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Inheritance Tax, Trusts & Estates

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Inheritance Tax, Trusts & Estates

Report

To: The executors of Adam Jones' estate
Rose Williams, Steven Jones and
Abby Williams

From: Anne Lloyd - Tax Partner

Subject: The estate of Adam Jones.

Date: May 2019

This report is for the executors of
The Adam Jones estate and relies
upon the information provided by
Rose Williams including valuations

All tax rates ~~and~~ are correct
at the time the report was
drafted

The report covers the following issues:

Section A - Sale of Assets within the estate

- ~~Post Mortem Relief~~

Section B - Sale of The Haven now
- Post Mortem Relief.

Section C - Sale of The Haven in Future

Section D - Gift of The Red cottage to Abby by Rose

- By outright gift

- By Deed of Variation

Section E - Gift of 10 Jones Pet food Ltd shares to Abby

- By outright gift

- By Deed of Variation

Executive Summary

- The capital disposals within the estate in 2018/19 give rise to capital gains and needs to be reported on the executors Tax return.
- The Haven to be sold now which would give rise to an IHT refund of £66,896 to the estate
- An overnight gift of the Red cottage to Abby gives rise to CGT of £19,124 with a gift of the shares giving rise to CGT of £20,250
- Gift of Red cottage can be made with a Deed of Variation. We recommend this as no IHT or CGT issues for Rose
- Deed of Variation needs to be

Question Title

Your Candidate No.

Inheritance Tax, Trusts & Estates

done by 10 october 2019.

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Section ASale of Assets within the Estate.

The executors made some disposals, namely the Holiday home, Sandy Bay and Mulberry Lodge along with the quoted share portfolio.

These disposals which were made in the 2018/19 tax year will need to be reported on the executors' 2018/19 tax return.

The capital gains tax ^(CGT) will need to be paid by 31 January 2020.

The estate will have use of the full Annual exemption for the 2018/19 tax year of £11,700, then gains will be taxed at 28%.

Inheritance Tax, Trusts & Estates

which is the CGT rate for residential property.

This Annual exemption is only available for two tax years of an estate in administration, so in 2019/20 the estate will not have it.

The tax return will need to be submitted by 31 January 2020 (or 31 October, if by paper).

There are penalties if the tax return is late or if payment of the tax is late.

We can assist with the completion of this and would recommend that this is done and completed soon,

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Section BPotential sale of the Haven now

The sale of The Haven now would give rise to a Capital gains loss of £200,000.

The probate value for Inheritance Tax (IHT) purposes was £800,000 and the executors have paid IHT on this valuation.

However, if The Haven was sold now, we would be able to go back to the estate valuation and reduce the valuation to £600,000 which would give an IHT refund to the estate.

This relief is called the
Post Mortem Relief. (PMR)

PMR

This relief allows the executors to include the sale value of Land/buildings, if they were sold at less than the probate value.

The sale needs to have been made 3 years from the date of death (10 October 2017) so this gives you up to 10 October 2020

The claim for PMR needs to be made within 4 years of death, so you would have until 10 October 2021 to make the claim.

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If there was a sale in the 4th year after death, ~~the~~ and it was sold at a loss then it would be treated as sold in the 3rd year and would qualify for PMR.

We have assumed that no land and buildings have been purchased by the estate in the period as these would need to be taken account of.

Appendix 1 shows that if The Haven was sold now there would be an IHT refund to the estate of £66,896

As you will notice from this Appendix 1. we have taken into

Inheritance Tax, Trusts & Estates

account the other two properties
sold to get the net loss.

The net loss is more than
£1,000 and more than 5% of
the total estate so PMR is
available.

Inheritance Tax, Trusts & Estates

Section CPotential Sale of The Haven in Future

Should the property be taken off the Market and sold in 3 or 4 years time, PMR would not be available to the estate as the time would have lapsed to make the claim.

The estate would not have the Capital Gains Annual exemption available either.

There would still be a loss but there would be no IHT refund.

Also, if the Property was let out

Inheritance Tax, Trusts & Estates

then income tax would be payable on the rental received (net of expenses) by the executors.

This would extend the administration period which is not ideal.

Prices of Properties are not guaranteed and may go up as well as down.

Recommendation

We would recommend that The Haven is sold now, which would give rise to an IHT refund to the estate.

We can assist with the necessary forms to HM Revenue & Customs for this

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Section DRed cottage to Abby

By outright gift.

This would be a disposal by Rose at Market Value giving rise to a Capital gain.

Appendix 2 shows that the CGT Payable would be £19,124. We note that ^{Rose} ~~you~~ does not have any Annual Exemption nor losses to use up.

~~As~~ Rose is a higher rate tax payer "disposing" of a residential property so this is taxed at 28%.

~~This gain could be deferred~~

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For IHT purposes, this transfer is a Potentially Exempt Transfer (PET).

This means that if ^{Rose} ~~you~~ survives 7 years from the date of the transfer then ~~the~~ Red cottage ^{Rose's} falls out of ~~your~~ estate, and no IHT is payable.

Should Rose die within 7 years then the gift becomes chargeable to IHT depending on how much Nil Rate Band (NRB) Rose has available on death.

Taper relief would be available to Abby, which reduces the IHT if more than 3 years has passed from date of Rose's death.

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Red cottage to Abby

By Deed of Variation: (D.O.V)

When a D.O.V is made, assets which someone has received on death, can be transferred to someone else as if the deceased had gifted it.

So Rose could make a D.O.V for the Red cottage to Abby and it would deem the gift as if Adam had left it in the will himself.

A D.O.V needs to be made within two ~~to~~ years from date of death, so this would need to be made by 10 October 2019.

Inheritance Tax, Trusts & Estates

The D.O.V needs to be made in writing by Rose, which we recommend is done by your solicitor.

A statement needs to be included (s.142) and this basically ~~is~~ re-writes Adams will so that the Red Cottage passes to Abby direct and by-passes ^{Rose} ~~you~~ for IHT purposes.

This means that there would be no additional IHT should ^{Rose} ~~you~~ not survive 7 years as the ~~is~~ transfer is deemed to be from Adam.

For CGT purposes, ^{Rose} ~~you~~ ~~are~~ still liable as the disposal is made by Rose.

Inheritance Tax, Trusts & Estates

This CGT liability can be mitigated if another statement (s65) is included in the D.O.V.

This once again, deems the disposal as made by Adam on his death and no CGT is payable by ~~g~~ Rose.

Abby then acquires Red cottage at the probate value of £400,000. Should Abby sell the cottage then this would be her cost when calculating CGT.

Abby would need to agree to this.

Section 6

10 Shares of Jones pet Foods Ltd
to Abby

By outright Gift.

As with Red cottage, this would be a disposal by Rose at Market value giving rise to a gain.

Appendix 3 shows that CGT Payable on the transfer would be £20,250. CGT calculated here is at 10%.

This is because Rose is able to claim Entrepreneurs' Relief (ER) by virtue of her working at the company, owning more than 5% of the shares and for more than 12 months.

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The cost of the shares have been calculated by way of pooling all the shares together to get the actual cost.

The CGT can be paid now or a claim can be made to defer this gain, as it is a Business asset (i.e. shares in an unquoted company) that is being gifted.

The effect of the claim is that Rose does not pay CGT but Abby takes the shares at Rose's base cost.

This could result in higher CGT if Abby sells the shares.

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The claim needs to be made within a year from the tax year end of the transfer by Rose and Abby.

For IHT purposes, again this is a PET, however, as this is a Business Property - then it gets Business Property Relief (BPR) at 100% of the value.

BPR is available when unquoted shares are gifted or still in an estate on death.

Should Abby still hold on to the shares, should ~~if~~ Rose die, then there would be no IHT to pay and full BPR at 100% given.

Inheritance Tax, Trusts & Estates

If Abby was to sell the shares and not hold them at Rose's death, then BPR is denied and the full value is subject to IHT.

This could be mitigated should Abby re-invest in more business property with the proceeds of the shares.

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10 Shares of Jones Per Foods Ltd
to Abby

By D.O.V:

As explained in the earlier part of the report, the effect of a ~~to~~ D.O.V. if executed correctly with the statements, Rose would not have any IHT or CGT consequences.

Abby would acquire the shares as if Adam had gifted them on his death via his will.

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Conclusion

If Rose were to die, Red cottage would increase her death estate and the value be chargeable at 40% IHT. If she still held it at death.

If Rose were to die, the shares she holds in Jones per Foods Ltd, provided she still held them at death, would be fully covered by BPR at 100%.

Recommendation

It is recommended that Rose removes Red cottage from her estate (as a chargeable asset)

The most tax efficient way of doing this is by making a D.O.V. which needs to be done by 10 October 2019

Rose would still have BPR available in 5 years time, so ^{outright} as a gift of 10 shares then to Abby would still secure the same tax advantages

Rose is now 65 yrs of age*

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So assuming she carries on
working at the company ER
will also be available to her.

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Appendix L

Capital Gains

Sandy Bay:		£
proceeds:		355,000
probate value		(350,000)
		5,000
sp 02/4	$£350k \times 0.16\%$	(560)
	Gain	<u>4,440</u>

Mulberry Lodge:

		£
proceeds		280,000
probate value		(250,000)
sp 02/4	$£250k \times 0.16\%$	(400)
	Gain	<u>29,600</u>

The Haven:

		£
proceeds		600,000
probate value		(800,000)
sp 02/09	$£800k \times 0.16\%$	(1,280)
	Loss	<u>201,280</u>

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Appendix 1. continued.

Post Mortem Relief

if Haven sold now:

	Gain/(Loss)
Sandy Bay	4,440
Mulberry Lodge	25,600
The Haven	(201,280)
	<u>167,240</u>

$\pounds 167,240 \times 40\% = \pounds 66,896$ IHT refund

due back to the

estate.

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Capital Gains Tax

Appendix 2

Red cottage to Abby

£

Market Value date of Transfer 480,000

Probate value (400,000)

80,000

AIE (used up per info) 0

NO losses 0Gain 80,000Residential @ 28% = £19,124

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Appendix 3

Capital Gains Tax

10 Shares to Abby

£

Market Value date of Transfer

£2,688,000/56 x 10

480,000

Cost #

(277,500)

202,500

No losses + No AIE

0

202,500

Entrepreneurs relief @ 10%.

= £20,250

Share pool.

No

£

1988

28

@7.500

210,000

2017

282,688,000²⁸/₅₆1,344,000

56

1,554,000

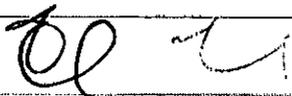
Gift #

(10)

£27,750 each

(277,500)461,276,500

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1 Plan 

Sales of Assets - CGT to pay

- AIE £11700 ^{for 2 years only} / for execs.
- needs reporting on tax return ^{2018/19}
- Payable by 31/1/20
- Penalties

The

Haven

- valuation £200k less
- Paid IHT on that
- Post-Mortem Relief - discuss
- £200k @ 40% → £80,000 ^{refund} ~~saved~~
- PMR by 10/10/20
- amths 10/2/21

Other properties
Sold sandy
Muthery

- would extend administration period
- income tax on the rental income
- No AIE then
- if waited - NO PMR
- Still a loss.
- NO AIE

Recommend sell now.

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Blue cottage - (make this a small point).

NO
only asked
for IHT
issues.

- Steven to include rental income on his own tax return.
- LET Mum know his self employed.

Gift of Red cottage or shares.

Adam died 10/10/17.

- D.O.U by 10/10/19.

Red cottage outright gift by Rose

- ~~PET survive 7 years~~
- IHT if dies Abby pays IHT
Taper relief after
3 years
- ~~CAT by Rose @ MU~~
- ~~\$260 - Abby gets at MU on that date.~~
Both to agree & sign.
- By D.O.U
requirements =
- S142 + S65 saving of
£1124

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Shares to Abby:

- Gift ^{disposal @ MU} - ~~Transfer~~
- ~~will have BPR on the shares~~
- CGT on the shares with ER
- ER - Criteria + @ 10%
- can pay now or do S165
- Business Roll over
- 4 years to claim
- claim
- by both
- Takes shares @ ~~the~~ cost.

IHT - PET

- dies get BPR if Abby still holds on to them
- if ~~sold~~ will need to reinvest in Business property to secure BPR.

insert \rightarrow

Recommend - if no plans to sell business + keep within family
 Collage to Abby now

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insect.

* Keep the shares:

- it dies - then leaves BPR

- no adverse effect if kept
another 5 years.

- is Rose going to keep working?

