

Preserving capital gains tax relief for settlors of heritage maintenance funds

Who is likely to be affected?

Trustees and settlors of heritage maintenance funds (HMFs) who are carrying on 'open house' businesses in heritage property.

General description of the measure

This measure will allow people who have gifted property to HMFs to continue to enjoy relief from capital gains tax without a tax charge arising on beneficiaries of the Funds when trustees distribute income to those beneficiaries.

Policy objective

The Government recognises the contribution of the heritage sector to the UK economy and to the life of the country. The measure will protect and enhance this contribution by improving the availability of income from HMFs for use in maintaining and repairing Britain's historic houses and other heritage properties.

Background to the measure

The Government announced at Budget 2012 that this measure would be introduced in Finance Bill 2013. It has not been subject to formal consultation, but relevant representative bodies have been consulted informally.

Detailed proposal

Operative date

The measure will have effect retrospectively in relation to the operation of the anti-avoidance rules concerning gift hold-over relief in tax year 2012-13 and subsequent years.

Current law

Section 165 Taxation of Chargeable Gains Act 1992 (TCGA) allows relief from capital gains tax to taxpayers who make gifts of business assets in certain circumstances. In order to prevent avoidance of tax, this relief is not available, or is clawed back, where certain conditions are not met. Section 169D stops these anti-avoidance rules from applying where the gift of assets is to an HMF.

One requirement for section 169D to apply is that the trustees of an HMF must have made an election under section 508 of the Income Tax Act 2007 (ITA), but an indirect result is that when the trustees make payments to the settlor for use in the 'open house' business, the payment is treated as a taxable receipt of that business. (The direct effect of the election is that the Fund's income is taxed on the trustees rather than on the person who settled the assets on the trust.)

Proposed revisions

Legislation will be introduced in Finance Bill 2013 to amend section 169D TCGA so that it will have the effect of switching off the anti-avoidance rules when an election under section 508 ITA could be made by the trustees, as well as when one is in fact made. This will allow trustees to reimburse trading settlors out of Fund income for their expenditure on

the repair and maintenance of historic properties without those reimbursements being taxable receipts in the hands of the settlor.

Summary of impacts

| | | | | | | |
|---|---|------------|------------|------------|------------|------------|
| Exchequer impact (£m) | 2012-13 | 2013-14 | 2014-15 | 2015-16 | 2016-17 | 2017-18 |
| | negligible | negligible | negligible | negligible | negligible | negligible |
| | This measure is expected to have a negligible impact on the Exchequer. Any impact will be set out at Budget 2013. | | | | | |
| Economic impact | The measure is not expected to have any significant economic impacts. | | | | | |
| Impact on individuals and households | Negligible impact for those acting as trustees for HMFs. Largely countervailing negligible impact on settlors of HMFs. The tax charge which arises on certain beneficiaries in receipt of income from trustees of HMFs where the trustees are taxed on the trust's income will be removed. | | | | | |
| Equalities impacts | No impact is expected on any protected group. | | | | | |
| Impact on business including civil society organisations | This measure is expected to have no impact on businesses and civil society organisations. An estimated 40 'open house' businesses will be able to receive funds from HMFs without causing unintended tax charges, therefore there will be no one-off costs or changes in ongoing administrative burdens. | | | | | |
| Operational impact (£m) (HMRC or other) | It is not anticipated that implementing these changes would incur any additional costs or savings for HMRC. | | | | | |
| Other impacts | Other impacts have been considered and none have been identified. | | | | | |

Monitoring and evaluation

The measure will be monitored for effectiveness in facilitating repair and maintenance work on heritage properties through ongoing communication with customers, in particular with the Historic Houses Association.

Further advice

If you have any questions about this change, please contact Rob Clay on 03000 570649 (email: rob.clay@hmrc.gsi.gov.uk).

1 Heritage maintenance settlements

- (1) In section 169D of TCGA 1992 (gifts to settlor-interested settlements etc: exceptions to sections 169B and 169C), in subsection (1), after “elected” insert “, or could have elected,”.
- (2) The amendment made by this section has effect for the tax year 2012-13 and subsequent tax years.

EXPLANATORY NOTE

HERITAGE MAINTENANCE SETTLEMENTS

SUMMARY

1. This clause amends existing anti-avoidance provisions to remove an anomaly. Settlers of certain types of heritage maintenance funds (HMFs) (also known as heritage maintenance settlements) are currently only eligible for a targeted relief from capital gains tax in respect of transfers of property into the trust if the trustees make an election under a statutory procedure. This can result in payments by the trust effectively being charged to income tax twice. The amendment made by the clause prevents this happening.

DETAILS OF THE CLAUSE

2. Subsection (1) amends section 169D(1) of the Taxation of Chargeable Gains Act 1992 (TCGA 1992). Section 169D(1) TCGA 1992 specifies the circumstances where anti-avoidance provisions at sections 169B and 169C do not apply. The effect of the amendment is to extend the circumstances specified by section 169D(1) TCGA 1992, to include not only those cases where trustees have made an election under section 508 of the Income Tax Act 2007, for that year, but also any case where the trustees could have made such an election, irrespective of whether they in fact did so.

BACKGROUND NOTE

3. HMFs are a statutory device enabling property to be held in trust so that the income from that property can be used for the repair and maintenance of historic buildings which are open to the public. Subject to a number of prescribed conditions being met, there is relief from capital gains tax on transfers of such property into an HMF.
4. The relief is subject to a number of anti-avoidance provisions. One of these limits eligibility to those trusts that have elected that income from trust property is to be treated as accruing to the trust rather than the settlor (“the election”); however the effect of the election is that payments to a settlor for use on the upkeep of the historic property triggers a further charge to tax upon the settlor.
5. The amendment made by this clause retains a restriction upon eligibility for the relief; however, so long as the trust satisfies the conditions for making the election, the requirement that it actually have done so is removed.

FINANCE BILL

6. If you have any questions about this change, or comments on the draft legislation, please contact Rob Clay on 03000 570649 (email: rob.clay@hmrc.gsi.gov.uk).