

# Main Residence - Concession to the Gifts with Reservation of Benefit rules

This technical note explores the rules around gifts with reservation of benefit ('GROB'), what can be done to counter these and situations where you can gift a share of a main residence away, not pay a full market rate of rent and the gift not be deemed a GROB for IHT purposes.

When considering 'gifting' solutions for clients to aid in reducing their potential Inheritance Tax ('IHT') liability, it is generally perceived that the gift will be outside of the donor's (person making the gift) estate if the donor survives 7 years from the date of making the gift.

This is of course not the only condition that needs to be met in order for the gift to be IHT efficient. There are rules set out in section 102 of the Finance Act 1986 that ultimately stop you from gifting assets away, retaining the enjoyment or benefit of them and also obtaining an IHT benefit after 7 years from the date of the gift.

In practice, one of the common scenarios in which a GROB arises is where parents put their house into their children's names who all live elsewhere but continue to occupy the property gifted rent free. Regardless of whether the parents survive 7 years from the date of the gift, the property will remain as part of their estates for IHT purposes when they die.

This is because they continue to benefit from the gifted asset by residing in the property rent free and are therefore caught by the GROB rules.

## Main Residence - Exception to the GROB rules: s. 102(b)(iv) Finance Act 1986

As illustrated earlier, if the owner of a main residence gifts the property to another and continues to live there, the gift will not be effective for IHT purposes. However, section 102(b)(iv) of the Finance Act 1986 introduces a concession to the GROB rules with regard to the main residence and applies to gifts made on or after 9th March 1999.

The legislation states that if an individual makes a gift of an undivided (meaning not the whole thing!) share of his main residence to another person and continues to reside at the property, the gifted share will not be caught by the GROB rules so long as the criteria listed below are adhered to.

1. the donor must gift a share but not the whole of their main residence
2. the recipient must be an 'occupier' of the property
3. the donor must continue paying at least their own share of the outgoings
4. these criteria must be adhered to until death (not just 7 years)
5. the gift must be absolute, i.e. not in trust

## Gift of an undivided share

It is important to highlight that for the concession to the GROB rules to apply, the client must only gift a share of the property to a chosen beneficiary absolutely and retain some benefit.

This means that technically, the donor could retain just 1% of the property after making the gift but it is worth noting that HMRC is likely to challenge any person making a gift of more than 50% of their property as they deem the disposal of more than 50% as aggressive tax planning.

Nevertheless, this is all within the legislation.

## Occupation

Noting the recipient must 'occupy' the property to avoid the GROB, this is an easy test where the occupier lives there full time. It should also be noted that it is possible in the eyes of the legislation to occupy more than one property at the same time.

The test as to whether somebody is occupying is clearly fundamental and where the occupier usually lives in another property, then the test as to the occupation is always going to be an evidential one. The test is likely to be satisfied where, for instance, there is a gift of a share of the main residence to a child who visits the property on a regular basis, is able to come and go as they please, have their own key and leaves their possessions at the property.

There does of course need to be more than mere storage of items at the property and so an occupier having their own bedroom and being able to come and go as they please would certainly make the test easier to satisfy.

## Outgoings

The outgoings are also essential in that the recipient of the gift must not pay more than what their share would suggest. For example, if your client gifts a 40% share of their main residence to their daughter who lives with them, they should ensure that they pay at least 40% of the household outgoings.

In other words, the donor must not 'benefit' from the arrangement by allowing the recipient to pay a higher amount of the outgoings than their share would suggest they have to.

For simplicity, if the donor currently pays all of the outgoings, it would be easier of that continued to be the case even after the gift, it is not a problem that the donor pays more than their share, the problem is where they pay less.

## Adherence until death

Finally, the donor of the gift must live for 7 years after the gift of a share of the property is made to ensure that the gifted share is outside of their estate for IHT purposes.

It needs to be remembered however, that the GROB rules apply as at the date of death, meaning that they look backwards 7 years from the point of death.

What this means, is that if the 7 years has passed since the gift without a reservation, such that the gifted asset is now outside of the estate for IHT purposes, any reservation of benefit from that point onwards, would mean the gifted asset would again spring back and form part of the estate of the donor for IHT purposes.

It is therefore critical to ensure that the 3 key points above are adhered to until death, a reservation of benefit 20 years after the gift would bring it back into the estate of the donor for IHT purposes! If the recipient of the gift moves out of the property, the donor of the gift must have a lease or tenancy agreement relating to the gifted share and he must pay a true market rate of rent which must be reviewed and kept up to date.

## Example

In 2004 Alan gifts a 40% share of his main residence to his daughter Charlotte and they both continue to reside at the property until 2020 when he passes away.

Charlotte was always paying for all utilities and household outgoings.

She now wants to know whether the 40% share of the property gifted to her is excluded from the value of her late father's estate for the purpose of calculating IHT.

## Answer

Despite surviving 7 years from the date of the gift, Alan failed to meet one of the criteria of section 102(b)(iv) of the Finance Act 1986 which required him to pay at least a 60% share of all household outgoings and therefore the full value of the property will be deemed in his estate for IHT purposes, not just the retained 60%.