CAPITAL TRUST

Who is it for?
Individuals holding either an incorporated or an unincorporated property investment portfolio where potential Inheritance Tax charges on the portfolio or the shares would mean that it would be necessary to break up the business.

What does it do?
Where the business is unincorporated, the individual may incorporate his property business. Thereafter he may choose to transfer all or a substantial part of his shareholding to a Capital Trust (CT). Persons already holding their property portfolio through a limited company can move immediately to this step. Where the relevant conditions are met there will be:

- no Inheritance Tax consequences of the gift to the CT;
- no Capital Gains Tax on a gift to a CT of shares by individual shareholders; and
- no SDLT or stamp duty payable on the gifts to the CT.

The shares held by the CT will remain in the CT to be used by the trustees in accordance with the terms of the trust deed and will then be outside the individual shareholders' estates for Inheritance tax purposes and will be also outside the relevant property regime which gives rise to the charge every 10 years to inheritance tax.

Key Points

- If a privately held portfolio is to be incorporated into a limited company as a first step, there will be no tax charge except for a potential SDLT liability. That liability does not arise where it is a partnership which owns the property business before incorporation and in many cases (e.g. husband/wife) we find that, at the very least, an informal partnership already exists.

- There may be incidental capital gains tax advantages on the Incorporation of an individual or partnership owned by the portfolio if there is an intention to make disposals of some of the properties.

- Where individuals wish to continue to be able to access dividend income directly from the company, that will be possible.

Registered Office: 590 Green Lanes, Palmers Green, London, N13 5RY
Inheritance Solutions UK Ltd: Registered in England & Wales, Company No: 07029991
T 0800 028 5119 E Info@Inheritancesolutions.co.uk W www.Inheritancesolutionsuk.co.uk

- The CT will be established for the benefit of all the officers and employees of the company (and their wider families).

- If the company is a close company, it is necessary to exclude the past, present and future participators, (broadly those with over a 5% shareholding in the company), and persons connected with them from benefiting from the capital of the trust, although such persons may still be able to receive income benefits from the trust. Such participators' families and dependents will be able to benefit following their death. It will be necessary to consider whether this level of provision provides sufficient incentive and reward for such participators who are also directors and employees who would otherwise benefit under the trust.

- In order to ensure that any future gains arising to the trust are not taxable on individual settlor, the CT must be established on a commercial basis with no element of "bounty". Whether or not a CT is commercial will depend on the specific facts in each case.

- To satisfy the conditions, more than 50% of the ordinary share capital must be gifted to the CT. This can be achieved by several individual settlors contributing shareholdings which, in aggregate, represent at least 51% of the share capital.

- A CT should meet the necessary requirement of commerciality if the key motive is to preserve the underlying business for the long-term benefit of all directors and employees of the company.

- It is normal practice for the settlor (that is the person who gifts the assets) to write to the trustees a Letter of Wishes. This will be of no legal effect but will guide the trustees as to how they might exercise their powers. Although the trustees must always exercise their own discretion in relation to such matters, they are likely to find this helpful.

- The funds held by the CT are not in any person's estate for inheritance tax purposes.

- It is important that clients then re-write their wills to take into account the fact that the property business is no longer in their estate and it is likely that they will seek to harmonise the provisions of their will with the suggestions set out in the Letter of Wishes.

Risks

It is important to note, as background, that HMRC is familiar with this type of planning and has, having considered the detailed documentation confirmed that there are no problems with it. However, each case needs to be assessed on its own merits. In particular, the factual question as to whether there is a property business is something that must be evaluated in each case. It should be stressed that this tax planning does not involve the rules relating to the disclosure of tax avoidance schemes nor, in Counsel's Opinion, is it in any way affected by the General Anti-Avoidance Rules (GAAR).