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PASSING INVESTMENT ASSETS DOWN A GENERATION (HOLDOVER RELIEF)

Edward and Karen Fortune own a small buy to let portfolio and are looking at ways to pass the assets down to their children and grandchildren. If they were to directly gift these properties to the children from their estate for inheritance tax (IHT) purposes will be a disposal of assets at full market value for capital gains tax (CGT) purposes.

It is very difficult to transfer property without triggering a full market value gain.

However, there is a means of taking the value of some of these assets out of the estate of Edward and Karen's estate using a UK trust.

Section 260 TCGA 1992 provides that capital gains tax need not be paid on non-business assets transferred into a UK resident trust if the following conditions are met:-

- The UK trustees agree to accept the assets at their tax base cost such that they will pay any future gain realised on sale.
- The transfer into trust is a chargeable transfer for IHT purposes, attracting a 20% lifetime charge.
- Holdover relief will be denied if the beneficiaries of the trust include the minor children (under 18) of the settlor.
- On transfers of property to the trust – claiming holdover relief will deny the trustees/beneficiaries claiming CGT exemption on the property as their PPR in the future.

However, a transfer below the nil rate band (£325,000) does not create a tax liability.

The arrangement works along the following broad lines.

1. Create a family trust in the UK with UK resident trustees (this could include Edward, Karen and another or you can use Fortress in their capacity as Corporate Trustees).

2. The terms of the trust are that it is a discretionary trust giving the trustees the power to appoint the income and capital of the trust to whatever member of the family they please, or an interest in possession trust, which means that trustees distribute income to beneficiaries identified by the settlor.

3. The trustees' actions are subject to the settlors prior written approval.

4. The settlor would retain a power to direct the trustee to do as he says with the assets of the trust, or retain control by being appointed a trustee.

5. The properties are transferred to the trustees. The transfer is a chargeable transfer for IHT purposes but their value is below the nil rate band (currently £325K per spouse).

6. This planning is suitable for assets such as property, quoted shares, or shares in an investment company.

Case Study:

1. Edward and Karen Fortune own 3 investment properties. They would like to pass these down to their children, Jake and Adam.

2. Edward and Karen no longer require the income from these properties but would like to shelter the assets from IHT, potential marital disputes and ensure the assets are retained in the bloodline.

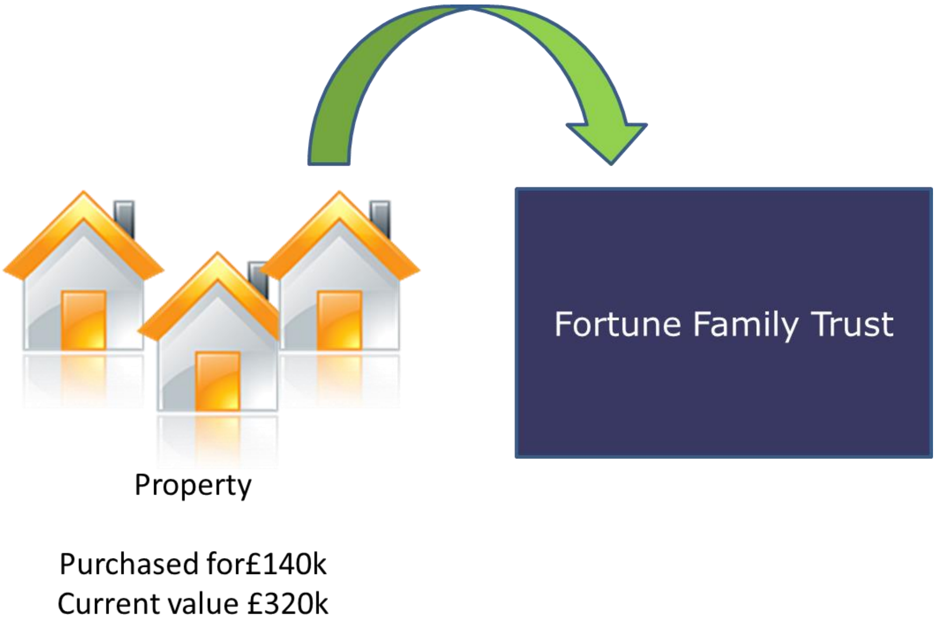
3. Edward and Karen own the properties jointly.

4. They create a family trust in the UK with themselves as trustees and a UK professional trustee.

5. The discretionary trust gives the trustees the power to appoint the income and capital of the trust to categories of beneficiaries including their children and grandchildren, but excluding spouses, ensuring the property stays in the bloodline.

6. The properties are transferred to the trust. The transfer is a chargeable transfer for IHT purposes but their value is below the nil rate band (currently £325K per spouse).

What would it look like?



IMPORTANT NOTES

Nothing in this article should be construed as advice. The contents of this article are intended to stimulate your and your client's interest in trusts and tax planning with a view to taking further professional advice upon your or your client's specific circumstances. No action should be taken without further professional advice from an appropriately qualified professional.