

## Upper Tax Tribunal reject protective costs order in appeal against £400k inheritance tax charge

Synopsis: A case in which the Upper Tax Tribunal rejected the estate executors' request for a protective costs order in their appeal against a £400k inheritance tax (IHT) charge on the estate, due to arrangements entered into by Mr Peter Linington in 2010 to reduce the amount of IHT that would be payable on his death.

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The Upper Tax Tribunal (UTT) recently refused to grant a protective costs order (PCO) requested by executors of an estate after a £400k inheritance tax (IHT) charge on the estate.

Testator, Peter Linington had used an IHT planning arrangement under which he was appointed reversionary beneficiary of a 150-year Isle of Man discretionary trust holding £1million in cash. The trustees were to accumulate income in this discretionary trust and pay surplus to the income beneficiary whilst the reversionary beneficiary would become entitled to the remaining trust assets at the expiry, 150 years from the date of settlement.

Peter Linington was both the income beneficiary and the reversionary beneficiary, Peter then assigned his reversionary interest to the Kent Trust, a UK-resident family trust.

After Peter's death, HMRC decided that the transfer of the reversionary interest to the Kent Trust was a transfer of value. Therefore, IHT was due either by his estate or by the Kent Trust. HMRC then issued a charge of £400k to the estate.

The estate executors challenged this charge, arguing that the reversionary interest was excluded property because the testator had not acquired it for a consideration for money or moneys worth. The reversionary interest had no value at that time. They argued that, even if the reversionary interest was not excluded property, there was no transfer of value by the testator as the transfer did not decrease the value of his estate. They also made reference to the fact that before and after, the transfer included the value of the trust assets as a result of his entitlement to the income interest.

The executors referenced the decision in Salinger v HMRC (2016 UKFTT 677 IC), which held that there was no transfer of value.

However, in this case the First-tier Tax Tribunal (FTT) chose to ignore the ruling in the Salinger case. It rejected the executors' arguments and gave judgement in HMRC's favour.

The executors therefore decided to appeal to the UTT on two grounds...

- 1) There were now two inconsistent FTT decisions in which the circumstances were essentially identical.

2) They argued that the FTT was wrong in law in finding that the reversionary interest was acquired for consideration.

Bridget Pearce, one of the executors claimed she could not afford the risk of becoming liable for HMRC's estimated £20k costs if they lost again. Bridget was acting in person as an executor and trustee and would be expected to meet any liability for costs herself. Accordingly, she applied for a PCO whereby the executors would not be liable for the costs of defending the appeal.

She said that the PCO should be granted in the interests of access to justice, as she would have to discontinue the appeal if no PCO was in place. HMRC opposed the PCO request.

The UTT agreed with HMRC, noting that Bridget Pearce was a principal beneficiary of the testator's will, so had a significant interest in the decision.

In addition, the Tribunal said, the '...general body of taxpayers would balk at the suggestion that the Appellants should be immune from a costs order where they are seeking to challenge a decision that the tax planning arrangements entered into by PL [Peter Linington] to avoid IHT were ineffective.'

The Tribunal accordingly refused to grant the PCO (Executors of Peter John Linington v HMRC, 2024 UKUT 70 TCC).

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