

MAKING A GIFT? DON'T FORGET TO TELL THE TAXMAN!

Most readers have probably heard of Capital Gains Tax (CGT) but how much do you know about the situations in which CGT is charged? You could be forgiven for thinking that CGT is only payable when you sell an asset which is chargeable to CGT (e.g. a rental property) and realise a 'profit' on the sale. But did you know that CGT can also be payable when you make a gift of an asset to, say, a family member? You are not alone if this comes as a surprise to you and it is therefore worth examining some such situations that may give rise to an unexpected CGT liability.

How can Capital Gains Tax be payable when I haven't actually made a gain?

Any transfer of an asset by an individual to a 'connected person' is deemed to take place at market value for CGT purposes. This applies to any asset which is a chargeable asset for CGT purposes, such as a rental property, land, certain stocks and shares etc.

The effect of these rules is that a CGT calculation is carried out for the transfer but in place of sale proceeds received, the market value is included instead. Take the example of a rental property which you want to gift to your son or daughter and let's assume you bought it for £200,000 ten years ago, have never lived in it, and it is now worth £250,000. Even though you are not receiving any sale proceeds from the transfer, the increase in value of £50,000 would be chargeable to CGT and you could end up paying as much as £14,000 in CGT.

Does this mean I have to pay CGT when I transfer any chargeable asset to a family member?

The definition of connected persons for these purposes includes spouses/civil partners, parents, grandparents (and remoter such ancestors), children, grandchildren and further issue, brothers & sisters and spouses/civil partners of most of these relatives as well. It therefore encompasses most close family members. Care should also be taken if transferring assets to a company which you control (possibly with family members) since this could also be a transfer between connected persons.

You should also note that even though spouses and civil partners are included in the definition of connected persons, special rules apply in this situation and any transactions between spouses/civil partners do not give rise to a gain or a loss for CGT purposes.

What if I sell the asset to a family member instead, but give them a 'good deal' on the sale?

Even where you receive some proceeds for the transfer of a chargeable asset to a connected person, the market value will always need to be substituted in place of the amount received

(so basically, the amount received is irrelevant). If necessary, HMRC can instruct the District Valuer to give their opinion on the market value of land and buildings etc. so you would need to make sure you know what the market value of the asset is before you proceed with the transaction.

It should also be noted that even where two parties are not connected, if the bargain is not at arm's length then the deemed proceeds for CGT purposes will still be the market value of the asset, where the transaction has been a gift or a transfer at undervalue.

Are there any ways to avoid the CGT liability?

There can be certain mechanisms which can be used to mitigate the CGT liability on any such transfers but specific advice will always be needed in each situation. In some cases, the use of a Trust can be helpful since it can be possible to transfer an asset to a Trust (for the ultimate benefit of a family member, for example) without giving rise to an immediate CGT liability.

If an asset qualifies as a 'business asset' e.g. shares in a family trading company or a share in a trading partnership etc. then the Capital Gain which would otherwise be chargeable on a gift of such an asset can also be 'postponed' and effectively passed on to the recipient of the asset. Again, the rules can be complex so specific advice for each situation will be required.

Are there any other taxes I should think about?

In brief, yes! Although beyond the scope of this article, gifts and transfers at undervalue of certain assets will often have Inheritance Tax implications and these should not be overlooked. Where the transaction involves land or buildings and there is an element of consideration, Stamp Duty Land Tax should also be considered. Finally, where the asset generates income, the income tax implications to both the recipient and the transferor will need to be taken in to account.

The above is for general guidance only and no action should be taken without obtaining specific advice.

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