

## Home loan IHT avoidance scheme narrowly escapes double tax charge

Synopsis: HMRC has defeated an attempt by the executors of Mrs Elborne to avoid inheritance tax (IHT) through a 'home loan' scheme but failed to persuade the First-tier Tax Tribunal (FTT) to impose a double IHT charge on the estate as a result of the scheme.

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### The case

Mrs Elborne sold her home to the trustees of a trust, in 2003, for the benefit of her children in return for a loan note. She continued to live in her home and pay the outgoings. She then gave the loan note to the trustees. She died more than seven years after that gift, so that it became a potentially exempt transfer (PET).

Mrs Elborne died in January 2011 and her executors claimed for a reduction of IHT on the basis of the home loan scheme. They stated that the deceased's home was deemed to form part of her estate through her interest in possession in the life settlement, but that the IHT value of the estate at the time of her death should be reduced by the value of the liability under the loan note at that time. That amount was broadly equal to the value of the home at the time when the home loan scheme was implemented.

### The outcome

HMRC disagreed and did not allow the loan note deduction. However, the executors appealed to the FTT. The FTT agreed with HMRC that the liability under the loan note should be abated to nil for IHT purposes. The reason being the liability consisted of an incumbrance created by the gift of the property to the trustees of the life settlement.

As a fallback, HMRC also argued that the gift of the property to the trust was a gift subject to a reservation so that the property should be treated as part of her estate upon her death.

However, if the FTT accepted HMRC's argument, the value of the deceased's estate would be increased by an amount equal to double the value of the loan note. It also found that it was not clear that there would be any relief from the double charge to tax that would then arise.

The FTT reasoned that the benefit received by the deceased by virtue of the gift of the note, as well as the right to occupy the property for the rest of her life, had existed before the gift was made and before the life tenancy arose. It thus did not impact upon the possession and enjoyment of the note by the trustees.

The effect is that a double tax charge did not arise against the estate as a result of the home loan scheme, although the scheme did fail to save any IHT. You can read the full case [here](#).

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