

Adding value

Careful and accurate assessment of the value of personal chattels can pay dividends, says *Robert Coram James*

HM Revenue & Customs (HMRC) is taking an increasingly hard line with executors who fail to declare or undervalue assets from a deceased estate and the penalties levied can be severe.

One of the executor's duties is to arrange for the estate's assets to be valued and to obtain as much detail of the deceased's debts and liabilities as possible, so that a calculation can be made as to the size of the estate and whether inheritance tax (IHT) will be payable. While that sounds straightforward, ascertaining a deceased person's assets is not always clear cut, particularly if their affairs were not in good order.

Paying the penalty

Executors dealing with estates that include art, antiques, jewellery or other valuable chattels have to be especially cautious and are warned by HMRC to ensure the value of such items is accurate, i.e. the market value as of the date of death, or run the risk of queries that could lead to lengthy delays and potential penalties.

If the value of an estate exceeds the £325,000 IHT threshold, then HMRC's shares and assets valuation team (SAV), who are also responsible for dealing with estate's chattels, will usually expect to see a valuation of personal possessions, if only to confirm a nominal value. The increase in wealth and estate values, even with the drop in house prices, means that more estates have been brought into the

IHT threshold net, increasing the need for such valuations.

On 1 April 2009 HMRC brought into effect new legislation in respect of penalties for tax offences. The legislation identifies three types of taxpayer behaviour which will trigger a potential penalty:

- careless;
- deliberate (not concealed); and
- deliberate and concealed.

The legislation defines 'careless' as 'failure to take reasonable care'; where the taxpayer takes reasonable care there will be no penalty. Under deliberate (not concealed), HMRC states that this will arise when a person knowingly and intentionally gives HMRC an inaccurate document, for example, submitting a document that purposefully undervalues the estate's chattels. Deliberate (concealed) is regarded as the most serious offence and occurs where a document containing a deliberate inaccuracy is given to HMRC and active steps have been taken to cover up the inaccuracy.

The law sets out a maximum level of penalty for each offence as a percentage of the 'potential lost revenue' (PLR). This is the tax that has been lost to HMRC as a result of the offence. No penalty will be charged if it can be shown that the error was due to a simple mistake that did not amount to carelessness. In the other situations the maximum penalty will be as follows:

$$\begin{array}{r} 2 + 3 \\ \hline 5 - 3 \\ \hline \end{array}$$

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3 = 5
3 = 2

- careless action 30 per cent PLR;
- deliberate (not concealed) 70 per cent PLR;
- deliberate (concealed) 100 per cent PLR.

These stricter rules and increased penalties are a particular cause for concern as it is not the estate that is penalised but the executor who is held personally liable. If the executors happen to be the only residuary beneficiaries of the estate then this may not be too much cause for concern, however in many cases the executors are not beneficiaries and they risk being held personally liable.

Weighing up

With such harsh penalties, it is crucial to commission an independent valuation to assess the market value of the relevant chattels, particularly if the estate contains high-value art and antiques. If no professional valuation is provided, HMRC may ask executors to explain the basis of the figures supplied. If the executor has estimated the value of the items based on their own knowledge and the basis of those figures is incorrect, then the SAV team may investigate further, a process which can cause lengthy delays. In 2010 the median time for HMRC to settle a chattels' valuation on negotiation was 13.5 months, a worrying statistic for those hoping to wrap up estates quickly.

Of course, it is occasionally necessary to submit an inheritance tax return, which includes estimated values, but executors need to be prepared to explain to HMRC why an accurate valuation could not be obtained. Commissioning a valuation is likely to save both time and expense and has other practical benefits. For example, a document listing the market value of each relevant item is important in ensuring fair distribution among family members and helps to resolve any potential disagreements.

A professional valuer will work closely with executors to ensure that an accurate IHT valuation report of chattels is compiled in accordance with section 160 of the IHT Act 1984. The report should provide a separate description for each item valued at £500 or more in the open market and a brief list of

all remaining items. The Revenue will expect to see photographs of any object valued over £15,000.

An experienced valuer will always be prepared to prove the basis of their figures in the event of referral by providing evidence of comparable items. The volatility of a particular market, fashions and trends can all affect the value of items and experienced valuers will prepare their reports only after carrying out thorough research.

Outside assistance

It is relatively unknown that the Royal Institution of Chartered Surveyors (RICS) has an art and antiques faculty, the members of which are known as chartered arts surveyors. Commissioning a chartered arts surveyor ensures that valuation documents are less likely to be queried by HMRC, as members are professionally qualified and have high levels of experience and training. A RICS valuer will also be able to advise on a range of related issues such as sale at auction, the potential capital gains tax (CGT) liabilities, or on the various National Heritage schemes, such as acceptance in lieu and conditional exemption.

To help taxpayers comply with their obligations, HMRC has prepared a valuation toolkit, which provides guidance for those submitting valuations and points out the penalties and how they can be avoided. Further information can be found on <http://www.hmrc.gov.uk/svd/val-land-prop.htm>.

The increased attention that HMRC is paying to valuations of chattels for IHT assessment will no doubt be a cause of concern to many private client solicitors, particularly because of the lengthy delays this can cause to the winding-up of estates. Using the services of a professional valuer not only ensures the process is dealt with efficiently and swiftly, but also that the best objective and practical advice is readily available when it is needed most. ■

Robert Coram James is a chartered arts surveyor with Coram James Ltd, which specialises in valuations of art, antiques and jewellery for tax, divorce and insurance purposes