

## Good Practice Guidance

### Tax

*Key Principles: Transparency, Collaboration, Informed*

Charities can benefit from tax exemptions and reliefs and generally don't pay tax on legacy income used to further their charitable purposes. However, liabilities may arise within an estate and charities may need to look into how and why this has occurred. Being Informed about the types and implications of tax liabilities, collaborating positively with our colleagues in finance or accounts, and being transparent about our work will help us deal with any tax issues that arise with legacies.

In particular, working in accordance with the three Principles of Transparency, Collaboration and Informed will help us when requesting a breakdown of the lay executor and/or solicitor's tax calculations. Demonstrating our rationale will help us obtain the information needed to verify any liability and to protect the charities' benefit from the estate, which helps safeguard our goal of helping the donor's gift fulfil its potential.

### Things to think about

Tax and legacies is too detailed an area to cover wholly here, given the focus of this guidance on the ethical framework for legacy management. However, we outline several points on the key relevant taxes below, and more information is available in the **Further reading and links** section below. Legacy professionals should seek appropriate advice on individual cases as necessary. We can also share guidance for lay executors to help them navigate tax issues (see [Member Toolkit: Guidance for lay executors](#))

- **Inheritance Tax**

Inheritance Tax (IHT) is a tax at the rate of 40% on the value of a person's estate, taking into account any exemptions and deductions that may affect that estate.

If IHT is payable on an estate, the applicable rate can be reduced to 36% if the deceased has left a legacy of at least 10% of the net chargeable estate to a UK-registered charity.

Whilst legacies to UK-registered charities are exempt from IHT, over the last few years, case law has affected a charity's benefit from an estate. Depending on the

wording of the Will, we may need to consider whether the reduced rate or full rate of IHT is applicable when calculating or considering the solicitors' and/or lay executors' calculations for IHT.

It's important to note that the wording of the Will may affect how the burden of IHT is borne by the estate. Either our charity will be free of tax and the non-exempt beneficiaries bear the burden, or, if the Will directs, all beneficiaries will bear the burden and potentially complex calculations will be required.

Fortunately, HMRC have provided online calculators to assist with some elements of calculating tax ([see here](#)). Collaborating with colleagues, either within our organisations or others (if there are many charities involved in a legacy) can also help share the load of undertaking this work.

Legacy professionals should seek further clarification or advice on individual cases where complex tax calculations are needed.

- **Capital Gains Tax**

Capital Gains Tax (CGT) may be applied to either property or investments when the value of these assets rises substantially from the donor's date of death (i.e. the probate or Confirmation valuation) and disposal (i.e. the distribution or transference of the assets). The Taxation of Chargeable Gains Act (1992, Section 256) provides an exemption from tax on capital gains, provided the gains are applied for charitable purposes.

The lay executor has a CGT exemption for a certain amount per year which they can set off against any possible CGT liability which may arise in the estate. This figure may change annually and HMRC can advise on the latest figure (as of November 2016, this was at £11,100).

An asset may gain substantial value due to a rise in the house market or a stock exchange. In this case, a CGT liability may be avoided by the executors appropriating the assets. In other words, this means transferring the assets to the charities, held by the executors in a bare trust, as the Taxation of Chargeable Gains Act 1992 provides an exemption from tax on capital gains provided the gains are used for charitable purposes. Appropriation is executed through a Memorandum or Minute of Appropriation.

In Scotland, appropriation of assets is sometimes referred to as "appointment" of assets. A Minute of Appointment would be executed rather than a Minute of Appropriation however, the end result is the same.

If there is a risk of a CGT liability arising from the sale of an asset, then we have a role in reminding solicitors and/or lay executors that the asset can be appropriated. However, once the asset is sold, appropriation cannot be retrospective. For a property, the appropriation must take place before exchange of contracts or conclusion of missives.

- **Income Tax**

Although charities benefiting from a legacy would not pay Income Tax, the donor's estate may have an outstanding Income Tax liability to settle. While it's possible to reclaim Income tax with an R185 HMRC form (see [relevant forms for the deduction of income](#)), we need to be aware that even years after the administration has concluded, HMRC can request for an additional payment of Income Tax if a further liability arises. As such, this is worth us flagging with colleagues in our accounts team (see [Guidance Notes - Income recognition and accruals](#)). Familiarising ourselves with the latest HMRC guidelines on their website is also helpful.

- **Awaiting tax clearance**

Those acting in the administration of an estate may be reluctant to make final distribution in an estate until they have received tax clearance from the Capital Tax Office and/or HMRC. Lay executors may find the ILM's factsheet guide to lay executors helpful when dealing with tax in an estate (see **Further reading and links** below).

It's important that we're aware of, and demonstrate we understand, the reasons for this reluctance. Holding back until receipt of tax clearance helps protect the executors by ensuring that they have written confirmation that there are no further tax liabilities that the estate has to settle. As a result, it's useful we also let our accounts and executive colleagues know if this is likely to be an issue, as this will postpone final distribution and affect our charity's estimates of future income ([Guidance Notes - Income recognition and accruals](#)).

#### **Further reading and useful links**

- See [ILM Member Toolkit: Guidance not for executors](#)
- [HMRC Trusts and estates: certificate of deduction of Income Tax \(R185\)](#)
- [HMRC 'grossing up' calculators](#)