INHERITANCE TAX:

LIFETIME GIFTS AND THE NEW TAPER PROVISIONS.

by Mark L. Dawbarn, Solicitor, Cannon Lincoln Group.

The Finance Act 1986 introduced the new name for the former Capital Transfer Tax and, at the same time, made several changes in the working of the tax. These included the concept of the Potentially Exempt Transfer and special treatment for gifts made subject to reservation. One old acquaintance who reappeared on the scene was the taper relief applying to lifetime gifts where a charge occurs as a result of death within the 7 year period. Unfortunately we found, once we had taken the trouble to get to know our old acquaintance again, that he had been replaced by an imposter with only a superficial resemblance and it seems likely that the newcomer, although he will complicate the tax, will have little of value to offer us in most cases.

Under Estate Duty, abolished in 1975, the effect of taper relief was to reduce the chargeable value of gifts made in the relevant inter vivos period before death. The amount of relief was on a progressive scale depending on the length of time elapsed. It was a useful relief because it had the effect of reducing tax at the top rate applicable to the estate. The life insurance industry was able to provide a well tailored policy to protect lifetime gifts, consisting of decreasing term cover against death during the chargeable period. The amount of cover would be based on the top rate of tax likely to apply to the estate.

The new taper relief provisions operate in a totally different way. Section 7 of the Inheritance Tax Act, 1984 (as amended by the Finance Act, 1986) provides that in the case of a transfer made within the 7 year period before death, tax will be charged at the following percentages of the death rate scale:-

YEARS BETWEEN GIFT AND DEATH	PERCENTAGE OF DEATH RATE
0 – 3	100
3 – 4	80
4 – 5	60
5 – 6	40
6 – 7	20

It is to be noted that this time the relief applies to the rate of tax and not to the value transferred. This means that if the gift falls within the nil rate band

(up to £71,000), the relief will be non-existent; neither will it reduce the tax payable on the remainder of the estate since the chargeable value for aggregation is not affected. Even in those larger cases where the taper does come into play the full effect can only be enjoyed by the very wealthy who can afford to make lifetime gifts which attract Inheritance Tax at the top rates. It is difficult to imagine that these bizarre results represent the original intention of the legislators.

It may be expected that in many cases where a lifetime gift is to be made, the donor will make his gift by means of a Potentially Exempt Transfer (a PET) rather than an immediately chargeable transfer, especially if the gift would take him above the nil rate band. He then has the chance to avoid the tax altogether if he survives by 7 years. If unfortunately he does not survive the 7 years the resulting tax calculation may be reasonably compared to a folly built in the park of a stately home. It may be faultless in structure and design but it is difficult to find any useful purpose for it.

DIRECTORS & OFFICERS LIABILITY FOLLOWING THE INSOLVENCY ACT

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The New Legislation

Within the last year, major new legislation has materially affected the personal exposure of directors and officers when carrying out their duties in a company. Initially contained in the Companies Act 1985 and the Insolvency Act 1985, the legislation has now been consolidated into the Insolvency Act 1986 and the Company Directors Disqualification Act 1986, the remaining provisions of which came into force on 29th December 1986.

All directors and officers have always been at risk, both in respect of their failure to discharge their duties properly and (as representatives of their company) for breaches of the law by the company and/or employees. However, personal financial risk was (with certain exceptions) largely limited to damages flowing from a successful claim for breach of duty. The Insolvency Act has now posed a significant further risk to the director in respect of his potential liability to be called upon to contribute to the deficit arising from his company's insolvent liquidation. This is a marked dilution of the traditional concept of "limited liability" (at least as far as creditors and directors are concerned) and is yet another example of the trend in 'piercing the corporate veil" which has, over the years, been regarded in some quarters as an aim rather than anathema.