

STEP JOURNAL

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Not without benefit

Julie Butler outlines a recent case where two trusts were found subject to UK inheritance tax, because the deceased had continued to benefit from them

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What is the issue?

The pressure of lifetime gifting after the UK Budget of 30 October 2024, and the problem of gifts with reservation of benefit as shown by the recent *Chughtai* case.

What does it mean for me?

Farm succession planning is very complicated at present, and the *Chughtai* case is a timely reminder that all must be in place to allay concerns regarding gifts with reservation of benefit.

What can I take away?

The need to consider *Ingram* and follow the trust deed.

Lifetime gifting has been given a positive energy boost, following the announcement that agricultural property relief (APR) and business property relief (BPR) are due to be cut in half to 50 per cent from April 2026, with the rate of 100 per cent relief applying only to the first GBP1 million in value. The news of a high-profile gift with reservation of benefit (GROB) case being lost is therefore a timely reminder to ensure all is in order with such transfers with regard to any reservation of benefit.

GROB s.102 of the *Finance Act 1986*

The recent tribunal ruling *Afsha Chughtai v HMRC*[\[1\]](#) has once again highlighted how complex inheritance tax (IHT) matters can become, especially when trusts are involved. This case examined the estate of the late Mohammed Chughtai (the Deceased), who had used two trusts to try and reduce his chargeable estate. The Deceased's daughter and executrix, Afsha Chughtai (the Appellant), claimed that since these dispositions were made more than seven years before her father's death, the value of the assets in the trusts didn't form part of his estate. However, HMRC disputed this, stating that the transfers were invalid given the retained benefit.

The gifts with reservation rules can be found in s.102 of the *Finance Act 1986*. While gifts made more than seven years before death are generally exempt from IHT, this exemption does not apply if the donor continues to enjoy the property or retains some benefit from it. This legislation was therefore key to HMRC's argument, which claimed the Deceased had reserved a benefit in the subject matter of both trusts during the seven years before his death.

HMRC therefore said the value of the assets in the trusts (valued at the date of the Deceased's death) should be included when calculating IHT. HMRC issued a notice of determination to the Appellant in August 2022, which set out a total chargeable estate of GBP843,950, with the two trusts making up GBP442,239 of that total.

The facts of the case

The Deceased signed two trust deeds in 2000, one relating to a bank account and one to a property, with his children as beneficiaries. After signing the property trust deed, he vacated the house but later returned to live in it to care for one of his children with mental health issues. He continued to live there for the rest of his life, working from the adjacent shop. There was no evidence to show he paid rent to live in the house, however, rent from the shop was paid into the bank account and declared in his tax returns.

Continued enjoyment of the trust property

In order to show that there was no reservation of benefit, the Appellant needed to satisfy three criteria. First, that the three beneficiaries had assumed bona fide enjoyment of the trust property before 26 February 2010. Second, that the trust property was enjoyed to the exclusion or virtual exclusion of the Deceased at all times between 26 February 2010 and 26 February 2017. Third, that the Deceased was excluded or virtually excluded from any benefit from the trust property at all times during that period.

By continuing to use the trust assets in the same manner as he had before the trust's creation, the Deceased reserved benefits that ruined the estate planning carried out.

However, the evidence suggested the opposite – not only had the Deceased continued using the property but he had also employed the bank account associated with the trust for personal transactions. These actions clearly undermined the very intention behind setting up the trusts with the judges concluding: *'It is clear to us that the...[properties] were not enjoyed to the exclusion or virtually the entire exclusion of the deceased.'*

The Appellant argued that the Deceased had returned to the property solely to care for his daughter, which did not constitute 'enjoyment' in a conventional sense. However, this argument was deemed unsatisfactory by the judges who noted there was no 'motive test' within the GROB provisions. The exception for unforeseen circumstances did not apply here as this is only relevant in instances where the donor cannot sustain themselves.

In addition, it was noted that the Deceased not only occupied the property but also used it for business purposes, along with receiving rent from the shop attached to the house. By continuing to use the trust assets in the same manner as he had before the trust's creation, the Deceased reserved benefits that ruined the estate planning carried out.

Reminders of *Ingram*

At the appeal hearing, the First-tier Tax Tribunal (FTT) was reminded of the House of Lords decision in *Ingram v CIR*.^[2] In that case, Lord Hoffmann identified the policy of the GROB provisions as requiring 'people to define precisely the interests which they are giving away and the interests, if any, which they are retaining. Once they have given away an interest, they may not receive back any benefits from that interest.' He also pointed out, 'Not only may you not have your cake and eat it, but if you eat more than a few de minimis crumbs of what was given, you are deemed for tax purposes to have eaten the lot.'

The FTT found that the Deceased had reserved benefit in both the Henley Road property and the Santander account. The tribunal judges commented:

'Our view is that the deceased carried on using the Santander account, after the establishment of the Santander Trust in exactly the same way as he had been using it before such establishment. He simply treated it as his own account and carried on making payments from it and into it, as if it were his own. He paid the outgoings on the Henley Road property when he was living there. He paid personal expenses out of it. Rent from the shop was paid into it as were payments from the DWP and F Habib.'

Follow the trust deed

This case is a reminder to trustees and beneficiaries that simply having a trust deed excluding the settlor is not enough on its own for tax purposes. It is important for trustees to run the trust in accordance with the trust deed.

If you are a trustee, you should remind yourself regularly of the contents of your trust deed to make sure you're not doing anything to undermine your position with HMRC.

For those who thought they had seen a 'let out' for the need of care, note that it must be the donor, as set out in the concession at sch.20, p.6(1)(b), *Finance Act 1986*. You should disregard the donor's occupation of gifted land, or any part of it, where:

- the occupation results from an unforeseen change in the donor's circumstances;
- the donor is unable to maintain themselves through old age or infirmity; and
- the occupation represents reasonable provision by the donee for their care and maintenance

This only applies if the donee is a relative of the donor or of the donor's spouse or civil partner.

Notably, the tribunal judges in this case commended the legal representatives for their clear submissions, highlighting that the presentation of such cases is also important. Personal testimonies and reliable evidence are essential in building a robust case should HMRC challenge any claims.

The ruling serves as a crucial reminder for families engaged in estate planning. While the rumour mill was churning out reports of a possible delay in the reduction of IHT to 50 per cent BPR and APR to April 2027, action must be taken now to ensure all outcomes are planned for on the basis of April 2026, or if post-April 2026, with full calculation of the amounts concerned.

• [\[1\]](#)[2025] UKFTT 00458 (TC)

• [\[2\]](#)[2000] 1 AC 293

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