

Gifts made within 7 years of death



At a glance

- Personal representatives must make adequate enquiries about gifts made within 7 years of death.
- Gifts can happen in different situations, not just when property or money is given to a friend or relative.
- Personal representatives must ask relatives, friends, professional advisers and others whether they know of any such gifts.
- Failure to make proper enquiries and make a complete return may result in tax-geared financial penalties.
- Anyone who receives a gift has a duty to report it. If a gift recipient does not tell the personal representatives about a gift and fails to report it, then he or she (rather than the personal representatives) could face significant financial penalties.

The importance of full enquiries - what is my duty as a personal representative?

When someone dies, one of the important jobs of the personal representatives is to ensure that the right amount of Inheritance Tax is paid.

As part of this, they need to report to H M Revenue & Customs (HMRC) any relevant gifts that the deceased may have made in the seven years before they died.

It is therefore the responsibility of the personal representatives to make sure that adequate enquiries are made to identify such gifts.

What counts as a gift?

Gifts can happen in lots of different circumstances, not just when property or money is given to a friend or relative.

All the following involve making a gift:

- Where an asset is sold for less than its full open market value, such as a sale of a house to a relative below its proper value.
- Where a debt has been written off – this is a gift by lender to borrower.
- Where items are paid for by the deceased on someone else's behalf e.g. holidays; bills.
- Where an asset is acquired by more than one person, but they hold that asset in different proportions to their contributions e.g. a house may be owned by a husband and wife in equal shares (1/2 each) but the husband may have funded the entire purchase. In this situation, there is a gift from husband to wife.
- Where property is transferred into a trust or settlement.
- Where someone has an interest in a trust but that interest came to an end before the person died.
- Where life policies are written in trust, the payment of premiums (unless the premiums are paid from monies already held in the same trust).

Who do I need to speak to about lifetime gifts?

In most cases, this will involve the personal representatives asking family members, friends, associates, those named in any will, any attorney for the deceased and the deceased's professional advisors (solicitors, accountants or financial advisors) whether they have received or whether they have any knowledge of any such gifts.

What happens if I don't make proper enquiries?

If the personal representatives do not take reasonable care to make a complete return, then tax-g geared financial penalties are likely to follow.

What if it's not my fault?

Sometimes, an inaccurate declaration resulting in an underpayment of tax may be the fault of the gift recipient, not the personal representatives. He or she may fail to tell the personal representatives about the gift.

Best advice to the personal representatives is to make it clear that there is also an obligation on the recipient of any gift to report it (Schedule 24 Para 1A Finance Act 2007). If the recipient of any gifts fails to tell the personal representatives about any such gift and fails to report it, then he could face significant financial penalties.

The minimum penalty in these circumstances is 50% of the tax undeclared and could be up to 100% of the undeclared tax. Importantly, the penalty in these cases is payable by the recipient of the gift, not the personal representative. This approach has been confirmed in the case of Commissioners for *HMRC v Hutchings*.

What enquiries should I make?

This Guidance sets out the basic, most obvious things that the personal representatives should check. Whilst this Guidance Note is as wide-ranging as possible, it should not be regarded as conclusive or final and you may need to make additional

enquiries that are not listed. We recommend that you read the Inheritance Tax Toolkit, as well as any additional guidance referred to, in full – see the Further Information section below.

Ideally ensure that all requests for information are made in writing and ask for written responses so that there is evidence that adequate enquiries have been made. Gift recipients should be made aware of the possible financial penalties they could incur for failing to disclose gifts made to them.

Things to check/consider	Checked?
Make a check of the last 7 years of bank/building society statements, possibly in conjunction with cheque book stubs (where available/relevant). Are there any withdrawals or transfers which seem unusual in amount or regularity?	
Ask family members whether they have received any gifts (whether cash or valuable personal items) from the deceased e.g. birthday/Christmas gifts during the last 7 years. (Please note that any gifts to a single person in any one tax year (6 April to following 5 April) not exceeding £250 can be ignored for this purpose.)	
Ask family members whether the deceased paid for anything on their behalf e.g. holidays; bills; valuable items e.g. a car; house deposit during the last 7 years.	
Ask family members whether the deceased loaned any money to them, which loan has since been waived/released during the last 7 years.	

Did the deceased own property jointly with someone else? If yes, check how the deceased and other owner(s) contributed to the purchase price/other costs e.g. stamp duty, professional costs.

Did the deceased dispose of any assets within the 7 years before death? If yes, check whether they were sold for full market value and whether the sale proceeds were received by the deceased.

Did the deceased transfer any assets into a trust or settlement within the 7 years before death? If yes, full details should be noted. Could the deceased benefit from the trust himself?

Did the deceased have an interest in any trust/settlement? If yes, check with the trustees whether there was any change/ending of the interest prior to death which might be classed as a gift.

Did the deceased pay premiums on a life assurance policy that is written in trust?

Further information

This guidance note has been prepared using information set out in HMRC's Inheritance Tax Toolkit regarding gifts and debts, in particular Question 12.

[Click here for the full text of HMRC's Inheritance Tax Toolkit](#)

[Click here for the full text of HMRC's Inheritance Tax Manual](#)

For further advice, please contact a member of the team.

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