



As of 1 October 2011, duty payable on gifts over \$27,000.00 has been abolished. This means that you can make a gift of any amount to another person or trust for whom you have “natural love and affection”. It may be a great opportunity for you to help your children, or to minimise some of the risks of being in business (creditor protection), or to limit your chances of being party to a relationship property dispute. But there are a few issues to consider...

Property (Relationships) Act 1976

- It may be an option to transfer or gift an asset to a family trust, to avoid those assets being subject to a relationship property claim, in the event you have a relationship break up. You cannot make a gift with the intention of defeating a spouse or partner's interest in relationship property. If you are currently in a relationship, you will need to establish whether or not the asset being gifted is relationship property. This is something we could discuss with you further.

Tax

- The rules around tax remain unchanged - for example, tax avoidance, the need for consideration in financial arrangements (there is a "natural love and affection" exception), the deeming of dispositions /acquisitions at market value and the recovery of depreciation (which is no longer available in many cases). Care must be taken to ensure your gift does not trigger unwanted taxation consequences. As always, your professional advisers should work together to achieve the best result for you.

Creditor Protection and Solvency

- You would need to consider your personal financial position, before making a gift. Under the current law, if a person is adjudicated bankrupt, the Official Assignee has powers to set aside a gift made in the past 2 years (and 5 years in some circumstances). A creditor could make an application to the court to 'claw back' a prejudicial gift, if you were unable to pay your debts at the time you made the gift, or if making the gift made you insolvent.

Residential Rest Home Subsidies - Means Testing

- The social security legislation remains unchanged. The Ministry of Social Development (“MSD”) presently exercises a discretion under the applicable regulations relating to gifting – potentially a ‘deprivation of assets’. To date, the regulations have been applied in a manner consistent with the gift duty rules – allowing each spouse to gift off \$27,000 per year, up to the date 5 years before means-testing. (In addition, a person may gift \$6,000 per year in the 5 years before means-testing.) However some recent guidance from MSD indicates that it may interpret and apply the regulations in a more restrictive way. This may mean that an outcome acceptable to MSD at the time a gift programme was begun, is no longer in accordance with present policy. Looking forward, as the population generally ages, there is no guarantee that the policy and rules surrounding means testing will remain the same. There are a number of complexities surrounding trusts and means testing, and this may need further discussion with you.

The abolition of gifting has created a number of opportunities for people, particularly in the estate planning area. Care must be taken to ensure a gift is properly completed in accordance with the law, and does not impact on other legal issues. We are most happy to meet with you to discuss your particular situation and can be contacted on 03 578 4229.