

PUMP COURT
TAX CHAMBERS

TRUSTS 9 YEARS AFTER FA 2006

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- Property settled by lifetime transfer on/after 22 March 2006 is 'relevant property' subject to limited exceptions
- Existing A & M trust property became 'relevant property' with effect from 5 April 2008
- Existing Interests in Possession (IIP) retained s.49 IHTA 'deemed owner' status. The other 'deemed owner' IIPs are
 - Transitional Serial Interests - s.49C* (pre-6 October 2008)
 - Transitional Serial Interests - s.49D (on death of spouse / civ. par)
 - Immediate Post-Death Interests - s.49A

[*references are to IHTA 1984 save where indicated]

Transfers of value into trusts can now only be **chargeable** transfers, or **exempt** transfers: not **PETs**.

But consider-

- Transfers into settlements where value left out of account altogether
 - Excluded property – s3(2) and 6
- Transfers into settlements which are not transfers of value
 - some pension funds – s.12

and....

TRANSFERS INTO TRUST: RELIEFS AND EXEMPTIONS

- Chargeable transfers into settlement, with no value for IHT
 - Agricultural Property – s.116
 - Relevant Business Property – s.105
- Exempt transfers into settlement
 - Normal expenditure out of income – s.21
 - Charitable trusts – s.23
 - Employee benefit trusts – s.28
 - Conditionally exempt transfers – s.30

Gifts to bare trustees and nominees for a beneficial owner are PETS.

HMRC acknowledge this, even where the beneficial owner is a minor and s.31 Trustee Act 1925 applies. HMRC/STEP Questionnaire Q33.

- DOTAS applied to IHT from 6 April 2011 only in relation to arrangements designed to permit property to pass into the ‘relevant property’ regime without an ‘entry charge’, but only in respect of arrangements not then in circulation.
- Consultation paper 31 July 2014 – proposal to include in DOTAS arrangements already in circulation.

Problems of termination of settlements

- IHT effects - 'exit' charge (s.65), or
 - qualifying IIP holder takes capital without charge (s.53(2)) or
 - qualifying IIP terminates with PET (s.52)

Individual, in whom fund vests, faces IHT charge (potentially at 40% on death)
- CGT effect – deemed disposal at market value (s.71 TCGA) – CGT charge (unless hold-over relief)

(i) Exercise of powers of appointment or advancement

- to extend trust period and prevent beneficiary being a settlor for IHT or CGT, but
- cannot exercise powers so as to infringe the perpetuity rule – *Pilkington v IRC* (1964)

(ii) New settlement of ultimate remainder interest

- No IHT on settlement of reversionary interest, if s.48(1) applies; but
- ‘Gift’ for GWR purposes by assignor
- Possibility of POAT, and
- CGT disposal under s.71 TCGA 1992 and possible IHT on end of 1st settlement

(iii) Saunders v Vautier (1841)

- Only where beneficiaries are all adult and *sui juris*
- Risk of creating a new settlement causing CGT deemed disposal (and possibly also a termination of a qualifying interest in possession)

(iv) Application to Court under Variation of Trusts Act 1958

Extension of trust period may be ordered by the Court under VTA 1958 s.1, if -

- The proposed variation does not amount to a resettlement (Re Holt's Settlement (1968); Wyndham v Egremont (2009)), and
- The extension is for the benefit of the minor and unborn beneficiaries

- It may be more beneficial to a beneficiary to be a discretionary object of an extended settlement of which he is not the settlor, than to become absolutely entitled to the settled property, particular if CGT and/or IHT is thereby deferred.
- Under a settlement of which he is not the settlor, and in which he is a discretionary object
 - Not liable to income tax save on income received
 - Not vulnerable to IHT at 40% on death
 - Better protected in event of insolvency
 - Possibly better protected in event of matrimonial breakdown

VTA 1958: HOW LONG CAN THE PERIOD BE EXTENDED?

- Up to 125 years under Perpetuities and Accumulations Act 2009
- The Court Order approving the variation is an 'instrument' for these purposes. See *re Holt's Settlement* (1968) and *Wyndham v Egremont* (2009)

VTA 1958: RESETTLEMENT?

See *Wyndham v Egremont* (2009)
Roome v Edwards (1982) per Lord Wilberforce
Re Holmden's Settlement (1968)
Swires v Renton (1991)

- FA 2006 went further than simply to level the fiscal playing field for settled and free estate.
- The IHT and CGT advantages of trusts compared to free estates were:
 - No 'gift' of trust property on terminating an IIP (so immune from Gift with Reservation) – reversed by s.102 ZA FA 2006
 - No disposal for CGT on termination of IIP, if settlement continued.
- The 'entry charge' has stopped those domiciled in the UK from creating new lifetime family settlements. Those not domiciled in the UK continue to set up trusts extensively in other trust jurisdictions modelled on English trust law.