

**FROM:** Head of Taxation, Taxation Department  
**LOCATION:** TAX/86/441  
**EXTENSION:** 5228  
**DATE:** 8 May 2001  
**REFERENCE:** TAX/DHC/Y2543  
**SUBJECT:** **INHERITANCE TAX - BUSINESS PROPERTY RELIEF**  
**ATTACHMENTS:**  
**ACTION POINTS:** **Individual members and their advisers to note**  
**DEADLINE:** **None**

## **1. Introduction**

- 1.1 When an individual member of Lloyd's dies, his or her Lloyd's interest may be chargeable to inheritance tax. The Lloyd's interest comprises assets held in Funds at Lloyd's and the Special Reserve Fund, underwriting profits or losses for open years of account and undistributed syndicate profits or unpaid losses for closed accounts.
- 1.2 Individual members are, however, eligible for 100% business property relief on the value of assets that are used wholly or mainly for the purpose of their Lloyd's business, provided certain conditions are met. If 100% business property relief is given, those assets are effectively free from inheritance tax.
- 1.3 Two recent tax cases have led to queries as to whether the Inland Revenue will be changing its policy or practice on the availability of business property relief. The Inland Revenue has confirmed that it will not be changing its interpretation. It will continue to apply the rules as they are currently understood.
- 1.4 This bulletin gives brief details of the two cases:
  - Inland Revenue Commissioners v. Mallender, a High Court judgment that concerned assets backing a bank guarantee that was used as Funds at Lloyd's; and
  - Hardcastle v. Inland Revenue Commissioners, a Special Commissioner's decision that concerned the result on open years of account.

## **2. Bank Guarantees for Individual Members**

- 2.1 Where a member provides a bank guarantee as part of his or her Funds at Lloyd's the Inland Revenue allows 100% business property relief up to the amount of the guarantee, provided that the amount is so used.
- 2.2 In the Mallender case, the taxpayers contended that business property relief should be given on the total value of the asset backing a guarantee rather than being limited to the amount of the guarantee. The Court rejected this argument, finding that the asset that underlay the guarantee did not itself qualify for relief.
- 2.3 Following the judgment, the Inland Revenue has confirmed that it will continue its existing practice of allowing individual members 100% business property relief on the value of bank guarantees used as part of a member's Funds at Lloyd's.

## **3. Underwriting results on open years**

- 3.1 The profits or losses for open years of account at the time of death enter into the valuation of the estate for inheritance tax. The Inland Revenue also includes these profits or losses in the value of the Lloyd's business for business property relief.
- 3.2 In the Hardcastle case there were open year losses. The taxpayers argued that, although they entered into the valuation of the total estate, these losses should not be deducted from the other net assets of the Lloyd's business in calculating the amount of business property relief due. The Special Commissioner decided in the taxpayers' favour.
- 3.3 The Inland Revenue has told us that it considers this decision to have been decided on its own particular facts and not to be of general application. It will therefore continue its existing practice of deducting open year losses from other Lloyd's assets in determining the amount of business property relief that is due. Likewise, it will continue its practice of giving business property relief on any open year profits.

## **4. Scottish Limited Partnerships and NameCos**

- 4.1 This bulletin applies to individual members of Scottish Limited Partnerships as it does to individuals.
- 4.2 A further bulletin will be issued shortly concerning NameCos.

## **5. Readership and contact details**

- 5.1 This bulletin has been agreed with the Inland Revenue. It is being sent to members' agents, recognised auditors, personal accountants to individual members and members who deal with their own tax affairs.
- 5.2 If you have any queries, please contact Roger Ramage on Lloyd's extension 6852.