

# When is a gift of the family home, not a gift?

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## A gift of the family home may trigger Capital Gains Tax, Income Tax, Stamp Duty Tax and Inheritance Tax.

The family home is often one of the most valuable assets in an estate. For a parent, gifting the family home to their child during their life seems like an easy decision: "if I do not own my home at death, I will not be taxed on it." Unfortunately, HMRC knows the family home is often one of the most valuable assets, and it follows that the rules for gifting the home are complex.

This article explores some Inheritance Tax consequences of gifting the family home. However, it does not cover all of the potential tax consequences which can arise, so it's worth checking your unique position with a qualified solicitor.

### What is Inheritance Tax?

Inheritance Tax (IHT) is a tax payable on the value of your estate. Everything you own makes up your estate - money in bank accounts, investments, personal possessions, and, of course, the family home. It also includes the value of any gifts made within the last seven years.

If the value of your estate is above the current IHT threshold of £325,000 (the Nil Rate Band), then your estate may be subject to IHT. The current rate of IHT is 40% on any amount above the Nil Rate Band. While this tax is usually due at death, there are some circumstances when HMRC can charge IHT during your life.

### Gifts subject to tax

When a parent gifts their child all or part of their home, the gift is considered a "potentially exempt transfer" ([PET](#)). It is only potentially exempt because if the parent dies within seven years of making the gift, the value of the gift is

added back into the estate for IHT purposes. The amount of tax that is due on the gift depends on two things:

1. the value of the gift; and
2. how soon after making the gift did the parent die (Taper Relief)?

This 'seven-year rule' is the rule that most people rely upon when making a gift.

### When a gift is not a gift

Suppose a mother gifts her property to her daughter but continues to live in the property; the mother has reserved the benefit of living in the property rent-free. In that case, the gift is called a 'gift with reservation of benefit' ([GROB](#)). If a gift is a GROB, it is not a PET. Therefore, the property's value remains in the mother's estate for IHT purposes - even if she dies seven years or more after making the gift.

Because the mother retains a benefit from the property, HMRC does not consider it a genuine gift. So, while the daughter owns the property on paper, HMRC believes it belongs to the mother for IHT purposes. However, there is one exemption from the GROB rule, where the child resides in the property with the parent as their principal residence.

### Benefit from Residence Nil Rate Band

It's always worth considering whether you need to make a gift of the family home. The family home is linked to a valuable IHT relief – the Residence Nil Rate Band ([RNRB](#)).

Currently, RNRB relief stands at £175,000. The relief is only available in some estates. For an estate to be eligible, the estate must:

1. have a property that the deceased has lived in during their lifetime;
2. which passed to a lineal descendant (child or grandchild);
3. the estate's total value is less than £2,000,000. The relief is tapered if the estate exceeds £2,000,000.

You can only take advantage of this relief if you have a property in your estate.

### How to make a GROB a PET

The rules around GROBs are complex. Many factors can affect whether a gift is considered a GROB.

As you can appreciate, it isn't straightforward. If you are considering making a gift of the family home and want to avoid the risk of it being considered a GROB, contact us today for some estate planning advice.

Similarly, suppose you've already made a gift of the family home and are concerned that it may be a GROB. In that case, we can help you to understand the IHT implications and your options moving forward.

Contact private client solicitor [Lalita Kauldhar](#) today.

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