



Capital Gains Tax - Issues In Divorce Settlements

This information sheet is relevant to any divorce settlement involving the transfer of business assets

Hold over relief on transfer of asset under a court order



The Inland Revenue have changed their practice following comments made by Coleridge J. in *G v G* [2002] EWHC 1339 in respect of the tax consequences of Court Orders made under Matrimonial

Clauses Act 1973.

In the past it has been the Revenue's practice to deny Capital Gains Tax holdover relief on transfer of business assets which would normally be available under S165 TCGA 1992 where the transfer of assets occurs between divorcing parties.

The reason for this practice is that S165 TCGA 1992 is restricted in its application to those transfers where no consideration, or insufficient consideration, has been given.

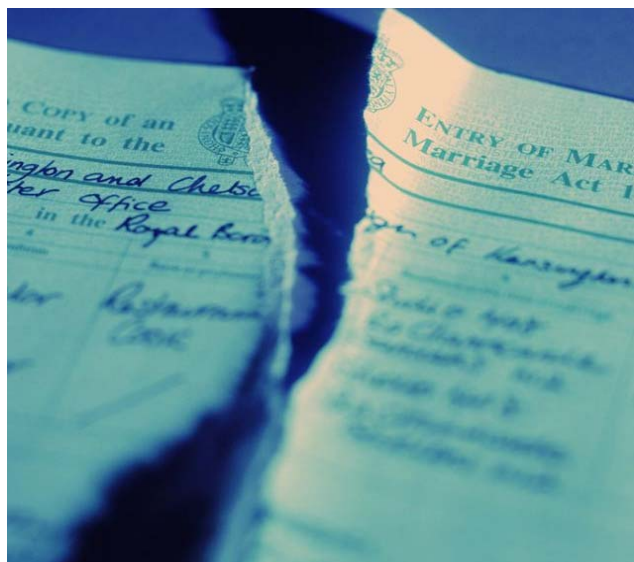
In a divorce settlement the Revenue took the view that consideration had been given, (consideration is not limited to money or money's worth) and therefore the relief was denied.

On 27 August 2003 the Revenue changed their view and will now allow Capital Gains on business assets to be held over under S165 TCGA 1992 where there is recourse to the courts who make an order:

- For ancillary relief under the Matrimonial Causes Act 1973 which results in a transfer of assets; or
- Formally ratifying an agreement reached by divorcing parties

In addition the Revenue have said that claims may be made where there is a substantial gratuitous element such that the transfer represents a much greater amount than the recipient might expect to receive if the matter was taken to court. However this, in practice, might be difficult to demonstrate to the Revenue after the event.

It would now seem prudent to ensure a court order is obtained where settlements involve the transfer of business assets. This practice applies for all S165 TCGA 1992 holdover claims made on or after 31 July 2002 and any unsettled claims at that date.



Further Information

This information is for general information only and specific advice should always be sought before taking action. For more information please contact **Geoff Don** who will be pleased to help on **01225 785520** or e-mail geoffd@monahans.co.uk