The Personal Tax Planning Review

GIFTS OF THE FAMILY HOME WITHOUT RESERVING A BENEFIT

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The introduction of s.102A into the FA 1986 restricted the application of *Ingram* Schemes and placed an (undeserved) question mark over the efficacy of the reversionary lease scheme. A common example of an *Ingram* Scheme involved a grant of a lease over the principal private resident to a life interest trust of which the grantor was life tenant. This was a potentially exempt transfer for IHT and an exempt disposal for CGT purposes. The lease was for nil rent and its length was based on the grantor's life expectancy. The grantor then gave the freehold reversionary interest to a children's trust from which he was excluded. The grantor thus remained in occupation in consequence of property (the leasehold interest) which he retained and received no benefit in the property (the freehold reversionary interest) given away. This scheme now works only if a gap of 7 years is left between the grant of the lease, and the gift of the reversionary interest: see s.102A(5) FA 1986.

The reversionary lease scheme was implemented by the grant of a 999 year lease over the principal private residence to a children's trust. It would be surprising if Parliament had not intended s.102A to block this. However, s.102A does not apply if the "right, interest or arrangement" in relation to the retained interest in land entitles the grantor to occupy "otherwise transfer full consideration in money or money's worth" (s.102A(3)). Nor does s.102A apply if the right, interest or arrangement "was granted or acquired before the period of 7 years ending with the date of the gift" (s.102A(5)). It appears therefore that a grantor who purchased his freehold interest for its market value 7 years before the grant of the reversionary lease escapes s.102A on two counts.

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The approach of the reversionary lease scheme and the *Ingram* scheme is therefore to avoid s.102A by satisfying one of its statutory exceptions. An alternative approach is to avoid making a gift of land at all. For example, the Donor could devalue his estate by creating a debt equal in value to the value of the principal private residence (by selling the PPR to an interest in possession trust for the Donor in consideration of the issue of an "IOU" which the Donor then gives away). To the extent that there is only a gift of a IOU, and not of an interest in land, s.102A simply does not apply. S.102 could apply to the gift of the benefit of the IOU. However, the gift can be made on such terms that the Donor cannot benefit from it (taking into account the associated operation rules). The arrangement is described in more detail below.

The first step in what is sometimes called "the lifetime debt scheme" if that the Donor establishes a life interest trust for the benefit of himself ("trust 1"). He then sells his principal private residence to trust 1 for full market value. The purchase price is paid by the issue of a loan note.

The purchase price is paid and not merely left outstanding in order to avoid creating a lien over the property in respect of an unpaid purchase price. Any such interest could amount to a gift of an interest in land for the purposes of s.102A when the loan note is gifted by the Donor. The debt has a fixed repayment date such as one month after the death of the Donor. A small amount of interest may be payable each 6 months (to avoid any limitation issues). The fixed repayment date is necessary to avoid s.102 applying to the gift. If the date were not fixed the donee would confer a benefit on trust 1 by not calling in the debt. By associated operations that would mean the Donor had reserved a benefit in the gift. The sale of the principal private residence is exempt from CGT. There will be a stamp duty charge which could be as much as 4% (unless the sale is allowed to "rest in contract").

The Donor then gifts the loan note to a life interest trust for his children or an A&M trust for his grandchildren ("trust 2"). He is wholly excluded from benefit under trust 2. In light of the terms of the IOU (see above) there is no IHT at this stage, and will not be if the Donor survives 7 years. The gift of the loan note is a disposal of a CGT asset to a connected party for its (deemed) market value. However, any gain accruing to the Donor is exempt under s.251 TCGA 1992 since he is the original creditor.

The Donor remains in occupation of his home by virtue of his life interest under trust 1. The value of his IHT estate must be considered in light of the deeming provision in s.49 IHTA 1984. S.49 deems him to be beneficially entitled to the "property" in which his interest subsists. The principal private residence is "property" but the debt is not. This means that literally, the full value of the principal private residence is included in his estate without any reduction for the value of the debts owed by the trustees. However, Parliament cannot have intended such a result in the normal case (and the facts here are materially indistinguishable from the normal case). One answer is that the trustees' lien over settled property for the payment of trust debts should be taken into account as reducing the value of the property included in the life tenant's estate.

In fact, the scope and effect of s.49 in this context is academic if the settled property is encumbered by say a charge or mortgage: see s.162(4) IHTA 1984. But to avoid a possible s.102A charge on the gift of the debt, no charge which constitutes an interest in land should be put in place until after the date of the gift.

The arrangement is relatively flexible since the Donor's occupation of the principal private residence as beneficiary means that the trustees can qualify for PPR relief on any gain on a future sale of the property. There is also a free uplift in the market value of the property on his death if s.72 TCGA 1992 applies. However, it is not as successful as the *Ingram* type schemes at avoiding IHT on the full value of the PPR at the date of death. This is because it only reduces the value of the Donor's estate by the value of the *debt* at the date of death. The debt may be valued at a discount (because immediately before the death the Donor is alive and the repayment date remains uncertain as does the likelihood of its being repaid by a mere family trust), and the principal private residence may increase in value. This means that a part of the value of the principal private residence may still form part of the Donor's estate on his death. The arrangement also has two "tax costs". The first has been mentioned already, namely, stamp duty on the sale of the PPR. The second is the possibility of a CGT charge on the repayment of the debt. This is because trust 2 will acquire the debt at a discount to its market value (for the reasons given above) but presumably dispose of the debt for its full market value. Therefore, when it is repaid a chargeable gain may accrue to the trust 2. This problem becomes more acute if steps are taken to increase the value of the debt at the date of death by linking the value of the IOU to an index of house prices which is assumed to increase in value over time. There are steps that can be taken to avoid these problems.

Finally, s.103 FA 1986 appears to have no relevance here at all.