



**5 Stone
Buildings**

**TAX ISSUES FOR PERSONAL
REPRESENTATIVES**

Simon Douglas

9 October, 2020

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- CGT on death
 - Sales by Personal Representatives
 - Taking *qua legatee*
 - Post-death variations
 - Disclaimers
-

I. CGT on death

- Death does not normally trigger a charge to CGT.
- PRs acquire the Deceased's assets at their market value on death, without paying any CGT: s. 62(1) TCGA 1992.
- Result is the “death-uplift” in value.

E.g. Barry acquired a painting for £60,000 in 2010. Barry died in 2018 when painting worth £100,000. Barry's PRs acquire painting at death value, washing out gains of £40,000.

II. Sale by PRs

- Increases in value during administration are chargeable.

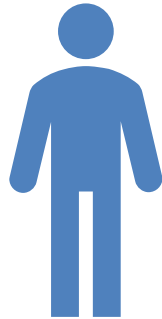
E.g. In 2020 Barry's painting is now worth £130,000. There are chargeable gains of £30,000.

- If the PRs plan to sell the asset, consider how the AEA can be used
- PRs have an AEA of £12,300 (2020-21) until 5th April following death, and two following tax years
- Compare with beneficiaries of estate who each have AEA every year

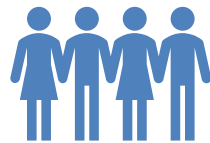
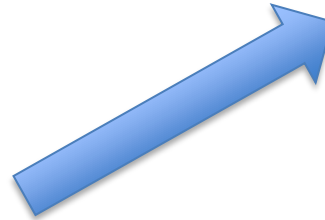
DURING ADMINISTRATION

Value increased by £50,000

PR



Purchaser

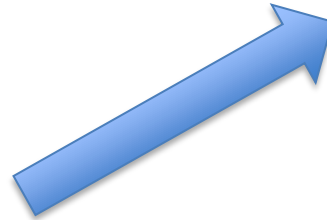
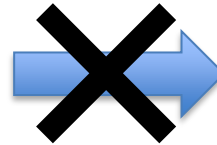
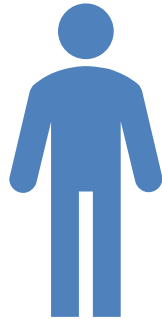


END OF ADMINISTRATION

PR

Purchaser

Value increased by £50,000

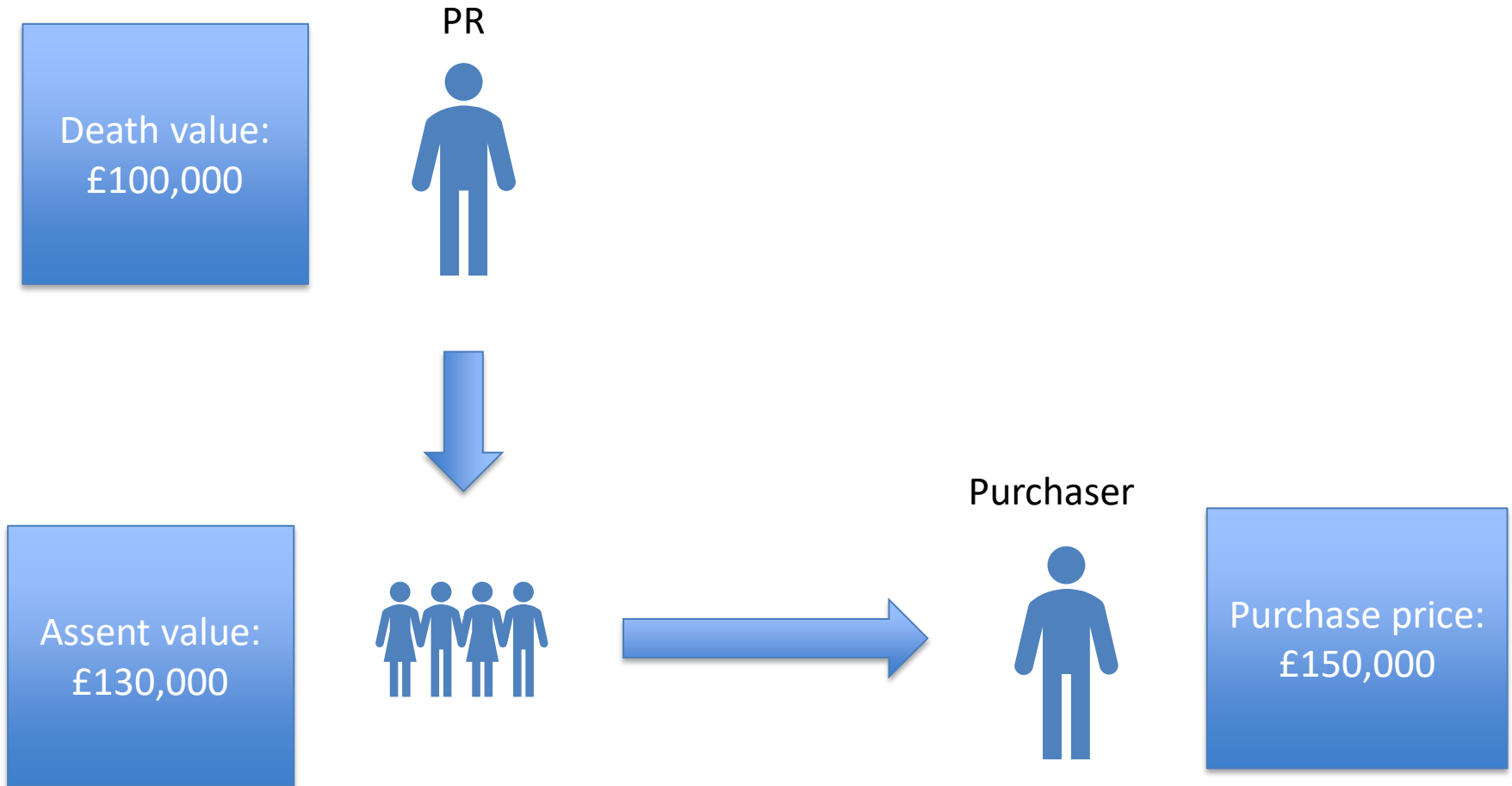


III. *Qua Legatee*

- Where a person acquires an asset from a PR as a legatee, there is neither a gain nor a loss for CGT purposes: s. 62(4) TCGA 1992
- The effect is that the legatee acquires the asset at the PRs' base cost.
- When the legatee sells the asset they are chargeable on gains accruing during both their own and the PRs holding.

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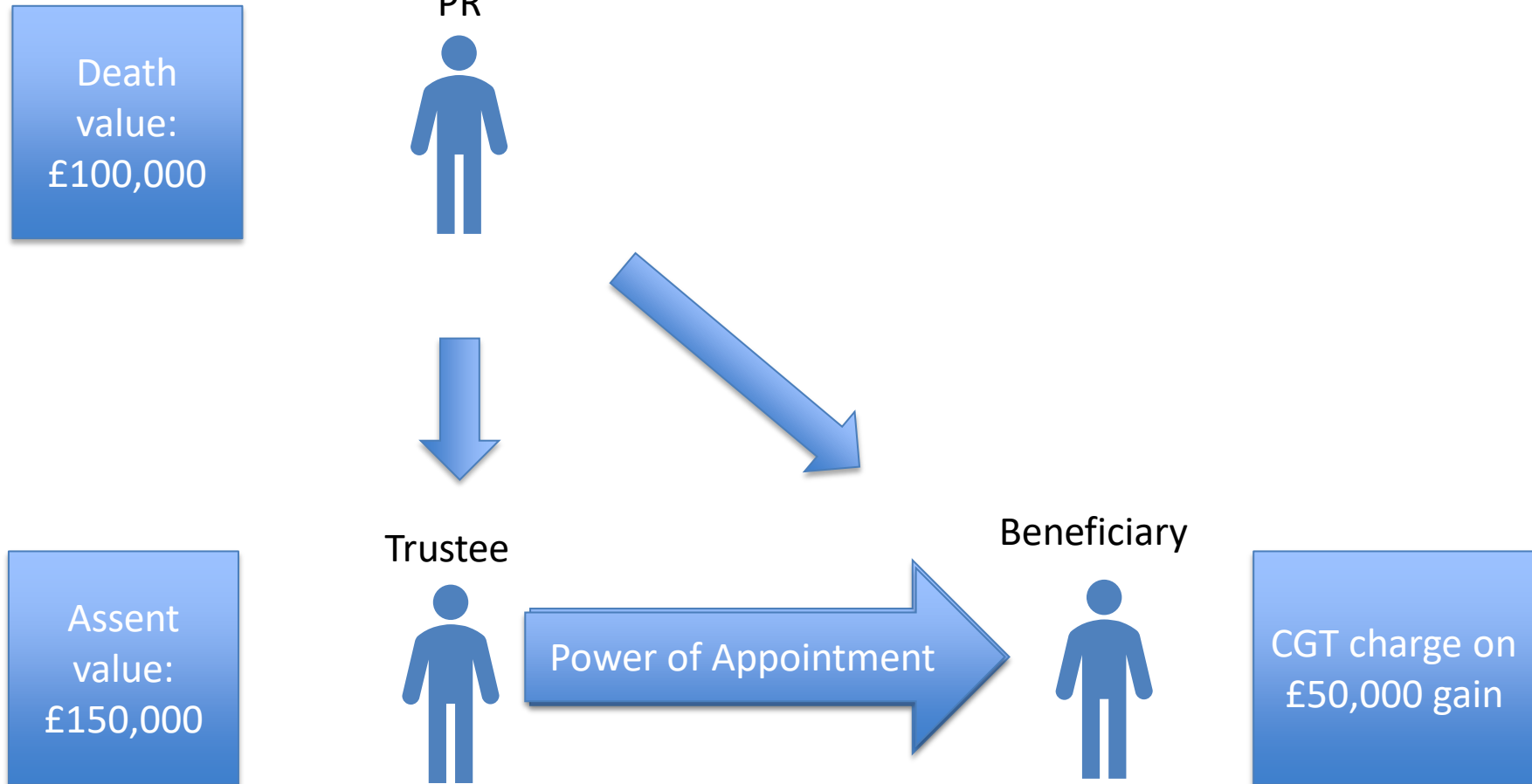
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Who is a legatee?

- Section 64(2): “... “legatee” includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee ...”
- Will trusts: the trustee is the “legatee”, not the beneficiary
- Payments by beneficiaries: where a legatee makes a balancing payment, are they still a “legatee”?

Will Trusts



Balancing Payments

- Sarah's estate includes a painting worth £100,000
- Alice is entitled to a pecuniary legacy of £75,000
- Alice offers to make balancing payment of £25,000 for painting
- HMRC's position: Alice does not take qua legatee, and assent will trigger CGT charge: *Passant v Jackson* (1986)
- Consider assenting painting to Alice subject to a charge for £25,000

IV. Variations

- Post-death variations under s. 142(1) IHTA 1984 do not normally need the involvement of the PRs, just the party disposing of the asset
- PRs only need to be a party to the deed if there is additional tax to pay
- However, PRs may only refuse to be a party if there are insufficient assets to meet tax liabilities

- Albert dies leaving his entire estate (worth £2m) to a charity, and excludes his long term un-married partner, Jill, from benefitting.
- Jill threatens to bring a claim under the 1975 Act.
- The parties settle, and agree to direct £500k to Jill under a s. 142(1) variation.
- The variation may result in IHT, as directing assets from exempt to non-exempt beneficiary.
- If there are sufficient assets in estate to cover IHT, PR must join the variation.

V. Disclaimers

- A disclaimer under s. 142(1) may result in additional IHT, e.g. where an exempt beneficiary disclaims in favour of a non-exempt beneficiary.
- Power to disclaim a life interest under s. 93 IHTA.
- HMRC permit the PRs to disclaim the life interest post-death, where the life tenant was unable due to ill-health, lack of knowledge or brevity.

- Clare leaves her estate (including a residential property) on an IIP to husband, Frank.
- A time of Clare's death in 2019, Frank is in care-home and has lost capacity.
- Frank dies 10 months later. The IIP forms part of Frank's estate, and uses part of his NRB.
- Frank did not benefit from the IIP, but lacked the capacity to disclaim it.
- Frank's PRs can now disclaim, and the IIP is not part of Frank's estate

Disclaimer

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Thank you,
any questions?

t 020 7242 6201

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