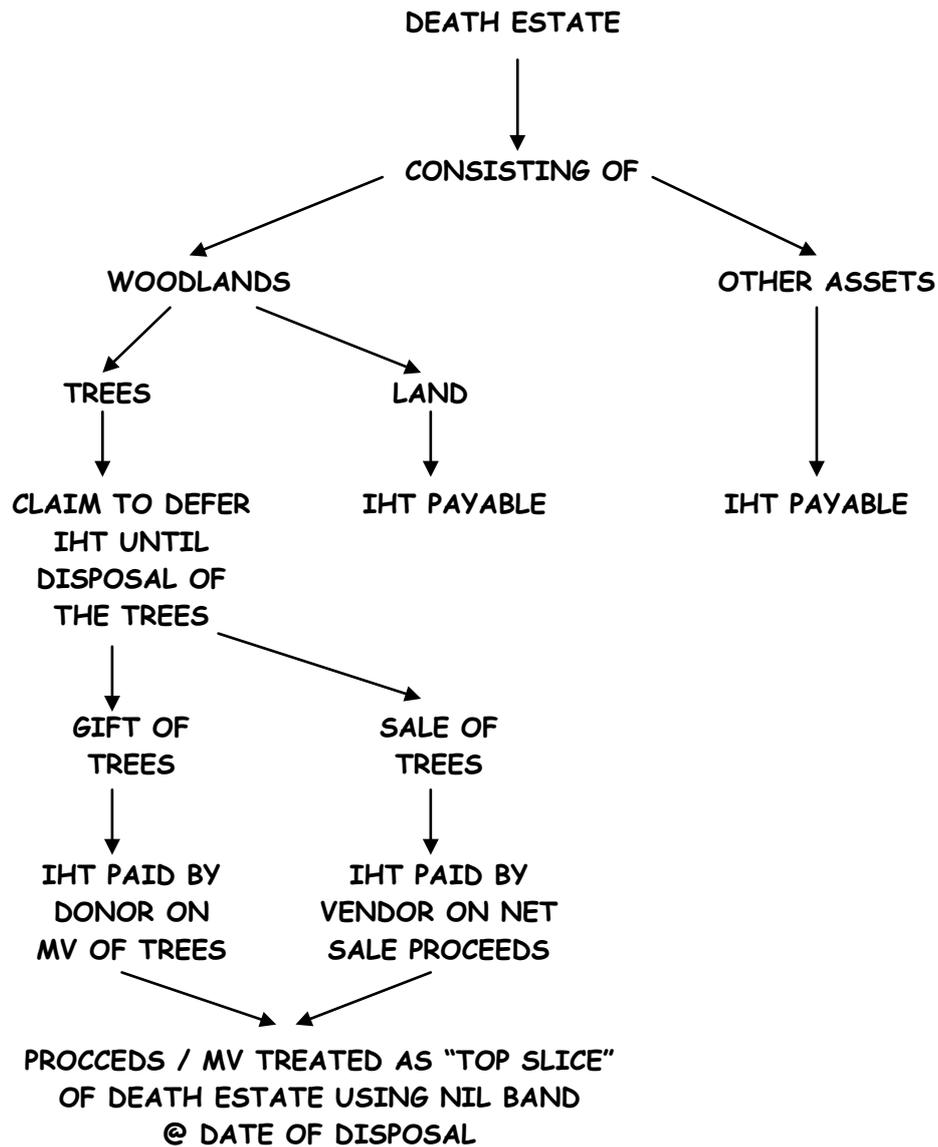


CHAPTER 25

WOODLANDS

25.1 Overview

The flowchart below summarises how woodlands relief works:



25.2 Introduction

There are 3 types of woodland for inheritance tax purposes:

- 1) Commercial woodland (such as orchards or nurseries or other areas of wood or forest used to generate business profits). Such land is usually eligible for 100% BPR (subject to the normal BPR conditions re ownership etc). Woodlands relief can be claimed on commercial woodland, although where BPR applies there is usually no tax so a claim is unnecessary.
- 2) Woodland ancillary to agriculture. If such land is designated by HMRC as "agricultural property", the woodland is excluded from woodlands relief;
- 3) Other non-commercial or non-agricultural woodland (such as woodland held as part of ones private residence or held as an investment). This type of woodland will qualify for woodlands relief.

The relief acts to defer inheritance tax on the value of the timber (ie trees or underwood) growing on the land. No relief is available on the value of the land itself. Therefore claims for woodlands relief are often referred to the HMRC District Valuer who will need to agree an apportionment of the woodland between the value of the land and of the trees etc growing on that land.

[IHTA 1984,
s.125](#)

On making a claim, the Executors will usually provide ordnance survey maps etc relating to the woodland in respect of which the claim is being made.

25.3 Conditions for the relief

An election must be made by the Executors of the deceased within 2 years of the date of death (or such longer period as HMRC may allow).

[IHTA 1984,
s.125\(3\)](#)

The land must be situated in the UK or in an EEA state.

[IHTA 1984,
s.125\(1\)\(a\)](#)

The deceased must either have:

[IHTA 1984,
s.125\(1\)\(b\)](#)

- a) owned the land for 5 years immediately prior to his death; or
- b) have acquired the land by way of gift or inheritance.

Woodlands relief is not available for:

- an outright lifetime gift;
- woodlands held on discretionary trust;
- woodlands which are on agricultural property.

25.4 How the relief works

If a claim is made the value of trees and underwood is left out of account when calculating the IHT on the death estate. The value of the land is however immediately charged.

[IHTA 1984,
s.125](#)

IHT becomes payable on a future disposal of the trees or underwood (a "recapture charge").

Therefore where the trees etc are very young and likely to grow and increase in value, it may be appropriate not to make a woodlands relief claim and instead pay IHT on the low value of the trees at the date of death.

Also where the taxable estate (including the timber) is less than the available nil band, no claim will need to be made.

25.5 Subsequent disposal of the woodlands

A disposal of the woodlands will trigger a charge to IHT.

[IHTA 1984,
s.126](#)

There is an exception for a gift to a spouse or civil partner (in which case a subsequent disposal by the spouse will generate a charge).

The liability to tax falls on the person who is entitled to the proceeds of sale (or who would be entitled if the disposal was a sale). This means that:

- a) on a sale of the woodland, IHT is charged on the vendor; and
- b) on a gift of the woodland, IHT is charged on the donor (although the donee can agree to accept responsibility for the tax).

25.6 The amount charged to tax

If the disposal is a sale for full consideration tax is charged on the net proceeds of sale.

[IHTA 1984,
s.127](#)

Otherwise, tax is charged on the net value of the timber at the time of the disposal.

Certain expenses, if they are not allowable for income tax, can be deducted to arrive at the net sale proceeds or value. These are:

- expenses of disposal (such as labour costs, plant hire, felling and clearing costs); and
- expenses of replanting the trees within three years of the disposal.

The three-year time limit for replanting expenses may be extended at the discretion of HMRC.

25.7 The rate of tax

The rate of tax chargeable on the disposal is found by treating the taxable amount as the top slice of the deceased's estate. The tax is calculated using the nil band at the date of disposal (not at the date of the original death).

[IHTA 1984,
s.128](#)

The maximum rate is therefore 40%. The rate will be less if some nil band is remaining.

For this purpose, the deceased's estate includes any sale proceeds or value charged to tax on previous disposals of timber since the death.

The "deceased" in this instance means the last person to die owning the relevant woodland.

Illustration 1

Robin owned 5 acres of non-commercial woodland for many years prior to his death in March 2006. He had made no lifetime transfers and he left his estate to his son, John. His estate at death was as follows:

	£
Family home & possessions in Nottingham	200,000
Woodland	80,000
Cash & quoted shares	<u>35,000</u>
Total	<u>315,000</u>

The HMRC District Valuer agreed that the value of the woodland included £25,000 in respect of trees and underwood, and a subsequent claim was made by the Executors under S.125 IHTA 1984.

In December 2010, John decided to clear the woodland to make room for development. He duly sold the trees to a timber merchant in January 2011 for £62,000. Felling costs were £3,000. In May 2011 he spent a further £2,500 in some partial replanting.

Calculate the IHT payable in respect of the above.

Robin's death estate:

	£
Taxable estate:	
Family home & possessions	200,000
Woodland £(80,000 - 25,000)	55,000
Cash & quoted shares	<u>35,000</u>
Chargeable estate	290,000
Less: nil band 2005/06	<u>(275,000)</u>
Taxable	<u>15,000</u>
IHT @ 40% (payable by Executors)	<u>£6,000</u>

Sale of timber by John:

	£	£
Chargeable estate		290,000
Proceeds of sale	62,000	
Less: disposal expenses	(3,000)	
Less: replanting costs	<u>(2,500)</u>	
		<u>56,500</u>
		346,500
Less: nil band 2010/11		<u>(325,000)</u>
Taxable		<u>21,500</u>
IHT @ 40% (payable by John)		<u>£8,600</u>

Note that where the chargeable estate is above the nil band for the year of the chargeable event - ie, there is no nil band left to use - the recapture charge will simply be the net sale proceeds multiplied by 40%. This is often the case.

24.8 Disposals by way of gift

A gift of the woodlands (other than to the spouse) after a S.125 claim has been made will trigger a charge to IHT.

The liability to tax falls on the donor.

Tax is charged on the net value of the timber (i.e. after expenses of transfer) at the time of the disposal.

If the gift is itself chargeable to IHT (eg, it is a gift to a trust or a PET within 7 years of the donor's death) the tax charged on the disposal reduces the transfer of value. Note that the tax paid reduces the transfer - it is not a tax credit.

[IHTA 1984, s.129](#)

Illustration 2

William died in January 2005 leaving his estate to his daughter Marian. The estate was valued at £500,000. This included non-commercial woodland valued at £60,000 of which £20,000 was attributable to trees and underwood. A claim was made under S.125 HTA 1984.

In May 2008, Marian gave the woodland to her sister, Holly. At that date the woodland was worth £95,000 of which £30,000 was attributed to the trees. Expenses of transfer were £800. This was Marian's only lifetime gift.

Marian died in May 2010 leaving an estate of £340,000 to her son.

Calculate the IHT payable as a result of Marian's death.

The gift of the woodland by Marian to Holly in May 2008 will result in a recapture charge under S.126.

The amount charged to tax is the value of the trees in May 2008, less costs of transfer (ie £30,000 - £800 = £29,200).

This is charged as the top-slice of William's death estate. As William's chargeable estate exceeds the nil band for the year of disposal, the IHT charge will be fully at 40%; i.e.

$$£29,200 \times 40\% = £11,680.$$

The tax paid by Marian under S.126 reduces the value of the PET for IHT purposes:

	£
Gift (May 2008)	95,000
Less: S.126 tax	(11,680)
Less: 2 x AEs	<u>(6,000)</u>
Chargeable on death	<u>77,320</u>

No tax on death as PET covered by nil band.

Marian's death estate:	£	£
Estate		340,000
Nil band 2010/11	325,000	
Less: transfers in last 7 years	<u>(77,320)</u>	
Taxable		<u>(247,680)</u>
		<u>92,320</u>
IHT @ 40% (paid by Executors)		<u>£36,928</u>

Example 1

Mr Sherwood died in 1998 leaving his estate to his son, Rowan. He had made chargeable transfers of £72,000 in the 7 years before his death. The estate included a woodland valued at £150,000 of which £60,000 was attributable to growing timber. Mr Sherwood's other chargeable assets at death were valued at £125,000. A claim was made under S.125 IHTA 1984.

On 1 July 2007, Rowan created a discretionary trust for his young grandchildren with £281,000 in cash. This was his first lifetime transfer.

On 1 August 2008, Rowan gave the woodland to his niece, Hazel, when the land was worth £225,000 (including growing timber of £95,000). Costs of transfer were £1,000.

Rowan died in March 2011 leaving an estate of £500,000 on trust for his grandchildren.

Calculate the IHT payable as a result of Rowan's death.

Answer 1

The gift of the woodland by Rowan to Hazel in August 2008 will result in a recapture charge under S.126. The amount charged to tax is the value of the trees in August 2008, less costs of transfer (i.e. £95,000 - £1,000 = £94,000).

This is charged as the top-slice of Mr Sherwood's death estate (using the nil band for the year of disposal being 2008/09):

Mr Sherwood's death estate:

	£	£
Woodland £(150,000 - 60,000)		90,000
Other assets		<u>125,000</u>
Chargeable estate		215,000
Nil band 2008/09	312,000	
Less: transfers in 7 years before death	<u>(72,000)</u>	<u>(240,000)</u>
Nil band remaining		<u>25,000</u>
Net value of timber at date of gift		94,000
Less: nil band remaining		<u>(25,000)</u>
Taxable under S.126		<u>69,000</u>
IHT @ 40% (payable by Rowan)		<u>£27,600</u>

The tax paid under S.126 reduces the value of the PET for IHT purposes:

	£
Gift (August 2008)	225,000
Less: S.126 tax	(27,600)
Less: AEs 2008/09	<u>(3,000)</u>
Chargeable on death	<u>194,400</u>

Rowan's chargeable transfers:

	£
Gift to trust (July 2007)	281,000
Less: 2 x AEs	<u>(6,000)</u>
Chargeable transfer	<u>275,000</u>
No tax on death as covered by nil band	
	£
PET (August 2008)	194,400
Nil band £(325,000 - 275,000)	<u>(50,000)</u>
Taxable	<u>144,400</u>
IHT @ 40% (payable by Hazel)	<u>£57,760</u>
Death estate:	
£500,000 @ 40% (no nil band remaining)	<u>£200,000</u>
Tax payable by Executors	