

Lifetime gifting: Consider practicalities, not just tax

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Giving away farming and other assets without thinking through the day to day and longer term consequences can simply mean swapping a potential tax problem for a raft of other complications, warn advisers. The costs of keeping and managing those gifts needs to be thought about, as well as how family dynamics and site specifics will affect this.

Can the recipient afford it?

Think carefully about what a gift may impose on the recipient - property assets come with responsibilities, such as maintenance and repair, cautions Peter Thomas, head of land management at Strutt & Parker's Exeter Office.

"We have seen cases where potential recipients have had to decline valuable property because the repair liabilities were too high because of its listed status"

Giving an asset to several people

If an asset is being given to more than one recipient, think about how decisions might be made about that asset and how it is to be managed in future, says Peter. He gives the example of a cottage given to three siblings. "What happens if two want to sell it in the future and one of them doesn't? These questions are not just hypothetical - they can become real sources of conflict over time. There are solutions but sometimes its just worth paying the tax."

Similarly, how should let land be managed if its ownership is transferred to more than one person? "One solution might be to set up a business structure where all the siblings operate collectively. This avoids the tenant ending up with more than one landlord. It also helps in situations such as investment being needed" says Peter. For example, if there are three joint owners of land requiring an investment of £21,000 and the land is managed through one entity, such as a company, which governs cash in and out, then that entity pays for the investment with a decision reached under the structure that has been put in place. "Otherwise, you may have three siblings each needing to put in say £7,000, with two being able to afford it and the third not able to come up with the case."

Similarly, where in-hand land is gifted to new joint owners, a structure should be established that helps to guide decision-making and sets out how to resolve difficulties.

Make the gift valid

A gift of property interest can be either a Land Registry transfer or an equitable assignment, says Jeanette Dennis, a partner with Ashtons Legal. “The latter does not have to be registered at the Land Registry. An equitable assignment by way of a deed still services as an effective gift for tax planning but avoids the need to alter the legal registered title. It is recognised by courts, and can also be a useful way for partnership property to be moved between generations” says Jeanette.

“Any gift should be by deed - be clear in terms of who is giving the property (including whether or not it is in the partnership), who the recipient is (and whether it is remaining as partnership property), the date of the gift, and have a plan attached that clearly defined the extent of the property and all rights and easements. The plan ideally should be Land Registry-compliant.

“We advise famers to first get full tax advise, but thinking of what does and doesn’t work on the ground is equally important,” adds Jeanette. “Also think about time frames for payment of tax by the donor. For example, there is a different set of tax rules and timings for gifting residential properties than for pure agricultural land. “Start off questioning whether you can afford to make the gift(s), and what are the tax and practical consequences: ask those “what if” questions - consider what might happen in the life of the recipient.”

HOW TO ORGANISE GIFTS WITH RESERVATION OF BENEFIT

The gifts with reservation of benefits (Grob) rules require that once an asset has been transferred, the donor should no longer derive any benefit from it. If HMRC determines that someone has given away but retains a benefit in an asset, it may be treated as part of the donor’s estate for inheritance tax (IHT) purposes.

A classic example of a Grob is for someone to continue living in a house

that they have already given away. The IHT potential of this can be managed by the giver paying a market rent to the new owner for their share of the accommodation. It is important that any money paid to recognise this benefit is paid to the correct person or entity, so this should be checked out.

Evidencing that a market rent has been paid every year is also important. “Set up a bona fide tenancy agreement,

which provides for regular rent reviews and document rent payments. Undertake reviews in good faith, ideally at arm’s length through an agent,” advises Peter.

Continued use or enjoyment of valuable furniture or other gifted personal assets also needs to be considered for IHT purposes, as do benefits such as the value of private water supply.

Restrictive covenants can help

Restrictive covenants which limit the use of land or property can be used to prevent unwelcome post-gift impacts, such as changes of use, for example, to intensive pigs or poultry, large extensions, new buildings overlooking another house, subdivision into multiple dwellings, or wider developments. “Measures like this can protect the donor and the remainder of the farm if properly worded,” says Jeanette.

She points out that in limited circumstances it is possible to vary or even remove covenants, also that imposing a covenant may reduce the value of gifted property. To assess the value of the gift for inheritance tax (IHT) purposes, she suggests that a Royal Institution of Chartered Surveyors “Red Book” valuation is advisable, if tax is likely to be payable now, such as on houses, or for land, at least a market appraisal letter from a suitably qualified valuer.

Personal financial security

The proposed changes to IHT relief are a strong driver to act, but this can lead to the personal financial security of the giver being overlooked. “Don’t ignore your own needs,” says Peter. “This includes your own eligibility for APR or BPR, so assess the potential impact of your planned gifting - on your living and financial requirements, too.”

Overages and clawbacks

Those making gifts often struggle to be “fair” to children and other recipients. One option is to make gifts with provisions, so that if their value rises (for example, through the grant of planning permission on land), then the profit above the original value is shared more widely.

Family friction and surprises

The process of preparing for gifting and succession, accelerated by the IHT relief cuts, can uncover a range of pressures, emotions and facts that are, in some cases, causing family friction. Recent examples include parents discovering that one of their adult children is an undischarged bankrupt. This is someone who’s bankruptcy is ongoing and is therefore subject to restrictions and to possible claims on assets they receive in some cases. “You can’t transfer assets to an undischarged bankrupt without taking into account all the implications” says Jeanette. Potential gifts to those with drug or mental health challenges, or a failing or oppressive marriage, are also complex but can be addressed through perhaps a discretionary trust, with a detailed letter of wishes to benefit a range of family members, she says.

PRACTICALITIES WHEN PROPERTY IS GIVEN

Transferring rural residential and other property can raise several practical issues, including:

- **Access** Is there direct access to a public highway from the gifted property, is a new access needed and, if yes, is it sensible to consider making this distinct from the farm? This point is important for the sake of both the owners and occupants of the gifted house as well as for the farm – ownership of either may change in future and so might the uses and relationships. Who will pay for the creation, maintenance and repair of any new access should also be considered, points out Jeanette Dennis of Ashtons Legal.

- **Utilities** Where do these come from and run to, are they attached to the farm in any way? Are they separately metered?

- **Private water supply** Is this metered, how will charges and

payments be organised, who will be responsible and pay for testing and maintenance?

- **Private sewage and foul water drainage** The implications and status of any setup must be considered for both the gifted property and any associated neighbouring property.

- **Boundaries** These need to be properly defined and obligations for maintenance and repair made clear.

- **Lift and shift clauses** These retain the right for the giver, who will become the previous owner, to enter the gifted land/property to carry out necessary re-routing of services such as water pipes and cables.

- **Licences** When transferring land, administrative details such as licences and permissions may need to be transferred too. For example, where land has abstraction rights, the licence will need to be transferred into the name of the new owner.