RUDGE REVENUE REVIEW

ISSUE XXXV

MARRIAGE EXPENSES AND WEDDING GIFTS: THE APPLICATION OF INHERITANCE TAX

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29th July 2026

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WEDDING BREAKFASTS AND WEDDING GIFTS

1.1 The elaborate parties with which marriages are now normally celebrated have their origins in the 'wedding breakfast' which, until quite recently, took place from immediately after the marriage was solemnised until the mid- to late-afternoon. It was the parents of the bride who were the hosts at that celebration, organised it and decided whom to invite to the wedding and succeeding wedding breakfast (albeit with the input of the bride and groom to be) and it was the father of the bride who would pay for the celebration. In addition, the fathers of the bride and groom would often make substantial presents to help the newly married couple establish their new home.

1.2 That was the norm long after Capital Transfer Tax ('CTT')[1] was first imposed by the Finance Act 1975 ('FA') with effect on transfers made after 26th March 1974.[2]

ALIA TEMPORA, ALLI MORES

2.1 Now that people are marrying for the first time so late in life, it has become common for the couple being married to organise, and pay for, the celebrations of their own marriage and it is not uncommon for both sets of parents to make gifts to the couple to help fund the costs of the wedding celebrations which have become lengthier and more elaborate and therefore considerably more expensive than they were in 1974.

[1] As Inheritance Tax ('IHT') was called originally
[2] See FA 1975 s.19(1) and s.20(5)

2.2 The legislative provisions relevant to the application of Inheritance Tax ('IHT') to such expenditure have never wholly fitted the relevant social customs and have not been adapted to their new forms. In this Review, we examine the application of the relevant IHT provisions by reference to an example of the more traditional arrangement and to an example of the new form.

EXAMPLE ONE – A TRADITIONAL ARRANGEMENT

3.1 John and Jane Smith's daughter is to be married. She is 23 and her fiancé is 26. The Smith family is a traditional one.

3.2 Mrs Smith organises the wedding inviting members of the two families and their friends and the friends of their daughter and soon to be son-in-law. The costs of this celebration are £60,000 in total and they are borne, and paid for, by Mr Smith who enters into all contracts in respect of the necessary services for the wedding breakfast.

3.3 He also gives his daughter £60,000 to help fund her share of the cost of purchasing, jointly with her fiancé, a flat.

3.4 A year before the transfer, Mr Smith had settled £325,000[3] on discretionary trusts for a beneficial class consisting of his issue, born and to be born.

[3] He has also fully utilised his annual exemptions under Inheritance Tax Act 1984 ('IHTA 1984') s.19. All statutory references in this Review are to the IHTA 1984 unless otherwise stated

EXAMPLE TWO – A CONTEMPORARY ARRANGEMENT

4.1 James and Mary Brown's son is to be married. The Brown family takes a more contemporary approach to such matters.

4.2 Their son and his fiancé are both in their mid-thirties and organise their wedding themselves, contracting to hire a venue for what they call the 'wedding party' and for the supply of all necessary services and inviting the guests who mainly consist of their friends but include close relations and some of their parents' friends as well. They bear, and pay, the costs of the wedding of £90,000.

4.3 In anticipation of getting married, the couple decide to sell the flat which they own as tenants-in-common and to buy a small house as joint tenants.

4.4 Mr and Mrs Brown make a joint gift to their son and soon to be daughter-in-law of £120,000 as a contribution to the wedding costs and towards meeting the difference between the sale proceeds from the sale of the flat and the cost of the house.

4.5 A year before the marriage, Mr and Mrs Brown had each settled £325,000 on discretionary trusts for a beneficial class consisting of their issue, born and to be born.[4]

[4] They have also fully utilised their annual exemptions under s.19

CONSIDERING EXAMPLE ONE – A TRADITIONAL ARRANGEMENT

5.1 Let us look first at Mr Smith's payments in Example One. We shall start by considering his payments in respect of the expenses of the wedding breakfast.

EXAMPLE ONE - MR SMITH'S PAYMENTS OF THE EXPENSES OF THE WEDDING BREAKFAST

The practice of advisers

6.1 We cannot recall any tax specialist suggesting that such payments are to be treated as chargeable to IHT. Nonetheless, it cannot be said that it is obvious why it is commonly assumed that they do not give rise to transfers of value which are either immediately chargeable or potentially exempt.

Transfers before, on or after 18th March 1986

6.2 The provisions relating to potentially exempt transfers were inserted, as s.3A,[5] by Finance Act 1986 into what had, by then, been renamed the Inheritance Tax Act 1984,[6] with effect in respect of transfers of value made on or after 18th March 1986. So, if payments, such as those made by Mr Smith, were made before that date, were transfers of value and were not exempt transfers, they would have been immediately chargeable to IHT.

5 See para. 6.15 below

6 See footnote 3 to para. 3.4 above. The Act now called the Inheritance Tax Act 1984 had previously been named the Capital Transfer Tax Act 1984

6.3 The treatment of such payments made on or after that date would, depending upon the application of s.3A (Potentially Exempt Transfers),[7] be either immediately chargeable, or potentially exempt, transfers.

Transfers of value

6.4 Clearly, subject to the question of whether they fall within ss. 10-17 (Dispositions that are not transfers of value), Mr Smith's payments of the wedding breakfast expenses are transfers of value within s. 3 because ' *… the value of …* [Mr Smith's] *estate immediately after the disposition*[s] *is less than it would be but for the disposition*[s] *…'.*[8]

Dispositions which are not transfers of value?

6.5 Do any of ss.10 – 17 prevent the payments being transfers of value? The only ones which might apply are ss.10 and 11.

Section 10

6.6 We shall look first at s.10 which provides:

> *'(1) A disposition is not a transfer of value if it is shown that it was not intended, and was not made in a transaction intended, to confer any gratuitous benefit on any person and either—*
>
> *(a) that it was made in a transaction at arm's length between persons not connected with each other, or*

[7] See paras. 6.14 – 6.35 below
[8] IHTA 1984 s.3(1)

(b) that it was such as might be expected to be made in a transaction at arm's length between persons not connected with each other.

(2) …

(3) In this section—

- *"disposition" includes anything treated as a disposition by virtue of section 3(3) above;*
- *"transaction" includes a series of transactions and any associated operations.'*

6.7 Clearly, ignoring, for the moment, the provision as to associated operations, Mr Smith's payments of the expenses of the wedding breakfast fall within (1)(a). That is because they are made, under arm's length contracts, to the various suppliers of services necessary to entertain the wedding guests, none of whom, one presumes, was connected with Mr Smith.

6.8 They do not, however, seem to satisfy the condition that it can be shown that they were *'not intended, and …* [were] … *not made in a transaction intended, to confer any gratuitous benefit on any person …'*.[9] Mr and Mrs Smith's invitations to the wedding breakfast and its conduct by them are clearly operations effected with reference to Mr Smith's transactions with the wedding suppliers and are, therefore, associated operations in respect of those transactions.[10]

[9] See para. 6.6 above

[10] IHTA 1984 s.268

6.9 Taken together, therefore, his contracts with the wedding suppliers, the invitations to the wedding breakfast and its conduct are transactions, within the extended definition in s.10, which are intended to confer a gratuitous benefit on the wedding guests. Clearly,[11] when one entertains a person one provides them with the gratuitous benefit of the entertainment. The fact that one does so for one's own pleasure, if that is the case, cannot change the fact that one intends to confer a gratuitous benefit on the persons one entertains.

6.10 Yet this is a rather startling conclusion. For it is also one which will apply to many other occasions on which entertainment is commonly given. Many people entertain their friends and relations frequently.

6.11 If such expenditure on entertainment is a transfer of value, it cannot be exempted under the small gifts exemption (s.20) if it is not an 'outright gift'. We assume for the moment that it is not an outright gift and consider whether it is or not in considering below[12] the application of the provisions concerning potentially exempt transfers.

6.12 The expenditure might be exempted under the exemption for normal expenditure out of income,[13] assuming that the individual does indeed entertain his friends and relations frequently. That may well not apply, however, to an unusually lavish entertainment of a large number of people such as one might

[11] Whether one's guests enjoy the entertainment or not, attendance at it is voluntary and it will involve the free provision of food and drink. Objectively, there is a benefit to the guests from such provision, whatever degree of pleasure or boredom it may arouse in them

[12] See paras. 6.14 – 6.35 below

[13] s.21

make for a golden wedding anniversary or on reaching one's allotted span of three score years and ten.

Section 11

6.13 Nor does it appear that s.11 (Dispositions for maintenance of family) will apply to Mr Smith's payments of the wedding breakfast expenses (or indeed expenditure on many other infrequent and unusually lavish entertainments such as those to which we have referred above) because the conditions of s. 11 are narrowly focused on the maintenance of a spouse or of a child who is either a minor or is in full-time education.

Not potentially exempt transfers

6.14 If such payments are transfers of value and are not exempt transfers (which we consider below)[14] will they be immediately chargeable transfers or potentially exempt ones?

IHTA 1984 s.3A

6.15 Section 3A[15] provides:

'(1) …

(1A) Any reference in this Act to a potentially exempt transfer is also a reference to a transfer of value—

(a) which is made by an individual on or after 22nd March 2006,

[14] See paras. 6.36 – 6.41 below
[15] See para. 6.2 above

(b) which, apart from this section, would be a chargeable transfer (or to the extent to which, apart from this section, it would be such a transfer), and

(c) to the extent that it constitutes—

(i) a gift to another individual,

(ii) a gift into a disabled trust, or

(iii) a gift into a bereaved minor's trust on the coming to an end of an immediate post-death interest.

…

(2) Subject to subsection (6) below, a transfer of value falls within subsection (1)(c) or (1A)(c)(i) above, as a gift to another individual,—

(a) to the extent that the value transferred is attributable to property which, by virtue of the transfer, becomes comprised in the estate of that other individual, or

(b) so far as that value is not attributable to property which becomes comprised in the estate of another person, to the extent that, by virtue of the transfer, the estate of that other individual is increased, . . .

…

(4) A potentially exempt transfer which is made seven years or more before the death of the transferor is an exempt transfer and any other potentially exempt transfer is a chargeable transfer.

… .'

Gifts to an individual?

6.16 Mr Smith's incurring, and payment of, the expenses of the wedding breakfast are not settled gifts and so they could only be potentially exempt transfers if they were gifts to an individual[16] or were treated as gifts to an individual by IHTA 1984 s.3A(2)(b).

6.17 Is it possible that the incurring of these expenses or the payment of them are gifts by Mr Smith by virtue of his providing entertainment to his guests in respect of which, in order to provide it, he has incurred, and paid, these expenses?

No special statutory definition

6.18 No special definition of a gift is given generally for the purposes of IHT.

Ordinary English usage

6.19 The most apposite definitions of the word 'gift' used as a noun given by the Oxford English Dictionary online are:

> *'**1.2 Law***
>
> > *1.2.a. the transference of property in a thing by one person to another, voluntarily and without any valuable consideration.'*

[16] See para. 6.15 above

II. The thing given.

II.3.a. Something, the possession of which is transferred to another without the expectation or receipt of an equivalent; a donation, present.'

6.20 So, on the basis of these definitions, in ordinary English usage the transfer of a beneficial interest in some asset is of the essence of a gift.

Is the ordinary English meaning displaced by statute or case law?

6.21 Is there anything in the references to 'gifts' in the IHT legislation or in the cases concerning IHT which suggest otherwise?

The statutory context

6.22 Plainly, s.3A(2)(b)[17] extends the meaning of the phrase *'a gift to another individual'* and therefore of the word *'gift'* to some transfers of value which do not result in a transfer of the beneficial interest in an asset. The fact that s.3A(2)(b) has that effect, however, indicates that without such a statutory extension for these limited purposes the meaning of *'gift'* in this provision would not so extend.

6.23 It does not indicate that where *'gift'* is used in other parts of the Act, it can refer to dispositions which do not vest a beneficial interest in an asset in the donee nor does it indicate that references to a gift in s.3A(1)(c) and (1A)(c)(i) include

[17] See para. 6.15 above

references to a disposition which neither vests a beneficial interest in an asset in an individual nor meets the conditions of s.3A(2)(b).

6.24 Section 20 (Small gifts) refers to 'outright gifts' which implies that the word 'gifts' might encompass gifts which are not 'outright'. As we shall see,[18] s.22 (Gifts in consideration of marriage or civil partnership) also refers to outright gifts but also includes references to gifts under which *'the property comprised in the gift is settled by the gift'*. That might indicate that a gift which is not outright is one in which the whole beneficial interest is not vested absolutely in the donee. It certainly does not suggest that there can be a gift to an individual without a transfer of a beneficial interest in the subject-matter of the gift.

6.25 Section 23 (Gifts to charities or registered clubs) refers to *'property which is given to charities or registered clubs'* but excludes dispositions, the effect of which is deferred or defeasible. Again, that demonstrates that the word *'gift'* might otherwise refer to a transfer of the beneficial interest in property which is to take effect in the future or is defeasible but it does not suggest that a gift to an individual can include dispositions under which the individual does not acquire at any time any beneficial interest in the property which is the subject of the gift.

6.26 Section 42 provides that for the purposes of Part 2 Chapter 3 (which concerns the allocations of exemptions):

> *'(1)`In this Chapter—*

[18] See paras. 6.37 – 6.40 below

- *“gift”, in relation to any transfer of value, means the benefit of any disposition or rule of law by which, on the making of the transfer, any property becomes (or would but for any abatement become) the property of any person or applicable for any purpose;*
- *“given” shall be construed accordingly;*
- *“specific gift” means any gift other than a gift of residue or of a share in residue.’*

6.27 This provision is consistent with the view that a gift must involve the transfer of a beneficial interest in property.

6.28 Section 272(1) provides that, for the purposes of IHTA 1984 a ‘disposition’ *‘includes a disposition effected by associated operations’*. Could it be that, because his incurring, and paying of, the wedding breakfast expenses are associated operations with Mr Smith’s entertainment of the wedding guests that s.272(1) has the effect that the incurring, and paying of the expenses are gifts to the wedding guests for this purpose? In the authors’ view they are not because there is no property in which a beneficial interest is transferred to the wedding guests as a result of the entertainment and the transactions associated with it.[19]

[19] Even the beneficial ownership of the items of food and drink with which the wedding guests are supplied cannot be said to vest in the wedding guests. Before their consumption, the beneficial ownership of them remains with Mr Smith who permits their consumption. When they are consumed, no items of property are vested in the wedding guests. Rather the items of food and drink are incorporated into the guests and cease to have separate existence.

Case law - *HMRC v. Eversden*

6.29 Is there anything in the relevant case law which might extend the meaning of 'gift' in the IHT legislation to dispositions not involving the transfer of a beneficial interest in an asset? In the case of *HMRC v. Eversden & Eversden (Greenstock's Executors)*,[20] the Court of Appeal had to consider the meaning of the word 'gift' in FA 1986 s.102(1) concerning gifts with reservation which provides:

> *' "102. Gifts with reservation*
>
> *(1) Subject to subsections (5) and (6) below, this section applies where, on or after 18th March 1986, an individual disposes of any property by way of gift and* [various other conditions are satisfied] -
>
> *… .'*

6.30 The case concerned a transfer of value comprising a settlement of land on trusts conferring an interest-in-possession on the settlor's husband with succeeding discretionary trusts for a class of beneficial objects which included the settlor.

6.31 Giving the leading judgement, Lord Justice Carnwath explained that Counsel for HMRC, basing his argument on the decision of the House of Lords in *Ingram v. IRC*,[21] had submitted:

> *' … that the term "property" in section 102, in relation to a house, is not referring to the house as a physical object, but to "a specific interest in*

[20] *HMRC v. Eversden & Eversden (Greenstock's Executors)* [2003] EWCA Civ 668
[21] *House of Lords in Ingram v. IRC* [2001] AC 293

that property, a legal construct, which can co-exist with other interests in the same physical object".'

6.32 HMRC had argued, therefore, that the transfer into a settlement was not a single gift but four gifts of four separate interests corresponding to the interests conferred by the settlement on varying individuals and classes of individuals.

6.33 Lord Justice Carnwath rejected HMRC's argument and said:

'In any event, it is impossible to introduce such conceptual subtleties into s 102(5) without distorting the language. Rightly or wrongly (from the purist's point of view), the draftsmen clearly did find it possible to equate a disposal by way of gift with a transfer of value. That is the effect of posing, in the sub-section, the question whether the disposal by way of gift "is an exempt transfer", with specific reference to the provisions of Part II of the 1984 Act all of which are references to "transfers of value".

… .

If further support were needed for this view that the draftsmen of the 1986 Act did not share … [Counsel for HMRC's] … *conceptual problems, it may perhaps be found in IHTA s 3A (see above), as inserted by the 1986 Act, dealing with "potentially exempt transfers". Such a transfer is defined as "a transfer of value," subject to certain conditions, "to the extent that it constitutes…a gift to another individual…" By sub-section (2), a transfer of value is regarded as a gift for these purposes to the extent that either (a) "the value transferred is attributable to property* *which…becomes comprised in the estate of that other individual", or (b) "to the extent that, by virtue of the transfer, the estate of that other individual is increased." Although (b) may be seen as an extension of the normal meaning of "gift", (a) is wholly consistent with the interpretation which I would regard as the natural reading of s 102(5), and shows no difficulty in marrying the two concepts. Although the relationship is not spelt out in s 102(5) in the same detail, it would be surprising if the draftsman was intending to use the term "gift" in a radically different sense in two places in the same Act.'*

6.34 The case of *Eversden* does suggest that the word 'gift' in IHTA 1984 might include transfers of value which would not be characterised as gifts if the word gift is given a narrow sense, although the transfer considered in the case was clearly a settled gift. There is nothing in the case to suggest that the transfer of a beneficial interest in property is not essential to the meaning of a 'gift'.

Conclusion on whether the entertainment of guests at the wedding breakfast involves a gift to an individual

6.35 In our view, a gift to another individual within IHTA 1984 s.3A(1A)(c)(i) must involve a transfer of a beneficial interest in some property unless it falls within the provision of s.3A(2)(b). The incurring, and paying, of the wedding breakfast expenses do not fall within s.3A(2)(b) because they do not increase the estates of the wedding guests.[22]

Exempt transfers?

6.36 Are the wedding expenses exempt transfers within any of the exemptions conferred by s.18 – s.29A? The only exemption which might apply to these expenses is the exemption for gifts in consideration of marriage conferred by s.22.

6.37 From the first imposition of CTT, FA 1975 Sch. 6 para. 6 provided an exemption from CTT for gifts in consideration of marriage which, except for its extension to gifts in consideration of civil partnerships,[23] survives largely unchanged in IHTA 1984 s.22. Indeed, this exemption is far older than CTT/IHT itself for there was a similar exemption from Estate Duty provided by the Finance (1909 – 10) Act s.59(2).[24]

6.38 The relevant parts of s.22 provide:

[22] Might it be that, if the suppliers are individuals, s.3A(2)(b) will be satisfied by reference to them? The 'individual' referred to in s.3A(2)(b), however, is clearly a reference to the 'individual, first referred' to in that sub-section who is a person of whom it may be said the gift is 'to'. Clearly no gift has been made to the suppliers

[23] Made by the Tax and Civil Partnership Regulations, SI 2005/3229 regs 3 & 8 with effect from 5th December 2005

[24] With one important difference. See para. 6.39 below

'(1) Transfers of value made by gifts in consideration of marriage[25] or civil partnership[26] are exempt to the extent that the values transferred by such transfers made by any one transferor in respect of any one marriage or civil partnership (calculated as values on which no tax is chargeable) do not exceed—

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[25] In its Inheritance Tax Manual at para. IHTM14201, HMRC refers to a case concerning the Estate Duty Exemption (see para. 6.37 above) in which the House of Lords considered the circumstances in which a gift will be made *'in consideration of marriage'*:

> *'Rennell v IRC [1964] AC 173 was a decision on the marriage exemption for Estate Duty. The House of Lords held that a transfer had to satisfy three conditions to be accepted as made in consideration of marriage.*
>
> *The conditions are that*
>
> - *the transfer must be made on the occasion of the marriage or civil partnership (IHTM11032)* https://www.gov.uk/hmrc-internal-manuals/inheritance-tax-manual/ihtm11032
> - *it must be conditioned only to take effect on the marriage or civil partnership taking place, and*
> - *the transfer must be made by a person for the purpose of, or with a view to encouraging or facilitating, the marriage or civil partnership.*
>
> *The expression "on the occasion of the marriage" should be given its ordinary customary meaning. Transfers or settlements made after the marriage or civil partnership do not qualify for the exemption unless they were made to fulfil a binding promise made before the marriage or civil partnership. You may assume that there is a binding promise if the transferor definitely told the donee that they were going to make the transfer if the marriage or civil partnership took place.*
>
> *If the donor took steps towards making the transfer before the marriage or civil partnership, for example by instructing their solicitors or brokers, but the transfer is not completed until after the marriage or civil partnership, it does not qualify for exemption unless they told the donee about it before the marriage or civil partnership. Refer any case in which it is difficult to identify the transfer with the promise to your manager.*
>
> *If the marriage or civil partnership has taken place and the first condition is met, you may assume, unless there is evidence to the contrary, that the second condition is also satisfied. An example of such evidence could arise in the case of a transfer by way of settlement. The instrument could either confer an immediate unconditional beneficial interest in advance of the marriage or civil partnership or dispose of the settled property in some alternative way (otherwise than by way of reversion or resulting trust to the donor) if the marriage or civil partnership fails to take place.*
>
> *The last condition does not apply where the transfer is to one of the spouses or civil partners and to nobody else: Re Park (No. 2) [1972] 2 WLR 276; [1972] 1 AER 394'*

We should not dissent from HMRC's opinion given in this passage and we assume these conditions are satisfied in respect of the payments in our examples

[26] Words added with effect from 5th December 2005. See footnote 20 above

(a) in the case of gifts within subsection (2) below by a parent of a party to the marriage or civil partnership, £5,000,

(b) in the case of other gifts within subsection (2) below, £2,500, and

(c) in any other case £1,000;

any excess being attributed to the transfers in proportion to the values transferred.

(2) A gift is within this subsection if—

(a) it is an outright gift to a child or remoter descendant of the transferor or

(b) the transferor is a parent or remoter ancestor of either party to the marriage or civil partnership, and either the gift is an outright gift to the other party to the marriage or civil partnership or the property comprised in the gift is settled by the gift, or

(c) the transferor is a party to the marriage or civil partnership, and either the gift is an outright gift to the other party to the marriage or civil partnership or the property comprised in the gift is settled by the gift;

and in this section "child" includes an illegitimate child, an adopted child and a step-child and "parent", "descendant" and "ancestor" shall be construed accordingly.

> (3) *A disposition which is an outright gift shall not be treated for the purposes of this section as a gift made in consideration of marriage or civil partnership if, or in so far as, it is a gift to a person other than a party to the marriage or civil partnership.'*[27]

6.39 The first thing to notice is that the exemption for gifts by a parent is restricted to £5,000. That limitation has been unchanged since the introduction of CTT which first applied to transfers of value made by an individual after 26th March 1974.[28] The RPI has increased by approximately 1,450% since March 1974 and if the allowance had been increased by this amount it would now be roughly £77,500.[29] The equivalent Estate Duty exemption provided by the Finance (1909 – 10) Act s.59(2),[30] had no restriction upon its amount.

6.40 Even if the exemption were to apply to Mr Smith's payments of the wedding expenses, therefore, only £5,000 of the £60,000 he expends would be exempt. In fact, however, the payments will not fall within s.22 at all because they are neither outright, nor settled, gifts.[31]

6.41 So, it would appear, that Mr Smith, in respect of these payments, made immediately chargeable transfers of £60,000. Because he has made a chargeable transfer of £325,000[32] within the previous seven years an

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27 Section 22(4) contains various provisions relating to transfers of value made by way of settlement which are not relevant to our examples
28 See para. 1.2 above
29 A fine example of fiscal drag
30 See para. 6.37 above
31 See paras. 6.14 – 6.35 above
32 And has fully utilised his annual exemptions. See para. 3.4 above

immediate charge to IHT will arise. The chargeable amount will be 'grossed up' because the gift was not made on the basis that Mr Smith's daughter would bear the IHT chargeable on it.[33] Therefore, the IHT chargeable on the payments of these expenses will, in aggregate, be £15,000 ((£60,000 x 100/80) @ 20%) with further tax chargeable if he dies within seven years of incurring the expenses.[34]

An unpleasant surprise?

6.42 How many fathers, celebrating their daughter's wedding by giving a wedding breakfast, have considered whether they are making transfers of value immediately chargeable to Inheritance Tax in doing so?

CONSIDERING EXAMPLE ONE - MR SMITH'S GIFT OF £60,000 TO HIS DAUGHTER ON HER MARRIAGE

7.1 Turning now to Mr Smith's gift of £60,000 to his daughter on her marriage this is also, subject to the application of s.10 and s.11, a transfer of value. It was clearly intended to confer a gratuitous benefit on Mr Smith's daughter and so s.10 does not apply. It is clearly not for the maintenance of the daughter so s.11 does not apply.[35]

7.2 If it is not exempt, therefore, it will either be an immediately chargeable transfer or a potentially exempt one.

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33 As it is unlikely that either she or Mr Smith considered the application of IHT to it
34 IHTA 1984 s.3A(4)
35 See paras. 6.5 – 6.13 above

7.3 The only exemption in s.18 – s.29A which might apply is the exemption for gifts in consideration of marriage. As it is an outright gift by a parent of a party to the marriage to that party the exemption will apply but only as to £5,000.[36] The excess of the transfer of value arising by reason of the gift over this amount will be a potentially exempt transfer because it is made by an individual and constitutes a gift to another individual.[37]

7.4 If Mr Smith dies within seven years of making this gift it will become chargeable at rates which will depend upon what period after the gift he dies.[38] Because the gift does not bear its own tax it will be necessary to make a grossing up calculation.

CONSIDERING EXAMPLE TWO – A CONTEMPORARY ARRANGEMENT

8.1 When Mr and Mrs Brown make their joint gift of £120,000 to their son and soon to be daughter-in-law, they each, subject to the application of s.10 – s.17, make a transfer of value of £60,000.[39] For the reasons explained above in respect of Mr Smith's gift of £60,000 to his daughter, ss.10 – 17 will not apply to these gifts,[40] the gifts will each be exempt as to an amount of £5,000[41] as gifts made in consideration of marriage and the excess of the gifts over this amount will be potentially exempt transfers.

[36] See paras. 6.37 – 6.40 above
[37] See para. 6.15 above
[38] IHTA 1984 ss.3A(4) and 7(4)
[39] See para. 6.4 above
[40] See para. 7.1 above
[41] See paras. 6.37 – 6.40 above. It should be noted that because Mr and Mrs Brown have made a joint gift and, thereby, have each made a transfer of value, each transfer of value is exempt as to £5,000 because of the application of the exemption for gifts in consideration of marriage. Thus, by both parents making a gift, the exemption is maximised

8.2 If either Mr Brown or Mrs Brown were to die within seven years of the gifts being made, the transfer of value by the deceased would have proved to be chargeable with the same considerations as to the applicable rate of tax and grossing up as we have examined in respect of Mr Smith's gift to his daughter of £60,000.[42]

CONCLUSION

9.1 It is perhaps not surprising that outright gifts to children on marriage should be exempt under the exemption for gifts in consideration of marriage to a limited extent and should be potentially exempt transfers as to the balance. What is surprising, in view of common practice, is that parents giving a traditional wedding breakfast are making immediately chargeable transfers in incurring the expenses of doing so.

[42] See para. 7.4 above