

Relief for gifts and similar transactions

i Contacts

Please phone:

- the number printed on page TR 1 of your tax return
- the SA Helpline on **0845 9000 444**
- the SA Orderline on **0845 9000 404** for helpsheets

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www.hmrc.gov.uk

This helpsheet explains how gifts are dealt with for Capital Gains Tax purposes, and is mainly concerned with hold-over relief, which in effect enables liability to be deferred and passed to the person to whom the gift is made. It also covers gifts to charities, but it is only an introduction. If you are in any doubt about your circumstances, you should ask your tax adviser. We will also be pleased to help. You can also consult our Capital Gains Manual, which explains the rules in more detail, at www.hmrc.gov.uk

This helpsheet will help you fill in the *Capital gains summary* pages of your tax return. It also includes a form which you must use for the purposes of claiming the principal relief which this helpsheet deals with.

If you need information concerning liability to Inheritance Tax on gifts or transfers to settlements, please phone the Inheritance Tax and Probate Helpline on **0845 30 20 900**. Further information is also available at www.hmrc.gov.uk including the Inheritance Tax Manual.

Passages written in *italics* are only relevant if you are a trustee.

References to a person becoming entitled to trust property are references to the occasion upon which a person ‘becomes absolutely entitled as against the trustee’, so that there is deemed to be a disposal by the trustees to that person. See Helpsheet 294 *Trusts and Capital Gains Tax*.

What is meant by gifts and similar transactions and how are they treated for the purposes of Capital Gains Tax?

If a person transfers an asset to another person for nothing, that is a gift in the strict sense and is a disposal otherwise than by way of a bargain at arm’s length.

If you receive something for transferring an asset but the consideration is less than its market value, this is also a disposal otherwise than by way of a bargain at arm’s length.

In both cases you will be treated as though you had disposed of the asset for its market value. See page CGN 4 of the *Capital gains summary notes*.

Example 1

You sell a shop to your brother for £40,000. The shop was then worth £100,000. In the absence of hold-over reliefs your liability to Capital Gains Tax would be based on the full market value of £100,000.

Full or partial relief from Capital Gains Tax may be available under these circumstances. The hold-over relief described overleaf covers all disposals made otherwise than by way of a bargain at arm’s length, but if you receive anything in return, you should also read the ‘What if you receive some payment for the asset?’ section on page 5 which explains how this restricts the hold-over relief.

Relief may also be available when a person becomes entitled to trust property, or in other cases where trustees are treated as if they had made a disposal, except in cases concerning anti-avoidance provisions.

When this helpsheet refers to gifts, you should assume it includes these cases unless other definitions exclude them. This helpsheet does not cover transfers to your spouse or civil partner: see Helpsheet 281 *Husband and wife, civil partners, divorce, dissolution and separation*, available from the SA Orderline and www.hmrc.gov.uk

What reliefs are available for gifts and similar transactions?

There are basically two types of relief:

- hold-over relief, where the chargeable gain is postponed, usually until the transferee disposes of the asset, where a claim is required
- other reliefs, which are due automatically.

Hold-over relief may be claimed for:

- gifts of business assets
- gifts of unlisted shares in trading companies etc.
- gifts of agricultural land
- gifts which are chargeable transfers for Inheritance Tax purposes
- certain types of gifts which are specifically exempted from Inheritance Tax.

Relief is due automatically on:

- gifts to charities, Community Amateur Sports Clubs and certain other bodies
- gifts (in the strict sense) of works of art, etc. where certain undertakings have been given
- sales of works of art to certain bodies, including transfers in settlement of Inheritance Tax liability.

How does hold-over relief work?

Example 2

You give an asset worth £50,000 to your brother on 5 August 2010. It cost you £17,000. The chargeable gain is therefore £33,000. If a claim is made by you and your brother, you do not have to pay tax on your chargeable gain, which is known as the 'held-over gain'. Instead, your brother's cost for the purposes of calculating his Capital Gains Tax liability on any future disposal of the asset, which would normally be its value of £50,000, is reduced by the amount of the held-over gain, £33,000, leaving a base cost of £17,000.

Please note that where hold-over relief has been given on the disposal of a house, there may be restrictions on the entitlement to private residence relief on a subsequent disposal, see Helpsheet 283 *Private Residence Relief*.

Which disposals qualify for hold-over relief?

Disposals that qualify for hold-over relief are in five categories.

Category 1 *Business assets*

Hold-over relief is available on the disposal of a business asset. This is an asset which is used for the purposes of a trade, profession or vocation carried on by:

- you, individually or in partnership, or

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- your ‘personal company’ (see the section ‘What are the different types of companies?’ below), or
- a member of a trading group whose holding company is your personal company (see the section ‘What are the different types of companies?’ below).

In the case of trustees, hold-over relief is available on the disposal of an asset which is used for the purposes of a trade, profession or vocation carried on by:

- *the trustees, or*
- *a beneficiary with an interest in possession in the settled property immediately before the disposal.*

The amount of the gain that can be held over is restricted, and part chargeable at once, if:

- the asset is land or a building of which only part was used for the purposes of the trade, etc. or
- at some time during your ownership the asset was not used for the purposes of the trade, etc.

Category 2 Shares and securities

The different types of companies are defined in the section ‘What are the different types of companies?’ below.

Hold-over relief is available on the disposal of shares or securities of a trading company or holding company of a trading group, if the shares or securities are not listed on a ‘recognised stock exchange’. The Alternative Investment Market (AIM) is not a recognised stock exchange.

Exceptionally, listed shares and securities can qualify. This is where the trading company or holding company is your personal company or, *in the case of trustees, where the trustees have not less than 25% of the voting rights.*

Where you have made a gift of a Qualifying Corporate Bond that you received in exchange for shares, that is a disposal which gives rise to a chargeable gain by reference to the original shares (see Helpsheet 285 *Share reorganisations, company takeovers and Capital Gains Tax*). This gain cannot be held over.

Where the company in question is:

- your personal company, or
- *at any time in the previous 12 months the trustees making the disposal had at least 25% of the voting rights*

the held-over gain is restricted by reference to those non-business assets of the company which would give rise to a chargeable gain (or allowable loss) if sold by the company.

What are the different types of companies?

A **personal company** of an individual is one where that individual has at least 5% of the voting rights.

A **trading company** is a company carrying on trading activities which do not include, to a substantial extent, non-trading activities.

A **holding company** is a company with one or more 51% subsidiaries.

A **trading group** is a group of which one or more of the members are carrying on trading activities and the activities of the members, when taken together, do not include, to a substantial extent, non-trading activities.

For further information on the definitions see the Capital Gains Manual available at www.hmrc.gov.uk

Category 3 Agricultural land

Where agricultural land would not qualify as ‘business assets’ under category 1 above, because it is not used for a trade carried on by an appropriate person, it can qualify for hold-over relief if it is agricultural property for the purposes of Inheritance Tax.

The Inheritance Tax relief for agricultural land is limited to its agricultural value. So, where the value of agricultural land is in excess of its agricultural value, for example, because of possibilities of development, the excess does not qualify for that relief. This restriction does not apply for the purposes of hold-over relief.

Category 4 Chargeable transfers for Inheritance Tax purposes

Hold-over relief is available where the disposal is a chargeable transfer for Inheritance Tax purposes, but not a Potentially Exempt Transfer (PET).

The most common example of a PET is a gift by an individual to another individual.

The main examples of a lifetime chargeable transfer are where an individual gives an asset to the trustees of a trust other than a disabled trust or an individual becomes entitled to the property of a ‘relevant property trust’.

Cases where there is no liability to Inheritance Tax, because the value transferred is within the zero-rate band, qualify for hold-over relief.

The ten-yearly charge on the trustees of a relevant property trust is not taken into account because it is not a disposal for Capital Gains Tax purposes.

Some transactions that are disposals for Capital Gains Tax purposes are specifically not chargeable transfers for Inheritance Tax. Examples are distributions within two years of death from a discretionary trust set up by a will or within three months of the commencement of the trust, or transfers within three months of a ten-yearly charge. In such cases, hold-over relief is not available.

Category 5 Certain occasions exempted from Inheritance Tax

Major changes were made to the way in which trusts are liable to Inheritance Tax from 22 March 2006. As a result the most important examples of cases where hold-over relief is available and where there is an Inheritance Tax exemption are these:

- a transfer from an ‘accumulation and maintenance trust’ which had that status before 22 March 2006 either to a qualifying beneficiary or on their death
- a transfer from a ‘trust for bereaved minors’ either to them or on their death and
- a transfer from an ‘18-25 trust’ either to the relevant beneficiary before their 18th birthday or on their death before the age of 18.

Where the disposal would be a chargeable transfer or PET for Inheritance Tax purposes, but for one of a list of exemptions most of which are concerned with historic buildings or works of art, hold-over relief is available.

Explanations of the various kinds of trusts described above and the relationship between Capital Gains Tax, hold-over relief and Inheritance Tax

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can be found in the Capital Gains Manual in the section headed 'Trusts and Capital Gains Tax' with the subheading *Changes to IHT from 22 March 2006* at www.hmrc.gov.uk You will also be able to consult the Inheritance Tax Manual which covers some of these matters in far more detail.

Which transferors and transferees qualify for hold-over relief?

The basic rule is that the relief is available only where the transfer is made by an individual or the trustees of a settlement to an individual or the trustees of a settlement.

No relief is available for transfers to the trustees of a 'settlor-interested' settlement. A settlement is settlor-interested if any of a settlor, a settlor's spouse or civil partner, and minor child or step-child, does or may benefit in any way, or there are arrangements under which a settlor may acquire an interest. This exclusion however does not apply where the trust is a disabled trust or a Heritage Maintenance Fund.

In addition, any gifts hold-over relief obtained in relation to transfers to the trustees of settlements which become settlor-interested settlements within a certain period starting immediately after the transfer, will be clawed back. (This 'clawback period' ends immediately before the sixth anniversary of the start of the tax year following that in which the transfer is made.) Ask us or your tax adviser for more information.

Exceptionally, in categories 1, 2 and 3 (see the section 'Which disposals qualify for hold-over relief?' on page 2) the transferee could be the personal representatives of a deceased person.

A company can be a transferee in cases falling within categories 1 and 3. In certain cases where the company is controlled by non-residents, relief is not available at all.

In all cases the transferee must be resident or ordinarily resident in the UK. For this purpose, persons treated as resident outside the UK by reason of a Double Taxation Agreement may be excluded.

There is no requirement for the transferor to be resident or ordinarily resident in the UK. *Therefore the relief is available for trustees of non-resident settlements where the chargeable gain would, or might otherwise be, charged on UK residents.*

What if you receive some payment for the asset?

If you receive something for the asset, such as money or another asset in exchange, and its value is greater than your base cost for the asset, then, subject to allowable losses, you are immediately chargeable on the excess of the value of what you have received over the base cost. Only the balance is held-over. *This rule does not apply on the occasion when a beneficiary becomes absolutely entitled as against the trustee.*

Example 3

You sell a shop to your brother for £40,000 in June 2010. The shop was then worth £81,000. It cost you £23,000. The chargeable gain before hold-over relief is £58,000. If you make a claim, then, subject to the availability of allowable losses, you are chargeable at once on £17,000, being the proceeds minus the original cost. The held-over gain is £41,000.

Your base cost is the amount that you are allowed to deduct in your calculation of the gain. This may be affected by a previous hold-over claim.

What if the transferee emigrates or dies?

If an individual transferee emigrates within six years of the end of the tax year in which the gift was made, and the asset has not been disposed of, they are chargeable on the held-over gain.

Different rules apply where the transferee is a trustee.

If the tax is not paid, in certain circumstances we can collect it from the transferor.

If the transferee is an individual, and dies, the normal exemption on death applies.

If the asset was transferred to trustees and the life tenant dies, the trustees do not have the normal exemption on the death, but the chargeable gain is restricted to the held-over gain. If this is an occasion of charge to Inheritance Tax, a claim can be made under category 4 (see the section 'Which disposals qualify for hold-over relief?' on page 2).

How to claim hold-over relief

Except where the claim is about a transfer to the trustees of a settlement, the transferor and the transferee must claim jointly. In the case of a transfer to the trustees of a settlement, the claim is made by the transferor only. The next section deals with requests to defer the agreement of values.

Claims to relief should be made on the form at the back of this helpsheet (on pages 9 and 10). Each disposal for which further relief is claimed must be shown on a separate form. Further copies of the form can be obtained from the SA Orderline, but you can use photocopies if you wish. If you submit your Self Assessment return online you can make the claim by attaching a scanned Portable Document Format (PDF) of the completed form. Please retain the original form as we may ask to see it.

Do you have to agree values?

The basic principle is that the held-over gain should be calculated and, if possible, agreed.

However, where such things as unlisted shares or land are involved, this may cause complicated and unproductive work both for you or your advisers and us, in agreeing values. Our Statement of Practice SP8/92 enables you to defer agreeing the values, providing that there is no liability to Capital Gains Tax on the disposal, except as described in the next paragraph.

Where the liability arises because you received some consideration from the person to whom you transferred the asset, liability is restricted as described in 'What if you receive some payment for the asset?' on page 5. Providing that the base cost represents actual expenditure and is not a value, in particular a value at 31 March 1982, it is not necessary to agree the value at the date of disposal. However, if the base cost is a value, agreement of the value will be needed at both dates in these circumstances.

The Statement of Practice SP8/92 is available at www.hmrc.gov.uk/practitioners/sop.pdf The main conditions, however, are incorporated in the claim form on pages 9 and 10 of this helpsheet.

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Where SP8/92 applies, the claim is admitted on condition that the provisional values submitted with the claim are left to be agreed between the claimant(s) and us at a later date, when and if it becomes relevant to the calculation on a further disposal by either claimant. The tax return and the claim form require you to enter estimated values. These should be your considered estimates, but need not be formal valuations by an expert. They are not, however, regarded as in any way binding on claimants or us.

Please note that, although in the case of a transfer to a settlement, the claim to hold-over the gain is made by the transferor only, the trustees must be a party to a claim to defer the agreement of values.

How to get relief for gifts

This section applies to gifts to UK charities and certain bodies such as the National Gallery, local authority-maintained art galleries and museums, local authorities and universities. A full list is in Schedule 3 Inheritance Tax Act 1984. Relief is also available for certain gifts to a registered Community Amateur Sports Club as gifts to such bodies, for Inheritance Tax and Capital Gains Tax, have effect as if a registered club were a charity.

If the asset is an outright gift, or if the consideration you have received is less than your base cost, the disposal is treated as being at such a price that there is neither a chargeable gain nor an allowable loss.

If the consideration received is greater than the base cost, your calculation is based on what you actually receive for the asset.

Example 4

You sell a shop to a charity for £50,000 in October 2010. The shop was then worth £100,000. It cost you £23,000.

The chargeable gain is based on the sale price of £50,000 and is therefore £27,000.

Where a charity becomes entitled to trust property, except where any consideration has been given to anyone to achieve this situation, the trustees are treated as disposing of the property at a price that gives no chargeable gain or allowable loss.

Go to www.hmrc.gov.uk to find out more about giving land, buildings, shares and securities to charity and in particular the Income Tax relief.

Are any other cases treated similarly?

Similar treatment applies to:

- gifts to certain kinds of trusts for employees
- gifts to registered housing associations.

How to get relief for gifts of heritage property

This relief covers works of art, historic houses and other property of sufficient standard to be regarded as part of the national heritage. There are reliefs for both Capital Gains Tax and Inheritance Tax.

Exemption from Capital Gains Tax may be available for certain transactions in respect of designated property. Details are in the Inheritance Tax Manual available at www.hmrc.gov.uk

Can tax be paid by instalments where there is liability on a gift?

This section applies to gifts in the strict sense only and to cases where a person becomes entitled to trust property.

Where hold-over relief is not available, or only partial relief is available (see the notes for categories 1 and 2 on pages 2 and 3), and the asset is of the kind listed below, you may elect to pay the tax in 10 equal instalments.

The main types of assets are:

- land or an interest in land
- shares or securities of a company that gave you control before the gift
- shares or securities of a company not listed on a recognised stock exchange.

There is no restriction to business assets. The unpaid instalments carry interest.

In certain circumstances the tax becomes payable immediately if the donee disposes of the asset.

What relief can be claimed for Inheritance Tax paid on a gift?

Inheritance Tax is not usually taken into account in calculating liability to Capital Gains Tax. In exceptional circumstances, it may be taken into account when the transferee disposes of the assets.

The transferee can claim the Inheritance Tax on the gift as a deduction in calculating the chargeable gain, but not so as to turn it into an allowable loss, provided that it was a disposal that was a chargeable transfer. But relief is not available in respect of the Inheritance Tax arising on the occasion of death.

This also applies where a transfer that is initially a PET becomes retrospectively a chargeable transfer, provided that it was a case where a claim was made within categories 1 to 3 (on pages 2 to 4).

In certain circumstances, Capital Gains Tax on a disposal can be taken into account for Inheritance tax.

These notes are for guidance only and reflect the position at the time of writing. They do not affect any rights of appeal. Any subsequent amendments to these notes can be found at www.hmrc.gov.uk

Request for valuations to be deferred

The disposal meets the conditions of Statement of Practice SP8/92. We jointly request that SP8/92 be applied, so that formal agreement of values can be deferred. We accept the terms upon which SP8/92 applies. We are satisfied that the value of the asset at the date of transfer is such that there would be a chargeable gain but for the claim.

Transferor signature

Date

□	□	□	□	□	□	□	□
---	---	---	---	---	---	---	---

Transferee signature

Date

□	□	□	□	□	□	□	□
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The details required are as follows; where estimated figures are used please use the codes at the bottom of the form. Acceptance of the claim does not bind us to accepting the values shown. The claimants are not bound by the values shown.

If there is insufficient space or you find it more convenient, please give the details on a separate sheet. You can give the information in the form of a calculation if you prefer.

Date of acquisition

1

□	□	□	□	□	□	□	□
---	---	---	---	---	---	---	---

Cost of acquisition

£

□	□	□	□	□	□	□	□
---	---	---	---	---	---	---	---

Date of additional allowable expenditure

2

□	□	□	□	□	□	□	□
---	---	---	---	---	---	---	---

Cost of additional allowable expenditure

£

□	□	□	□	□	□	□	□
---	---	---	---	---	---	---	---

Value at 31 March 1982, if relevant

3

£

□	□	□	□	□	□	□	□
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Value of asset at date of transfer

4

£

□	□	□	□	□	□	□	□
---	---	---	---	---	---	---	---

If asset consists of shares or securities, enter details of any relevant bonus issues or reorganisations

5

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If the disposal is a part disposal, enter details of and value of the part retained

6

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Notes

- The disposal of part of a shareholding may be a part disposal. If there is an entry in box 6, the figures at boxes 1 to 3 are those for the whole asset, not just the part disposed of.
- Where the figures given are values and not actual costs, please write whichever of the following letters is appropriate in the box, after the figures:
 - A** value agreed by HMRC
 - V** valuation by professional valuer but not agreed by HMRC
 - E** transferor and transferee's estimate of the value.