

Inheritance Tax: Gift with reservation and spouse exemption

1. Property subject to a reservation at the donor's death is treated by FA 1986 s 102(3) as:

"property to which he was beneficially entitled immediately before his death"
2. IHTA 1984 s 4 requires tax on death to be charged as if the deceased had made a transfer of value and:

"the value transferred had been equal to the value of his estate immediately before his death"
3. IHTA 1984 s 5(1) provides that a person's estate is:

"the aggregate of all property to which he is beneficially entitled"
4. A chargeable transfer is a transfer of value which is not an exempt transfer.
5. IHTA 1984 s 18(1) provides that a transfer of value is an exempt transfer:

"to the extent that the value transferred is attributable to property which becomes comprised in the estate of the transferor's spouse"
6. It follows that spousal relief applies to settled property subject to a reservation if on the death of the settlor the settlor's spouse becomes beneficially entitled to the property under either:
 - (a) The original terms of the settlement; or
 - (b) A subsequent appointment made thereunder and prior to the settlor's death.
7. The same would apply where the spouse's entitlement on the death of the settlor is to a qualifying interest in possession, i.e. to an interest in possession to which IHTA 1984 s 49 applies.
8. It is not considered spousal relief applies where settled property ceases to be subject to a reservation inter vivos. This is because FA 1986 s 102(4) operates by deeming there to be a PET rather than by deeming the donor to be beneficially entitled to the gifted property.

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