

Capital Gains Tax and Probate/Estates



CGT Generally

Capital Gains Tax is charged when individuals sell or give away assets or property. It is charged on most types of property, but there are exceptions.

It is charged on the difference between the value of an item when it was acquired and the value of the item when it was subsequently sold or gifted. It is only charged when the item has gained in value between acquisition and disposal, and the tax is charged on the amount of the gain in value.

There is currently an annual exempt limit for individuals of £10,100, so CGT will only be an issue where there are significant disposals of property in any one tax year.

There are various exemptions and reliefs. It is worth visiting the HMRC website for details.

There are two situations in particular where CGT can cause problems. Prior to the date of death, and afterwards during the course of the administration of the Estate.

CGT (Capital Gains Tax) incurred before the date of death

This is a relatively rare occurrence and most people are unlikely to encounter it. In fact, in most estates, particularly small estates, unpaid CGT incurred prior to the date of death will not be an issue and can be discounted as a possibility swiftly and summarily.

However, you should be alert to the possibility that there might be an unpaid CGT liability so that you are not caught out by it.

If you discover that the deceased sold or gifted assets of significant value within the three years prior to his or her death, and there is a possibility that CGT was incurred but not paid on these assets, you will need to investigate.

You do not need to be a tax expert to find out what the CGT position is – you simply need to know what questions to ask, then give the information that you obtain to your accountant.

You should make enquiries to establish what the position is to ensure that you do not cost the estate (and yourself) money.

If unpaid CGT could be an issue, you will need to make a list of sales of assets/property made by the deceased, but this list need not go back further than three years (however check this three-year limit with your accountant or solicitor).

Your list should provide details of the asset/item of property sold (e.g. whether it was a house or shares, etc), the date of sale of each asset/item of property, the sale price, the date it was purchased by the deceased and the purchase price. You may wish to check what assets might

be exempt or subject to reliefs by visiting the HMRC website – or if you would prefer someone else to decide whether exemptions or reliefs apply, just submit a comprehensive list to your accountant.

Your accountant will be able to go through the list and advise you of the CGT position and let you know whether more information is required.

CGT (Capital Gains Tax) incurred after the date of death

CGT can be incurred by the personal representatives when they sell assets that are in the estate.

For tax purposes they acquire the money, assets and property in the estate at the value it had at the date of death. When they sell an item, if it has gained in value, this could trigger a charge to CGT.

A fairly typical situation would be one where a house or a significant share portfolio gains in value following the death of the owner, and is sold by the personal representatives. In certain situations they may have only half the annual exempt amount of an individual.

If there are indications that you might be selling an asset which would trigger a charge to CGT, you need to consult with your solicitor as in many cases action can be taken to mitigate or eliminate the CGT liability. But mitigation does require forward planning – so you should consult on this matter well before the sale takes place.

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