

Inheritance Tax

- 1 Please note that it is perfectly legal to seek to arrange your affairs to minimise your liability for taxation within the framework of the law. However, tax evasion is illegal & criminal penalties apply.
- 2 This summary is intended to set out the main factors & possibilities that could minimise any liability to Inheritance Tax (IHT) & to describe the use of General Protection Trusts (GPT's) & Instruments of Variation (IoV's).
- 3 It is NOT intended to be an exhaustive & complete statement.
- 4 Note that the information given is current at December 2015. It can be changed at any future time.
- 5 In particular, the legal position surrounding GPT's is fluid & subject to change either by changes in the law, by cases decided in a Court or by reinterpretation of existing rules by the Inland Revenue. As a matter of principle neither the Chancellor of the Exchequer nor the Inland Revenue want there to be a simple fool proof way of avoiding IHT. Hence, whilst from time to time schemes emerge that promise to avoid IHT either they fail when challenged by the Inland Revenue in a Court or the Government acts to make them illegal.

THIS MEANS THAT WHILST WE ALWAYS SEEK TO PROVIDE APPROPRIATE & CORRECT ADVICE TO OUR CLIENTS WE CANNOT GUARANTEE THAT ADVICE WILL REMAIN APPROPRIATE & CORRECT AT ANY FUTURE TIME. NOR CAN WE UNDERTAKE TO INFORM CLIENTS WHERE ADVICE ONCE GIVEN BECOMES INAPPROPRIATE EITHER BY THE CHANGE MECHANISMS SET OUT ABOVE OR BY CHANGES TO CLIENTS' CIRCUMSTANCES.

Inheritance Tax

- 6 For people who are married or civil partners anything they give to their spouse/civil partner in life or on death is tax free.
- 7 If someone dies & leaves assets, their 'estate', valued at more than ~£325,000 then IHT will be levied at a rate of 40% on the slice of the assets above ~£325,000, called the 'nil rate band'. Possible ways to reduce any IHT liability include the following:-
 - 7.1 For people who are married or civil partners any 'un-used' nil rate band on first death can be used in addition to their own nil rate band by the surviving spouse/civil partner on their death. So at best the surviving spouse/civil partner can gift ~£650,000 free of IHT on their death.
 - 7.2 Spend money & reduce the value of your estate.
 - 7.3 Give assets away & reduce the value of your estate. If you live for more than 7 years then the gifts you made will not be counted for IHT purposes. For gifts made within seven years of death where the total value exceeds the nil rate band, IHT is payable on a reducing scale: -

less than 3 years before death	Full 40% tax payable
3 to 4 years	80% of 40% tax payable
4 to 5 years	60% of 40% tax payable
5 to 6 years	40% of 40% tax payable
6 to 7 years	20% of 40% tax payable
 - 7.4 But note that if you give assets away but still retain the use & benefit of them, called a 'gift with reservation', the gift will be disregarded for IHT purposes. For example, if you give your house to your son but continue to live in it rent free this is a gift with reservation. If following the gift you pay your son a market rent to live in the house this would not be a gift with reservation. After your death your son may have to demonstrate that he did in fact receive such a rent, that it was a reasonable rent & it was not repaid to you surreptitiously. Another example would be that if on your death you gave your half of your house to your son (assuming, of course, that you & your spouse own the house

as 'tenants in common') but your spouse continued to live in the house without paying rent to your son for living in his half, then again, for IHT purposes your spouse would be assessed as owning all the house on his/her death.

- 8 A gift is valued as the reduction in your worth by making the gift. This can be important. For example, if you own 51% of the shares of a company you have control of it. If you give away 2% of the shares the value of the gift for IHT purposes may be much greater than the sale price of any 2% of the company's shares as the price you could sell 49% of the company for may be much less than the value of a 51% controlling interest.
- 9 Be careful of selling an asset at a 'knock down' price. After your death the purchaser may have to convince the Inland Revenue that it was not done to reduce IHT liability.
- 10 If you are not married then get married. Any gifts to your spouse either while you are alive or in your will are completely free of IHT.
- 11 An individual can give away free of eventual IHT liability the following: -
 - 11.1 gifts made to individuals more than seven years before your death.
 - 11.2 gifts not exceeding £3,000 in any tax year. (A tax year runs from 6 April in one year to 5 April the following year.) This applies to one gift or a number of gifts and may be used with other exemptions (except the small gifts exemption). If the total value of gifts in one year is less than £3,000 any surplus can be carried forward to the next tax year but no further.
 - 11.3 wedding gifts of up to: -
 - £5,000 for each of your children (including adopted children and step-children) or the person that your child is marrying
 - £2,500 to each grandchild, great grandchild or the person your grandchild or great grandchild is marrying
 - £1,000 to anybody else(To qualify, a wedding gift must be made on or shortly before the marriage, to one or both parties, and exemption only becomes fully effective when the marriage takes place.)
 - 11.4 gifts to UK based charities, registered housing associations and qualifying Parliamentary political parties
 - 11.5 gifts to national museums, universities, The National Trust and certain other bodies
 - 11.6 gifts in any tax year up to a total of £250 to as many people as you wish, but such gifts are only exempt if the total given to any one person in any tax year is not more than £250 (You cannot use this with any other exemption for the same person.)
 - 11.7 gifts out of your income after tax. To qualify, you must show that the gifts are a part of your normal 'usual expenditure', and leave you with sufficient income to maintain your usual standard of living. There is a vague requirement that the gifts should be or be intended to be regular in nature.
- 12 Any insurance that pays out on your death can be written on trust for, for example, your children. The pay-outs will then not be counted as part of your estate.
- 13 Take out insurance on your life designed to pay the expected IHT bill. Make sure that it is written in trust for, for example, your children or your estate will have to pay IHT on the proceeds of the policy designed to pay the IHT!
- 14 Gifts to registered charities, for 'national purposes' & to political parties are free of IHT.
- 15 If you have business related assets or agricultural property when you die & have held them for at least two years reliefs are available that can be up 100% of the tax due; see later. That is effectively no tax would be payable on the business assets. If you have debt secured on such property consider moving the debt to property that will be subject to IHT. This can be done at any time before your death - the day before if your timing is that good - & will still be effective.
- 16 After a death an Instrument of Variation could be used to alter a will to reduce an expected IHT liability; see later.
- 17 Moving your assets out of the UK is ineffective. IHT is levied on everything you own worldwide.
- 18 Leave the country & move your 'domicile' abroad. The Channel Islands & the Isle of Man are 'abroad'. Domicile is a complex term in that it is not the country you are living in but the country you 'belong' to. To change your country of domicile you have to leave the UK with no intention of ever returning & effectively severing all links with the UK. Persuading the Inland Revenue that you are no longer domiciled in the UK can be very difficult. If you succeed IHT will only be payable on your assets in the UK. You may have to pay the equivalent of IHT in your new domicile.
- 19 If you join the armed forces & die on active service no IHT is levied on your estate.
- 20 There is no simple, sure-fire, tried & tested, no-strings-attached way of avoiding IHT.

General Protection Trusts

- 21 **WE STRONGLY RECOMMEND THAT PROFESSIONAL TRUSTEES ARE APPOINTED TO MANAGE A GPT. IF THIS IS NOT DONE WE STRONGLY RECOMMEND THAT THE TRUSTEES TAKE PROFESSIONAL ADVICE IN THE DISCHARGE OF THEIR DUTIES.**
- 22 There are many possible uses for GPT's: -
- 22.1 **IHT Saving.** The new regime allows spouses/civil partners to 'pass on' un-used Nil Rate Band to their spouses/civil partners on their death. Only one NRB can be passed on in this way. So widows/widowers who re-marry can't pass on the up to two NRB's they may have the use of on their death. In these circumstances GPT's can save IHT. A GPT can also give IHT savings if the assets transferred into the trust are expected to grow in value at a faster rate than the anticipated future increase in the nil rate bands. A house and land will often fall into this category!
 - 22.2 **Saving Residential Care Fees.** For spouses or civil partners after the first death if the survivor needs residential health care then potentially almost all of the survivors' wealth could be used up paying for it. A GPT can ensure that whatever is placed in the trust on first death is protected.
 - 22.3 **Keeping Assets 'Safe for the Children'.** After first death the survivor can benefit from assets held in the GPT but whatever happens to the survivor, for example, re-marriage or bankruptcy, the assets in the GPT are protected. If, for example children, should ever suffer divorce the former spouse cannot claim any assets that are held in a GPT.
 - 22.4 **Keeping Control Of Assets Out of 'Unsuitable' Hands.** A GPT can keep assets safe from, for example, children who would fritter the money away, whilst still allowing those children to benefit from the assets in a controlled way.
 - 22.5 **Unmarried Partners.** A GPT can make the most of the Inheritance Tax (IHT) allowances available to unmarried partners and minimise IHT payable on second death.
 - 22.6 **Business and Agricultural Assets.** Reliefs are available for business and agricultural assets that eliminate or substantially reduce IHT. Using a GPT can preserve that benefit so that it is not lost to people who in later life might sell their business or agricultural assets before death.
 - 22.7 **Children with Special Needs.** If you look after children with special needs GPT's can be an effective way of providing for them in a way that does not stop any benefits the state or local authority may offer.
- 23 Although assets equivalent to the nil rate band can be given on the first death to children or other beneficiaries apart from the surviving spouse, in the majority of cases this will leave insufficient assets to ensure that the survivor will continue to enjoy the same standard of living as before. By using a GPT containing up to the nil rate band on the first death, it is possible significantly to reduce the IHT bill on the second death while allowing the survivor to benefit financially, not only from their own assets but also from the whole of their spouse's estate.
- 24 A discretionary trust is so called because no beneficiary has a fixed entitlement & the trustees have complete discretion to decide what, if any, benefits should be allocated to the beneficiaries. The trustees can distribute income and/or capital among a defined class of possible beneficiaries, which can include the surviving spouse, any children & grandchildren & such other beneficiaries as may even conceivably be intended to benefit. Mere inclusion in the class does not confer any legal right to receive any benefit, & it is entirely up to the trustees to decide how the Trust assets should be used.
- 25 The flexibility of the arrangement enables the trustees after the first death to decide what should happen. The aim of the exercise is for the trustees at their discretion to pay any income from the Trust to the survivor, or to allow the survivor to use any property (or share in the property) in the Trust, throughout their lifetime, but without the capital value being liable to IHT on the survivor's death. If necessary, some or even all of the capital can be transferred to the survivor although, to the extent to which it is, the IHT saving on the second death will be lost. Similarly, provided the survivor has sufficient other assets, some or all of the capital can be made over to children or other beneficiaries during the survivor's lifetime. It will normally be intended that, after the survivor's death, the Trust will be wound up & the assets distributed to the children or other appropriate beneficiaries. Both spouses may find it reassuring if a letter of wishes has been addressed to the trustees asking them, albeit in a non-binding way, to regard the survivor as the principal beneficiary, & providing guidelines as to how the Trust assets should eventually be distributed.
- 26 Much of the legal underpinning of wills is stable & does not change much over time; indeed the main legislation is the Will Act of 1837! The one area that is often subject to change is that relating to GPT's. Whilst HMRC has accepted that GPT's are valid & do work, because GPT's minimise tax payable the HMRC always seeks to strike down the arrangement where they can find reason to do so. Hence, the best ways to set up & run GPT's does change from time to time. For this reason our provision for GPT's in wills we write is deliberately intended to be as flexible as possible & to leave the decisions about how to structure & run the trust to the trustees after first death. That said, there are two main ways to set up a GPT: -
- 26.1 Simply transfer assets to the trust & let the trustees look after the assets. For example, if spare cash was available in the estate of the first to die, £325,000 in cash could be given to the trust & invested by the trustees.
 - 26.2 If most of the value in the estate of the first to die lies in a share of the family home then this must be transferred into the trust. There are three principle options: -
 - 26.2.1 Transfer the share of the family home into the trust & leave it there. The trust is then co-owner of the home & party to all decisions relating to it.
 - 26.2.2 Transfer the share of the family home into the trust & then sell it to the surviving spouse. As the surviving spouse often hasn't got the money to pay for the share its normal for the trust to accept an IOU. See below for more discussion of this option.

26.2.3 Transfer the share of the family home to the surviving spouse subject to a charge over the share which represents the asset held by the trust. See below for more discussion of this option.

- 27 The appointed Trustees who administer the GPT have ABSOLUTE power & discretion as to what to give, to who & when. It is important to note that the appointed Trustees must act in appropriate ways & take appropriate decisions for the GPT to work as intended.
- 28 Hence, care is required when choosing who should act in this role. Normally, the surviving spouse will be one of the trustees but MUST not be the only one. Adult children or other family members can be appointed although, if they also have a personal interest in the Trust, it may be preferable to appoint one or more professional or other independent trustees. As the trustees will have to act unanimously, any one of them effectively has a power of veto.
- 29 It is important to note that for a GPT to work the sole residual beneficiary in the will must be the surviving spouse.
- 30 For the arrangement to work in whichever order spouses die they must each own sufficient assets to use up the nil rate band. This may require some equalisation of the estates subject, of course, to other considerations. The only or main residence, or a share therein, is not an ideal asset to allocate to the Trust, because of the danger of the survivor being regarded by the Revenue as being taxable as an outright owner by virtue of their continuing rent-free occupation. If such a residence is the only significant asset owned by spouses, the discretionary trust arrangement & the appointment & conduct of the Trustees needs to be considered particularly carefully.
- 31 **THIS IS IMPORTANT** It is common for two or more people to own a house or land together as 'joint tenants' & this means that they DO NOT own a fixed percentage of each but that together they own it all. The practical effect of this is that they cannot give away their 'part' of the property in their Will. Upon the first death, the other(s) owns all of the property regardless of what the Will may say. So, if jointly-owned property is used in the trust, it must be owned by the spouses as 'tenants in common' rather than as joint tenants so that, on the first death, the deceased's Will applies to their share rather than it passing automatically to the survivor.
- 32 An existing 'joint tenancy' can be severed & converted into a 'tenancy in common' quite easily. Generally, it is preferable, for investments, cash or other assets to be allocated to the Trust.
- 33 Income Tax: Apart from IHT, the trustees will generally have to pay income tax at 34%. Special rules now apply to dividend income. Although the Trustees will still suffer tax at approximately 34% overall when receiving dividend income, they may have additional income tax to pay if they distribute the net balance. Each case must be looked at separately.
- 34 Capital gains tax ("CGT") The trustees will pay CGT at a flat rate of 34% (subject to any taper relief) in respect of any capital gains exceeding their available annual exemption. Although there will be no uplift in the base value of the assets on the survivor's death for CGT purposes, when they are subsequently distributed it should be possible to defer payment of the tax by an election for hold-over relief.
- 35 A Discretionary Trust needs to be properly administered. This involves the trustees filing annual tax returns & issuing appropriate tax deduction certificates to beneficiaries who have received income. The trustees should also maintain Trust accounts & properly manage the Trust's property or investments. The amount of administrative work will depend on the nature of the Trust assets & on the frequency or otherwise of distributions of income & capital.
- 36 In the right circumstances, GPT legacies provide a married couple with an opportunity to reduce the eventual IHT liability significantly, while still allowing the survivor to benefit from all of the assets which the spouses presently enjoy between them.

Business Property Relief

- 37 Business Property Relief (BPR) reduces the taxable value under IHT of a chargeable transfer of 'relevant business property' by either 100% or 50%.
- 38 The 100% rate applies to businesses (sole traders) interests in businesses (partnerships) & to any shares or securities in an unquoted company. The 50% rate applies to a controlling holding of shares or securities in a quoted trading company & to land buildings or plant & machinery owned by the transferor & used wholly or mainly by companies controlled by the transferor or by his partnership or by a business owned by a settlement in which the transferor enjoys an interest in possession & which is carried on by the transferor.
- 39 Shares listed on the Stock Exchange or other recognized stock exchanges are quoted but for these purposes shares listed on the Alternative Investment Market or OFEX are unquoted.

Minimum Ownership Period

- 40 The transferor must either have owned the property i.e. the sole trader business partnership interest or the shares land buildings or plant throughout the previous two-year period or be deemed to have satisfied the condition. Thus relevant business property which has replaced other business property can qualify for relief. Those who inherit relevant business property from their spouse can add the deceased's period of ownership to their own; & · Relevant business property which was subject to an earlier transfer can qualify for relief if it or the earlier transfer is made on death.

'Wholly or Mainly'

- 41 Property will not be relevant business property if the business consists wholly or mainly of dealing with securities stocks or shares or buildings or making or holding investments. Investment businesses are therefore denied business property relief. In contrast businesses which carry on both investment & trading activities will qualify for relief if they are mainly

trading. Quantitatively the test is clear: it means more than 50%. Thus a business which is 51% trading will attract relief but a business which is 49% trading will attract no relief at all. Qualitatively the test is less clear as there is no statutory guidance. It is unsurprising; therefore that the applications of this 'wholly or mainly' test has spawned a number of cases in recent years. In the past the Inland Revenue sought to place great emphasis upon net profitability as being the determining yardstick so that only those businesses which generated more than 50% of their net profit from trading activities qualified for relief.

Excepted Assets

42 Even if the requirements for BPR are met an asset will be denied relief as an 'excepted asset' if it is neither used wholly or mainly for the purposes of the business nor required at the time of the transfer for the future use of the business. An asset used wholly or mainly for the benefit of the transferor or of the person connected with him is also deemed to be an excepted asset. An excepted asset could include surplus cash within the business or a property owned by the business but occupied by the transferor as his home.

Denial of Relief

43 If the transferor dies within seven years of making a transfer of qualifying relevant business property BPR will be denied unless certain conditions are met & most importantly unless the transferee has retained the property or has sold it & reinvested the sale proceeds in suitable replacement property. If the transferor has entered into a binding contract to sell the relevant business property then relief will not be available.

Instrument of Variation

44 IoV's are used to effectively alter the provisions of a will after the death of the will maker. This is normally done so that the changes have an immediate or potential future saving in IHT.

45 The law is not so silly as to insist that someone who is given a gift under the terms of a will, a 'beneficiary', must take the gift even if they do not want to. There are three possibilities in this situation.

- The beneficiary can take the gift & then give it away. However, there may then be a potential IHT liability if the beneficiary dies within 7 years of making the gift.
- Use a disclaimer; a direction from a beneficiary to the executors or administrators that they do not want the gift. A disclaimer is only possible before the beneficiary has taken possession of the gift. The beneficiary can only reject the entire gift; for example, if the gift is of £10,000 the beneficiary can't say that he only wants £5,000. It's all or nothing unless the will has made specific provision to the contrary. The rejected gift would then fall into the residuary estate & be distributed according to the will or according to the Law of Intestacy.
- Use a IoV; a IoV is a direction from a beneficiary to the executors or administrators to transfer property to someone else. A IoV is treated from the view point of IHT as if the will itself contained the variation.

46 A IoV is similar to a disclaimer in that the original beneficiary gives up his rights to receive property under the terms of the will or the intestacy rules but a IoV differs from a disclaimer in three important respects:-

47 A IoV is possible even if the original beneficiary has accepted the property, whether by receiving income or by having the property given to him. It is even possible to 'vary' the terms of the will once the administration of the estate is complete. Surprisingly, it is possible to vary the terms or will even if the original beneficiary has died. For example, if my wife dies & leaves me everything & then I die & leave everything to my son. My son can use a IoV to effectively alter the provisions of my will if it makes sense for an IHT saving point of view.

48 The original beneficiary can make a partial 'variation' of a gift by, for example, giving up part of a gift.

49 The original beneficiary can control the ultimate destination of the property since it passes to whomever he specifies. The property does not have to pass under the terms of the deceased's will or the intestacy rules.

50 Points to note: -

- A IoV must not be made for payment. The original beneficiary must not receive any payment for executing the IoV.
- A IoV must be made in writing.
- A IoV must be made within two years of the death & the IR must be notified within 6 months of the date of the IoV.
- If the IoV means that more tax would be payable from the estate the executors/administrators must endorse the IoV. The executors/administrators can only refuse to endorse the IoV if the estate has no money to pay the additional tax.

51 It is not always possible to vary the gifts given by a Will. A IoV normally requires the consent of all beneficiaries who are interested in the property which is to be redirected. Problems are likely to arise if some beneficiaries are under the age of majority or if their gift is to be held in trust for them.

52 It is also possible to use a IoV to vary a will to set up a will trust such as a GPT.

53 Please note that this guidance is based on the legal situation as at December 2015. If you write a will on the assumption that a IoV could be used to adjust things after death & the legal position changes you may need to change your will.

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