Death, personal representatives and legatees

Contacts
Please phone:
- the number printed on page TR 1 of your tax return
- the SA Helpline on **0845 9000 444**
- the SA Orderline on **0845 9000 404** for helpsheets

or go to **hmrc.gov.uk/sa**

This helpsheet explains how Capital Gains Tax (CGT) applies when someone dies, and in particular how to compute gains or losses made by the personal representatives and those who inherit property from the deceased. But it is only an introduction. If you are in any doubt about your circumstances you should ask your tax adviser. We will also be pleased to help you and provide any forms you may need. You can also consult our *Capital Gains Manual*, which explains the rules in more detail. Go to **hmrc.gov.uk/manuals/cgmanual**

This helpsheet will help you fill in the *Capital gains summary* pages of your tax return.

If you need information concerning liability to Inheritance Tax, please see the end of this helpsheet.

Meaning of expressions used

In general these notes refer to the legal terms used in England and Wales. In most respects the taxation principles are the same where the law in Scotland or Northern Ireland applies. However, the general law background may differ slightly. Because of the differences in general law some of the terms used for cases in Scotland may be different from those used in these notes.

Personal representatives is the term used here for the persons who are responsible for settling the affairs of a deceased person. It includes both executors and administrators (in Scotland, executors nominate and executors dative).

The **administration period** is the period during which the personal representatives are settling the estate. It starts on the date of death of the deceased person and usually ends for tax purposes when the residue of the estate has been ascertained. If, however, there are disputes about the will, the administration period is not regarded as ended until they are resolved.

The **residue of the estate** is ascertained when the net balance of the estate has been identified and sufficient funds have been provided to enable any liabilities to be paid.

A **legatee** is defined for CGT purposes as including any person benefiting from a testamentary disposition (normally a will), or on an intestacy or a partial intestacy. For this purpose legatees include trustees of a settlement arising under the terms of the will or intestacy.

General position

When a person dies there is no CGT charge. Instead there are special rules.

In broad terms, the assets which were owned by the deceased at the date of death (including any joint interests which in effect pass immediately to the

survivor(s)) are treated as though they had passed to the personal representatives or other person to whom they pass by law at the date of death, at their market value on that date. When the administration of the estate has been completed and the assets remaining in the estate are passed to the legatees, they are treated as though they had passed to the legatees at the date of death at their market value on that date.

Example 1

Mr Andrews dies on 10 October 2011. At the time of his death he owns a house, value £175,000, some shares, value £25,000 and money in a bank account, £20,000. All of these are treated as passing to his personal representatives at those values.

The administration of the estate is completed on 31 January 2013. At that date the house is worth £200,000 and the shares £18,000. Those assets are passed to Mr Andrews' legatees but are treated as having been acquired by the legatees on 10 October 2011 at values of £175,000 and £25,000.

Capital Gains Tax liability for periods up to the date of death

Before death the deceased may have disposed of assets. There may be Capital Gains Tax (CGT) arising. Returns of the gains may not have been sent to us, or the correct amount of tax may not have been agreed. The personal representatives must agree with us the liability of the deceased up to the date of death. This will include:

- settling any points that are open for those years in which tax returns have already been made
- completing a tax return for the period from the previous 6 April to the date of death, plus tax returns for any years where a return is outstanding, and
- agreeing the liability for those years and making appropriate payments.

Annual exemption

There is no restriction imposed on the amount of the annual exemption for a year in which an individual dies, where available. The whole of the exemption is available to set against the deceased's gains arising in that year, however short the period from 6 April to the date of death.

Losses in year of death

If the deceased disposed of assets in the part of the tax year before death, there may have been losses on some assets rather than gains. If so, those losses must first be set against any chargeable gains made in that period.

The losses must be set against all gains, even if this reduces the net chargeable gains to below the amount of the annual exemption.

If any allowable losses remain after this has been done, those excess losses may be carried back. The losses can be set off against gains:

- arising in the three tax years prior to the tax year in which death occurs, but
- the losses must be set off against gains in a later year before making set-offs against gains of an earlier year.

Losses carried back in this way are only set off so that the net chargeable gains are reduced to the amount of the annual exemption. The full benefit of the annual exemption is still enjoyed for those years.

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Any losses **not** set against gains of:
- the part of the tax year before death
- the three previous tax years

cannot be used.

Such losses cannot be used by:
- the personal representatives, or
- the legatees

in any circumstances.

Example 2 (losses carried back)

Mrs Gee died on 30 September 2012. In the period 6 April 2012 to 30 September 2012 she had chargeable gains of £1,000 and allowable losses of £10,000. In the three previous tax years her net chargeable gains were:

2009–10	£20,000
2010–11	£3,000
2011–12	£12,000

First, set the 2012-13 losses against her gains of that year.

2012–13

Chargeable gains		£1,000
Allowable losses	£10,000	
Set-off	£1,000	£1,000
Net chargeable gains		zero
Excess losses available to carry back	£9,000	

Second, set off excess losses against gains of earlier years, taking into account later years before earlier years. Therefore consider 2011-12 first.

2011–12

Chargeable gains	£12,000
Covered by annual exemption	£10,600
Limit set-off to	£1,400
Therefore reducing Capital Gains Tax to zero.	
Allowable losses brought back	£9,000
Set-off 2011-12	£1,400
Excess loss to carry back	£7,600

Third, consider next 2010-11. Net chargeable gains of £3,000 are already wholly covered by annual exemption. Therefore none of the losses brought back should be set against these gains.

Example 2 (losses carried back) ***continued***

Fourth, consider next 2009-10.
2009-10

Chargeable gain	£20,000
Covered by annual exemption	£10,100
Available to set loss against	£9,900

As this exceeds the losses brought back of £7,600, all those losses can be set against the 2009-10 assessment.

Net chargeable gains before set-off	£20,000
minus losses brought back	£7,600
Revised net chargeable gains for 2009-10	£12,400
minus annual exemption	£10,100
Gains chargeable to tax	£2,300

Capital Gains Tax liability for the period of administration

During the period of administration, the personal representatives may be liable to Capital Gains Tax (CGT) if they sell or otherwise dispose of any of the assets in the estate. This does not apply when assets are passed to legatees under the terms of the will, etc.

During this period the personal representatives have absolute control over the assets, except those that have been passed to the legatees. They are not bare trustees or nominees for the legatees.

Where:
- an asset has not been formally transferred to a legatee, and
- the residue of the estate has not been ascertained (see page 1 of this helpsheet), and
- the asset is disposed of, and
- a gain arises

that gain is chargeable on the personal representatives and not the legatee.

Residence status of deceased

In general terms, only individuals who are treated for tax purposes as resident or ordinarily resident in the UK are liable to CGT.

The personal representatives of a deceased individual are treated as a single and continuing body of persons having the same residence and domicile status as the deceased. So, if the deceased was not resident and not ordinarily resident in the UK before death, then the personal representatives will not be liable on any disposals even if they are themselves resident in the UK.

Where, despite being not resident, the deceased would still have been liable to CGT on the disposal of particular assets (for example, where the assets had been used in a trade carried on in the UK through a permanent establishment), then the personal representatives will also be liable on any disposal of those assets.

You can get more information on residence, ordinary residence and domicile in the *Residence, remittance basis etc. notes* available online. Go to **hmrc.gov.uk**

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Calculating gains and losses

In calculating gains and losses, most of the normal CGT rules apply to personal representatives as to individuals, but there are some differences. These are explained in this section.

The assets that were owned by the deceased at the date of death are treated as though they had passed to the personal representatives at the date of death at their market value at that date. This value is the 'cost' or acquisition value.

Where the personal representatives acquire assets during the course of administering the estate, the actual cost or value of those assets is used in calculating gains or losses on their disposal.

Annual exemption

The full amount of the annual exemption is allowed to personal representatives:
- for the period from the date of death to the following 5 April (no matter how short this period is), and
- for the two tax years following the year of death.

Where gains arise in a later year, no annual exemption is due.

Rate of tax

For 2012-13 the rate of CGT for personal representatives is 28%, which is the same as for individuals and trustees.

Expenses incurred by personal representatives

Personal representatives incur legal and other expenses in the administration of the estate, for instance, in obtaining a grant of probate. If they sell or dispose of some of the assets of the estate, then some of that expenditure may be allowable in calculating the gains or losses. Because of the way solicitors charge for their services, it is often difficult to isolate the allowable expenditure from other expenditure which is not allowable.

We will accept calculations which include deductions for costs of establishing title which are based on a published scale. The scale is published as Statement of Practice SP02/04 (for deaths after 6 April 2004). (Statements of Practice can be viewed at **hmrc.gov.uk**)

Personal representatives are entitled to claim the actual expenditure where this is known.

This expenditure is only available where the personal representatives dispose of assets.

Transfer of assets to legatees

When the personal representatives have completed the administration of the estate, they will pass the assets to the legatees in accordance with the wishes of the deceased in the will, or under rules laid down where there is no will. The administration is usually completed when the residue of the estate has been ascertained.

When the personal representatives pass the assets to the legatees, no CGT is charged. Under the special rules the assets, which were owned by the deceased at the date of death, are treated as though they had been acquired by the legatees at the date of death at their market value on that date (see Example 1 on page 2 of this helpsheet).

Sometimes the personal representatives will themselves acquire assets during the course of the administration and these assets may be passed to

legatees under the terms of the will, etc. In that case those assets are treated as though they had been acquired by the legatees on the date the personal representatives acquired them, at the cost to the personal representatives or the value at which the personal representatives acquired them.

Treatment of legatees

All assets acquired by a legatee following a death, which were assets owned by the deceased at the date of death, are treated as though acquired by the legatee:

- at the date of death
- at their market value on the date of death.

Assets acquired by the personal representatives during the course of the administration are treated as though they had been acquired by the legatee:

- at the date of acquisition by the personal representatives
- at the cost to the personal representatives or the value at which they were acquired by the personal representatives.

If the legatee subsequently sells or otherwise disposes of those assets, the normal rules of Capital Gains Tax (CGT) will apply.

The legatee is not entitled to claim unused losses of the deceased or personal representatives or any of the expenses incurred by the personal representatives in establishing title to the estate. They may claim on any future disposal any expenditure incurred by them or by the personal representatives relating to the actual transfer of the asset to the legatee.

Valuation of assets of deceased at date of death

A legatee is treated as though assets acquired from an estate were acquired at their market value.

A legatee may sometimes acquire only part of an asset. For instance, a holding of shares may be divided between a number of legatees, or several legatees may become joint owners of an indivisible asset such as land.

Where this happens, the acquisition cost of each legatee's share is an appropriate fraction of the market value of the holding or asset acquired by the personal representatives.

Example 3

On 31 December 2012 a person dies having a shareholding of 600 shares in a company. This represents a 60% holding in that company and is valued at £60,000 or £100 a share. On the date of death a holding of 200 shares, or 20% of the company, would have been valued at £2,000 or £10 a share.

When residue is ascertained, each of the three legatees receives 200 shares from the personal representatives. They are each treated as having an acquisition cost of $^1/_3$ of £60,000 (the personal representatives' acquisition value). Their acquisition cost is thus £20,000, not the value of £2,000 that would have been placed on a 20% shareholding.

The value of an asset at the date of death may be needed in order to calculate the Inheritance Tax liability of the estate. It may also be needed for CGT purposes as an acquisition cost if either the personal representatives or the legatee subsequently disposes of the asset. Because the valuation is used in arriving at the liability under both taxes, there are special rules to make sure that the same value is used in dealing with each tax.

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Where:
- the value of an asset is needed for the purposes of both taxes, and
- that value has been 'ascertained' for the purposes of Inheritance Tax on the estate of the deceased at death,

that value is also to be used as the acquisition cost for CGT purposes.

In some cases HMRC Trusts & Estates Inheritance Tax may not need to determine the values of some or all of the assets. This can happen, for example, where all the assets pass to a surviving spouse or civil partner and the entire estate is exempt, or where the estimated value of the estate is well below the threshold on which the tax is payable, or where particular assets qualify for 100% relief from Inheritance Tax.

In such cases, the values will either not have been considered in any detail or not considered at all and are not thereby 'ascertained' under the special rules mentioned above.

In some cases where a person dies, the value of the estate of their late spouse or civil partner may need to be valued for Inheritance Tax (IHT) purposes, although there had been no liability on the first death because it was within the nil-rate band for IHT, after any spouse/civil partner exemptions. This is because a sum representing the unused nil-rate band on the first death is added to the nil-rate band for the second death. You can find more information in the IHT Manual available at **hmrc.gov.uk** In this situation, whatever the interval between the deaths, the value on the first death is not regarded as ascertained for IHT purposes.

If the asset is disposed of either by the personal representatives or legatees, the acquisition value will have to be agreed or determined.

Variation of the terms of the will or intestacy

Sometimes, the legatees of an estate decide that they want to change the way in which the estate is to be distributed. This can be done by a deed of variation, or a similar legal document.

Where the document is legally valid, and if certain conditions are met, then:
- the variation will be treated for Capital Gains Tax (CGT) purposes as not being a disposal, and
- the rules outlined in this helpsheet will apply as they would if the variation had in fact been included in the will.

In other words, the rules outlined in this helpsheet apply as they would if the terms of the deed had been included in the will, etc. The conditions, all of which must be satisfied, are that:
- the variation must be effected by an instrument in writing made within two years of the deceased's death
- the persons who wish to give up all or part of their entitlement under the will or intestacy provisions must be parties to the instrument
- there must be no consideration in money or money's worth for the variation other than consideration in the form of a disclaimer or variation of other dispositions of the same estate
- the instrument must contain a statement that the parties intend Section 62(6) Taxation of Chargeable Gains Act 1992 to apply. Our website **hmrc.gov.uk** provides a checklist form IOV2 to help in meeting the requirements for an instrument that is effective for CGT (and/or Inheritance Tax) purposes.

Sometimes proceedings are brought under the Inheritance (Provision for Family and Dependants) Act 1975. Where the court makes an order under Section 2 of that Act, the terms of that order are deemed to have applied from the date of death for all purposes. There are therefore no capital gains disposals on the making of the order and the special rules outlined in this helpsheet apply.

Where the conditions are not met, and the terms of the deed are not treated as though included in the will, the variations will involve disposals by some of the parties which may have CGT consequences. This is a complex area and in such cases you may want to seek professional advice.

Sometimes a trust is declared in the deed of variation. If this trust replaces an absolute gift of assets under the will, then the person who gave up his or her entitlement under the will in favour of the trust is the settlor of that trust for CGT purposes. If the trust replaces in whole, or in part, another trust declared in the will, then the position is not straightforward and you should ask the office dealing with the estate or your tax adviser for help, but if it was executed after 5 April 2006 the testator is regarded as the settlor.

Inheritance Tax

Inheritance Tax is administered by HM Revenue & Customs Trusts & Estates. If you write to HMRC Trusts & Estates Inheritance Tax at the address below, please quote our reference number. If you do not know it, you should give the full name of the deceased and the date of their death.

HMRC Trusts & Estates
Inheritance Tax
Ferrers House
PO Box 38
NOTTINGHAM
NG2 1BB

HMRC Trusts & Estates and HM Courts & Tribunals Service operate the Probate and Inheritance Tax Helpline on **0845 302 0900**.
For our opening hours go to **hmrc.gov.uk** or phone us. You can also find more information about Inheritance Tax on our website at **hmrc.gov.uk/inheritancetax**