

This was not seasonal goodwill!

(Lecture P1077 – 13.19 minutes)

Over the course of the recent Christmas holiday season, the newspapers became more than a little exercised about HMRC's apparent pursuit of wealthy Brexit supporters who had made large donations to the 'Vote Leave' campaign. So now might be an appropriate time to remind ourselves of exactly how the IHT rules work.

IHT is a tax on deceased persons' estates and, in some cases, it can also be a tax on lifetime gifts. It is this latter aspect that is relevant here.

The basic rule is that, if a person's estate is diminished by anything that he does (or deliberately fails to do), he is likely to have made a transfer of value. In this situation, it is then necessary to consider whether the transfer of value can be classified as a 'chargeable transfer', given that IHT is only levied on transfers which fall into this latter category.

Any action taken which is not intended to confer a gratuitous benefit on someone (like purchasing an asset from a friend at what is considered to be a fair market price) is not usually a transfer of value and so falls at the first hurdle. And gifts made to individuals are not treated as chargeable transfers, provided that the donor survives for seven years from the date of the gift.

It is gifts made to 'non-natural persons' such as trusts, companies, organisations and associations that typically can give rise to IHT problems. If, in any seven-year period, such gifts exceed £325,000, tax is payable at 20% on the excess. And it can sometimes be more than this – see below. Gifts (whether or not the £325,000 limit has been reached), where they have been made within seven years of the donor's death, also have a knock-on effect on the IHT payable on the death estate. As a result, the IHT liability on the deceased's estate will usually be greater.

Of course, some categories of gift to 'non-natural persons' are exempt. These include, inter alia, gifts to charities and to political parties. However, gifts to political parties only qualify provided that they managed to have at least two MPs elected at the most recent General Election (or one MP and the party received 150,000 votes or more in total) – thus the Green Party are included, but UKIP are not. Campaigning organisations and pressure groups that are neither charities nor qualifying political parties do not count. The 'Vote Leave' campaign falls under this heading and that is where the problem has arisen.

None of this matters as long as the chargeable transfers over the last seven years do not exceed £325,000 and the donor survives seven years. But it appears that a number of individuals who made substantial donations, particularly to 'Vote Leave' during the EU referendum campaign, may have overlooked the need to make appropriate returns (Forms IHT100 and IHT100a) and have consequently found HMRC coming after them. It should be noted that, although the headline rate of IHT on lifetime gifts is 20%, the tax – where paid by the donor – is calculated on a grossed up basis and so becomes 25% of the sum donated.

Some donors have been crying foul, contrasting HMRC's assiduousness in collecting IHT in respect of 'Vote Leave' donations with their failure to pursue a similar path with the 'Vote Remain' supporters and thereby implying a political agenda.

In fact, wealthy benefactors of the 'Vote Remain' campaign would be in exactly the same tax position as their 'Vote Leave' opponents. The truth of the matter is that much of the money raised by 'Vote Remain' came from public companies rather than well-heeled individuals that involves completely different tax considerations. This is the real reason for HMRC taking the actions that they did.

There was an interesting postscript to this debate when the Daily Telegraph reported in January 2018 that the Chancellor was said to be 'sympathetic to looking carefully' at the dilemma so that, in future, large-scale donations to referendum campaigns by private individuals would not be subject to IHT. However, any change in the law as a result of this rethink will not affect the present tax demands that run into millions of pounds.

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