



**REMEMBER A CHARITY
IN YOUR WILL**
Help the work live on...

Leaving residue to IHT-liable and exempt beneficiaries

If a Will includes division of residue between exempt (such as charities) and non-exempt beneficiaries (such as family members), you need to consider Section 41 of the Inheritance Tax Act 1984. This Act states that the exempt gifts in the Will should not bear tax that arises on any other part of the residue.

Therefore the division of residue should be on a **gross division basis**, the tax being borne by non-exempt beneficiaries, unless the Will is very clearly and specifically drafted to achieve equality net of tax – the net division basis. Therefore it is essential that you ask your client whether they wish the two classes of beneficiary to receive equal amounts after inheritance tax, which is the net division basis (and it would only be right to point out that more inheritance tax is paid as a result).

In both *Re Benham's Will Trust [1995]* and *Re Ratcliffe deceased [1999]*, questions arose as to whether or not the testators intended the residuary beneficiaries to receive their shares of the estate either gross or net of inheritance tax.

In *Re Ratcliffe*, IHT was borne by the non-charitable beneficiaries, so that the charities benefited from the gross residue, before IHT was deducted. The *Benham* approach, where charities and non-exempt beneficiaries received their shares after tax was deducted, is not commonly used, but you should be alerted to this case.

Christopher McCall QC has advised charities that the following clause should be used:

“provided always and I hereby expressly direct and declare that if and in so far as my residuary estate shall be exempt from tax on my death in part but not in its entirety the proportions in which I have directed my estate to be divided are intended to denote those proportions which the several shares in which my estate falls to be divided shall bear to each other after deduction of the inheritance tax payable in respect of and out of that part which is not so exempt from tax (and my executors shall adjust the proportions in which my residuary estate falls to be divided before taking account of the burden of tax accordingly)”.

“I give the residue of my estate to my Trustees (after payment of) upon trust for such of the following individuals and charities in the following parts or shares: (a) As to ABC Charity of Charity Address (Registered Charity Number: xxx) absolutely two parts thereof (b) As to DEF Charity of Charity Address (Registered Charity Number: xxx) absolutely one part thereof (c) As to G (an individual) absolutely two parts.”