

## CHAPTER 14

### POST MORTEM RELIEFS

#### 14.1 General

In this chapter we shall look at inheritance tax reliefs which are available for events which take place **after the individual has died**.

Under general principles, **inheritance tax is charged on the net value of the deceased's assets at the date of death**.

However, in certain circumstances claims can be made to **substitute a lower value in the death estate for assets which have been sold by the Executors after the date of death**. We shall look at three post mortem claims.

1. Where the Executors sell **quoted shares or securities within 12 months of death**. [IHTA 1984, s.179](#)
2. Where the Executors sell **land or buildings within 3 years of death**. [IHTA 1984, s.191](#)
3. Where assets have been **valued in conjunction with other assets for IHT purposes, and which are sold within 3 years of death**. [IHTA 1984, s.176](#)

We shall look at each of these reliefs in turn.

#### 14.2 Quoted shares and unit trusts

[IHTA 1984, s.179](#)

IHT relief is available if the Executors sell quoted shares, units in authorised unit trusts, or shares in open ended investment companies within 12 months of the date of death. If such investments are sold at a loss, a claim can be made by the Executors. **The resulting loss reduces the value of the estate for IHT purposes**.

As IHT would have already been paid based on the value of assets at the date of death, a post mortem claim will usually generate a repayment of inheritance tax. A claim is made by the person who is liable to pay the inheritance tax on the estate, i.e. the Executor or Personal Representative.

To calculate the allowable loss, the Executors must take account of **all sales of quoted shares, unit trusts or shares in open ended investment companies in the 12 month period** running from the date of death. **All sales in the period must be considered**, even those which give rise to a profit.

Profits and losses are aggregated, and if the sales in the 12 month period have given rise to an overall loss, the Executors will make a claim for relief.

Shares are sold at a loss if **gross proceeds of sale are lower than the probate value of the shares being sold**. We must use **gross sale proceeds**, so any expenses of sale are ignored in calculating the allowable loss.

For capital gains tax purposes, the Executors are deemed to have acquired the shares at their market value at the date of death. Where a post mortem claim is made, such that a **lower value is substituted** into the estate for IHT purposes, **this lower value also becomes the base cost for CGT**.

### Illustration 1

Duncan died on 12 April 2010. His death estate included various quoted shares and other assets valued as below:

	£
50,000 Hamlet plc shares	100,000
20,000 Tempest plc shares	80,000
10,000 Venice plc shares	30,000
Other assets	<u>390,000</u>
Total estate	<u>600,000</u>

After the date of death, Duncan's Executors sold some of the quoted shares. Details of the share disposals are as below:

		Gross proceeds
1.6.10	25,000 Hamlet plc	£65,000
1.3.11	20,000 Tempest plc	£45,000
1.5.11	9,000 Venice plc	£35,000

We will examine how these share disposals affect the IHT computation.

When the inheritance tax returns and computations were originally prepared, they would have been based on the value of Duncan's assets at the date of death, ignoring any share transactions undertaken by the Executors. If we assume that Duncan made no lifetime transfers, the IHT computation is:

	£
Death Estate (original)	600,000
Less: nil band	<u>(325,000)</u>
Taxable	<u>275,000</u>
IHT @ 40% (due 31.10.2010)	<u>£110,000</u>

However, if the Executors sell quoted shares within 12 months of death, and those sales give rise to an overall loss, a **post mortem claim can be made to reduce the value of the death estate.**

We therefore need to identify any share disposals in the 12 month period from the date of death, i.e. between 12 April 2010 and 12 April 2011.

These are sales of the Hamlet Plc shares (1.6.10) and Tempest Plc shares (1.3.11). The disposal of shares in Venice Plc is outside the 12 month period and can therefore be ignored.

The next step is to calculate the allowable loss. The allowable loss is the **probate value of the shares sold less the gross sale proceeds.**

Calculation of "loss"

<i>Shares sold</i>	<i>Probate value</i>	<i>Gross proceeds</i>	<i>Loss/(profit)</i>
	£	£	
25,000 Hamlet plc	50,000	65,000	(15,000)
20,000 Tempest plc	<u>80,000</u>	<u>45,000</u>	<u>35,000</u>
	<u>130,000</u>	<u>110,000</u>	<u>20,000</u>
Death estate (original)			600,000
Less: S.179 loss			<u>(20,000)</u>
Revised estate			<u>580,000</u>
Tax £(580,000 - 325,000) @ 40%			<u>£102,000</u>

The effect of a claim under S.179 is that the allowable loss will **reduce the overall value of the death estate.** After having made a S.179 claim, the Executors will have a revised IHT liability of £102,000.

The earliest time a S.179 claim can be made is 12 months after the date of death, as **all sales** in this 12 month period must be accounted for.

When the calculations were originally prepared, IHT of £110,000 was paid. The Executors will therefore be entitled to an **inheritance tax repayment of £8,000.** This is equivalent to the **loss of £20,000 multiplied by the death rate of 40%.**

### 14.3 Restriction for shares purchased by Executors

[IHTA 1984,  
s.180](#)

There is an anti-avoidance provision to prevent Executors from deliberately selling shares standing at a loss in order to create an inheritance tax repayment, then **buying the shares back immediately** with the sale proceeds.

The allowable loss is restricted if **quoted shares or unit trusts are purchased by the Executors**, within the period starting with the date of death and running until **2 months after the last sale** in the 12 month period.

In the previous example, Duncan died on 12 April 2010. The last sale in the 12 month period was the sale of the Tempest Plc shares on 1 March 2011. The "relevant period" for purchases by the Executors runs from the date of death until 2 months after this sale. Therefore any **investments purchased by the Executors between 12 April 2010 and 1 May 2011**, must be taken into account when calculating the allowable loss under S.179.

If investments are purchased in the period, the loss is restricted. The way we calculate the restriction, is by taking the loss and multiplying it by:

$$\text{Loss} \times \frac{\text{Amount invested}}{\text{Total gross sale proceeds}}$$

#### Illustration 2

Returning to the previous example, when calculating the allowable loss we took account of the sale of 25,000 shares in Hamlet Plc on 1 June 2010 and 20,000 Tempest Plc shares sold on 1 March 2011. The share disposals gave rise to an overall loss of £20,000.

On 1 September 2010, the Executors purchased 1,000 shares in a quoted company called Verona Plc for £11,000.

This investment is within the period starting with the date of death and running until 2 months after the last sale. Therefore this investment will restrict the amount of the loss available as follows:

	£
Loss	20,000
Restricted by:	
£20,000 × $\frac{11000}{110000}$	<u>(2,000)</u>
Allowable loss under S. 179	<u>£18,000</u>

The amount reinvested is £11,000. The Hamlet Plc shares were sold for £65,000 and the Tempest Plc shares were sold for £45,000, so the total gross sale proceeds are £110,000. The loss is therefore restricted by £2,000.

The allowable loss is therefore £18,000. It is **this amount** that will be deducted from the value of the estate for inheritance tax purposes.

#### 14.4 Changes in shareholdings - bonus issues

[IHTA 1984,  
s.183](#)

We now look at the situation where there is a **bonus issue before shares** are sold by the Executors - ie, between the date of death and the date of sale.

The treatment is simple. The **holding at death** is deemed to be **increased by the bonus issue**, but the **value** of the shares at death is **unaffected** since a bonus issue is at no cost.

##### Illustration 3

Mark died on 14 August 2010. His death estate included 5,000 Rex plc shares valued at £9,000. Four months after his death there was a bonus issue of 1:5. Two months later the Executors sold 2,000 shares for £2,300.

The holding at death is adjusted for the bonus issue of 1,000 shares.

The holding therefore becomes 5,000 + 1,000 = 6,000 shares with a probate value of £9,000.

Sale of 2,000 shares by the Executors;

	£
Proceeds	2,300
Probate value:	
£9,000 × <u>2,000</u>	<u>(3,000)</u>
6,000	
Allowable loss under S. 179	<u>£(700)</u>

#### 14.5 Changes in shareholdings - rights issues

[IHTA 1984,  
s.183](#)

Next we look at the situation where there is a **rights issue before shares** are sold by the Executors - again between the date of death and the date of sale.

The treatment is again straightforward. The **holding at death** is **increased by the rights issue**, but the **value** of the shares at death is also **increased** by the **cost** of the new **rights** shares.

##### Illustration 4

Tony died on 15 August 2010. His death estate included 5,000 Lex plc shares valued at £9,000.

Four months after his death there was a 1:5 rights issue at £1.20 per share. The Executors took up their rights in full. An extra 1,000 shares were therefore acquired at a cost of £1,200.

Two months later the Executors sold 2,000 shares for £2,300.

The holding at death is adjusted for the rights issue of 1,000 shares. The holding therefore becomes 5,000 + 1,000 = 6,000 shares with a probate value of £(9,000 + 1,200) = £10,200.

Sale of 2,000 shares by the Executors;

	£
Proceeds	2,300
Probate value:	
£10,200 × $\frac{2,000}{6,000}$	<u>(3,400)</u>
Allowable loss under S. 179	<u>£(1,100)</u>

#### 14.6 Changes in shareholdings - acquisitions prior to sale of identical shares

[IHTA 1984,  
s. 185](#)

Finally on shares, we turn to the position where the Executors **purchase identical shares** to those held at death before there is a sale.

In these circumstances the **shares sold are apportioned** between those held at death and those acquired during the intervening period.

In addition, we have to **remember** that the purchase itself will cause a **restriction** to the loss available. The restriction uses the total sales proceeds and there is no apportionment.

##### Illustration 5

Simon died on 16 August 2010. At his death he held 21,000 shares in Tex plc worth £27,000. Four months after his death the Executors purchased another 3,000 shares in Tex plc (giving a total holding of 24,000 shares) for £2,100.

A further 2 months later the Executors sold 8,000 Tex plc shares for £4,000.

Under s.185 the shares sold have to be apportioned. The number of shares treated as being sold out of the death estate is:

$$8,000 \times \frac{21,000}{24,000} = \underline{7,000 \text{ shares}}$$

We therefore calculate the loss on the sale of these 7,000 shares;

	£
Proceeds (£4,000 × 7/8)	3,500
Probate value:	
£27,000 × $\frac{7,000}{21,000}$	<u>(9,000)</u>
Loss	<u>£(5,500)</u>

However, this is not the allowable loss as we need to restrict this for shares purchased. The allowable loss is therefore;

	£
Loss	5,500
Less: restricted for purchase	
$£5,500 \times \frac{2,100}{4,000}$	<u>(2,888)</u>
Allowable loss under S. 179	<u>£2,612</u>

#### 14.7 Sales of land and buildings

[IHTA 1984,  
s.191](#)

Post mortem claims can also be made for sales of land and buildings. The relief works in much the same way as losses on sales of quoted shares, with a couple of important differences.

Relief is available for any sales of land and buildings **within 3 years of the date of death**. Again to calculate the overall loss, we must **aggregate together all profits and losses in the 3 year period**, and any resulting loss is deducted from the value of the estate for IHT purposes.

If the Executors sell any land and buildings at a loss in the **fourth year** - i.e. between 3 and 4 years from the date of death - these losses can **also** be counted when working out the overall allowable loss. **Any sales at a profit in the fourth year can be ignored.**

[IHTA 1984,  
s.197A](#)

As is the case for quoted shares, if the Executors **purchase** land and buildings within a certain period, such investments will restrict the amount of the allowable loss. This restriction period runs from the **date of death until 4 months after the final sale in the first 3 years**.

[IHTA 1984,  
s.192](#)

As is the case for shares, the restriction is;

$$\text{Loss} \times \frac{\text{Amount invested}}{\text{Total gross sale proceeds}}$$

Finally, when considering sales of land and buildings, we can **completely ignore any sales** which give rise to a profit or loss of either;

[IHTA 1984,  
s.191\(2\)](#)

- (i) less than £1,000; and
- (ii) less than 5% of the probate value,

whichever is the **lower**.

**Illustration 6**

Daniel died on 7 December 2009. Daniel's death estate included 4 buildings whose market values at death were as follows:

	MV
House in Camden	£300,000
Flat in Hampstead	£180,000
Flat in Kilburn	£90,000
House in Kensington	£500,000

When calculating the IHT payable in the first instance, these death values would have been used.

The Executors **sold all 4 buildings** at various stages throughout the administration period, and the gross proceeds of sale are as below:

Sales by PRs;		Proceeds
1.1.10	Camden	£275,000
1.1.11	Hampstead	£190,000
1.1.12	Kilburn	£89,500
1.1.13	Kensington	£460,000

On 1 March 2012 the Executors bought a plot of land for £100,000.

We will illustrate how these sales of land and buildings affect the inheritance tax computation. As Daniel died on 7 December 2009, we **must look at all sales of land and buildings between December 2009 and December 2012**.

On 1 January 2010, the Executors sold the house in Camden making a loss on the sale of £25,000. On 1 January 2011, the Executors sold the flat in Hampstead making a profit on the sale of £10,000.

The only other sale in the 3 year period, is the sale of the flat in Kilburn which gave rise to a loss of £500. This loss must be **disregarded** as it is **less than £1,000 and is less than 5% of its probate value**.

The house in Kensington was sold on 1 January 2013. This is **outside** the three year period, however the loss of £40,000 **can be counted because it is a loss on sales of land and buildings in year 4**. Remember that any losses in year 4 **can** be counted, whilst any profits in year 4 are ignored.

We aggregate together all profits and losses.

	Loss/Profit
	£
Camden	25,000
Hampstead	(10,000)
Kensington	<u>40,000</u>
Allowable loss	<u>£55,000</u>

We now need to consider the **purchase of land** for £100,000 on 1 March 2012.

Purchases of land only need to be considered if they take place within the "relevant period". The "relevant period" runs from the **date of death until 4 months after the final sale in the first 3 years**. The final relevant sale in the 3 year period was the house in Hampstead which took place on 1 January 2011. The sale of the flat in Kilburn was below the de-minimis threshold and is therefore ignored.

Therefore only purchases between **December 2009 and 1 May 2011** need to be taken into account. The **purchase** of land on 1 March 2012 can therefore be **ignored** when calculating the overall loss.

Note that even though we have taken account of the loss on the house in Kensington on 1 January 2013, **this does not extend the restriction period for purchases**. The allowable loss for S.191 purposes is therefore £55,000.

The value of land and buildings in Daniel's death estate will therefore be reduced by £55,000. This will generate a repayment of inheritance tax at 40% - i.e. £22,000 will be repaid to the Executors.

#### 14.8 Assets valued with other assets

[IHTA 1984,  
s.176](#)

The final post mortem relief involves the **sale of assets which have been valued together with other assets for inheritance tax purposes**.

Under S.176 IHTA 1984 a post mortem claim can be made by the Executors if 3 conditions are satisfied.

1. The Executor must be selling an asset which was **valued with other assets** for IHT purposes. This will most commonly mean **related property**.
2. The Executors must sell the asset **within 3 years of death** to an unconnected third party.
3. **Gross proceeds of sale** must be **less than the amount which was previously charged to inheritance tax**.

If **all 3** conditions are satisfied, a post mortem claim under S.176 can be made.

This post mortem relief works in a different way to sales of quoted shares or sales of land and buildings.

If the Executors make a claim under S.176, the **amount originally charged to IHT in respect of the asset, is removed from the IHT computation**. In its place, the Executors will **substitute the "stand alone" or "isolated" value of the asset which has been sold**. By "stand alone" value, we mean the value of the asset at the date of death ignoring the related property rules.

### Illustration 7

Mr Bloggs has 40% of the shares of Bloggs Investments Ltd. Mrs Bloggs also has 40% of the shares, and their son has the remaining 20%.

Mr Bloggs died in May 2009. At the date of death, a 40% holding is worth £100,000, whilst an 80% holding is worth £300,000. As the shares are in an investment company, no business property relief is available.

To calculate the value of Mr Bloggs's 40% share, we must take account of the **related property** rules. We do **not** simply take the value of a 40% holding.

Under the related property rules, Mr Bloggs is deemed to have **40/80ths of an 80% holding**, i.e.

$$40 / 80 \times £300,000 = £150,000.$$

The amount chargeable to IHT is £150,000. This means that Mr Bloggs' shares have been valued with other assets (i.e. Mrs Bloggs' shares) for IHT purposes.

In December 2010, the Executors sell Mr Bloggs' 40% holding for gross proceeds of £110,000. **All** of the conditions have been satisfied for a S.176 claim to be made, i.e.

1. The Executors have **sold assets valued with other assets** for IHT purposes.
2. The sale takes place **within 3 years of death**;
3. The gross sale proceeds (£110,000) are **less than the amount which was originally charged to inheritance tax**. The amount originally charged to IHT in Mr Bloggs' estate is £150,000.

The effect of a S.176 claim is to **remove the amount originally charged** to inheritance tax from the computation. Here we remove £150,000.

In its place, the Executors will **substitute the "stand alone" value** of Mr Bloggs' 40% holding. At the date of death, a 40% holding of shares in Bloggs Investments Ltd was worth £100,000. **This amount is now chargeable to inheritance tax**. The effect of a S.176 claim in this instance, is to reduce Mr Bloggs' death estate by £50,000.

This relief is different to sales of quoted shares or sale of land and buildings because the **actual amount of the loss is largely irrelevant**. In this example, the Executors sold the shares for £110,000. If they had sold the shares for, say, £95,000, the result would have been exactly the same - i.e. we would have **removed £150,000 from the computation and replaced it with a "stand alone" value of £100,000**.

**Example 1**

Marco died in August 2009. His estate included the following:

	MV
10,000 Derby plc shares	£60,000
10,000 Buxton plc shares	£50,000
5,000 Leek plc shares	£20,000

The Executors sold half the Derby plc shares in March 2010 for £35,000, and 10,000 of the Buxton plc shares in July 2010 for £30,000.

The Executors bought 1,000 units in a unit trust in August 2010 for £13,000.

**Calculate the allowable loss for S.179 purposes.**

**Example 2**

Gina died on 15 March 2010. At her death she held 10,000 shares in Vivi plc valued at 318p - 326p. On 2 September 2010 the Executors purchased a further 2,000 shares in Vivi plc for £5,600.

On 31 December 2010 the Executors sold 3,000 Vivi plc shares for £7,500.

**Calculate the allowable loss for S.179 purposes.**

**Answer 1**

	<i>Probate value</i>	<i>Gross proceeds</i>	<i>Loss/(profit)</i>
	£	£	£
5,000 Derby plc	30,000	35,000	(5,000)
10,000 Buxton plc	<u>50,000</u>	<u>30,000</u>	<u>20,000</u>
	<u>80,000</u>	<u>65,000</u>	15,000
Restriction for purchases:			
			<u>(3,000)</u>
	$£15,000 \times \frac{13000}{65000}$		
Allowable loss under S.179			<u>£12,000</u>

**Answer 2**

The 3,000 shares sold have to be apportioned between those held on Gina's death and those bought afterwards.

The number of shares treated as being sold out of the death estate is:

$$3,000 \times \frac{10,000}{12,000} = \underline{2,500 \text{ shares}}$$

We therefore calculate the loss on the sale of these 2,500 shares:

	£
Proceeds (£7,500 × 2,500/3,000)	6,250
Probate value:	
£32,000 (N) × $\frac{2,500}{10,000}$	<u>(8,000)</u>
Loss	(1,750)
Less: restricted for purchase	
£1,750 × $\frac{5,600}{7,500}$	<u>1,307</u>
Allowable loss under S. 179	<u>£(443)</u>

Note;

$$\frac{1}{4}\text{-up value} = 320\text{p}$$

$$10,000 @ 320\text{p} = £32,000.$$