
The Personal Tax Planning Review

LADY INGRAM AND THE FINANCE BILL 1999 - A NOTE

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Volume 6, Issue 3, of this *Review* contained an article of mine: “Carbolic Smoke Ball Protects Against Influenza” or *Lady Ingram* in the House of Lords’, in which I commented on the taxpayers victory in that case, reported at [1999] STC 37. Their Lordships held that a “lease carve-out” scheme implemented by Lady Ingram had been effective for inheritance tax purposes, had not involved tax avoidance and had not offended against the policy underlying the gifts with reservation of benefit provisions.

The Revenue reaction was worthy of Sir Humphrey Appleby: yet another case of reversal of a House of Lords decision by Press Release.² I reproduce the Press Release without the Notes. Italics have been supplied to highlight the contempt with which the Revenue have treated their Lordships’ views.

“Inheritance tax—blocking tax avoidance

Loopholes which result in the avoidance of inheritance tax are to be closed, the Chancellor announced today.

The changes, which confirm the Government’s determination to stamp out tax avoidance, relate to what is often referred to as making a “gift with reservation”. This is when, for example, someone gives away his/her house but continues to live in the property. The changes restore the tax position as it was understood³ to be prior to the House of Lords’ ruling in the case of Ingram v IRC.

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² A precedent had been set in a Press Release associated with the 1998 Budget Speech in which the taking out of personalised offshore insurance policies was castigated as “tax avoidance”, even though the House of Lords had expressly held the contrary in *Willoughby v Inland Revenue Commissioners* (1997) 70 TC 57; [1997] STC 995.

³ RV’s comment: understood by whom?

The new provisions will apply to gifts of interests in land where—

the gift is made on or after 9th March 1999;

there is some interest, right or arrangement which enables or entitles the donor to occupy the land to a significant degree or enjoy a significant right in relation to the land without paying full consideration;

the gift is made within seven years after the interest, right or arrangement concerned is granted, acquired or entered into.

DETAILS

1. Legislation (FA 1986 section 102, Schedule 20) contains special rules on the taxation of lifetime gifts where the person making the gift (the donor) reserves or receives any material benefit from the gifted asset. *They are intended to prevent the avoidance of the inheritance tax charge on death through a lifetime gift aimed at reducing the value of the donor's estate for the purposes of the tax, while leaving the donor effectively in much the same position in terms of his or her continued enjoyment of the asset concerned as it was before the gift.*
2. *The recent decision of the House of Lords in Ingram and another v IRC [1999] STC 37 has shown that these special rules do not work as they should.*
3. *The Government is extending the existing provisions so that they will work as originally intended.* Subject to the exceptions explained below, the new provisions will apply to gifts made on or after today where—
 - the asset given away is an interest in land;
 - the donor or his/her spouse has a significant right or interest, or is a party to an arrangement, relating to the land;
 - by reason of the right, interest or arrangement, the donor is entitled or able to occupy any of the land, or enjoy some right in relation to it.
4. The extended provisions will not apply where—
 - as with the existing rules

the gift is itself covered by the main exemptions from inheritance tax, including transfers between spouses;

the retained right or interest is negligible so that the donor is virtually entirely excluded from any enjoyment of the land;

the donor pays full consideration for his/her occupation of the land; or

the occupation of the land is effectively forced on the donor by some unforeseen downturn in his/her financial circumstances;

the gift is made more than seven years after the right, interest or arrangement concerned is created or entered into;

the donor may occupy the land or enjoy some right in relation to it only on the determination of the interest that he/she has given away; for example, the donor gives away a leasehold interest and retains the freehold reversion which entitles him/her to re-occupy the land when the lease expires; or

the gift is of a share in land, which the donor then occupies jointly with the other owner (the donee) providing the donor receives no other benefit at the donee's expense in connection with the gift."

The Finance Bill, clause 92, inserts three new sections into Finance Act 1986, to supplement the existing section 102, namely:

Section 102A - donor enjoying significant right or interest in relation to land;

Section 102B - gift of undivided share of interest in land;

Section 102C - supplemental to both section 102A and 102B.

These provisions are an emotional reaction to the Revenue having lost a case which the Lords say they deserve to have lost. They are not designed to correct any loophole, because there is none. They are virtually devoid of principle. It is not surprising that they are capricious and erratic in their operation. They are badly drafted. They attack situations which are not mentioned in the Press Release. They allow basic tax planning to proceed in many situations which they were no doubt intended to catch. Their most important effect is enormously to complicate the position and to put a greater premium than ever on obtaining first-class advice.

I intend to write an article on the operation of the new provisions once they have become law, which should appear in the next issue of this *Review*.