



# ESTATE & TAX PLANNING

December 2020



## What is a gift with reservation of benefit?

**When something is given away, but the person making the gift still retains the use of it, it is known as a gift with reservation of benefit (GROB).**

A GROB commonly occurs when parents give their property to their children but continue to live there. While the property legally belongs to the children, because a benefit was retained it will be included in Inheritance Tax (IHT) calculations on the parent's estate.

This is a common error committed by individuals who undertake perform do-it-yourself IHT planning, without professional advice. Sometimes cheap can become expensive.

### The legal definition of a GROB

A gift is subject to a reservation of benefit, if either of the following occurs in the seven years prior to the death of the person who made the gift:

- i) The person receiving the gift did not take possession of it or use it at the beginning of the seven-year period; or
- ii) There was a period during the seven years when the property was not used by the person who received it as a gift to the entire exclusion or virtually the entire exclusion of the person who gifted it.

The gift does not have to be property, it can be another valuable asset such as a piece of art or jewellery.

## Exceptions to the rule in respect of Inheritance Tax

There are a number of exceptions, including the following:

- If you pay a full market rent under a proper lease or tenancy agreement for the property after giving it away;
- If the benefit is very small, such as an occasional visit to a holiday home;
- If you gift a property that you have inherited as soon as it is transferred to you, even if you retain a benefit in it. The transfer must be done by Deed of Variation.

If you wish to make a gift but retain a benefit in it, it is recommended that you seek professional advice because of the tax implications of doing this.

### Potentially exempt transfers

If after giving away the property, you later also give up the benefit you have retained, at that point the gift becomes a potentially exempt transfer for Inheritance Tax purposes. This means that if you live for at least another seven years after giving up the benefit, Inheritance Tax will not be charged.

If you should die within the seven-year period, Inheritance Tax is payable on a sliding scale, with a higher amount payable during the first years, diminishing over time.

### Tax planning

Giving property and other assets away in order to try and avoid paying Inheritance Tax or other charges can be fraught with risk. As well as the

likelihood that Inheritance Tax will still be payable, the person gifting the property must be aware that they may lose a benefit on which they are relying.

For example, if a child goes through a divorce, they may be required to sell the property when their assets are divided. If the gift is made to try and avoid care home fees, it may be classed as a deliberate deprivation of assets and the local authority may be able to set aside the transfer and require payment of care home fees in any event.

Anyone can give away an asset but not anybody can give away an asset tax efficiently.

## Should I make all my children attorneys on my LPA?

**Your Lasting Power of Attorney (LPA) is an important document. It gives your chosen attorney the power to deal with your affairs on your behalf, should you lose the capacity to do so yourself. But is it a good idea to appoint your children?**

You can make an LPA giving someone the power to deal with your property and financial affairs and also an LPA in respect of your health and welfare.

Each LPA can have up to four attorneys. They can be required to act all together, so that they all have to approve each decision that is made on your behalf, or you can give them each the power to make a decision on their own.

You can also appoint a substitute attorney, should your first choice be unable to act when the time comes.

### Who should I choose as my attorney?

People often choose their spouse in the first instance, with children as their secondary choice.

You can also choose a close and trusted friend or other relative. If you do not have anyone to take on the role, it is also possible to appoint a professional attorney.

Whoever you choose, you should discuss the

appointment with them, to ensure that they are happy to take it on.

### Choosing your children as your attorneys

If you decide to appoint your children, you should consider whether you believe they will cope with the role.

If you appoint more than one, then you will also need to decide whether you want them each to have the power to make a decision unilaterally, or whether you want them all to agree on a decision before it can be taken.

Clearly, it will be important to take into account how well your children get along together. It may be better to just appoint one of them to act alone.

The job can be time-consuming and also require some financial acuity. It may be that one of your children is more suited to the role than another, simply because they have more time available or are more familiar with administrative tasks.

### Talking about the future

As well as discussing the appointment with your potential attorneys, you should also give them some guidance as to how you would like your affairs dealt with.

This can be particularly important in respect of a health and welfare LPA, where your attorney will be making decisions about where you live, your day-to-day living and your medical care. You can leave guidance about whether or not you want to receive life-sustaining treatment, should the time come, but it is often good to have a conversation with your family and your attorney in advance so that they understand your wishes.

Putting an LPA in place can give you the peace of mind of knowing that a trusted attorney will step in should you become unable to manage your own affairs. It will also make matters easier for your family, who would otherwise have to make an application to the court for the power to act on your behalf.

**If you would like to discuss your Estate & Tax Planning, call David on 020 8670 0917 or email him at: [david@marcus-bishop-associates.co.uk](mailto:david@marcus-bishop-associates.co.uk).**