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Inheritance tax - and how to reduce your tax liability

A Guide provided by Rod Jones of Convenient Wills

1 Welcome

Thank you for requesting this guide. I hope you find it helpful and informative.

Convenient Wills, as will-writers, only advise on simple tax planning issues that relate directly to Wills. But the reduction of an inheritance tax liability can be achieved in many ways. To recommend you just use your Will to achieve the tax reduction would, in our opinion, be poor advice. So this guide aims to make you aware of other methods by which you can effectively reduce your potential tax liability. This information is provided on condition that you accept:

- ♦ This document does not constitute any form of advice. The pros and cons of each option are our viewpoint, and provided for information purposes only. They are not specific to you; you must discuss your affairs with a tax specialist -- who will tell you the pros and cons of each in relation to your own circumstances.
- ♦ You must NOT rely upon any part of this document for accuracy - but seek professional advice in a face-to-face meeting to verify any 'fact' printed in this guide.
- ♦ This guide must be regarded only as a source of information to supplement your own knowledge. The guide's purpose is to equip you with information to enable you to have an informed discussion with your professional adviser.
- ♦ We cannot accept any responsibility or liability for any adverse outcomes for you or your family, no matter how caused. In addition, we do not accept any liability for any mistake, error, or omission from this guide: we take great care to ensure the technical accuracy of our guides and reports but mistakes can still occur.

If you do not accept these terms then do not read any further.

This guide is one of a number of guides and reports available from our web site www.convenient-wills.co.uk; they cover a wide range of aspects dealing with estate planning in general, and making your Last Will & Testament and Lasting Powers of Attorney in particular.

All our downloadable guides and reports use hyperlink technology. This allows you, if you are reading the document direct from a computer with access to the Internet, to click on a hyperlink (indicated with blue, underlined text) and you will be taken through to the appropriate article. Please note that the guide is not designed to be printed off; if you wish to print off the guide please [contact us](#) and we will send you an amended version.

If you require further information or clarification on any aspect of this guide then please do not hesitate to contact me. I will be only too pleased to help.

Rod Jones

Rod Jones A.C.I.B.
Proprietor of **Convenient Wills**

2 Inheritance Tax (IHT) - Overview

The thought of paying the Taxman 40% tax on the value of the your estate [that exceeds the IHT Nil- Rate band] when you die probably annoys you. It seems to annoys most people.

Inheritance tax used to be regarded as:

- ♦ the tax on the rich; and
- ♦ an avoidable tax - by doing a little tax planning.

With house prices souring within the UK in recent years the tax now applies to ever increasing numbers of people, although in reality it still only affects a comparatively minor % share of the whole community.

The claim that IHT is an avoidable tax is still true - but more work is required today than in the past to ensure the tax planning is legal. Many of the former loopholes have now been closed by legislation and by HM Revenue and Custom's interpretation of that legislation.

It is still possible though to legally avoid all inheritance tax - providing you give yourself and your estate sufficient time.

History shows us that any IHT-reducing scheme that is complex or 'out of the ordinary', runs an ever-increasing probability of not succeeding in the long term. The 'golden rule' nowadays would appear to be to stick to simple solutions, using case proven standard tax-planning principles - and plan before your death.

The purpose of this guide is to draw your attention to:

- ♦ how a Last Will and Testament ("Will") can be used to reduce a potential inheritance tax liability; and
- ♦ draw your attention to the other available options that can potentially help reduce an IHT liability.

3 Glossary

- ♦ **Inheritance tax:** the name given to the tax that becomes payable on the death of a person.
- ♦ **IHT:** the standard abbreviation for inheritance tax;
- ♦ **Nil-Rate-Band (NRB):** The amount a person can give away on their death that is subject to inheritance tax at 0%. (I.e. They pay no tax on this amount.) Any amount exceeding the IHT NRB threshold is subject to inheritance tax, presently at the rate of 40%.
- ♦ **Transferable Nil-Rate-Band:** Where a spouse or civil-partner dies, and does not use all of their NRB, then the unused portion (as a % of the then total NRB) can be transferred to, and added to, the surviving spouse/civil-partner's NRB for them to use at the time of their death.
- ♦ **HMRC:** Her Majesty's Revenue & Customs - previously known as the Inland Revenue.
- ♦ **PET:** Potentially Exempt Transfer. Where a gift is made from an estate during a person's lifetime that gift is usually classified as a PET. A PET is disregarded after seven years for inheritance tax calculations -- however if a person dies before seven years has lapsed from the time of making the gift then the gift is added back into the deceased person's estate for inheritance tax liability calculations.
- ♦ **Will:** Short for 'Last Will and testament'.

4 Present Limits in IHT

For the purposes of this fact-sheet we assume you are a UK resident, and of UK domicile. If you are not then other limits and rules may apply; you must seek advice from a tax specialist.

Each UK resident is allowed to gift away up to the equivalent of the IHT Nil Rate Band Allowance -- presently set at £325,000 (tax year 2011-12) -- at the time of their death without incurring any IHT tax.

The value of the estate comprises:

- ♦ the net value of the estate at the time of death; plus
- ♦ any gifts made in the 7 years prior to the person's death that do not qualify as an exempt gift.

Any amount above the IHT NRB threshold is subject of tax at 40% (unless an exemption applies)

So, an estate valued at £425,000 (where no exemptions exist and disregarding any allowances) will be subject to the payment of £40,000 IHT. ($£425k - £325k = £100k \times 40\% = £40k$)

So, in summary:

- ♦ an estate that is valued at the time of the estate owner's death at less than the IHT NRB limit applying at that time will incur no IHT liability. And no tax planning is required unless those conditions are likely to change in the future due to [say] the receipt of an inheritance.
- ♦ An estate that is valued at the time of the estate owner's death at more than the IHT NRB limit applying at that time will incur an IHT liability -- unless post death tax planning is undertaken.

5 IHT Allowances and Exemptions

Tax planning involves using one [or more] of the following four distinct courses of action:

- ♦ Use the allowances available to reduce the value of the estate. In effect gifting away the estate over time to bring its value down to the NRB threshold level -- or at least reducing the estate to where the potential IHT liability is at an acceptable level;
- ♦ use the available exemptions;
- ♦ Use the available reliefs; and / or
- ♦ make separate provision for the anticipated tax liability.

We will now look at please four courses of action, starting with the more important exemptions and allowances.

6 IHT Allowance

The individual person's IHT allowance

As stated above, up to the IHT NRB allowance is taxed at 0%. Every person can give away this amount without incurring any inheritance tax.

The objective therefore for most people is to reduce their estate to below this threshold (or where widowed then to below the Transferable Nil Rate Band Allowance - see below).

This allowance forms the backbone to IHT planning.

Transferable Nil Rate Band Allowance

This allowance was introduced in October 2007. It allows a widow or widower to uplift their former spouse's unused IHT NRB allowance.

For example: Mr and Mrs Jones's joint estate is valued at £1,000,000. They have spread the value of their estate equally between each of them. On Mr Jones's death his estate - which is valued for inheritance tax purposes at £500,000 -- is gifted to his surviving wife.

As we can read from the section below, no inheritance tax is payable on Mr Jones's estate as the whole of Mr Jones's estate went to his surviving wife - a transfer which is IHT exempt.

Following the death of her husband Mrs Jones is now worth £1 million. On Mrs Jones's death her executors will now be able to claim Mrs Jones's individual person's allowance plus her husband's unused individual person's allowance -- under the scheme known as the 'transferable nil rate band allowance'.

This means that Mrs Jones's estate will only pay tax at 40% on the excess over £650,000.

For *most* married couples / civil partners [whose joint estate is less than 2 x NRB i.e. Less than £650,000] the Transferable Nil Rate Nil Rate Band Allowance removes the need for more complex IHT planning.

This is a simplified explanation of how the Transferable Nil Rate Band works - but hopefully it demonstrates the rules. More information is available from [HM Revenue and Customs](http://www.hmrc.gov.uk) website.

Please note: While the new rules help ease the IHT burden, and reduce the need for complex Wills, it is now even more essential that all parties make a Will; failure to do so will result in the rules of intestacy being applied - and these negate these new rules where no Will has been made.

7 Inheritance Tax Exemptions

The following exemptions are also available:

- ◆ Married Person's exemption;
- ◆ Annual Gift Exemption;
- ◆ Marriage gift Exemption;
- ◆ Small Gift Exemption
- ◆ Gifts to Charity exemption;
- ◆ Conditional exemption e.g. Gifts of art;
- ◆ Gifts out of regular income exemption.

Married Person's Exemption

Most married couples and civil partners transfer their estate to their surviving spouse or civil partner on their death. This transfer is 100% exempt of IHT i.e. No IHT to pay, irrespective of the amount transferred.

For example: Mr and Mrs Jones's joint estate is valued at £1,000,000. They have spread the value of their estate equally between each of them. On Mr Jones's death his estate - which is valued for inheritance tax purposes at £500,000 -- is gifted to his surviving wife. Even though Mr Jones's estate is greater than the IHT NRB allowance no tax is payable because the gift to his wife is exempt.

The married person's exemption provides the opportunity for significant tax planning.

Annual Gift Exemption

The annual gift exemption allows you to make gifts, each year, every year, up to the annual gift exemption. These gifts are excluded from the clawback calculation that relates to PETs (Potentially exempt transfers).

PROS

- ◆ Allowance: Up to £3,000 per annum in total.
- ◆ Unused element of last years exemption can be carried forward;
- ◆ Husband and wife each have their own exemption.

CONS

- ◆ If potential IHT liability is large this does not make large inroads to IHT reduction.

Marriage Gift Exemption

These gifts are made to children, just **prior** to their marriage.

PROS

- ◆ Each parent can give away up to £5000 to each child.
- ◆ Grandparents can give away £2500.
- ◆ The exemption can make a small difference to a potential IHT liability.

CONS

- ♦ If your potential IHT is large this does not make large inroads towards IHT reduction.
- ♦ Marriages occur infrequently.

Small Gifts Exemption

You can go around giving money to whoever you want. Providing no individual receives more than £250 in any one year these gifts do not detract from any of the other exemptions.

PRO'S

- ♦ Up to £250 per gift; and
- ♦ Unlimited number of £250 gifts allowed.

CONS

- ♦ If potential IHT liability is large this does not make large inroads to IHT reduction. How many people do you know?

Charity Exemption

The charity must be a recognised charity i.e. Registered with the Charity Commission.

PROS

- ♦ Gifts to charity are IHT exempt, and unlimited in amount.
- ♦ Your assets go for the benefit of the community.

CONS

- ♦ The family of the donor receive less.
- ♦ Care is needed with regards to the wording of the gift in the Will.
- ♦ Charities are increasingly putting pressure upon executors, chasing them for the monies due.
- ♦ Your assets go for the benefit of the community, rather than being retained within your family's estate / control.

Note: The Government intend to introduce a 10% inheritance tax discount for estates leaving 10 per cent or more of their total estate to charity.

The reduced rate of IHT, which will be discounted from 40 per cent to 36 per cent, is designed to encourage charitable giving and will apply from 6th April 2012.

We suspect that this tax discount scheme will offer little benefit to most people -- but we await to read the fine detail of what is proposed.

Conditional Exemption

e.g. Art, property etc may be given an exemption.

If you have an asset that would benefit the general public being given access to it then HMRC may grant a conditional exemption on that asset.

Gifts out of regular income

This is dealt with in more detail in section 13.

8 Specific Inheritance Tax Reliefs

There are two important reliefs available, namely:

- ♦ Business Property Relief; and
- ♦ Agricultural Property Relief

Business Property Relief

Business Property Relief ("BPR") can be claimed by the executors of a deceased business owner at time of the business owner's death. In most cases the shares or sale proceeds qualify for 100% relief i.e. There is no inheritance tax to pay.

For example: Mr Smith runs a business valued at £1 million. He has owned the business for more than two years. His Will gives the business to his son, and the residue of his estate to his surviving wife. On Mr Smith's death the business is given to his son (in accordance with his Will) and the remainder of his estate is given to his surviving wife. The gift to his wife is IHT exempt because gifts to spouses are exempt. And the gift to his son of the £1 million business qualifies for 100% business property relief - and so there is no inheritance tax to pay on this gift either.

PROS

- ♦ 100% relief on gifts of business property - including shares in unlisted small companies.

CONS

- ♦ A pure investment company does not qualify - e.g. A Property investment company.
- ♦ Either all the assets or none of the assets qualify for BPR; there is no in-between position. Therefore you need to seek advice as to what to include in the claim for BPR. You should earmark as many assets as you can legitimately as business assets -- to maximise the relief available. Any loans outstanding should, where possible, be earmarked as personal liabilities (rather than business liabilities).
- ♦ The testator has to have owned the business property for 2+ years to qualify for BPR.
- ♦ A grey area - seek advice from an accountant / tax office to ensure your business will qualify for BPR.

If you are the business owner you might wish to read our guide ['Wills for Business Owners'](#).

Agricultural Property Relief ("APR")

This applies to owners of agricultural land and associated assets. It works in a similar fashion to BPR above.

PROS

- ♦ 100% relief available.

CONS

- ♦ Must have held the land for 2 years if owned.
- ♦ If rented land the deceased must have rented for a period of 7 years.
- ♦ Seek advice from an accountant or tax office.

If you are a farmer you might wish to read our guide ['Wills for Business Owners'](#).

Other Reliefs

There are a number of other reliefs also available. These are not discussed here as they are minor.

9 IHT Savings Solutions

If after having explored all of your available allowances, reliefs, and exemptions there is still a potential inheritance tax liability then you may wish to take further action. Your options can be broken down into four distinct areas, namely:

- ♦ Solutions offered by your Will writer;
- ♦ Solutions provided by your financial adviser;
- ♦ Solutions you can undertake yourself; and
- ♦ Life cover.

10 IHT Saving Solutions - Offered By Your Will Writer

Discretionary trusts, pilot trusts, and lifetime trusts

By using a mixture of discretionary trusts, lifetime trusts, and pilot trusts [and assuming that there is sufficient time] then it should be possible to eradicate an inheritance tax liability in its entirety and to provide protection for the next generation of your family also.

How these trusts can be used so effectively to wipe out an inheritance tax liability is beyond the scope of this guide. Please call us to discuss.

Flexible Life Interest With Over-riding Powers of Appointment

If a married couple's estate is greater than 2 x the NRB allowance one solution is to incorporate the flexible life interest with over-riding powers of appointment into both Wills.

How these trusts can be used so effectively to reduce an inheritance tax liability is beyond the scope of this guide. Please call us to discuss.

If your Will contains such a trust then you are recommended to appoint a specialist solicitor to ensure everything is done correctly. Failure to operate the trust correctly could prove very costly.

Jump a Generation

Whilst this does not reduce your own IHT tax position it can save the family [as a whole] significant tax over time. It works like this:

Lets consider Parent P, who has an IHT liability, gives £100 to their child C on their death. In this simplified example IHT is applied to the child's gift reducing it down from £100 to £60. Child C, who has no need for the money during their lifetime saves it. On their death Child C also has an IHT liability. When Child C gives their estate to their child GC then the £60 gift from their own parents is diminished further by the application of IHT again. The gift to GC is now worth £36.

An alternative would be for Parent P to gift the money direct to their grandchild GC. Tax would still be payable on the gift when P died but the grandchild now inherits £60 - rather than the £36 in the example above.

By doing this:

- ♦ the grandchild enjoys an increase to them of 66%; and
- ♦ the gift is made to a grandchild at a more useful time for the grandchild.

11 Financial Adviser - Tax Planning Solutions

Your financial adviser can offer you a number of ways in which you can:

- ♦ effectively reduce the value of your estate - and thus your potential IHT liability; and /or
- ♦ make provision for your future liability.

To reduce the size of your estate you could:

Place Life Policies Proceeds into a Flexible Trust

Many people take out life policies on their own life, payable to themselves. They have overlooked the fact that you can't spend the money if your dead! In effect though they increase the value of their estate - and often create an even greater inheritance tax burden as a consequence. The better solution is to place these life policy proceeds into trust - for the benefit of the surviving spouse and children.

PROS

- ♦ Stops high value cash being added to the estate on death.
- ♦ Minimal / Zero cost.

CONS

- ◆ Need specific forms from life companies (or comparatively expensive forms from a Solicitor).
- ◆ Some policies include critical illness cover which you will want in your lifetime. Some companies are unable to split the two aspects of the plans. (You are recommended to liaise with your financial adviser before placing a policy into trust.)
- ◆ Care is needed as most of the trusts offered by life companies are very basic in their powers. Usually the money from the life policy is paid into the trust fund, and then almost immediately paid out to the beneficiaries. Sometimes a better solution is for the trust to retain those monies and for the trustees to release those funds over a period of time, and in certain cases into other trusts. The more powerful and complicated trusts are 'lifetime' trusts set up by solicitors. They normally cost in the region of £500 to create.

You must therefore see a suitably qualified financial adviser to explore this advice.

Purchase Income Bonds

Income Bonds can be a useful tool - refer to an IFA for more information.

Purchase a Loan Trust

A loan trust may be suitable for:

- ◆ Individuals who have total assets in excess of twice the nil rate band of inheritance tax, or who are already using the nil rate band in their wills on the first death.
- ◆ Individuals who wish to reduce the future growth of their estate so as not to add to their IHT liability, but who do not wish to gift assets while alive.
- ◆ Individuals who have surplus capital which is not currently needed to support their life-style, but to which access may be needed in the future.

Discuss with a suitably qualified financial adviser.

Purchase a Discounted Gift Trust

The discounted gift trust may be suitable for:

- ◆ Individuals who have surplus capital which they are certain that they will never require in the future, but from which they do need to obtain regular withdrawals.
- ◆ Individuals who are confident that they have a life expectancy of at least 7 years.

Alternatively, individuals who, whilst not certain of surviving the full seven years, are prepared to make a gift into the trust in excess of the nil rate band, expect to survive for at least 3 years subsequently, and wish their estate to benefit potentially from the IHT taper relief. This reduces the tax charge by 20% if death occurs 3-4 years after the gift; by 40% after 4-5 years; by 60% after 5-6 years and by 80% after 6-7 years. However, taper relief only applies to an amount in excess of the nil rate band.

Discuss with a suitably qualified financial adviser.

Equity Release

Many people have most of their assets 'tied up' in their property. Equity release enables the owners to 'withdraw' cash from their property - which can then be used for their own purposes, including gifting it away to family members.

The loan interest then accrues until it is repaid - which can be at the time of death or when the house is vacated because the occupants have gone into care.

Please speak with a specialist IFA about these products.

12 Other IHT reducing methods

Lifetime Gifts (PETs)

Lifetime gifts are where you give away your assets to your beneficiaries whilst you are still alive.

This is the simplest and quickest way to lower the value of your estate. You can give your assets away to whoever you like.

If the gift is into a discretionary trust then care is required regarding the tax position; you may create an immediate tax liability.

If the gift is made to a person or an incorporated body the gift will be potentially exempt from inheritance tax. To be fully exempt you will need to live for 7 years from the time you made the gift.

The Pros and Cons of PETs are:

PROS

- Gift away assets, unlimited in amount - allows you to quickly reduce the net value of your estate.

CON'S

- The person making the gift needs to live 7 years to avoid an IHT clawback claim.
- If they fail to live 7-years then the amount gifted is aggregated with the other gifts and the value of their estate to determine amount of IHT then due.
- Risk of being caught by 'Gifts with Reservation' rules (See later)
- Risk of being caught by 'POAT' (Pre-owned asset tax)

13 Future provision of IHT - IFA Solutions

Where an IHT liability remains a person may purchase a life policy that will pay out upon their death. An even better solution is to purchase a life policy using surplus income. Indeed, any surplus income should be disposed of wherever possible using the exemptions allowed. In each of the following cases your financial adviser will explain how these plans work.

Purchase Gifts From Your Everyday Income

This is a little used, but very effective method of reducing the net value of your estate, and hence your IHT liability. A number of methods exist that use your 'surplus' income towards reducing, or making provision for, your own IHT liability.

The reason why it is included in the IFA Solutions section is the need to have proof that the gift was made from your income on an ongoing basis and without detrimentally affecting your lifestyle; the solutions provided by IFAs provide the proof. Your surplus income can be used to, say:

- purchase a Whole of Life 2nd death Life policy - that could pay out a sizeable sum on the life assured's death that could then be used to reduce an inheritance tax liability;
- purchase a Whole of Life 1st death Life policy - that could pay out a sizeable sum on the life assured's death that could then be used to reduce an inheritance tax liability;
- contribute to a pension for your children-- and thus improve your children's wealth while at the same time reducing the net value of your own estate. You could even make contributions to a pension for your grandchildren;
- And more

Please speak with a specialist IFA about these options.

Purchase Whole of Life 2nd Death Life Policy

You can arrange this plan so that the level of cover is the same as your estimated potential IHT liability that would be due on 2nd death for a married couple.

The policy provides a lump sum to cover IHT liability on the 2nd death.

The policy must be placed into trust - see earlier.

You must seek advice from a qualified IFA.

Purchase Whole of Life 1st Death Life Policy

You arrange this plan so that the level of cover is the same as your estimated potential IHT liability that would be due on your death.

The policy provides a lump sum to cover the IHT liability on your death.

The policy must be placed into trust.

You must seek advice from a qualified IFA.

Pension Contribution

Parents can contribute to a pension fund set up for their minor children. We understand that if a parent contributed the maximum allowed each year, every year, from age 1 until their child reached age 18 the child would [probably] not need to add to the pension fund themselves (assuming standard growth rates etc.) for the rest of their lives. Wow!

If the funding was proved to be a 'gift from income' - see above - then this becomes a very effective way of reducing the growth in your estate size over the years, and passing your wealth down to your children in the process.

You must seek advice from a qualified financial adviser.

14 Other Aspects an IFA or solicitor can Help You With

For estates with potentially sizeable inheritance tax liabilities financial advisers and IFAs can help you with:

Death in Service (DIS) Payments

(Also known as In Service Death Benefits / ISDB)

Some employers supplement their employee's pay with additional staff benefits; one common one is the provision of a 'death in service' payment.

If the employee dies while in the employ of the employer then the scheme will pay out a multiple of the deceased employee's salary - usually to a surviving spouse, or to the employee's children. Typical multiples are 2, 3 and 4 x salary.

The scheme providers rarely pay benefits direct to the deceased, conscious of the fact that to do so could create, or add to, the employee's IHT liability. This is fine in most cases but there are exceptions.

If your 'death in service payment is likely to be sizeable (say £150,000+) it may be worth exploring having this paid into a trust set up in your lifetime.

Please seek advice from a tax specialist on this topic - as the use of lifetime trusts (a 'spousal bypass' trust or inter-vivos trust) may be beneficial to you.

Pension Funds

If you have a large pension fund it may be worth exploring the use of trusts to give greater tax planning opportunities.

Your Pension policies may be held in trust, or they may be an insurance company plan. Liaise with your scheme provider to clarify what would happen if you were to die prior to taking your pension benefits.

If the scheme pays out a lump sum it may be worth instructing that these monies be paid to a 'spousal bypass' trust as detailed above.

The trust should be set up now if the pension fund is large enough to create an IHT liability, or from within your will if a smaller payment.

Alternatively, if the scheme allows, place the pension fund into trust.

Discuss with a suitably qualified financial adviser or solicitor.

Give Away Your Holiday Home or Second Home?

If you have either a holiday home or a second home think about giving it away now into trust for the next generation i.e your children.

You can still use it, providing you pay market rent when you do so.

However, you will no longer be responsible for all the running costs of the property - these will be paid by the trust instead, and the Capital Gains Tax liability could be charged to the trust.

Further, if pilot trusts were set up in the name of each of your grandchildren then the trustees could pay the rental income to the grandchildren and then claim the tax back using the grandchild's personal tax allowance.

This area of estate planning is very technical -- and beyond the scope of the team at Convenient Wills. Discuss with a suitably qualified financial adviser, tax adviser, or solicitor.

15: Additional Options to Reduce IHT for Larger Estates

These solutions are provided by a mixture of IFA, tax consultant, and your solicitor.

Lifetime Gifts Into a Trust

We have already explained that anyone can give away their estate to any person. This option though places those gifts into a trust (rather than being given away to a family member absolutely), with a possible perpetuity period of 125 years. Multiple trusts may be required.

Consider Moving Off Shore and Using Offshore Trusts

It is possible by moving abroad to reduce your IHT liability, but to avoid a charge to inheritance tax in the UK involves a lot more than just moving abroad; you have to lose your UK domicile - this means that you need to sever all ties with the UK.

Get advice before you go to make sure you are doing everything you can to alter your domicile. Get advice and give yourself peace of mind that everything will be in order after you have gone.

16 Trusts, Traps and Wills

Wills can make use of trusts to aid inheritance tax planning. There are traps to avoid. E.g.

- ◆ 'Gift with Reservation' rules;
- ◆ Pre-Owned Asset Tax (POAT);
- ◆ Sham Trusts;

Our fact sheet '[Trusts, Traps and Wills](#)' explain more about the different types of trusts that can be contained in a Will, and the traps to be aware of.

17 Post Death Planning

Once a person has died the opportunities for estate planning are significantly reduced. In reality they comprise:

- ♦ Deed of Variation.

Deed Of Variation (DoV)

The 'deed of variation' is a facility that was introduced with the inheritance tax legislation and remains available today - though it is expected [by many tax specialists] to be withdrawn in the future.

The DoV allows beneficiaries to amend the Will of a deceased person where by so doing the outcome suits all beneficiaries.

PROs

- ♦ Significant tax can be saved.
- ♦ Allows an estate of the deceased to be adjusted to reflect how, perhaps, the deceased would have wished their estate to be distributed had they held a current Will;
- ♦ To provide for someone who has been omitted from the Will, or who has not been given sufficient provision within the Will

CONs

- ♦ When minor children are beneficiaries only the Law courts can validate the deed of variation;
- ♦ All parties affected by the amendments have to agree to the variations
- ♦ Only one DoV is allowed. If having made one DoV and further members are required then [technically] these cannot be put into place.

One tip that can [very occasionally] be effective at reducing inheritance tax is where a person 'A' dies and they give everything to another person 'B'. The gift from 'A' either added to or created an IHT liability for person 'B's estate. Subsequently person 'B' dies shortly thereafter - there 'Will' gives everything to 'C'. By undertaking a deed of variation on 'A's estate, redirecting the assets to the ultimate beneficiary 'C', you can [in effect] reduce the size of the IHT liability on 'B's estate. Time limits apply.

18 What Not To Do

Don't gift away the family home.

For many people their wealth is tied up in the family home. One, easy, way to reduce the value of an estate is to give away the family home to your children - whilst you are alive.

One problem with this is you will probably breach the 'Gifts with Reservation of Benefit' rules. Another drawback of giving away 'title' of the family home to say your child, but staying in it is that the property may become subject to Capital Gains Tax when it is finally sold or given away by the child. If the arrangement is not carried out carefully there is a risk of paying Inheritance Tax on the parents death, and capital gains tax on the ultimate sale as well. A double tax burden.

And what if your child dies before you?

Further, if your child finds themselves in financial trouble or they get divorced what then? They own your house! Do you think a receiver in Bankruptcy is going to allow your child to continue owning your house? The risk is that the house will have to be sold to clear the child's debts, or part of the divorce settlement - leaving you, the parent, homeless.

Giving away the family home is dangerous; our recommendation is simple: Don't.

19 Cohabiting Partners

The married person's exemption does NOT apply to cohabiting partners. As a consequence there is a risk of creating an inheritance tax liability which would, with a little bit of tax planning, be avoidable.

For example: Partner X and partner Y cohabit. X's estate is worth £200,000, while Y's estate is worth £225,000. When X dies his Will gives his estate to Y absolutely. Because the amount of the gift is below the present IHT NRB allowance of £325,000 there is no inheritance tax to pay at the time of X's death. Y is now worth £425,000. When Y dies her estate will have a £40,000 inheritance tax liability because the estate is £100,000 greater than the IHT NRB allowance of £325,000 -- this excess is taxed at 40%.

Now, had X placed his estate into a discretionary trust at the time of his death (as opposed to giving everything to Y absolutely) then the trust could have retained ownership of those assets, or lent those assets to Y on whatever terms they agreed, or given the assets away to Y absolutely.

If the latter option had been chosen then there would have been no benefit. But if either of the two other options had been chosen then inheritance tax could have been saved. This is because the trust monies would not be deemed to be part of Y's estate and therefore when she died the trust would comprise £200,000, and importantly her estate would comprise just £225,000. This amount is below the IHT Nil Rate Band allowance and therefore her estate would not be subject to any tax liability. In effect we have saved £40,000 in tax by using a discretionary trust.

For cohabiting partners tax efficient wills should be considered; these can ensure that each partner's IHT NRB allowance is not wasted. Each partner should each have a Will in any case to protect each other - so the inclusion of a discretionary trust is only a marginal extra cost that could save many £1000's of avoidable tax.

Eradication of a tax liability for partners may need additional tax planning.

Please contact us for more details.

20 Weighing Up the Pros and Cons of Discretionary Trusts

Prior to October 2007 the inclusion of a discretionary trust within each Will of a married couple was common practice - as part of the inheritance tax planning. Following the changes to the law -- which introduced the Transferable Nil Rate Band allowance as highlighted in section 6 earlier -- the frequency with which discretionary trusts are now included in Wills has diminished significantly. That said, the discretionary trust is still a worthwhile tax and estate planning tool.

The main benefit of the discretionary trust is that it allows you to control your assets from the grave, via your trustees.

For example: Let us assume that your daughter's marriage was 'on the rocks' at the time of your death. If your Will gave your estate to your daughter absolutely then your child would inherit immediately. But then your daughter's inheritance would be added to her existing estate and form part of a divorce settlement. The outcome would be that your son-in-law would then inherit from you, rather than your own daughter enjoying the benefits of your inheritance 100 percent.

A better option is to include a discretionary trust in your Will. On your death your daughters inheritance is placed into the discretionary trust. The trustees review your daughters marital situation and decide to retain her inheritance in the trust for the time being as they believe the marriage will fail. Later, and after the marriage has failed, the trustees release the monies from the trust to your daughter. She now enjoys her inheritance from you 100 percent without having to share it with her former husband (who does not benefit at all).

A discretionary trust can also fully utilise a person's IHT NRB allowance.

The inclusion of a discretionary trust in a Will therefore offers a number of benefits - not least potential tax savings. But is a discretionary trust 'right' for you?

You need to be aware of the drawbacks to including such trusts in your Will, the risks, and the potential costs. Each case is different - with factors such as age of the client, age of the children/beneficiaries, choice

of trustees, size of potential IHT liability, potential investment growth etc. needing to be factored into the decision making process. Once you know the benefits and the drawbacks, and also the other options then you can make an informed decision with the aid of a professional adviser.

And one more word of warning; if your adviser does not explain the drawbacks and downside to including these trusts - but just focuses on the benefits - then DO NOT PROCEED with that adviser. Many will writers and solicitors charge an extra £300+ for these trusts, which is a nice income earner for them - but could be made at an unexpectedly high cost to you and your family. Our fact sheet '[The Secrets Solicitors and Will Writers Would Prefer You Not To Know](#)' explains more; this is available as a download from our website www.convenient-wills.co.uk.

21 Additional reading

In addition to this guide you may find the following of interest: -

- ♦ '[Trusts, tax and Wills](#)' - which gives more detail about discretionary trusts;
- ♦ '[11 Ways to make your Will](#)' -- which explains the different ways to make your Will, highlighting some of the dangers of doing it yourself; and
- ♦ '[The Secrets Solicitors and Will Writers Would Prefer You Not To Know](#)' -- which draws your attention to some of the marketing tricks used by will writers and solicitors to entice you to use their services which ultimately has a cost to you.

22 Convenient Wills would like to help you

Making your Will can be time consuming and relatively stressful. The more you research into what should be included in a Will the more you realise there is yet more to learn. Estates with inheritance tax liabilities are even more complex than the average estate. And if you have not used the services of a professional then when the task is done you may have nagging doubts about its legality and validity.

Using a professional will-writer can be quicker and more cost effective in the longer run.

Convenient Wills is the only home visit, specialist Lasting Powers of Attorney & will-writing business located in Newcastle-under-Lyme that covers North Staffordshire, South Cheshire and North Shropshire.

Convenient Wills, as a specialist home-visit will-writing service, offers you:

- ♦ **convenience:** we come to your home, thereby saving you travel costs, and time;
- ♦ **flexibility:** our appointments are held at times convenient for you, including daytime, evening, and at the weekend. There is no need for you to take time out from work;
- ♦ **a relaxed atmosphere:** the discussions are held in the comfort and relaxed atmosphere of your own home -- and not in an 'oppressive' office in your local (or not so 'local' in some cases) town;
- ♦ **time saving:** our experienced and friendly consultant will advise and guide you through all the options you should consider -- thus eliminating the need for you to undertake any prior research, such as searching the Internet or library to see what you should include;
- ♦ **a bespoke Will:** your Will will be legal and personalised to match your exact wishes. This means, for example, that the names of your children will be included in your Will rather than just referring to them as your 'children'; and we will draft your Will to match your wishes rather than making your wishes fit into one of our pre-formatted template wills.
- ♦ **a fixed fee:** We do not charge extra for the inclusion of, say, a trust in your Will (Unlike some of our competitors). Nor do we do increase our fees if we feel you can 'afford' to pay more; and
- ♦ **protection:** our processes (which includes visiting you twice) ensure your Will can be defended from claims of lack of capacity, undue influence, and fraud.

Our home visit Will writing service is a very comprehensive package as explained in detail on our [web site](#).

Not all will writing services are the same.

No one likes to consider their demise; we though make the task relatively simple. If you would like to join our existing and growing group of satisfied customers please call Rod on:

(Stoke) **01782 639716** or click on

www.convenient-wills.co.uk

We hope you have found this fact sheet informative. If so then please feel free to share it with others.

More information and helpful, informative guides are available from our web site, or by calling us direct.

Convenient Wills

01782 639716 or 0800 072 5510.

www.convenient-wills.co.uk