as possible for you, while maximising the value of the legacy gift which has been kindly left to us.