Answer by **Melissa Ellis, Private Client Solicitor at Payne Hicks Beach** first published in Financial Times online on 31 October 2018 and reproduced with kind permission
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FINANCIAL TIMES

Your Questions Income tax

Is capital gains tax payable on assets left to Australian heirs?

I am the executor of an estate and want to follow the rules

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Lucy Warwick-Ching

I was the executor of an estate which paid inheritance tax in the usual way on its assets. Some of the assets were then placed in a will trust, of which I am a trustee. The trust deed specified that the income of the trust should be paid to the settlor's son as the lifetime beneficiary or life tenant.

On his death, the assets were to be distributed to his children. The life tenant was resident in Australia, as are his children. On the death of the life tenant last year, the assets (in the form of quoted shares) were sold, and the proceeds distributed as specified above.

The gains amounted to about £100,000. Is this gain liable for capital gains tax, as the will trust was resident in the UK?

Melissa Ellis, solicitor in the private client department at Payne Hicks Beach, says that since the lifetime beneficiary or life tenant acquired his interest in the will trust under the terms of his father's will, this means that on the death of the life tenant the assets in the will trust would have been treated for inheritance tax purposes as belonging to the life tenant personally.

Therefore, the value of the shares at his death (along with the value of the other will trust assets at that date) would have been subject to inheritance tax at a rate of 40 per cent, less any available exemptions and reliefs such as the life tenant's nil-rate band and transferable nil-rate band.


Melissa Ellis, solicitor at Payne Hicks Beach

You may not be aware that the shares would have been automatically re-based for capital gains tax purposes on the death of the life tenant. As there is no capital gains tax on death, unless the shares had increased in value between the date of the life tenant's death and the date the shares were sold, there will have been no capital gains tax liability arising.

Please note that any inheritance tax liability arising on the death of the life tenant is the responsibility of the trustees, who have to account to HM Revenue & Customs for the tax payable as well as notifying HMRC that the life tenant has died and the will trust has come to an end. We would advise you as trustee not to distribute the estate until all tax liabilities have been settled out of the trust fund, because otherwise you could become personally liable for any tax that has not been paid.

This is a complicated area and the precise answer will depend on the facts, but it appears initially as though there will have been an inheritance tax liability but there may not have been a capital gains tax liability unless the value of the shares increased between the date of the life tenant's death and the date of sale.

As both the life tenant and the remainder beneficiaries are resident in Australia, there may also have been Australian tax consequences as a result of the life tenant's death, for which you would need to seek Australian tax advice.

William Hancock, partner in the tax and estate planning team at Collyer Bristow, says UK resident trustees are liable for capital gains tax on worldwide gains arising on the disposal of trust assets. However, in certain circumstances, there will be no CGT to pay.

The basic rule is that, on the death of a qualifying life beneficiary, there is a deemed disposal of the trust assets. The trustees are then judged immediately to have reacquired those assets at their then market value, but no chargeable gain accrues. In other words, a charge to CGT is not incurred and the trustees start out again with a new base cost at the date of the beneficiary's death. This is called "rebasing".

Importantly, rebasing occurs only where the trust is created for a life beneficiary before March 22 2006; is an "immediate post-death interest" (IPDI); or is a "transitional serial interest" (TSI).

The first of these will apply if the trust was created for the son before March 22 2006, although there is an exception. You explain that the terms are set out in a trust deed. If that deed is dated after March 22 2006 but within two years of the settlor's death before that date, then under statute the son's life interest is treated as arising before that date and rebasing can still be available.

An IPDI is where a beneficiary's life interest was created by will or under the intestacy rules. If the son became entitled to his life interest either under his father's will or on his intestacy, and enjoyed that same life interest until his death, then the son had an IPDI and rebasing applies.

Finally, a TSI arises where there was a life interest in existence before March 22 2006, which came to an end after that date but before October 6 2008, and was followed by a successive life interest. If the son's life interest arose in this way, he would have a TSI and again rebasing would apply.

If rebasing is available, the base cost of the shares would be uplifted to their market value at the date of the son's death, without the trustees facing a CGT charge. Assuming the shares were sold shortly after the son's death, the trustees would be liable to CGT at that point, but any gain should be negligible thanks to the uplifted base cost.

Alternatively, if the trust does not fall into any of the three categories above, then although there is no deemed disposal of the shares when the son dies, neither is there an uplift of their base cost for CGT. As a result, subject to any exemptions or available reliefs, the trustees are liable to CGT on the whole of the £100,000 gain that arose on the shares during their time in the trust.