HMRC - CG14542 - Market Value Rule: Subjective Intention Test

A transaction is ‘otherwise than by way of a bargain made at arm’s length’ when one of the persons involved in the transaction does not intend to get the best deal for themselves from THAT PARTICULAR TRANSACTION. That person enters into the transaction with the subjective intention of giving some gratuitous benefit to the other person.

WHERE ONE OF THE PARTIES TO A TRANSACTION HAS THE INTENTION OF CONFERRING A GRATUITOUS BENEFIT ON ANOTHER PARTY TO THE TRANSACTION THEN THE TRANSACTION IS OTHERWISE THAN BY WAY OF A BARGAIN MADE AT ARM’S LENGTH AND THE MARKET VALUE RULE APPLIES.

This test can apply to a wide range of circumstances. The examples given only cover a small number of the possible circumstances.

EXAMPLE

John gives Sarah a painting worth £100,000.

Clearly John intended to confer a gratuitous benefit on Sarah and the transaction is ‘otherwise than by way of a bargain made at arm’s length’.

The market value of the painting should be brought in as John’s disposal proceeds in his capital gains computation. Sarah will have an acquisition cost of £100,000 for the painting.

EXAMPLE

Mr K Brown sells 100 shares in the family trading company to his nephew, Alec Brown, at par, for £1 each. The shares are worth £100 each. Mr K Brown has knowingly sold the shares at undervalue and intended to confer a gratuitous benefit on his nephew. An uncle and nephew are not connected persons so the subjective intention test has to be applied in order to use the market value rule.

The market value of the shares, supplied by Shares and Assets Valuation, should be used as Mr K Brown’s disposal proceeds and as Alec Brown’s acquisition cost.

Previous page

Next page