

Tolley's Tax Annuals Re-launch – New Look Pages

9

Capital Gains Tax

Introduction	9.1
Relief for CGT against IHT	9.2
Nature of relief	9.3
Conditions of relief	9.4
Relief for IHT against CGT	9.5
Key Points	9.6

Cross-reference. See 56.6 VALUATION for valuation at death for capital gains tax purposes.

Simon's Taxes, Parts I3.611–I3.615, I5.915.

Other Sources. Tolley's Capital Gains Tax 2010–11.

Introduction

[9.1] A *lifetime* disposition may give rise to a chargeable gain subject to capital gains tax. There is no capital gains tax on property passing on death. For the purposes of inheritance tax no account is taken of any capital gains tax borne by the transferor in determining the reduction in value in his estate. *Section 5(4)* makes it clear that the value of a transferor's estate immediately after the transfer of value 'do not include his liability (if any) for any other tax or duty resulting from the transfer.' [IHTA 1984, s 5(4)].

Example 1

A makes a gift of land to discretionary trustees valued at £10,000 on which there is capital gains tax of £4,000. The value for inheritance tax purposes (subject to grossing-up for the IHT payable) is £10,000 (i.e. the same as if A had sold the land and given the £10,000 proceeds to the trustees).

Valuations for IHT purposes	£
70 acres at £1,500 per acre	105,000
Farmhouse	125,000
Development value	<u>3,895,000</u>
Total value	<u>4,125,000</u>
The transfers subject to tax on D's death:	
(i) Agricultural value of land	105,000
70 acres × £1,500	(105,000)
Less agricultural property relief at 100%	—

[9.1] Capital Gains Tax

(ii) Farmhouse	125,000
(iii) Value of development land potential not attracting BPR	<u>3,895,000</u>
Deduct Nil rate band 2009/10	4,020,000
Chargeable at 40% on death of D	<u>325,000</u>
IHT payable	£3,695,000
Payable by ten-yearly instalments (IHTA 1984, s 227) of	£
	<u>1,478,000</u>
	147,800

Relief for CGT against IHT

[9.2] Capital gains tax paid is taken into account for IHT purposes in the following circumstances.

If IHT becomes payable in circumstances [other than the above], there is no relief for any of the CGT payable on the transfers.

It is also the method adopted in all worked examples, unless clearly to the contrary, in this work. Under this method primary and secondary contributions are each to be calculated separately at each of whichever rates apply and each such calculation is to be to the nearest penny with any amount of a halfpenny or less being disregarded. This form was updated in December 2005 and includes a worksheet IHT100WS. For timber, trees or wood chargeable in connection with a death, Form C-5 (Timber) applies. Note that the old form IHT 100 and IHT 101 cannot be used after 31 October 2003. The following explains this.

- IHT 100 **An account of a transfer of value** (for use for lifetime transfers by individuals or the termination (during life or on death) of an interest in possession in settled property, but not where Form IHT 101 applies nor by personal representatives intending to obtain a grant of probate from a Probate Registry). Instruction booklet is IHT 110. This form was updated in December 2005 and includes a worksheet IHT100WS. For timber, trees or wood chargeable in connection with a death, Form C-5 (Timber) applies. Note that the old form IHT 100 and IHT 101 cannot be used after 31 October 2003.
- IHT 101 **An account of a chargeable event** (which arises under the provisions relating to settlements without interests in possession in IHTA 1984, Pt III, Ch III). IHT 101 is now phased out with the introduction of the replacement IHT 100. The accompanying instruction booklet was IHT 111.

Examples to be set in shaded boxes to highlight them

Structure of chapters improved and chapters split where relevant

Text converted to summary tables for speedy reference

Clearer contents to aid navigation

Introduction for each chapter

New Clearer text design

More practical examples included

The law and practice for last 4 years is included and unnecessary historical information removed.

Tolley's Tax Annuals Re-launch – New Look Pages

Nature of relief

[9.3] The relief is a percentage reduction of the value transferred by a transfer of value (including an occasion on which tax is chargeable under the rules on 44 SETTLEMENTS WITHOUT INTERESTS IN POSSESSION). The percentage reduction is made before deduction of the annual exemption and other 21 EXEMPT TRANSFERS and before grossing-up where the transferor pays the tax.

Conditions of relief

[9.4] The agricultural property must have been either:

- occupied by the transferor for the purposes of agriculture throughout the period of two years ending with the date of transfer (see *Wheatley 59 TAX CASES*), or
- owned by the transferor for the period of seven years ending with the date of transfer and have been occupied throughout that period (by him or another person) for the purposes of agriculture. [*IHTA 1984, s 117*]. See *Wheatley's Executors v CIR* [1998] STC SCD 60 Sp C 149.

Relief for IHT against CGT

[9.5] In certain circumstances, where capital gains tax on a disposal not at arm's length has been held over under the provisions of *FA 1980, s 79* as extended by *FA 1981, s 78* and *FA 1982, s 82* (general relief for gifts etc. before 14 March 1989) or, where the disposal takes place after 13 March 1989, *TCGA 1992, s 165* (relief for gifts etc. of business assets), any inheritance tax payable (or which proves to be payable where a potentially exempt transfer becomes a chargeable transfer on the transferor's death within seven years) may be deducted from the chargeable gain arising on the transferee's subsequent disposal (but not so as to create an allowable loss). Where the inheritance tax is re-determined in consequence of the transferor's death within seven years of the chargeable transfer or is otherwise varied, all necessary adjustments are to be made whether by assessment, discharge or repayment. [*TCGA 1992, s 67(2)(3), s 165(10)(11); FA 2004, s 116*].

Capital gains tax

Capital gains tax paid is taken into account for IHT purposes in the following circumstances.

- If the transferor fails to pay all or part of the capital gains tax within twelve months of the due date, an assessment may be made on the donee [*TCGA 1992, s 282 as amended by FA 2004, s 116*] and the amount of such tax borne by the donee is treated as reducing the value transferred. There is a similar effect when the transfer is from a settlement but this only applies if the capital gains tax is borne by a person who becomes absolutely entitled to the settled property concerned. [*IHTA 1984, s 165(1)(2)*].

- Where a person sells, or is treated as having sold, national heritage property on the breach or termination of an undertaking (see 33.10 NATIONAL HERITAGE) any capital gains tax payable is deductible in determining the value of the asset for IHT purposes. [*TCGA 1992, s 258(8)*].
- Where the transferee pays the CGT rather than the transferor then the CGT paid by the transferee may be deducted from the value transferred in determining the loss to the transferor's estate for IHT purposes. [*IHTA 1984, s 165(1)*].

Chargeable transfers

The same relief against the transferee's gain is available for chargeable transfers (not potentially exempt) after 13 March 1989 for which capital gains tax holdover relief is available under *TCGA 1992, s 260* (gifts on which inheritance tax is chargeable etc.). The foregoing relief is subject to the anti-avoidance provisions regarding private residence relief which is subject to a hold-over election under *TCGA 1992, s 260*. [*TCGA 1992, s 260(7)(8); FA 2004, s 116, Schs 21, 22*].

For full details of capital gains tax, see Tolley's Capital Gains Tax 2010-11.

Key Points

[9.6] Points to consider are:

- With CGT at 18% currently it may be better option to gift assets not qualifying for holdover relief to relatives now rather than wait until death when a charge for IHT of 40% may apply. Clearly, the transferor would have to survive for a period following the gift just in excess of seven years. This would not be appropriate in cases where 100% APR/BPR is available unless there was a risk of losing the reliefs.
- The potential for an increase in the CGT rate of 18% to match the current income tax rate bands of 40% and maybe 50% in future legislation suggests that individuals holding assets that do not attract holdover reliefs or APR/BPR reliefs should consider locking in such a rate now by making gifts.
- Where gifts are made now where there is a capital gain at 18% but the prospect of an IHT charge at 40% later on the PET then insurance cover such as diminishing term assurance may be taken out on the life of the transferor by the transferees to meet any IHT that becomes payable in the circumstances above in the event of the transferors' death within 7 years.

More distinct heading levels more headings introduced

More bulleted lists and lists to break down issues

Sentences rewritten to be shorter, more succinct with more paragraph breaks

Key points including planning suggestions added at the end of relevant chapters