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Private Wealth

LIFETIME TAX PLANNING IN THE UK:
2024/2025

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Lifetime tax planning in the UK for UK residents: 2024/25

This briefing provides an outline guide to the inheritance tax (IHT) and capital gains tax (CGT) implications for individuals who wish to make outright lifetime gifts (also referred to in this note as chargeable transfers) in the UK. All the rates and levels of allowances or exemptions in this note are for the tax year 2024/25.

NOTE - no references are made to potential changes to the rates or the scope of IHT, CGT or income tax for the tax year 2025/26.

Inheritance tax

Under current legislation, IHT is payable on the value of an individual's *worldwide estate* on death, if they are domiciled, or deemed to be domiciled, for tax purposes, in the UK. Such individuals are also (potentially) within the scope of IHT on lifetime gifts regardless of where in the world the assets are located.

Individuals who are not domiciled (or deemed domiciled) in the UK are subject to IHT on death (and potentially on lifetime gifts) on their *UK assets only*.

Lifetime rates:

IHT is calculated at two rates on the value of lifetime chargeable transfers.

- £0 - £325,000: 0% (often referred to as the “nil rate band” or “NRB”)
- Over £325,000: 20%¹

The nil rate band applies on a rolling seven-year basis. Gifts of up to £325,000 can therefore be made every seven years without triggering a charge to IHT (including gifts into trust). Care needs to be taken with timing, and with recording any relevant gifts.

Outright gifts to individuals (“potentially exempt transfers” or “PETs”):

Any lifetime chargeable transfer made to any individual as an outright gift is a potentially exempt transfer. There is no charge to IHT (nor any reporting requirement) when a PET is made. It is treated for all purposes as being exempt unless the donor dies within seven years of the gift. If the donor does die during that period, IHT is payable at a tapered rate depending on how much time has passed between the date of the gift and the date of death.

¹ The rate of IHT on death is generally 40%.

- 80% where the transfer is made more than three but no more than four years before death
- 60% where the transfer is more than four but no more than five years before death
- 40% where the transfer is more than five but no more than six years before death
- 20% where the transfer is more than six but no more than seven years before death

Note that taper relief only applies where tax is actually payable on the lifetime gift (not where the gift falls within the available NRB) and where the gift was made more than three years before death. If the gift falls within the period of three years before death, then the IHT death rate of 40% applies with no taper relief.

The value of a PET, before any allowances and exemptions, is not simply the capital value of the asset being given away but is valued on what loss there has been to the estate of the person giving the asset away. If cash, then this is very simple. However, in terms of assets such as antiques, jewellery or works of art given away during lifetime, this is not limited to just the capital value of the item and can include the loss incurred by giving away one item out of a collection. The loss here would be the reduction in the value of the collection as a whole, by giving away one item from it.

Lifetime chargeable transfers into trust

IHT is immediately payable at a rate of 20% in relation to lifetime gifts into most kinds of trusts (over and above the available nil rate band). If the settlor dies within the following seven years, IHT will be reassessed at a rate of 40%. Credit is given in the recalculation for any tax already paid when the trust was created.

Reliefs and exemptions for lifetime chargeable transfers

Spouse² exemption. There is an unlimited exemption for lifetime transfers (and on death) between spouses, except where the donor spouse is UK domiciled and the donee spouse is non-UK domiciled. In these circumstances, the exemption is limited to the first £325,000 of the donor's estate (or lifetime gift), subject an election by the recipient spouse to be treated as UK domiciled (whereupon the unlimited spouse exemption will apply) or the application of relief under a Double Tax Treaty.

- *Annual allowance.* Each individual may make gifts up to an aggregate total value of £3,000 each tax year without incurring a tax charge. Any unused allowance for one year may be carried forward to the next tax year.
- *Small gifts.* Small gifts not exceeding £250 may be made to any one person in any one tax year without incurring a tax charge. It is not possible to combine this small gift exemption with

² References to a "spouse" in this briefing include references to a civil partner.

another exemption such as the annual allowance.

- *Normal expenditure out of income.* Gifts may be made out of income free of inheritance tax. Payments do not need to be for the same amount each time, but there must be some pattern to the gifts or for there to be an intention of such. The only limitation is that the gifts must be made out of “excess” income – so that they do not affect the lifestyle of the donor. It is important to keep careful records to demonstrate this. There is no limit in principle as to how much income can be gifted free of inheritance tax so this is potentially a very powerful exemption.
- *Gifts on Marriage.* Gifts can be made to children of up to £5,000 per parent of the couple on the occasion of their marriage. Gifts of £1,000 may be made to any other person on the occasion of their marriage.
- *Charity exemption.* All gifts to a qualifying UK charity, regardless of the amount, are exempt from IHT. Additionally, if on death 10% or more of an individual’s estate is left to a qualifying UK charity, the rate of tax on the whole death estate is reduced from 40% to 36%.
- *Business Property Relief.* The value of assets (such as interests in private businesses) that qualify for business property relief from IHT can be reduced by 50% or 100%. Generally, the shares or the business must have been owned for at least two years before the relevant transfer (whether a lifetime or death transfer). Relief is not available if the activities of the business consist mainly of dealing in securities, stocks or shares, land or building, or making or holding investments. Large cash reserves may be ineligible. This is an extremely important relief in practice, and it is important to assess its availability in any given case with care.
- *Agricultural Property Relief.* Certain interests in agricultural property may attract relief at 50% or 100%.

Additional considerations when making gifts of cash or assets

Over the years, taxpayers have sought to give away assets out of their estate to reduce their IHT exposure, whilst continuing to benefit from those assets. This has given rise to two major pieces of anti-avoidance legislation. Where lifetime gifts of assets are made, it is usually important to ensure that the donor does not continue to receive a benefit from such assets.

Gifts with reservation of benefit

Subject to limited exceptions, if the donor continues to enjoy the use of or retain any benefit in any asset given away, such as real estate, then under anti-avoidance legislation, the asset will typically continue to be treated as part of their estate on death for IHT purposes. It follows that IHT will be due on the donor’s death on the value of the asset as if it had not been given away.

The pre-owned asset tax

Anti-avoidance legislation also imposes a charge where assets (such as real estate, money or investments) are given away and the donor continues to derive a benefit from that asset (or property derived from it). The operation of this legislation results in an income tax charge on the value of the

benefit received unless (a) the gift with reservation of benefit provisions apply or (b) an election is made for the asset to form part of the individual's estate for IHT purposes.

Capital gains tax

Any lifetime gift of an asset will involve a disposal for capital gains tax purposes. The donor is treated as disposing of the asset, and the recipient is treated as acquiring it, at the market value of the asset at the date of disposal. Subject to any available exemption or relief, if there has been a gain in value between the donor's original acquisition cost and the value at the date of its disposal, the donor will be subject to capital gains tax. The rate of tax will depend on the marginal rate at which the donor pays income tax and the nature of the asset (see below).

From 6 April 2023 the "no gain/no loss"³ treatment afforded to transfers between spouses was extended beyond the tax year of separation to the earlier of 5 April in the third tax year following separation and the day on which a court grants an order or decree for divorce, or dissolution of the marriage or civil partnership, or judicial separation. Where a transfer is made between the separating couple in accordance with a court order or approved agreement, there is no time limit.

The CGT rates for 2024/25 are as follows:

- Annual exempt amount: £3,000
- Lower rate: 10% (18% on residential property⁴ and carried interest)
- Upper rate: 20% (24% on residential property⁵ and 28% on carried interest)
- Assets which qualify for Business Asset Relief: 10% on qualifying disposals of business assets

Maurice Turnor Gardner LLP

If you would like to receive further updates, please email info@mtgllp.com to be added to our distribution list.

These notes do not contain or constitute legal advice, and no reliance should be placed on them. If you have any questions, please do not hesitate to speak to your usual contact at Maurice Turnor Gardner LLP.

³ A no gain/no loss disposal is one where neither a gain nor a loss arises to the transferor as a result of the disposal. The donee is treated as acquiring the asset at the value at which the donor originally acquired it.

⁴ Subject to Principal Residence Relief

⁵ Subject to Principal Residence Relief