

Transfers between siblings (Lecture P1334 – 14.56 minutes)

Background

On 7 July 2022, the government published new IHT [inheritance tax] legislation, the Inheritance Tax Act 1984 (Amendment) (Siblings) Bill. This Bill amends IHTA 1984 to make transfers between siblings exempt in certain circumstances.

Current legislation

The IHT exemption for transfers between spouses or civil partners (in IHTA 1984, s 18) is generally well-known among taxpayers and IHT practitioners alike.

The same can probably be said about the transferable nil rate band facility for spouses and civil partners (in IHTA 1984, ss 8A-8C). The legislation in both instances is specifically aimed at spouses and civil partners.

In *Holland (executor of Holland, deceased) v IRC* [2003] STC (SCD) 350, the taxpayer wasn't married to the deceased, but they had lived together as husband and wife for 31 years, before his death in April 2000. A claim for the spouse exemption was refused by the Revenue. The taxpayer appealed, contending that the spouse exemption wasn't restricted to those who were legally married, but also included those who had lived together as husband and wife. Alternatively, the taxpayer argued that refusal to grant the exemption breached Article 14 of the European Convention on Human Rights, which prohibits discrimination. Unfortunately for the taxpayer, their appeal was unsuccessful on both grounds.

Subsequently, in *Burden & Burden v United Kingdom* [2008] STC 1305, two unmarried sisters had lived together for many years in a house which they owned jointly. Each had made a will leaving her interest in the property to the other. The sisters applied to the European Court of Human Rights complaining that an IHT liability could arise on the first sister to die, whereas the liability would not arise in the case of a married couple or civil partners due to the spouse or civil partner exemption. The sisters argued that this amounted to a violation of their human rights. However, the court held that the relationship of siblings was fundamentally different from that of marriages or civil partnerships, and it followed that there was no discrimination and no violation of the sisters' convention rights.

OTS report

Over a decade later, in July 2019, the Office of Tax Simplification [OTS] published its second report on IHT simplification. This OTS report observed that from 1996 to 2017 the number of cohabiting couple families had increased from 1.5 million to 3.3 million.

However, the OTS concluded:

'The OTS considers that any change to the definition of spouse to include a cohabiting partner or sibling would be far reaching. This would most naturally form part of a wider response to social change considered across government rather than being driven primarily by Inheritance Tax considerations.'

Siblings exemption

The Inheritance Tax Act 1984 (Amendment) (Siblings) Bill amends IHTA 1984, by introducing a new section 18A (headed 'Transfers between siblings').

This exemption doesn't extend to cohabiting couples.

The legislation states:

"18A Transfers between siblings

- (1) 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 a sibling of the transferor to whom subsection (2) applies or, so far as the value transferred is not so attributable, to the extent that that estate is increased.
- (2) This subsection applies to a sibling who has—
 - (a) ordinarily resided in the same household as the transferor for a continuous period of 7 years ending with the date of the transfer; and
 - (b) attained the age of 30 before that date.
- (3) For the purposes of this section, "sibling" means a brother, sister, half-brother or half-sister of the transferor."

However, the exemption is limited in its application by two conditions, both of which must be satisfied.

The first condition (s 18A(2)(a)) is aimed at benefiting siblings such as the Burden sisters in the case mentioned above. This cohabitation requirement is a high hurdle to jump, which significantly restricts the scope of the exemption.

The reason for the age requirement in the second condition (s 18A(2)(b)) is not immediately apparent. However, it may be aimed at ensuring that the exemption applies to siblings who have made a lifestyle choice to live together, as opposed to (for example) younger siblings who are still living at home with their parents and have not yet acquired a property of their own.

When introduced, the sibling exemption will extend to England and Wales, Scotland and Northern Ireland.

Commencement

The Inheritance Tax Act 1984 (Amendment) (Siblings) Bill was presented to Parliament and published on 7 July 2022. Parliament then went into recess. The Act will eventually come into force at the end of the two-month period beginning with the day on which it is passed. That means the legislation could take effect towards the end of 2022 and will be called the Inheritance Tax (Amendment) (Siblings) Act 2022.

In the meantime, the legislation is subject to possible amendment during its passage through Parliament, so watch this space.

Contributed by Mark McLaughlin

