

Home loan IHT avoidance scheme succeeds on appeal

Synopsis: A recent tax case in which the use of a home loan scheme to avoid inheritance tax (IHT) on a property was found to be valid by the Upper Tax Tribunal.

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The case

In this case, [Executors of Mrs Leslie Vivienne Elborne v HMRC \(2025 UKUT 59 TCC\)](#), Mrs Elborne sold her home to the trustees of a trust, in 2003, in which she held an interest in possession, for the benefit of her children in return for a £1.8 million loan note. She then gave the loan note to the trustees of a second trust under which she was precluded from benefiting.

She continued to live in her home and pay the outgoings. She died in January 2011, more than seven years after that gift, so that it became a potentially exempt transfer (PET).

Mrs Elborne's 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. The executors appealed to the First-tier Tax Tribunal (FTT). However, the FTT agreed with HMRC that the debt was prohibited as a deduction under s.103 Finance Act 1986, and 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. In the FTT's view, the liability under the loan note was precluded by s.103 because...

"(1) the liabilities of the settlement were to be treated as having been incurred by the holder of the interest in possession, with the result that the Note was a "debt incurred by" Mrs Elborne within s103(1); and (2) the consideration for the debt comprised "property derived from the deceased" within s103(1)(a), there being no requirement for two dispositions of property for this purpose."

This was in 2023.

The executors then appealed to the Upper Tax Tribunal, submitting that the FTT erred in law in its conclusions on the s.103 issue. They argued that the liability under the trustees' promissory note was not a 'debt incurred by' Mrs Elborne for the purposes of s.103; and further, that the consideration for the debt was not 'property derived from' Mrs Elborne within the meaning of s.103(3). This second part would

be relevant only if the liability under the note was deemed to be a debt incurred by Mrs Elborne for the purpose of s.103(1).

In a judgment made on 17 February 2025, the Upper Tax Tribunal agreed with the executors on both these issues, saying...

“We have concluded that the decision of the FTT on the Section 103 Debt Incurred Issue involved two errors of law. Individually and together, those errors were material to the FTT’s conclusion on that issue and to the appeal.”

HMRC cross-appealed on five issues, all of which had already been decided against them by the FTT. The Upper Tribunal dismissed all the cross-appeals again and ruled that the trustees' promissory note was not, in law, a debt incurred by Mrs Elborne. Instead of remitting the case back to the FTT, it re-made the decision and allowed her executors' appeal against HMRC's IHT assessment.

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