

A GUIDE TO LIFETIME GIVING, EXEMPTIONS AND RELIEFS

Lifetime Gifts

Set out below are two of the taxes that need to be considered when looking at possible tax mitigation by making lifetime gifts.

Inheritance Tax (IHT)

IHT is charged on a person's death at a rate of 40% on the value of the assets contained in his or her estate to the extent the total value exceeds Nil Rate Sum (£325,000 for 2009/2010). For the purpose of valuing a person's estate at the date of death assets given away in the seven years prior to death may be included.



Potentially Exempt Transfers

If a person makes an outright gift to an individual during their lifetime, no IHT is payable when that gift is made. However, the value of the gift is included in the value of the person's estate if they die within seven years of the gift.

Immediate Chargeable Transfers

Gifts made in a person's lifetime to a trust are chargeable at 20% of the value of the gift when the gift is made (to the extent the value exceeds the Nil Rate Sum) and may be charged at the death rate of 40% if the donor dies within seven years (with credit allowed for the IHT already paid at 20% during the donor's lifetime).

Taper relief, reducing the IHT payable, may be available in both the above cases if the donor does not survive the full seven years. Also, the donor must not "reserve a benefit" in the property given away, this means that he must not continue to benefit from the item gifted. If he does then he will need to pay full market rent for any occupation and for use of the item gifted if a gift with reservation is to be avoided.

Capital Gains Tax (CGT)

CGT is charged on "disposals" which include gifts as well as sales, so this must be considered when a person gives away assets during his or her lifetime. It is charged on the difference between the "base value" (which is usually the purchase price or the value in March 1982 if the asset in question was purchased before that date) and the value at the date of disposal (whether by gift or sale). The rate of tax payable on the gain will be 18%.

Exemptions and Reliefs for IHT

Set out below are a number of exemptions that may apply to lifetime gifts, gifts on death or both.

Nil Rate Sum - Although strictly speaking not an exemption as such, the first £325,000 (for 2009/2010) worth of chargeable transfers are taxable at nil per cent and so, effectively, are free of tax. If not used during lifetime the NIL Rate Sum is available on death, and in the case of spouses/civil partners, if not used on the first death in full, the balance may now be used on the second death, this is known as the transferable nil rate band. This change was introduced in the 2008 Finance Act and is effective in relation to the death of a surviving spouse or civil partner on or after 9 October 2007.



Spouse Exemption - Transfers between spouses or civil partners are exempt from IHT. This is without limit except in the case where one party is UK domiciled and the other is not. In that case the exemption is limited to £55,000. For this exemption to apply, the couple must be legally married or in a registered civil partnership.

Gifts to Charities - All gifts to **UK** Registered Charities are exempt from IHT.

Gifts to Political Parties - Without limit these are exempt from IHT. The Political Party qualifies if at the last general election preceding the transfer of value:

- Two members of that party were elected to the House of Commons; or
- One member of that party was elected to the House of Commons and not less than 150,000 votes were given to candidates who were members of that party.

Gifts for maintenance of family - Any gift for maintenance of a child who is either under 18, or over 18 but in full time education or training, or is dependent upon you because he is physically or mentally disabled, and which in each case is reasonable for his or her needs, will be exempt from IHT.

Annual Exemption - An individual can gift up to £3,000 per year free of IHT. If he has not used his exemption from the previous year, then that can be carried forward so that the current year exemption is increased to £6,000.

Small Gifts - Up to £250 can be gifted to individuals (as long as they are different to the recipients of the £3,000 gift, or any part of it).

Gifts in consideration of Marriage or Civil Partnership - You can make the following gifts free of IHT: £5,000 if you are a parent; £2,500 if you are a grandparent; and £1,000 in any other case.

Normal expenditure out of income - You can make regular gifts free of IHT provided these are made out of income and leave you with sufficient income to maintain your usual standard of living. Complete records of income and expenditure must be kept if this exemption is claimed.

Business Property Relief (BPR) - Most shares in private trading companies, or interests in unincorporated businesses as either a sole proprietor, or as a partner, will receive 100% BPR and so, in effect, be exempt from IHT. Some business assets in certain cases may only qualify for 50% BPR.

Agricultural Property Relief (APR) - In hand agricultural land, together with farm houses, cottages and other farm buildings of “a character appropriate” to the agricultural land may receive APR either at 100%, and so, in effect be exempt from IHT. Tenanted agricultural land and buildings may also receive APR at 100%, or at 50%. This only applies to property in the UK, Channel Islands and Isle of Man.

Heritage Property - Conditional exemption from IHT is available for works of art, individually and in collections, of national, scientific, historic or artistic interest; outstanding land; and buildings of historic or architectural interest, together with associated land and contents.

This guide is based upon the law as at October 2009. For advice in relation to your specific circumstances, please contact any of the Lawyers in the Private Capital Group or either of the contacts below.

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