



## WHEN IS A GIFT NOT A GIFT?

Inheritance Tax (IHT) is the tax levied on the estate of someone who has died.

By making lifetime gifts, you may be able to reduce the IHT payable on your death and therefore increase the amount of money you can pass to your loved ones. However, if the gift fails to meet certain criteria, then it might not have the desired effect.

Gifts may fall into three categories:

### EXEMPT GIFTS

These are always worth exploring first. If you die shortly after making the gift, then its value will be ignored for IHT purposes. Several exemptions exist, including an annual exemption which means you can give away £3,000 worth of gifts each

year without them being added to the value of your estate. You can also make small gifts of £250 to different recipients and slightly larger gifts on the marriage of a child. A less well known but useful exemption allows you to make regular gifts out of income, provided there is an established pattern of giving.

### POTENTIALLY EXEMPT TRANSFERS (PET)

A PET gift will only become exempt for IHT purposes if you survive the gift by a period of seven years.

### IMMEDIATE CHARGEABLE TRANSFERS

If your gift falls within this category, then you may face an immediate charge to IHT (at reduced lifetime rates) as soon as you make the gift and a further charge if you should

die within 7 years. Gifts to certain trusts are regarded as chargeable transfers. They may nevertheless be useful as part of a tax planning exercise, however the tax rules are complex and you should take specialist legal advice.

There are a number of traps to avoid:

### RESERVATION OF BENEFIT

If you give away an asset but continue to receive a benefit from it – like gifting your house but continuing to live there – then you may still be treated as owning it on your death.

### PRE-OWNED ASSETS

These are complex income tax rules which may apply when the reservation of benefit rules aren't valid. For example, you may sell your house and gift the proceeds of sale but, if the recipient later purchases a house and you subsequently move in, then you may be unexpectedly subject to an income tax charge on a deemed market rent.

### DEPRIVATION OF ASSETS RULES

If you give away an asset and subsequently require care,

then a Local Authority may seek to apply these rules when carrying out a financial assessment to determine your contribution to the cost of your care. You may be treated as if you still own that asset for the purposes of the assessment.

### IMMEDIATE TAX ISSUES

A gift of certain assets (like shares or a second home) may be a disposal for capital gains tax purposes. You could find yourself subject to an immediate charge to tax if the value of the asset has increased since it was acquired, although creating a trust may mitigate this.

In summary, making gifts may reduce your IHT burden and allow you to increase the amount you pass to your family or friends, but you need to ensure that your gifts don't create unforeseen issues. Be careful to take specialist advice before taking any action!



**Ann-Marie Matthews**  
Private Client Team  
ann-marie.matthews@barkergotelee.co.uk

# DO PARENTS NEED EACH OTHER'S PERMISSION TO POST PHOTOS OF THEIR CHILD ONLINE?



This question comes up time and again in cases where parents have separated and are trying to figure out how to parent their children when they are no longer one family unit. The issue of privacy and posting to social media was unlikely to be a big issue when the parents were together, however, once parents separate they no longer have the same level of control and this issue can be a difficult one to navigate.

If each parent has parental responsibility (PR) for the child, this means they each have a collective set of rights and responsibilities not only to the child, but to each other as separated parents. There are certain issues connected to the child which do require consent from every adult who has PR for the child, such as wanting to change the child's

surname or relocating abroad to another jurisdiction. However, posting photos or other content to social media is not specifically covered by PR.

In the first instance, the separated parents should try to agree a set of ground rules they are both happy with. One of these could be that any photos or videos of their children can only be posted to social media from each parent's account and no one else's and the content should only be shared with a specific group of people (e.g a friends list).

If the parents cannot agree on such ground rules, it is possible for one parent to attempt to have any content of their child posted to social media by the other parent removed. The specific rules

and regulations of each social media platform would need to be checked carefully to see what is permissible but the parent may also be able to rely on privacy laws.

Under Article 8 of the European Convention on Human Rights a person has a right to respect for their private and family life, home and correspondence. Accordingly, it might be possible to argue the taking and posting of photographs without consent could infringe the Article 8 right to privacy of the child, however determining the "right to privacy" can be complex and would be judged on each individual case.

Data protection law may also provide further scope for preventing the publication of images of children. "Personal

data" under the UK GDPR means any information relating to an identified or identifiable natural person (data subject). Therefore, a screenshot showing a picture of an identifiable child would be deemed personal data and subject to the UK GDPR and Data Protection Act 2018 (DPA 2018). The UK GDPR and DPA 2018 provide safeguards in relation to the processing of children's personal data.



**Amanda Erskine**  
Family Team  
amanda.erskine@barkergotelee.co.uk

## DIGITAL ASSETS IN WILLS

The Law Society has recently urged people to consider including digital assets such as emails and photos in their Wills.

In a survey of 1,000 respondents:

- Only one quarter knew what would happen to their digital assets after they die;
- 29% of those surveyed had an up-to-date Will; and
- 93% of those who do have a Will have not included any digital assets in it.

With technology being such a large part of modern life you would think it would be obvious, but often people are surprised to find that they have substantial digital assets. Whilst these may not be of significant financial value, they can be of considerable sentimental value, including family photos and social media accounts.

The laws surrounding digital assets are complex but there are clauses that can be included in your Will to make the process of dealing with digital assets easier.

Some social media platforms have put in place specific provision for digital legacies to allow users to nominate a specified person to deal with their accounts after they have died. For further advice on dealing with digital assets in your Will please contact us.



**Rebecca Dixon**  
Private Client Team  
rebecca.dixon@barkergotelee.co.uk



# BUSINESS INTERRUPTION INSURANCE

For the vast majority of businesses who have seen their businesses forced to close due to the COVID19 pandemic and the ensuing lockdown restrictions, much of last year was spent avidly reviewing insurance policies to assess the prospect of recovering lost profits through business interruption insurance.

On the other hand the ABI (Association of British Insurers) and certain insurance companies were indicating that in many cases these claims would not be paid, due to various details and exclusions in insurance policies.

Therefore it was of much interest when on Friday 15th January 2021 the Supreme

Court delivered its long-awaited verdict in regards to the Financial Conduct Authority's business interruption insurance test case.

It is difficult to summarise such a complex piece, but for those short of time and hopefully without losing the meaning:-

The insurers, broadly, lost their appeals and the Financial Conduct Authority was, broadly, successful.

This means that for those businesses that have the right policy wording and can prove some extent of Covid within the geographical radius, the insurers must provide cover for business losses.

The prior precedent provided by Orient Express which had found in favour of the insurer has also been overturned.

Reliance should not be placed on this intentionally simple update, which is merely intended to notify those reading of the Judgment publication. For more details about the business interruption insurance case you can visit the FCA (Financial Conduct Authority) website.

Those seeking advice will likely have submitted claims already and will know the importance of the fine detail of policy wording, but I should emphasise that the same is fundamental to its interpretation and the success of any claim. Of course, the

next questions are what is the geographical radius and how do you prove incidents within it.

If you own a business and have questions about business interruption insurance or any other aspects of commercial law, please contact our business services team.



**Mark Wrinch**  
Business Services Team  
mark.wrinch@barkergotelee.co.uk

## BARKER GOTELEE GROWS ITS TEAM FOR 2021 AND BEYOND

Here at Barker Gotelee Solicitors we are pleased to announce the continued expansion of our team with the recent addition of several new members of staff.

In the commercial property team we are joined by Emel Kilickaya who will be working as a full time paralegal, having recently finished her ME Law course. Emel is an experienced immigration paralegal and is well versed in matters of property law.

Legal Executive Penny Gordon has joined the residential property team. Penny comes to us from a large local law firm and has considerable experience in residential conveyancing.

Adam Kanharn is a newly qualified solicitor who has joined us after completing his training contract at a firm based in Norwich. Adam will be working with Clare Richards in the corporate and commercial team assisting her on a wide range of commercial matters.

Managing Partner, Andrew Nicholson says, "We are delighted to be welcoming so many new faces to the team here at Barker Gotelee. The past year has been a challenging time for everyone but it is to the credit of our brilliant staff and loyal clients that we have been able not only to maintain but build on our success as a business going forward."



Contact us on 01473 611211

41 Barrack Square, Martlesham Heath, Ipswich IP5 3RF

barkergotelee.co.uk