

Valued Client?
October 30, 2008

In 2002-03, before I was appointed to act on his behalf, my client and his brother inherited a half share of his parents' house. This was on the death of his mother.

His father has recently died and the property has now been sold and I am preparing the capital gains tax computation for my client.

My client has given me a surveyor's report showing that, at the time of his mother's death, the whole house was worth £500,000 and suggesting that the base cost of his half share of his late mother's half share should be £125,000. However, for good or bad, I have seen a copy of the solicitor's probate valuation of the mother's estate and this shows her share of the house valued as £212,500; meaning that my client's share would be £106,250. It seems that a 15% discount was given on what was presumably the vacant possession valuation. Taking account of other assets, this still meant that there was no inheritance tax to pay on the mother's death.

Using the lower figure would mean that my client's tax bill would increase by £5,000 and my client is quite insistent that I should include £125,000 in his capital gains tax computation.

Are there any grounds for doing this? It seems to me that if there are, someone (me, the client or the mother's solicitor) should advise HMRC that the value of the estate has increased accordingly.

I am also concerned at the line my client's brother (or his accountant) will take. I don't particularly want to find myself in a position where I have used the higher figure and they have successfully used the lower figure; and I then have a somewhat resentful client. How do I resolve this situation?

Query 17,295 — Sibling.

Reply by Stephen Parnham:

It is assumed that the surveyor was not instructed to undertake a valuation for tax purposes. If correct, Sibling's client needs to be aware that this limits its usefulness. Case law and HMRC's manuals confirm the practice that the market value of a half share in a property is less than an equivalent share of the whole and that a discount, usually between 10% to 15%, will be appropriate. HMRC will refer the higher valuation to the Valuation Office Agency and, if agreement cannot be reached, the Lands Tribunal will set a figure. This could prove both frustrating and costly to Sibling's client if he remains inflexible. To quote HMRC's *Capital Gains Manual* at CG74502:

'The Lands Tribunal is a court equivalent in status to the High Court and with the power to award costs, which may be substantial. If a reference to the Lands Tribunal is

necessary, we are represented by the board's solicitor.'

Having said that, strictly speaking neither may the parties rely on the value which was presumably entered on the IHT205 by the solicitor holding good for capital gains tax purposes. HMRC will not normally accept that a value has been 'ascertained' for inheritance tax purposes unless the value returned was examined by, discussed with, and agreed with the Valuation Office Agency and tax was due on the deceased's estate. As Sibling tells us that no tax was due, TCGA 1992, s 274 has no bearing.

The mechanics of valuing a part share of a domestic property was determined by the Lands Tribunal in *Wight & Moss v CIR* 264 EG 935. The case is central to HMRC's Valuation Office and related sections of the *Inheritance Tax Manual* and the *Capital Gains Manual*, which direct officers to offer a discount of 10% for a part share, 'to be increased to 15% in appropriate cases'. Appropriate cases may be taken to include those where the surviving spouse is the co-owner, the 15% discount reflecting the fact that a half share is an unattractive purchase in the marketplace. In practice, the discount should not be fixed and sometimes one can negotiate upwards or downwards depending on the circumstances. For instance, the anticipated length of time before the other half share comes onto the market should have some bearing where appropriate. The *Capital Gains Manual* at CGTM 74243 echoes these principles as does the *Inheritance Tax Manual* at section 18.4 and Practice Note 2 and the *Capital Gains Manual* at section 7.26 of the Valuation Office manuals, all of which consider undivided shares in land. All are worth reading.

Sibling should familiarise his client with HMRC's approach in these circumstances and counsel that focus should move to securing HMRC's agreement to the valuation of the whole. It is also strongly recommended that Sibling confers with the other parties to ensure consistent reporting.

It is proposed that the solicitor's valuation is used in the capital gains tax computation incorporating a note drawing the Inspector's attention to the origin and circumstances behind the cost figure used, unless there are grounds for arguing for a 10% discount. Although the valuation has not been 'ascertained' for inheritance tax purposes, the fact is that the discount is otherwise based on current practice insofar as it follows the principles set out in the inheritance tax, capital gains tax and Valuation Office manuals. If the case is referred to the Valuation Office Agency, the probability is that the discount will be confirmed.