

# Order of gifting

## Briefing Note

**When passing accumulated wealth to future generations, it is essential to consider a client's overall assets, the history of their previous gifts and the order in which any new gifts are made. Gifting in the wrong order can have serious tax consequences but sometimes there may be little an adviser can do about this if a client has already made gifts without advice.**

Structures that do not create large chargeable lifetime transfers (CLTs) or potentially exempt transfers (PETs) at outset should be considered first, as other arrangements that create large CLTs or PETs (which could subsequently become chargeable) could impact on these arrangements.

The following suggestions assume no CLTs or PETs have been made in the seven years before setting up any of these arrangements. Our suggested order (with at least one day between each solution) where a number of solutions are being considered is as follows:

### 1. Gift and loan discretionary trust

The initial £10 gift is usually exempt under the annual exemption. The loan to the trustees is not a transfer of value so is therefore IHT neutral.

At each tenth anniversary, when calculating the periodic charge, the trust's available nil rate band is reduced by any CLTs (including failed PETs) made in the seven years before the trust commenced. Gift and loan discretionary trusts should be considered first, since they will have no impact on periodic and exit charge calculations on any subsequent discretionary trusts.

### 2. Regular premium policies written in discretionary trusts

Consider whether the regular premiums can be offset against the normal expenditure out of income exemption or the annual exemption. If either of these exemptions cover the regular premiums then the gifts are exempt and will have no impact on subsequent gifting.

However, if the regular premiums cannot be offset against the normal expenditure out of income exemption, or the annual exemption, then they will be treated as CLTs.

### 3. Single premium policies written in discretionary trusts

The single premium in excess of any available exemptions will normally be treated as a CLT and therefore these arrangements need to be established before bare trust arrangements that create PETs. This is because if the PET failed it would become a chargeable transfer, which would impact on the discretionary trust periodic charges.

### 4. Bare trusts

Gifts into bare trusts are PETs and therefore should be considered last, due to the impact that failed PETs can have on discretionary trust periodic charges.

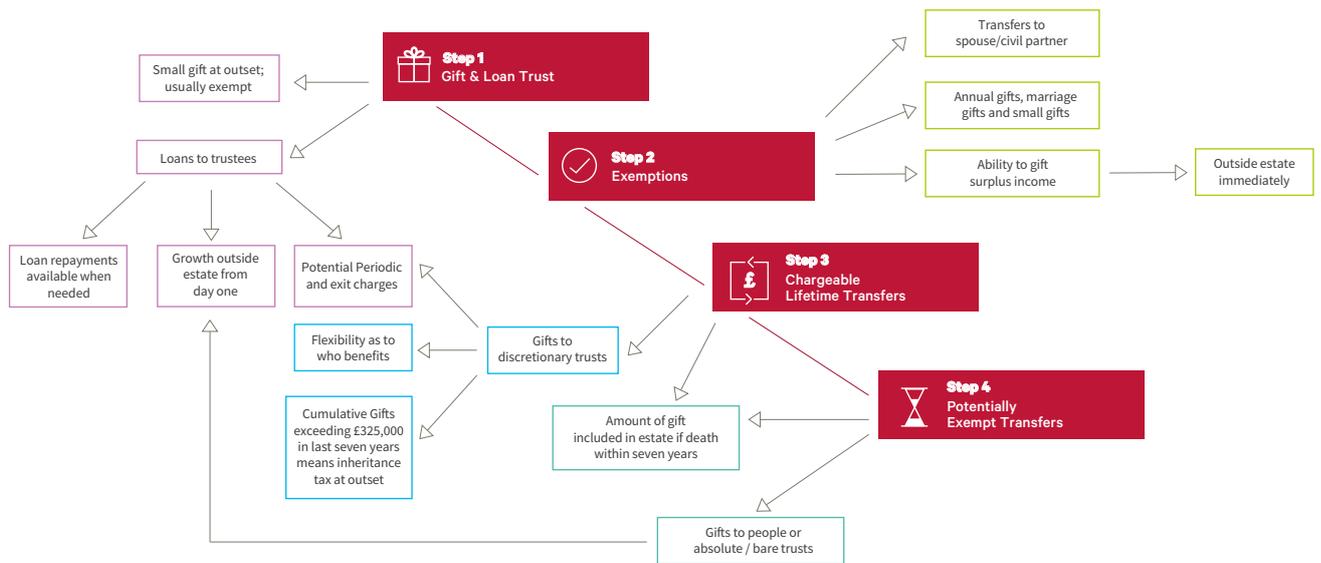
The above order of gifting assumes that all arrangements are made around the same time since gifts into discretionary trusts can affect PETs made up to seven years later (sometimes referred to as the 14-year rule).

### Key facts about gifting and IHT planning

- Consider all the client's assets as a whole, do not plan in isolation
- Don't forget that PETs made in the last seven years could possibly impact on new discretionary trust arrangements if the individual dies within that seven-year period
- When considering more than one arrangement then the order in which the arrangements are entered into is important
- Trusts should be established on separate days to avoid them being related settlements, as the values of related settlements are aggregated when computing charges to IHT

The following page provides a flowchart showing the recommended order of gifting

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This document is based on Canada Life's understanding of applicable UK tax legislation and current HM Revenue & Custom's practice, as at October 2020 and could be subject to change in the future. It is provided for professional advisers only. Any recommendations are the adviser's sole responsibility.



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