INHERITANCE TAX AND CAPITAL GAINS TAX CONSIDERATIONS WHEN MAKING GIFTS

Inheritance tax (IHT) and Capital Gains tax (CGT) become payable upon the making of some gifts or upon the transfer of assets into a trust or transfers out of some trusts.

Gifts to individuals

Gifts to individuals will be exempt from IHT provided the person making the gift survives for seven years. If the person making the gift dies within seven years of making the gift IHT may be payable depending upon what allowances and reliefs are available. If an asset has increased in value since the person making the gift first acquired, there may also be capital gains tax to pay when the gift is made. CGT is not payable on gifts of money and is not payable upon most small gifts of chattels (e.g. personal possessions etc.) if the value of the chattel is less than £6,000.00 but may be payable in respect of gifts of valuable chattels (subject to certain exemptions), shares, land or other real property. The amount of tax payable is subject to whatever reliefs and allowances may apply.

Payments to companies or organisations e.g. payment of school fees for grandchildren paid directly to the school

These types of payments are called immediately chargeable transfers and although they are intended as gifts to an individual they do not have the benefit of the same exemptions because the payment is not made directly to the individual but instead to a company or organisation on behalf of the intended beneficiary of the gift. Depending upon what allowances and reliefs may be available IHT may be payable immediately on the value of the "gift" at the lifetime rate of 20% and if the person making the gift dies within seven years of making it then that tax rate will increase to the death rate of 40% (less the 20% lifetime tax already paid). Most gifts of this type will be monetary and so CGT will not apply but if there is a transfer of an asset rather than cash the same rules apply as gifts to individuals.

Transfers or Gifts into or out of trusts

Since 22nd March 2006 all gifts into a trust created during the settlor's lifetime are immediately chargeable transfers for IHT purposes. Tax will be payable at the lifetime rate subject to any exemptions and allowances that may be available and the death of the settlor within seven years of making a gift into trust will increase the tax payable to the death rate less any lifetime tax already paid. Although the transfer into trust would usually give rise to CGT (unless the gift is monetary) you are able to "hold over" the gain but to do so would need to make a formal application for holdover in accordance with the relevant time limits etc. When the beneficiary of the trust then becomes absolutely entitled to an asset of the trust IHT and CGT may be payable, but the CGT could be held over again subject to another formal application for holdover being made in accordance with the relevant time limits. When the asset is eventually sold or transferred from the beneficiary to another individual or company all of the held over Gain will be subject to CGT subject to any available allowances or reliefs. If Trustees sell a trust asset CGT may be payable and it may be worth considering transferring the asset to a beneficiary or beneficiaries before sale and claiming holdover relief to reduce the amount of CGT that would otherwise be payable by utilising the beneficiaries' own CGT allowances (which are higher than the allowances available to trusts).

Trusts that have been created by a will are not subject to CGT when they are created but upon transfers out of the trust, sale of assets by trustees or upon a beneficiary becoming absolutely entitled to a trust asset CGT may be payable subject to any available exemptions and reliefs and the possibility of claiming holdover relief as set out above. IHT may also be payable in respect of transfers out of this type of trust or upon a beneficiary becoming absolutely entitled to a trust asset subject to the allowances that may be available.