

RELIEF FOR GIFTS AND SIMILAR TRANSACTIONS

This Help Sheet 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. Your Inland Revenue office will also be pleased to help. You can also consult the Inland Revenue Capital Gains Manual, which explains the rules in more detail. The Manual is available on the Inland Revenue website at www.inlandrevenue.gov.uk or you can ask to see it at your local Inland Revenue Enquiry Centre.

This Help Sheet will help you fill in the Capital Gains Pages of your Tax Return. It also includes a form which you must use for the purposes of claiming the principal relief which this Help Sheet deals with.

If you need information concerning liability to Inheritance Tax on gifts please telephone the Capital Taxes Office on:

0115 974 2400 (England and Wales)

0131 777 4000 (Scotland)

02890 505353 (Northern Ireland).

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 *Help Sheet IR294: Trusts and Capital Gains Tax*.

WHAT IS MEANT BY GIFTS AND SIMILAR TRANSACTIONS?

If a person transfers an asset to another person for nothing, that is a gift in the strict sense.

Full or partial relief may also be available where the asset is transferred for less than its market value. The hold-over relief described below extends to other cases where there is a disposal otherwise than by way of a bargain at arm's length. But if you receive anything in return, read the 'What if you receive some payment for the asset?' section on page 3 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.

When this Help Sheet refers to gifts, you should assume it includes these cases unless other definitions exclude them.

Nothing in this Help Sheet applies to transfers to your husband or wife. See *Help Sheet IR281: Husband and wife, divorce and separation*, available from the Orderline and on the Inland Revenue website.

HOW ARE GIFTS NORMALLY TREATED FOR THE PURPOSES OF CAPITAL GAINS TAX?

If you dispose of an asset otherwise than by way of a bargain at arm's length, then you are treated as if you had disposed of it for its market value. See page CGN13 of the Notes on the Capital Gains Pages.

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 value of £100,000.

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. A claim is required
- other reliefs, which are due automatically.

Hold-over relief is available for the following main types of disposal:

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

The main types of gift, etc., where relief is due automatically are:

- gifts to charities 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. It cost you £17,000 and the indexation allowance on that cost is £11,000. The chargeable gain is therefore £22,000. If a claim is made by you and your brother, your chargeable gain, which is known as the 'held-over gain', is eliminated. His cost for the purposes of any future disposal, including the calculation of indexation, would normally be its value of £50,000, but this is reduced by the amount of the held-over gain, £22,000, leaving a base cost of £28,000.

Please note that the chargeable gain referred to in Example 2 is not adjusted in any way for taper relief. Furthermore, when your brother disposes of the asset, only his own period of ownership is taken into account for taper purposes.

WHICH DISPOSALS QUALIFY FOR HOLD-OVER RELIEF?

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

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**
- your 'personal company' (see the section 'What are the different types of companies?' in the next column), **or**
- a member of a trading group whose holding company is your personal company (see the section 'What are the different types of companies?' in the next column).

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.

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.

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 *Help Sheet IR285: Share reorganisations, company take-overs 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 whose business consists wholly or mainly in the carrying on of trades.

A **holding company** is a company whose business consists wholly or mainly in holding shares or securities of one or more subsidiaries.

A **trading group** is a group of companies whose business, taking the companies together, consists wholly or mainly in the carrying on of trades.

3. Agricultural land

Where agricultural land would not qualify as 'business assets' under 1., 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 relief. This restriction does not apply for the purposes of hold-over relief.

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).

A PET is a gift by an individual to another individual, an accumulation and maintenance trust, an interest in possession trust or a trust for the disabled.

The main examples of a lifetime chargeable transfer are where you give an asset to the trustees of a discretionary trust, or where you become entitled to the property of a discretionary 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 discretionary settlement 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 from a discretionary trust set up by a will within two years of death, or transfers within three months of a ten-yearly charge. In such cases, hold-over relief is not available.

5. Certain occasions exempted from Inheritance Tax

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.

The most common case is where a qualifying beneficiary becomes entitled to the property of an accumulation and maintenance trust. Where the beneficiary already has an interest in possession, including a statutory interest effective from their 18th birthday, this is not an accumulation and maintenance trust.

WHICH TRANSFERORS AND TRANSFEREES QUALIFY FOR HOLD-OVER RELIEF?

The basic rule is that both the transferor and the transferee must be:

- an individual, or
- the trustees of a settlement.

Exceptionally, in Categories 1, 2 and 3 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, but not otherwise. Furthermore, in certain cases where the company is controlled by non-residents, relief is not available at all.

Relief for the transfer of shares or securities to a company is no longer available.

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 and to taper relief, 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.

Example 3

You sell a shop to your brother for £40,000 in June 2001. The shop was then worth £100,000. It cost you £23,000. Indexation allowance is £19,000. The chargeable gain before hold-over relief is £58,000. If you make a claim, then, subject to the availability of allowable losses and taper relief, 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 (excluding indexation) that you are allowed to deduct in your calculation of the gain. This may be affected by a previous hold-over claim.

RETIREMENT RELIEF

Where you qualify for retirement relief on a disposal, the amount of the retirement relief must be calculated before hold-over relief. If, but for retirement relief, the whole of your chargeable gain would qualify for hold-over relief, for example where you have given away your business assets or qualifying shares to individuals or to a trust, and there are no restrictions, the amount which is held over, and therefore the amount by which the cost to the person who acquires the assets is reduced, is the chargeable gain after deducting retirement relief. Please ask the Orderline for *Help Sheet IR289: Retirement relief and Capital Gains Tax*.

WHAT IF THE TRANSFEE 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 the Inland Revenue 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.

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 should 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 Help Sheet (on pages 6 and 7). 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 Orderline, but you can use photocopies if you wish.

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 the section on page 3, 'What if you receive some payment for the asset?'. 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.

You can get a copy of Statement of Practice SP8/92 from the Orderline. The main conditions, however, are incorporated in the claim form on pages 6 and 7 of this Help Sheet.

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, ETC, TO CHARITIES

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.

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 base cost, your calculation is based on what is actually paid to you.

Example 4

You sell a shop to a charity for £50,000. The shop was then worth £100,000. It cost you £23,000. Indexation allowance is £19,000. The chargeable gain is based on the sale price of £50,000, and is therefore £8,000.

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.

The Income Tax relief for certain gifts to charity is explained in leaflet IR178: *Giving shares and securities to charity*, available from the Orderline.

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.

**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 page 2 Categories 1 and 2), 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.

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 page 2.

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.

Claim for hold-over relief - Sections 165 and 260 TCGA 1992

Transferor		Transferee	
Name	<input type="text"/>	Name	<input type="text"/>
Address	<input type="text"/>	Address	<input type="text"/>
	Postcode <input type="text"/>		Postcode <input type="text"/>
Inland Revenue office	<input type="text"/>	Inland Revenue office	<input type="text"/>
Tax reference	<input type="text"/>	Tax reference	<input type="text"/>

Except in case of a gift in settlement, the claim must be made by both transferor and transferee. If the transferor or transferee has no Inland Revenue office or reference please explain why.

I/We hereby claim relief under Section 165/Section 260 TCGA 1992 in respect of the transfer of the asset specified below. The particulars given in this claim are correctly stated to the best of my/our information and belief.

Description of asset and date of disposal

The gain held over is £ A calculation is attached [✓] one box

We apply for deferment of valuations and have completed the second page of the claim form.

We qualify for relief because:

- the asset is used for the business of [✓] one box
Please insert name of person
- the asset consists of unlisted shares or securities of a trading company or holding company of a trading group
- the asset is agricultural land
- the asset consists of listed shares or securities of the transferor's personal company or, where trustees are the transferors, a company in which they had 25% of the voting rights
- the disposal was a chargeable transfer, but not a Potentially Exempt Transfer, for Inheritance Tax purposes
- Capital Taxes Office reference number
- the disposal was exempt from Inheritance Tax under IHTA Section
Please insert Section number

Signed Signed

Date / / Date / /

Request for valuations to be deferred

The disposal meets the conditions of Inland Revenue 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		Transferee
Signed	<input style="width: 100%; height: 20px;" type="text"/>	Signed	<input style="width: 100%; height: 20px;" type="text"/>
Date	<input style="width: 20px;" type="text"/> / <input style="width: 20px;" type="text"/> / <input style="width: 20px;" type="text"/>	Date	<input style="width: 20px;" type="text"/> / <input style="width: 20px;" type="text"/> / <input style="width: 20px;" type="text"/>

The details required are as follows; where estimated figures are used please use the codes at the bottom of the form.

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.

1	Date of acquisition and cost	<input style="width: 100%; height: 20px;" type="text"/>	£	<input style="width: 100%; height: 20px;" type="text"/>
2	Date and cost of additional allowable expenditure	<input style="width: 100%; height: 20px;" type="text"/>	£	<input style="width: 100%; height: 20px;" type="text"/>
3	Value at 31 March 1982 if relevant		£	<input style="width: 100%; height: 20px;" type="text"/>
4	Value of asset at date of transfer		£	<input style="width: 100%; height: 20px;" type="text"/>
5	Details of any relevant bonus issues or reorganisations if asset consists of shares or securities	<input style="width: 100%; height: 100%;" type="text"/>		
6	If the disposal is a part disposal, details of and value of part retained	<input style="width: 100%; height: 100%;" type="text"/>		

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 Inland Revenue
 - V: Valuation by professional valuer but not agreed by Inland Revenue
 - E: Our estimate of the value.
- Acceptance of the claim does not bind the Inland Revenue to accepting the values shown. The claimants are not bound by the values shown.