



135. INCREASED GIFTS AND LOANS

With the coronavirus pandemic resulting in a lot of intergenerational gifts and loans, questions must be asked over the correct recording and the appropriate tax treatment.

There can be confusion as to whether a 'gift was a loan' and such misunderstandings can have different inheritance tax (IHT) treatment and of course different understandings between family members as to loans and gifts for the ultimate share of the estate. This is particularly important in farming situations where the family members are known to enter into disputes as shown by *Guest v Guest* [2020] EWCA Civ 387.

There are considerations around whether the donor survived seven years since the date of the gift. If the donor survives less than seven years, then there is a failed potentially exempt transfer (PET).

The debts can be where the deceased lends money or indeed with the current COVID-19 problems where they borrow money. Securities for the borrowings must be understood. The basic rule for what constitutes the death estate is found at s5(1), IHTA 1984 which confirms: "For the purposes of this act a person's estate is the aggregate of all the property to which he is beneficially entitled..." And, at s5(3), IHTA 1984: "In determining the value of a person's estate at any time his liabilities at that time shall be taken into account..."

Borrowings

With regard to borrowings: "A liability incurred by a transferor shall be taken into account only to the extent that it was incurred for a consideration in money or money's worth." The definition is found in s5(5), IHTA 1984. This broadly means a debt is allowable for IHT purposes as long as the deceased received something equivalent in value to the debt during their lifetime. It follows, therefore, that any debts created under a moral obligation (promising or intending to make a gift, for example) or that are legally unenforceable because there is no supporting paperwork are unlikely to be allowable deductions for these purposes.

Farming partnerships

Where the deceased farmed in a partnership, or indeed there is any trading partnership, it must be understood whether the debt belongs to the partnership or is a debt of the individual. In the same way that the loan and security must be understood to achieve the correct result, so must the underlying farm asset.

It is noted that both agricultural property relief and business property relief survived the Budget on 11 March. With regards to offsetting loans against relievable assets for IHT purposes, the FA 2013 changes must be considered (see s162B, IHTA 1984). A practical tip is to analyse if the borrowed funds have been used for mixed purposes. By mixed purposes it means to check if they have been used for business/agricultural purposes and some non-business personal purposes. It is important to retain the supporting documentation for the use of funds to support a deduction against non-relievable property for IHT. There are ordering rules for the offset of debts depending on the security and the assets.

In these difficult times of COVID-19 there will be more need than ever to have documentation, understanding and tax protection consideration with each gift or loan made by family members. When clients are advising of loans and gifts both made and received it is essential to remind them to document such transactions for tax planning and to protect against family squabbles or disputes that come with greater commercial risk.

From *Tax Planning for Farm and Land Diversification (Sixth Edition)* by Julie Butler, published by Bloomsbury Professional