

CHAPTER 25

GIFT RELIEF: FURTHER ASPECTS

25.1 Residence status of the donee

A gift relief claim can only be made if the **donee** (the recipient) is either **resident or ordinarily resident** in the UK.

[TCGA 1992, s. 166\(1\)](#)

To be within the charge to UK capital gains tax, an individual must live in the UK. HMRC will not allow a capital gain to be deducted from the base cost of an asset owned by somebody who is outside the scope of UK CGT.

Once a gift relief claim has been made, the **deferred gain is clawed back if the donee emigrates within six tax years**. If a donor gifts an asset to a donee and a gift relief claim is made, if the donee leaves the UK within any of the following six tax years, the deferred gain is **charged on the donee at the date of his emigration**.

[TCGA 1992, s. 168](#)

This rule can present HMRC with a problem, because the person who now has a CGT liability - i.e. the donee - no longer lives in the UK, and therefore collection of the capital gains tax could be difficult. Therefore if the **donee fails to pay the capital gains tax within 12 months** of the normal due date, HMRC have the **right to pursue the donor** for the donee's tax.

Illustration 1

A donor gifts a business asset to a donee in March 2006. The donor makes a capital gain of £20,000, and a gift relief claim is made to defer this gain. In July 2010, the donee leaves the UK permanently. Because the donee has emigrated within six tax years of receiving an asset on which a gift relief claim was made, the deferred gain - i.e. £20,000 - becomes chargeable on the donee in 2010/11 - i.e. the year of emigration.

As this is a gain in 2010/11, the CGT is payable no later than 31 January 2012. However, at this point the donee will be living in another country and may not feel inclined to pay his UK tax bill.

HMRC will wait for 12 months - i.e. until 31 January 2013. At this point, HMRC can write to the donor and ask him to pay the donee's tax. Note that this will **not change the amount of tax due**, which will have been **calculated using the donee's rates and annual exemption etc.**

These rules **do not apply if the donee leaves the UK on a full-time contract of employment and returns to the UK within three years**. Neither do the rules apply if the donee had sold the asset prior to his emigration.

25.2 Payment by instalments

In the chapter on "earn outs" and deferred consideration, we mentioned that an individual can make an election to pay his capital gains tax in instalments. Under s.280, if a vendor receives his consideration in instalments, and the instalment period exceeds 18 months, it may be possible to spread the CGT due over a period which cannot exceed 8 years.

[TCGA 1992, s. 280](#)

There is another instance when capital gains tax can be paid in instalments, this time under s. 281 TCCA 1992. S. 281 applies if a **donor gives away an asset and cannot claim gift relief** to defer the capital gain. If the donor **makes an election, the CGT due can be paid in ten equal annual instalments**. Typically this will be the case when the donor gives away a non-business asset and cannot claim gift relief under s. 165.

[TCGA 1992, s. 281](#)

[TCGA 1992, s. 281\(2\)](#)

The instalment option is only available in respect of gifts of **certain assets**. CGT due in respect of gifts of **land and buildings** can be paid in instalments. For example, if a donor gives away a building which is not used for the purpose of a trade, because no gift relief will be available, the CGT can be paid in instalments under s. 281. The reason behind the legislation is that the donor does not have any cash to pay the capital gains tax, so HMRC will accept the tax in instalments.

[TCGA 1992, s. 281\(3\)](#)

Tax on gifts of shares in **unquoted companies** can also be paid in instalments. Tax on gifts of **quoted shares** can only be paid in instalments **if the donor controls the company** - i.e. the donor has more than 50% of the voting rights. Unquoted shares or shares in a personal company are usually qualifying assets for gift relief purposes, but only if the company is a trading company. Therefore when an individual **gives away shares in an investment company he will usually be able to pay his tax in instalments**.

Although HMRC are happy to accept payment of tax in ten equal instalments, these **instalments will be interest-bearing**. This means that interest on the unpaid balance of tax will be added to each annual instalment.

[TCGA 1992, s. 281\(6\)](#)

Illustration 2

In May 2010, Rita gives a building to her daughter Jennifer that had cost her £80,000. The building is a non-business asset. The building is worth £200,000 in May 2010, leaving Rita with a capital gain, of £120,000. As this is a non-business asset, gift relief is not available.

	£
MV	200,000
Cost	<u>(80,000)</u>
Gain	<u>£120,000</u>
CGT due	
£(120,000 - 10,100) @ 18%	<u>£19,782</u>

Rita therefore has capital gains tax of £19,782 to pay no later than 31 January 2012.

Rita can make an election under s.281 to pay her tax in instalments. This is because tax is due on a gift of a qualifying asset - i.e. land or buildings - and no gift relief is available. Assuming Rita makes a claim under s. 281, she will pay her tax in ten annual instalments starting on 31 January 2012.

The second instalment will be due on 31 January 2013. This will be another 10% of the tax being £1,978. However, because the instalments are interest-bearing, HMRC will **add on one year's interest on the unpaid balance of tax** at 31 January 2013 of £17,804.

31 January 2013	£
Tax	1,978
Interest on £17,804 @ 3% (assumed)	<u>534</u>
	<u>£2,512</u>

This will happen each year until the total tax has been discharged. Finally here, **if Jennifer sells the asset, any tax unpaid** by Rita, together with any accrued interest, becomes **due and payable** and the instalment option ends.

Tax can also be paid in instalments if the donor has made a gift relief claim, but there is still a chargeable gain remaining after the relief has been given. This may apply as the donor is gifting shares in his personal trading company, but as the company holds non-business assets, gift relief is restricted under the $\frac{CBA}{CA}$ rule.

25.3 Partial business use

Gift relief is **restricted** if an asset is partly used for business and partly **used for non-business purposes**. Section 165 only gives relief for gifts of business assets, therefore some apportionment will need to be made if an asset is partly used for non-business purposes.

For example, a trader uses 75% of a building for business purposes and 25% for non-business purposes. The donor gives the building away, and has a capital gain on the disposal. 75% of this gain can be deferred under the gift relief rules, because 75% of the asset was used for business purposes. The remaining 25% of the gain is immediately chargeable and CGT will be payable. In this instance, it would be possible for the donor to pay this tax in instalments.

[TCGA 1992, Sch 7 para 5](#)

A similar apportionment needs to be made if an asset was not used for the purposes of a trade for part of the donor's ownership period. This would apply if a shop was originally used for business purposes, then fell into non-business use before it was given away. The gain arising in the business period would qualify for gift relief, whereas the gain arising in the non-business period would be immediately chargeable. When calculating the business and non-business proportions, any business or non-business use of an asset before 1 April 1982 can be ignored.

[TCGA 1992, Sch 7 para 6](#)

Example 1

Steve bought a business asset in 1995 and gave it to his brother Karl in March 2007. A joint claim was made to defer the gain of £20,000.

In January 2011, Karl emigrated to Australia. Which of the following statements is true?

- a) The gain of £20,000 is charged on Steve in 2006/07
- b) The gain of £20,000 is charged on Karl in 2006/07
- c) The gain of £20,000 is charged on Steve in 2010/11
- d) The gain of £20,000 is charged on Karl in 2010/11

Answer 1

The answer is **D**

The gain is charged at emigration, i.e. 2010/11, and is charged on the donee, i.e. Karl.

If Karl fails to pay the tax within one year, HMRC can collect it from Steve.