Back to basics

Section 260 holdover relief

Speed read

The transfer of an asset from an individual or a trust is a disposal for CGT purposes, irrespective of whether any consideration is received. There are two available CGT gift holdover relief claims – under TCGA 1992 s 165 and s 260. The reliefs aim to prevent tax from being a hurdle to the succession of acceptable assets by ensuring that a dry tax charge does not arise on a gift. Section 260 is in place for a transfer of value on which there is an immediate charge to IHT, even if no IHT is actually paid as a result of IHT exemptions and/or reliefs. Typically, s 260 relief is available on transfers of value to and from trusts, but it is also available on several other types of transfers. For the donor, an election results in the chargeable gain being reduced by the held over again; for the donee, the base cost is reduced by the quantum of the gain held over. A joint election by the donor and donee is required, except for settlements into trust, where only the settlor need sign (however, the trustees do need to sign to defer agreement of values).

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The purpose of s 260 gift relief

Relief under TCGA 1992 s 260 ('s 260 relief') is available on lifetime transfers that are immediately chargeable to IHT and to certain other transfers, as set out below. The effect of the relief, if available and claimed, is broadly to defer all or part of the CGT liability which would otherwise arise on the disposal of a chargeable asset, normally until a later disposal by the recipient of the gift. Essentially, the gain is passed onto the recipient, as well as the gift itself.

Claims for reliefs under s 260 most commonly arise when transfers are made to and from trusts. Most lifetime gifts made between individuals are potentially exempt transfers (PETs) and as these do not involve an immediate charge to IHT, s 260 cannot apply. The most common example that is seen in practice would be when an individual settles an asset such as an investment property into a trust. Such a settlement would result in a deemed disposal (by the settlor) and acquisition (by the trustees) for CGT purposes at market value, and an immediate charge to IHT may arise if the transfer of value is not sheltered by the transferee's available IHT nil rate band or annual exemption. A claim for s 260 gift relief can be made, which will allow the chargeable gain arising on the property to be held over (or deferred), with the trustees' base cost of the property being reduced by the gain held over.

Unlike holdover relief under TCGA 1992 s 165 (examined in 'Back to basics: Section 165 holdover relief' (C Holmes & P Townson), *Tax Journal*, 10 March 2023), s 260 relief does not distinguish between business assets and other assets. The relief is available on all assets if there is an immediate charge to IHT (or would be but for the availability of IHT exemptions or reliefs). Where conditions for both s 165 and s 260 have been met, s 260 relief will take priority. We summarise below the gains that can be sheltered through a s 260 claim, and how a claim can be made.

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Disposals to which s 260 relief applies

Disposals to which s 260 applies must be made otherwise than by way of a bargain at arm's length, and represent one of the following:

1. A chargeable transfer for IHT purposes under IHTA 1984 s 19, or one which would be so chargeable but for the annual £3,000 exemption. Please note that PETs are excluded, even if they later become chargeable as a result of the transferor's death.
2. Exempt transfers for IHT purposes made:
   - to political parties (IHTA 1984 s 24);
   - for public benefit (IHTA 1984 s 26);
   - to maintenance funds for historic buildings (IHTA 1984 s 27);

     or which are conditionally exempt transfers under IHTA 1984 s 30, as designated by HM Treasury.
3. Property held on certain types of trust, including accumulation and maintenance trusts (IHTA 1984 s 71), bereaved minor trusts (IHTA 1984 s 71B) and 18–25 trusts (IHTA 1984 s 71E).
4. Transfers of works of art that do not incur an immediate charge to IHT as a result of relief under IHTA 1984 s 78.
5. Transfers of certain property between settlements where there is no charge to IHT, or a reduced charge to IHT under IHTA 1984 Sch 4 (maintenance funds for historic buildings).

If a non-domiciled/non-deemed domiciled settlor transfers assets to a non-resident trust, this will be an exempt transfer for IHT purposes, with no immediate charge to IHT unless the transfer is in respect of UK land and property or a UK 'property rich' company.

How holdover relief works

Section 260 gives relief where the transfer is 'chargeable' to IHT, or falls within 2-4 above. There is no requirement for IHT to have actually been paid on the transfer for the relief to be available. For example, if a settlor makes a gift to a discretionary trust, and the transfer is covered either by the settlor's nil rate band or business relief, etc, even though no

IHT is payable, a gift relief claim can still be made for CGT purposes. The value of the asset transferred will always be the open market value of the asset at the date of gift.

The effect of a holdover relief election, and how it will impact the donor and donee, is discussed below:

The donor

The donor can either be an individual or the trustees of a settlement. There is no requirement for the donor to be UK-resident. It is important to be aware of the donor's domicile for IHT, as if the donor is non-UK domiciled or non-deemed UK domiciled they are only liable to IHT on their UK-situated assets. If a non-domiciled person owns assets which are situated outside of the UK, those assets are excluded property. Transfers of excluded property are ignored for IHT purposes.

The donee

Section 260 requires the donee to be an individual or the trustees of a settlement.

Individuals: Individual donees will only need to make a s 260 election if the gain that would otherwise arise would be chargeable to UK CGT. As such, claims are normally restricted to UK-resident donees. The exception to this rule is where a direct or indirect interest in UK land is gifted by a non-UK resident individual, as the disposal will be within the scope of UK CGT, and therefore s 260 will be available.

Trustees: Trustees must be UK-resident to claim s 260 relief. The exception above relating to UK land interests also applies to non-resident trustees.

For the donor: The chargeable gain is reduced by the held over again; depending on the circumstances, this could be to nil.

For the donee: Where the base cost would have been the market value of the asset received, this is reduced by the quantum of the gain held over. Where the whole gain is held over, mathematically the donee's base cost will be equal to the base cost for the donor, regardless of what the market value may be.

See example 1.

Example 1: Section 260 gift relief on the transfer of shares into a trust

Over many years, John Jones acquired a minority shareholding of shares in ABC Plc, a company quoted on the main London Stock Exchange, with a CGT base cost of 50p per share. He has made no chargeable lifetime transfers in the last seven years.

In January 2023, John transferred 10,000 shares in ABC Plc into a discretionary trust 'The Jones family discretionary trust'. The shares had a market value of £100,000 (£10 per share) at the date of the gift. The base cost of the shares was £5,000 (50p per share). As the gift of shares into a discretionary trust was a chargeable lifetime transfer made by John, it is immediately chargeable to IHT, though sheltered by his available nil rate band, and therefore s 260 relief can be claimed.

By claiming s 260 relief, the gain of £95,000 (£100,000 less £5,000) is held over, and the trustees acquire the shares with a base cost of £5,000.

Example 2: Interaction with IHT

John transferred shares valued at £400,000 into a discretionary trust in 2022/23, paying £17,250 IHT on his lifetime transfer. As the transfer is immediately chargeable to IHT, gift relief under s 260 is available.

John originally purchased the shares for £240,000 in 2005. The gain on the transfer of the shares into the trust is £160,000 (£400,000 less £240,000).

If a claim for s 260 gift relief is made, the £160,000 gain will be deferred, and will reduce the trustees' base cost for the shares on their future disposal. The base cost of the shares for the trustees would then be calculated as follows:

	£
Market value of the shares at transfer	400,000
Less: s 260 deferred gain	(160,000)
	240,000
Add: s 260(7) relief for IHT paid	17,250
Base cost	**257,250**

The base cost of £257,250 will apply when the trustees dispose of the shares in the future.

Restrictions to the relief, and anti-avoidance measures

Anti-avoidance provisions apply when the transferee is one of the following:

- a settlor-interested trust;
- a dual resident trust;
- a non-UK resident individual; or
- a foreign controlled UK company.

It is not possible to make a s 260 claim on a gift of assets into a settlor-interested trust, i.e. a trust from which the settlor, his/her spouse/civil partner or minor children can benefit.

If the settlor of the trust is the parent of a minor dependant child or stepchild (i.e. children under the age of 18), the trust will be deemed settlor-interested. A disposal into the trust does not need to be made directly by the settlor; it can be made by another individual, or trustees of a different settlement. If the settlor or the settlor's child has an interest in the settlement, the anti-avoidance provisions will block the holdover relief from being applied.

The provisions restricting holdover relief occur immediately after the relevant disposal. The clawback period begins with the relevant disposal and ends six years after the year of assessment in which it was made. Therefore, if the trust becomes settlor-interested during this period, the holdover relief will be clawed back. A planning tip to avoid these measures would be to ensure that the settlement does not become settlor-interested until six years after the holdover relief claim.

Secondly, if the donee emigrates from the UK within six years from the end of the tax year of gift, the deferred gain will be chargeable on them. If the tax is not paid, HMRC can seek to collect the tax from the donor within 12 months.

If no claim to holdover relief has yet been made at the time one of the conditions has been satisfied, any subsequent claim is blocked from that point onwards.

Private residence relief (PRR) and gift relief

PRR is available if a trust owns a property, and under the terms of the settlement the trustees permit a beneficiary to occupy this property as their main residence.

PRR is restricted where a property is transferred to a trust and s 260 relief is claimed, to the extent that if s 260 relief is claimed, PRR will be denied on a subsequent disposal by the trustees. Similar treatment will also be applied if the trustees transfer a property out of the trust to the beneficiaries and s 260 relief is claimed on the disposal.

Therefore, it is vital that donors/donees consider the long term impact of making a hold over claim on the transfer of property into and out of trust that could qualify for PRR.

CGT and IHT interactions for s 260

When CGT and IHT interact relating to the same disposal, the IHT paid on the transfer will become an allowable deduction for the donee for CGT purposes, and can be treated as an additional cost incurred by the trustees in acquiring the shares (TCGA 1992 s 260(7)). This is likely to occur when settlors transfer assets into a trust, or when the trustees transfer assets to a beneficiary, giving rise to an exit charge. See example 2.

Note that capital disposals made to beneficiaries from a trust within three months of the ten year anniversary charge will not be subject to IHT, and care should be taken by the trustees when disposing of assets during this time. The trustees will be able to benefit from no IHT charges on the exit, however the disposal may still give rise to CGT and s 260 will not be available in this scenario.

How to make the claim

In most instances, a s 260 claim is made jointly by the donor and the donee. This is not the case when the donee is a trust. If the settlor transfers assets to a trust and wishes to defer the gain, the claim will be made by the settlor only, and the consent of the trustees will not be required (unless a claim to defer agreement of valuations is being made).

A s 260 claim must be made within four years after the end of the tax year in which the assets are transferred. For example, for a gift made in 2022/23, a claim must be made no later than 5 April 2027.

Section 260 claims are not automatic. So, for tax planning purposes, if the settlor's gains are either covered by losses or their annual exempt amount, no claim should be made and the donee's base cost will not be reduced as a result.

As discussed in the s 165 article, HMRC has amended its policies and now accepts a PDF version of the gift relief/s 260 claims that can be attached to the tax returns when filed automatically. There is no longer a requirement for wet signatures.

Final thoughts

Holdover relief under s 260 is a valuable relief which can effectively help the transferor with their immediate CGT implications of gifting assets. The relief is available to assist with the double taxation under both IHT and CGT regimes. However, even if the chargeable transfer is within the nil rate band and no IHT is due, the relief is still available to assist with CGT charges that can arise as a consequence of the gift. ■

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