

Inheritance Tax Saving Secrets for Homeowners

(and their children or other beneficiaries!)

This edition sponsored by:

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(but you may not amend it in any way.)

Foreword by Ron G Holland, a man who has created almost as many millionaires as Bill Gates!

I have devoted my life to helping people fulfil their potential, and very often that has been the potential to build wealth through establishing and growing a thriving business.

Since I met Steve, I have further reflected on the reasons why we all strive to achieve our true potential. They are many and varied, but the two most common underlying reasons are:

- self-fulfilment – we are determined to do the best we possibly can and
- to benefit our families and others

Too often I have seen the dream fulfilled, only for the plug to be pulled by the Grim Reaper or one of his non-fatal henchmen, draining away a lifetime's achievement faster than you would believe possible, with families and employees alike suffering and all of the hard work in building up wasted. Businesses routinely make contingency plans or they would fail much sooner. We should all be doing the same.

So I urge you to read and act on the information in this Manual and take advice to underpin and preserve what you have achieved for yourself and your family. Life and death are a matter of chance and chances taken. Optimise yours for your own sake and that of your family!

Ron G Holland

www.TopBizGuru.co.uk

Welcome!

I do hope you find these tips a useful starting point - please bear in mind that you will need **personal advice** before implementing them: they are by necessity a gross over simplification of a very complicated tax system, which is changing almost every day. These recommendations should be discussed with your Financial Adviser, who will most likely work with us to implement appropriate measures agreed with you.

We are by profession Will Writers and Estate Planners, working in association with experienced financial advisers and other professionals. If you wish to take ACTION, our instruction form is at the end of this document (together with some information on our services) for you to print off, complete and fax or FREEPOST to us.

If you need FINANCIAL ADVICE please contact the financial adviser who paid for this ebook.

You will appreciate that we cannot answer individual questions except where clients have completed our Instruction Form and sent it in with the appropriate fee, though you can short circuit by calling our admin staff during office hours with your debit or credit card to hand, or by faxing the instruction form through.

If you are a millionaire, you may wish to take advantage of our full tax planning service: a brief outline of your situation and concerns can be sent in via the sponsor: there is no fee for the initial enquiry: fees will be agreed before proceeding.

Steve Pett

Managing Director

Allied Professional Will Writers Ltd www.APWW.co.uk

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Probate & Trustee Services Ltd

Stephen Pett was an Independent Financial Adviser for more years than he cares to remember, and began the transition to his current business in the early 1990's. He writes extensively on financial and legal matters and is a Regional Director of the Society of Will Writers & Estate Planning Practitioners.

Several STEP Members are associated with his practice, two of whom are very senior figures in the Will Writing world – but he insists that any error in this book is his!

Is Inheritance Tax REALLY the major issue?

For many people, the answer will be **NO!**

It is quite trendy to have an IHT problem, but many who do have one don't recognise it, and many who do have a significant IHT liability are actually in far greater danger from elsewhere.

1. Do I have an IHT Problem?

If your assets are substantially in excess of £275,000, whether you are single or married – YES

If your assets are less than that, but you have significant life insurance (often even if it is in trust), death in service benefit, pensions or your parents are still alive and likely to leave you a significant inheritance – YES

If you are younger, own your own home, and your assets are growing you will have one in future, and it is cheaper to plan in advance to reduce the impact of IHT.

2. Our joint assets are around £350,000. Is that an IHT problem?

If you leave everything to each other, on the second death tax would be 40% on £75,000 (£350,000 less the current tax allowance of £275,000) which is £30,000, which should be easily avoidable.

HOWEVER:

What if one of you needed Residential Care? Then it is quite possible that a substantial proportion of your assets could be eaten up paying Care Fees, leaving little or nothing for your family to inherit.

In theory, the Local Council pick up the tab for Nursing Home Fees, within the maximum they will pay. However, they will expect you to pretty much exhaust your savings before they start paying (they are more generous in Scotland), and then they may put a debt charge on your home. This enables them to recover their costs when your home is sold. Over 70,000 homes are sold each year to pay off debts to Local Authorities.

Generally you are quite safe if a protected relative is living in the home – spouse, school age child etc – but if not, the home could be lost to pay back the Council for Care fees.

It is therefore quite possibly more appropriate to consider Asset Protection a greater priority than saving IHT and we have the solution for you, provided it is carried out several years in advance of any expectation of need. Should Alzheimer's or some other progressive disorder have been diagnosed already, it is probably too late. But you can warn others in a similar situation so they get the chance to protect their family's inheritance.

To take action on Protective Property Trusts (available to joint property owners only) complete the Will Instruction Form at the end of the book.

Your Financial Adviser will also be able to help you plan your finances to better withstand the onslaught of Care Home bills.

Inheritance Tax Saving Tips

There are many legitimate ways to minimise Inheritance Tax: the following are specific exemptions available to anyone who can afford to take advantage of them and planning devices which may be of use (with advice) in appropriate circumstances. Bear in mind that £s are just a measure of the value transferred (given) and any item given will have a value: sometimes this value can be greater than the value of the item given!

1. All gifts to your spouse (legal husband/wife/civil partner) are exempt

provided **he/she is UK domiciled** – if they are **not** then the most they can receive tax-free is **just £55,000** on death, and or £55,000 every 7 complete years. The biggest planning tip here is to work very hard to remove any doubt that a new UK domicile has been established. This is far from easy and one slip can destroy years of hard work. I have added some information in an Appendix but domicile is a complex area that may require specialist advice. I have included the Revenue Helpline should you need it, but if you or your father were born in Scotland, Northern Ireland or any foreign country including Eire, you need to investigate domicile further as you may be subject to rules other than those of the England and Wales, or be treated as non-domiciled for IHT purposes.

I have yet to hear of a series of tax driven divorces, marriages then further divorces in a family to spread assets around but I guess it would be very effective! I wonder if the Taxman would require proof of consummation to ensure the marriages were not called into question as shams? Perhaps better not try that one!

2. Everyone is allowed to give away up to £3,000 in value in any tax year

– this could be 10 gifts of £300 or just one of £3,000. You can even give last years allowance away this year (once you have used this years). For a couple, that is £6,000, which can be given away, *every* year. It is interesting to note that the amount of £3,000 has remained static since 1981/82! Your Financial Adviser will be able to advise you as to how these relatively minor gifts can be made more beneficial.

3. When is a gift made?

As far as the Taxman is concerned, if you write out a cheque on 1st April, and the person you are giving it to banks it on 5th April (the last day of the tax year), and it clears on 10th April, the gift is not made until 10th April and one years allowance could be lost!

4. You can give as many gifts of up to £250

(or less) as you like, each to different people, provided the recipient has not had any other benefit (e.g. a share of the £3,000). Someone worth £250 million could give away £250 to a million people free of tax. But those who had a legitimate interest in their estate might question their sanity! If you give someone a benefit worth £250.01, that will come out of the £3,000 allowance above or become a Potentially Exempt Transfer (PET). On its own, £25 is not a lot, but saved up and turned into a capital sum via a savings plan in the child's name your financial adviser could make it much more worth while – and self-completing if you die early.

5. One of the biggest exemptions

for those with high incomes (or business owners who can manipulate their own incomes) is the **normal expenditure out of income rule**. Say you have a net income of £100,000 a year, but you habitually spend only £50,000 a year (I could live on that!), then you can give away £50,000 a year. J K Rowling bumbles along on about £2 million a week, so if she pulled her horns in, she could give away over £50 million a year **but only** if the economical lifestyle was (or became provably) normal for her. You cannot spend it all one year, then go all economical and expect to get away with it – it is called the **normal** expenditure rule for a good reason. Gifts must not reduce your established, normal standard of living: the Revenue may well appreciate proof if they feel you have been pushing your luck! Once again, your financial adviser can help turn a series of relatively modest payments into a substantial sum over a period.

A classic use of this exemption is using a regular premium pension or insurance to benefit someone else – the regular contributions help establish the pattern as being gifts out of normal income. Stakeholder pensions, unit trusts, saving plans, sometimes Whole Life policies to create inheritances or provide funds for paying IHT.

It would be wise to keep very careful records if you want to use this exemption to anything like its full potential, not only for the years gifts are made in but before and after to ensure the pattern can be proved. However, it is perfectly acceptable to make a resolution to establish a pattern from now on, perhaps by assuming payments for a loan, or establishing a sensible, regular pattern of giving. (Quick plug for our special IHT Planning Professional Maintenance Service!)

Income means what it says, gifts necessitating withdrawals of capital (remember, it is **gifts out of normal income**) will not work and care should be taken to treat withdrawals from investments such as bonds as capital. **REGULARITY** is an essential character of any payment under this rule to avoid it being treated as an excessive gift under section 2 or 3 (and thus become a potentially exempt transfer.)

6. Payments of maintenance or support

for ex-spouses, children or stepchildren under 18 or in full time education, or other relatives who are dependent on you are exempt. No doubt the Revenue would add the word “reasonable” – nevertheless, this could be a very useful way of helping less well off relatives, at least partially at the Taxman’s expense (they are effectively subsidising the gifts by 40% if you are in the IHT band despite your best planning efforts.) This is actually a rather more useful than at first appears. Amongst the areas this can be useful in is where the receiving spouse/ civil partner is not UK domiciled, so gifts exceeding £55,000 in a 7 year period would normally incur lifetime IHT.

7. Gifts to UK based charities,

qualifying political parties and registered housing associations, universities, national museums, the National Trust etc. There is a more comprehensive list in Appendix 10. This can be a bit more interesting than it sounds – some people establish their own Charitable Foundations – a useful personalised way of making a difference suitable for the seriously wealthy.

Charitable gift WARNING: thinking of making a large gift to charity? Think carefully.

Most of us will have signed many of Gift Aid declarations. Have you thought of the consequences? Effectively you will be giving the charity a sum which is net of basic rate tax. The legislation is quite clear that if you “over-donate” the charity is still entitled to reclaim 22p in every pound and instead the

donor (you!) is asked to pay income tax at the basic rate on as much of the gift as is necessary to recover the tax the charity has reclaimed, but which you had not paid. Could be a very nasty bill on a big gift!

Some declarations refer only to a specific donation but most, e.g. those signed when you set up a standing order, are much wider.

The same problem could arise if your income drops suddenly (on retirement or due to a career break). Your income may have plummeted but if you still have plenty of capital you may not immediately alter your style of living or your charitable gifts. None of this is to stop you giving – just think about the consequences of major charitable gifts in advance.

8. Gifts in “contemplation of marriage”

(must be made on or just **before** and **specific to** the marriage) to natural, adopted or step-children **either**

- from a parent to bride/ groom - £5,000 – parents could give £5,000 each plus their £3,000 annual allowance (if not already used) making a total of £16,000 of exempt gifts.
- grandparent to bride or groom - £2,500
- Anyone else to bride/ groom - £1,000

If the marriage does not proceed, the gift must be returned, or (unless other allowances would cover it – e.g. the £3,000 or £250 ones) it becomes a Potentially Exempt Transfer.

9. Potentially Exempt Transfers

(PETs!) during your lifetime, you can make gifts in excess of those detailed in 2 and 3 above without being liable to an **immediate** tax charge unless those gifts exceed the Nil Rate Band (£275,000) within a 7 year period. **If you survive 7 years** after making the gift, it generally is accepted as being outside your estate for IHT purposes. If you die within the period, then gift is included on a sliding scale with a 20% reduction after 3 full years, plus a further 20% each full year thereafter. A point often missed is that PETs will (on death within 7 years) be first used to fill up the Nil Rate Band: only when PETs exceed Nil Rate Band (so they would have started to be taxed at lifetime rates) will the so-called reduction be of any benefit. Be aware that the slightest suspicion that you might continue to benefit from what you have given away, the Taxman will be all over you trying to bring back the gift into the tax net. One major **warning** is that the recipient is liable to pay the IHT if you die, unless it has been specifically agreed to the contrary that your estate will bear the tax. There are a number of excellent investment products which can allow you some access to capital or income from such gifts, where you do not wish to pass total control over to the beneficiary. Your Financial Adviser can advise. Gifts can also be made into:

10. Trusts

There are two basic types of trust, interest in possession trusts and discretionary trusts. There are also charitable trusts but they are a very specialised area. All these types of trust can be created as will trusts or as inter-vivos trusts (usually called a settlement).

The interest in possession trust is the traditional trust giving income to a life tenant on whose death the capital passes to individuals called remaindermen. They can include a power of appointment exercisable by the life tenant. The fund can also be sheltered by the use of a 'protective life interest'; a statutory provision which prevents the life tenant from disposing of their right to income. It is also quite common to have flexible life interest trusts which are flexible both as to a power to advance capital and to determine the life interest.

If set up during the lifetime of the settlor the gift is treated as a PET for IHT purposes. On the death of the life tenant the value of the trust fund is aggregated with the life tenant's free estate and charged to IHT at the full death rate, the effect is to apportion the Nil Rate Band between the trust and the free estate.

The trustees are assessable to CGT when they sell assets. Tax on gains is payable from the trust fund and the annual exemption available to trustees is £4,250 (2005/06), i.e. one half the individual annual exemption. The rate of tax is 40%. All income received by the trustees will bear tax at the basic rate or if received gross have basic rate tax deducted. The trustees do not have a personal allowance.

In the discretionary trust the distribution of income and capital is at the discretion of the trustees who are often guided by a letter of wishes from the settlor or testator. Such distributions can be into further trusts for the benefit of the beneficiaries. These trusts invariably have wide administrative powers and can often give the trustees the power to add beneficiaries to discretion. The administration of these trusts is often complex and as a result expensive.

Inter vivos gifts into a discretionary trust are treated as a chargeable gift with an immediate liability at the lifetime rate of 20% on the excess over the nil rate band. There are also regular 10-year charges to IHT and exit charges on distribution and the termination of the trust. The rules are complex.

Similar CGT rules apply as with an IIP trust except that for CGT purposes an election may be made for holdover relief. Trustees of discretionary trusts pay income tax at the special rate of 40% (RAT) on all trust income. They have no personal allowance. Tax is dealt with via the tax pool the operation of which is complex.

Accumulation and Maintenance trusts are a cross between the IIP and discretionary trust.

They are for the benefit of children or grand children; Capital must be distributable at age 25 or remain on an interest in possession trust.

A further variant of the discretionary trust are the trusts for disabled persons. They have disadvantages and provision can often be better made by use of a full discretionary trust.

There are special rules governing the taxation of accumulation and maintenance settlements and trusts for disabled people.

11. Heritage Property

Exemption from IHT is available on transfers of certain pictures, prints, books, manuscripts, works of art or scientific objects which are of national, scientific or historical or artistic interest. Exemption is also available in respect of land of outstanding scenic, historic or scientific interest, buildings of outstanding historic or architectural interest and objects associated with such buildings. Strict objective tests apply. The exemption from IHT is conditional on the taxpayer (or other suitable person) providing undertakings to HMRC (Her Majesties Revenue and Customs – aka the Taxman!) that he will maintain the object or property and that he will allow reasonable public access to it. The exemption from IHT for heritage property only lasts for so long as the taxpayer complies with the undertakings and does not dispose of the asset. Breach of an undertaking or disposal will give rise to an immediate tax charge. It should be noted that HMRC are rather more insistent that the public do gain genuine and reasonable access - they used to be rather lax on this. You can look up the days and times of access and what you can see (divided into buildings and contents, works of art and collections) is available at: <http://www.inlandrevenue.gov.uk/heritage> and each section is divided up into regions for convenience.

Land that is deemed to be of outstanding scientific interest (along with land of outstanding historic and/or scenic interest) may qualify for conditional exemption from Inheritance Tax. New advice on managing these outstanding areas of land in England is now available from the Countryside Agency's website at www.countryside.gov.uk/heritagelandscapes.

The conditional exemption scheme allows for relief from Inheritance Tax that could otherwise require these heritage assets to be sold or broken up to pay the tax. In return, owners undertake to manage the land, preserve its character and provide reasonable public access. This secures the future of the outstanding areas in private ownership and allows people to visit some of England's finest countryside.

To assist owners, and their advisers, a booklet titled: 'Conditional Exemption and Heritage Management Plans: An introduction for owners and their advisers' has been written. Both documents can be viewed and downloaded from the Countryside Agency's website. Further information can be obtained by contacting William Du Croz on 01733 455145 or by email: William.DuCroz@english-nature.org.uk

12. Agricultural property relief

For transfers of owner-occupied farms and tenanted farms, 100% relief is potentially available where the transferor has vacant possession of the land, or could have within 12 months.

- 100% relief is also available where this condition is not met but the land is tenanted under a lease that started after 31 August 1995.
- 50% relief is available for tenanted land where the lease started before 1 September 1995.
- **Watch out for** changes of use by diversification putting land outside the scope of agricultural property relief

A major issue to watch out for in these days of diversification is moving land to non-agricultural use and losing the IHT relief.

13. Business property relief

Relief from IHT at either 100% or 50% is available to a taxpayer on the transfer of certain business assets. There are various conditions that must be satisfied to qualify for the relief:

- The business must be a qualifying business (i.e. basically it must be a trading rather than an investment entity)
- The asset must be relevant business property
- The asset must have been owned for two years
- The availability of relief depends on the type of asset being transferred:

Unincorporated Business

The whole or part of an unincorporated business qualifies for 100% relief. Do bear in mind that you may need to undertake some planning to make sure the business will even survive your death – many will not, often for no other reason than no one can even sign cheques to pay the wages!

Unquoted Shares

All unquoted shares now qualify for 100% relief, as do AIM shares.

Quoted Shares

Quoted shares, which gave the owner voting control over the company immediately before the transfer, will qualify for 50% relief.

Land, Buildings, Plant and Machinery used by a company controlled by the giver, or a partnership of which he is a partner or a trust of which he is a beneficiary, will qualify for 50% relief.

Relief is given on gifts of business assets provided the giver has owned them for at least two years. Relief is not available where the business consists of dealing in securities or land and buildings, or making investments.

100% relief applies to:

- A business or an interest in a business (e.g. a partnership share).
- Shares in unlisted and Alternative Investment Market (AIM) companies.

50% relief applies to:

Assets (e.g. land or plant and machinery) owned by the transferor and used in a partnership in which the transferor is a partner, or a company controlled by the transferor. Controlling interests in listed companies.

Once again, your financial adviser will have access to specialist investments which can carry full business relief, if they are suitable for you.

14. Equalisation of Estates and Effective use of the Nil Rate Band

The example shows how married (or those in registered single sex relationship) couples can make maximum use of their Nil Rate Bands.

Fred and wife Wendy have a combined estate of £1.5 million. They have made use of the IHT (and Capital Gains Tax) spouse exemption on lifetime transfers to equalise their estates so that they are both worth £750,000.

If Fred were to die first, leaving everything by Will to Wendy, no tax would be payable on his death due to the spouse exemption. However, on Wendy's subsequent death the combined estate, less her Nil Rate Band, would be taxable at 40%, resulting in a

£490,000 IHT liability (£1.5 million less £275,000, taxed at 40%).

Alternatively, if Fred had left £275,000 (equivalent to his Nil Rate Band) by Will to his children and the remaining £475,000 to Wendy, there would still be no tax payable on his death. On Wendy's subsequent death her estate would only be worth £1,225,000 which, less her Nil Rate Band, would be taxable, at 40%, resulting in a £380,000 IHT liability (£1,225,000 less £275,000, taxed at 40%).

A tax saving of £110,000 is therefore possible if both Fred and Wendy make full use of their Nil Rate Bands. If you are reviewing your investments, and doubtful about retaining one, the benefit of equalising estates may tip the balance so that your financial adviser recommends a switch from one name or joint names to the name of the other partner.

15. Nil Rate Band Will Trusts *(our speciality!)*

- these are an inexpensive way of gaining maximum benefit from **both** Nil Rate Bands where the partners cannot actually afford to give away money (let alone £275,000) on the first death. Setting up a Nil Rate Band Will Trust is reasonably straightforward (though more and more care is needed). Putting the required steps in place after death is no longer straightforward, and professional advice is essential (that is where we come in!). These Wills work by creating a special Trust on the first death, into which is left an amount as near to the Nil Rate Band as possible the potential beneficiaries usually being the surviving spouse and the children/ grandchildren. A Memorandum of Wishes from the Testator is issued when the Wills are drawn up which guides the Trustees (people appointed to manage the Trust Fund) and would usually instruct them that the Fund should be applied primarily to the benefit of the surviving spouse.

The Trustees will ask the survivor if he/she can manage happily without the amount of the fund, and the answer will generally be “No” whereupon the Trustees are authorised under the terms of the Will Trust to lend up to the entire amount to the survivor, in exchange for an IOU, which is a debt on the survivors estate. This facility can be very handy even for those who can afford to give away the Nil Rate Band fairly easily – just as a precaution against the first death being at a financially difficult time (or indeed, creating a difficult time). There is nothing to stop the Trustees paying out all or part of the Nil Rate Band to the children (or whoever) fairly soon if the surviving spouse has no need for it.

On the second death, the Trustees of the first estates Nil Rate Band Fund ask the Executors of the second estate to repay the loan which they then pay out under the terms of the first Will, within the Nil Rate Band and therefore Tax free. The second estate can also pay out up to £275,000 tax free so the couple have effectively used **both** Nil Rate Bands and transferred £550,000 to the next generation tax free without disadvantaging either spouse significantly, with a potential saving of £110,000 to the benefit of the next generation – more as the Nil Rate Band rises. This one is too good to miss!

16. Death on active service (not recommended as a Tax Planning device!)

Where a member of the armed forces dies as a result of a wound inflicted, an accident occurring or a disease contracted while on active service, his/her estate will be exempt from IHT. Death resulting from an existing problem that is aggravated by active service could also trigger this exemption. Similar relief is available to members of the Police Service of Northern Ireland (formerly Royal Ulster Constabulary) who die as a result of terrorist activity in Northern Ireland. Certain other individuals may also qualify if they are subject to the law governing the armed forces.

The personal representatives of an individual should contact the Ministry of Defence for a certificate substantiating any claim. The point of this is that the personal representatives might not be aware of the exemption.

17. Trusts 2

– virtually all life insurance policies and pensions offer the (usually free) opportunity to place the death benefits in Trust from the start. Life policies potentially create immediate and large potentially taxable benefits. Pension funds grow slowly, but can become vast reservoirs of capital, which can substantially alter an individual's IHT situation. If plans are not in Trust, or where they are automatically in Trust (as are many pension policies) but the Trustees have not been advised of your wishes as to how they should pay out the benefits on your death, the omission can be expensive in tax terms. Putting policies in Trust after they have been set up may also have tax consequences, so take professional advice. Flexible Trusts can be set up so that the Trustees can direct the benefit to the spouse or the children, which can be very handy if the spouses die together. If one dies first, the chances are that the benefits will be paid out to the survivor and substantially swell that estate.

There is some argument that life policies covering loans or mortgages should not be in Trust, as some lenders may not be happy with such an arrangement as it reduces their security. However, in most other circumstances it is very important to take advantage of one of the many Trust arrangements available, with professional advice being essential as the type and wording of the Trust will be driven by your personal objectives. Buying cheap insurance without full advice on Trusts is a false economy. Finally, it should be noted that Insurance Company **Investment Bonds** are also life insurance policies and can be set up in Trust.

There can be sound reasons for not putting policies in trust, so speak to your financial adviser.

18. Trusts 3 – gifting to grandchildren

Many grandparents support their grandchildren on a regular or irregular basis. Let's take an example where the grandparents have been making an annual allowance out of taxed income to support (say) school fees for two children. A more tax efficient approach would be to gift £275,000 – the nil rate allowance – which would essentially fall out of the IHT net after 7 years. It would probably best be gifted equally out of both estates, or perhaps from the younger/ fitter spouse. This would go into an accumulation and maintenance trust, probably within an investment product, which might produce a gross income of £10,000 a year, which would be taxed at 40%, producing a net income of £6,000 a year. Clearly, each partner could gift £275,000 (or the current nil rate band) every 7 years.

The Trust then pays out £3,000 to each child, who will be treated as having received £5,000 gross income, on which they can then reclaim tax of £1,975 each – an annual profit of £3,950 to the family, with a further potential saving of £105,200 if the giver survives the requisite 7 years.

19. Quick succession relief

– not really a planning tip, but you need to be aware of it. Where an individual dies within five years of receiving a chargeable transfer from another person, credit is given for part of the IHT paid on the previous transfer.

Maximum time between transfers	1 yr	2	3	4	5
Credit (%)	100	80	60	40	20

20. Trusts 4 Spousal By Pass Trusts

– these can be useful to employed people with a Death in Service Scheme. As an employee, you can write to the scheme Trustees and tell them to whom you would wish the benefits to go, to avoid them being paid into your Estate and causing the loss of 40% to the Taxman. However, it is difficult to foresee the future, and the Trustees (though they can exercise their discretion) are unlikely to give enormous thought to your IHT situation. A spousal by pass trust can be set up in your Will, and the Trustees be requested to pay any death benefit into that. This then leaves your own personally selected Trustees in charge who will have a much better understanding of your situation and wishes. They can potentially pass or loan the money to your spouse, children, grandchildren or whoever else you may wish to benefit and, with the appropriate powers, assist in saving IHT.

One commentator has said that the Taxman has changed policy on this. We have asked the Capital Taxes Office, and they are not aware of the practice being challenged. We have asked the person concerned for their source and have as yet had no reply. This is rather a good example of why our ongoing Professional Maintenance Service is so beneficial! Things change, and often quite unexpectedly.

21. Paying Tax by instalments (normally on property)

– if you qualify, go for it but make sure the funds are guaranteed, as **the Executor remains liable until the tax is paid in full!** Interest free over 10 years or until the property is sold is a big benefit.

22. Business or Exempt Assets –

i) **Some ordinary investments are treated as Business Assets:** they tend to be rather higher risk than ordinary shares etc, but many are packaged together in such a way as to minimise risk, and advisers are always looking at way to give them wider appeal by reducing risk. Remember that a business asset can achieve 100% IHT relief in just two years! Speak to your financial adviser.

ii) **Don't leave them to your spouse!** If you can, leave any exempt assets to **non-exempt** beneficiaries (anyone except your spouse), even if you want them to end up owned by your spouse. An example will demonstrate the logic: you have assets worth £2,000,000, half of which is a business that qualifies for 100% relief, the other half just ordinary assets. Let's assume no other planning (it's just an example!) and that Mrs X survives Mr X and is not in any desperate need of inheriting from him, having substantial assets of her own:

1. Mr X dies and leaves his children £1,250,000, the rest to his wife. IHT payable £500,000. Net benefit £750,000
2. Mr X dies and leaves the business to his children plus £275,000. The children decide to sell the business back to Mrs X at the probate valuation (technically, no profit!) and end up with a cool £1,250,000 and no IHT to pay!!
3. Mrs X conveniently lasts another 2 years so the business again qualifies for 100% BPR, so it can be left a second time to the children (etc) free of IHT. Double whammy!

iii) **Don't secure loans on business assets with 100% BPR** – Business Property Relief - (at least, not for IHT purposes) – deducting the value of a loan from an exempt asset will do no good at all in tax saving terms. Transfer that loan to something which is taxable, preferably fully taxable such your home, and there will be a substantial reduction in your taxable estate – up to 40% of the loan will be deducted from the IHT bill. Clearly, it may not always be prudent to secure loans on your home, but the balance may shift if you are in your prime or 65+ and not in good health. If you are in business and are given bad news by the doctor, a spot of swift re-allocation of debt could be very profitable for those left behind. The same exercise could be carried out under an Enduring Power of Attorney (see Appendix

iii) **Selling you business on death – Buy/Sell Agreements** – when a business owner or partner dies, it is often appropriate to have an agreement in place to ensure that other shareholders or partners have the right or option to buy the deceased's share of the business. There are two issues here: a partnership which does not have a formal Partnership Agreement will cease to exist if one partner dies, so there is no value to pass on. Partnership Agreements are absolutely essential for this and many other reasons. The second is that an agreement should be in place to ensure a proper valuation and pre-agreed destination for shares or partnership share – very often to the other owners in proportion to their existing ownership, so as not to disturb the balance of power. The **key point** is that careless organisation of this agreement **will destroy IHT relief**. If there is a **binding** buy/sell agreement in place, there is no relief – and many older agreements will be written like this. To retain full relief, what is needed is a double option agreement – this gives both the buyer and the seller the **right** but not the obligation to insist the sale goes ahead – if both parties are happy with the situation as it is, the sale does not have to happen. Probably the main reason for these agreements is to ensure that the business stays in the hands of working owners, rather than forcing them to work with the deceased's spouse, who may know nothing about the business and cause all sorts of aggravation!

iv) **Consider Transferring Business** (rather than other) **assets into a Trust** – with 100% BPR this will not incur a charge as a Lifetime Transfer as it is exempt. The Trust could then sell them back, at market price.

v) **Employee Trusts** – gifts to these are exempt from IHT (but you would require advice in this specialist area).

vi) **Waiver of Remuneration or Dividends** is not considered a loss to the **Estate**, so might be a useful planning device in some circumstances.

23. Moving Offshore – changing domicile

Remember that a “non domiciled” spouse can only be given the ***Nil Rate Allowance plus £55,000***. If you intend decamping to tax-friendlier climes, if one partner goes first and establishes an offshore domicile, there may be a potential to transfer all your assets offshore without even a potential tax liability.

If you are non-domiciled, you have the opportunity to set up a “settlement” which remains offshore and is comprised solely of offshore assets. Even if you return to UK domicile, these assets will remain outside the UK IHT net.

24. Buy to Let

Investing in buy to let property direct as an individual offers no IHT savings but investing in property for furnished holiday lets (minimum actual lets 70 days a year) *does* carry business IHT relief. Don't forget to use ownership to balance estates for IHT and CGT savings. And your financial advisers won't thank me if I forget to remind you to talk to them about the mortgages!

25. Planning with Pensions

a) Self Invested Pension Plans (SIPPs) – there are a lot of changes going on in this area – talk to your financial adviser.

Under the new pension legislation effective from 6th April 2006, the surplus under a member's SIPP on their death (after payment of death benefits) can be passed on to one or more other SIPPs such as the SIPP of their child or grandchild. The only requirement is that all the SIPPs must be with the same provider.

How much can be passed on in this way?

Each person can hold up to £1.5M tax free (ish) within their own SIPP. Once they start to draw benefits, they can take as little as £1 a year out as income. When they die, the first call on the remaining assets of their SIPP is usually the spouse (or dependant child, if there is one - up to age 23 unless they are physically or mentally handicapped) i.e. the original member's SIPP is used to provide income to the spouse or dependant.

However, the spouse/dependant in turn need only draw as little as £1 a year. When they subsequently die, the remaining assets could still be £1.5m. Effectively up to £1.5M can be passed on by this route. If this transfer of assets pushes the "receiving" SIPP over the £1.5M limit there could be tax implications. We wait to see if the member of the "receiving" SIPP can, when they commence to draw benefits, take any proportion of the "inherited" benefit as a tax-free cash sum.

NB: if there are dependants as well as a spouse, "drawdown" of benefits must continue until the last of the spouse/dependants dies. Only then can the residual "lump sum" be passed on.

Who could be included in a Family SIPP?

- Basically anyone in the UK.
- There are no minimum age restrictions
- Can be set up for a child at birth!

The SIPP needs to be set up and a contribution paid in e.g. the parents could put a contribution into the SIPP for their newly born child. Tax relief is available on the contribution. The maximum that can be paid for someone with no earnings (e.g. a child) is currently £2808p.a. net, which is a real contribution of £3600. There is no requirement for continuing contributions.

So SIPPs could be set up for IHT purposes for children, grandchildren, etc. Alternatively they could be friends or business colleagues: whomever it is that the member wants to pass their wealth on to.

Four important points

All the SIPPs must be with the same SIPP provider.

The Trustee of the SIPP should have a "Nomination Form" from the member indicating which SIPP(s) they wish to receive their surplus SIPP assets on their death. This is not binding on the Trustee, but they will need guidance.

If the assets are not passed on via the "Family SIPP", the Trustee may have to pay the assets to a charity or the Duchy of Lancaster or Cornwall. *Note: the Trustee can only pay monies to a charity if that charity has been nominated by the member or another legally "authorised" person.*

Precise details of the legislation are awaited, but there may potentially be different approaches

depending if death is pre- and post- age 75. Potentially before age 75 the residual SIPP assets on death would be passed as a “contribution” to another “nominated” SIPP, from Trust to Trust (outside of IHT); this can be done now. After age 75, the member would elect for ASP (see below) and the residual assets on death would then be passed to another Family SIPP within the same “Scheme” using the new rules.

27. SSAS – Small Self Administered Pension Schemes

These schemes are mainly for company directors who will have advisers well capable of explaining the ins and outs of this complex subject. Suffice it to say that the overall scheme is a pot of value, which can be distributed as the Trustees agree, so if one member dies, the Trustees could agree to transfer the benefits to (for example) a younger member of the scheme, rather than paying them out as death benefits (which would also normally be IHT free).

28. FURBS and URBS

Funded Unapproved Retirement Benefit Schemes (and their Unfunded counterparts) are generally used to provide additional retirement benefits where executives’ incomes are above the maximum level on which pension contributions can be based. The “cap” is £102,000 a year at present, so if you are paid £500,000 a year, £398,000 is not eligible for pension contributions and the maximum retirement income from pensions is a humble £68,340 – a big drop! However, the point is that FURBS and URBS written under Trust can pay death benefits free of IHT, provided that the owners’ estate is **not** a potential beneficiary. Speak to your financial adviser if these are potentially relevant.

29. Other pensions

- most pensions have the facility to nominate a beneficiary to receive the benefit payable on death – this should ideally go to someone *other* than the spouse (as benefits to him/ her are free of IHT anyway) but to a non-exempt beneficiary such as the children. But **ONLY IF the widow/er can afford it**. We often have clients where hubby thinks wifey can survive half the capital and half the income the couple currently enjoy: life doesn’t work like that unless you are **very** rich!

30. If all else fails

at the moment a **Deed of Family Arrangement** or **Instrument of Variation** completed and delivered within 2 years of death can write or re-write the deceased's Will, and for IHT and Capital Gains Tax purposes, provided:

- a) everyone adversely affected agrees
- b) there is no reciprocation – no one is compensated for what they give up.
- c) none of the assets are affected by a Gift With Reservation
- d) if the variation affects the rights of children or unborn children, Court approval will probably be needed.

It is possible to amend (“vary”) a Will or indeed an Intestacy after a death. There are many reasons why this may be desirable, for example, to balance the differences in the finances of the beneficiaries (perhaps from a rich brother to a poor sister), or to pass the inheritance on to the next generation rather than swelling the (taxable) estates of well heeled parents (maybe in modest health) to struggling grand or even great-grandchildren.

Normally, a variation takes effect from the date of the document varying the inheritance. But provided those making the variation comply with the requirements, it can be treated for inheritance tax (IHT) and certain capital gains tax (CGT) purposes as if it had been made by the deceased on the date of death. IHT is recalculated taking account of the variation being made. And a nice big refund cheque of up to £110,000 – **plus interest (we can help!)**

31. and now for something completely different - other matters we can help with

A Will deals with what happens if you straight out DIE – but what happens if you go into a coma, for example, after a serious accident? Your Will is irrelevant, as it has no power until you are dead.

These two issues are highly relevant to your overall planning, and in some cases, to your Financial Planning:

a) Enduring Powers of Attorney (EPA)

An Enduring Power of Attorney appoints specific persons to manage your finances if you are unable to manage, due to sudden sickness, accident or sheer old age. They can be written to give immediate authority to the Attorneys, or to give no authority UNLESS you lose mental competence, at which point Court approval must be sought for the attorneys to be given authority to act. Immediate authority would generally only be given where someone was very old, or a person might be out of touch for some time (e.g. a long jungle holiday!)

The alternative (if you don't have an EPA) is for someone to apply to the Court of Protection to become your Receiver – an expensive and ongoing process. If you use a solicitor, costs could easily be £3,000 initially and £3000 a year ongoing, as the Court needs to approve pretty much everything. With an EPA, the fee for registering it (on mental incompetence) is currently £120 – and that is it.

b) Advance Medical Directives

These can do two things:

- 1) appoint Medical Proxies to deal with doctors if you are unable to (and no one has such authority unless it has been specifically given – certainly not a wife or partner) and
- 2) make advance decisions about how you would wish to be treated if you were unable to communicate your wishes.

THAT'S IT

I hope it was of interest – now is the time to **act**. The excuse that you meant to write a Will, meant to appoint Guardians for your children, meant to have an Enduing Power of Attorney etc won't help if events catch up with you. They will just have to find the money to pay the potentially enormous burden your delay has laid on them.

I attach a Will Instruction form, an EPA form if you already have up to date and tax efficient Wills and just need EPAs, plus a Financial Adviser enquiry form on the last page - please return these via the sponsoring financial adviser. Now would be a good time!

Steve Pett

PS If you would like to learn more about Legal and Financial Planning, visit our website www.APWW.co.uk and subscribe to our email Course – no cost, no obligation.

Financial Advice Enquiry (form supplied by Allied Professional Will Writers Ltd)

(Allied Professional Will Writers are NOT themselves financial advisers).

Please contact the book Sponsor:

Your Name

Your Address

Tel: Your Number Email: Your email Fax: Your Fax

Your name:	
Your address:	
Postcode:	
Contact: Email:	Day Tel:
Home Tel:	Best time to call: Day/Evening/Weekend

I would like to speak to a Financial Adviser about:

- Inheritance Tax
- Pensions
- Investments
- Mortgages
- Life Insurance
- Tax Shelters
- Staff Benefit Schemes
- Other:

Signed: _____ Dated:

Allied Professional Will Writers Ltd

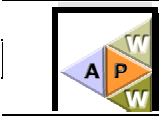
Clientline: 0845 166 8873

www.APWW.co.uk e-mail: Wills@APWW.co.uk

Please return to: FREEPOST SEA 7243 Pevensey BN24 5BR

valid to 14th June 2006

Regulated by:



Emailed (wills@apww.co.uk) or faxed copies are acceptable when payment is by card. Fax: 0845 129 8831

HATE FORMS? Just call the office 9-5 M-F with your debit/credit card to hand!

ENGLAND & WALES PRELIMINARY LEGAL PLANNING INSTRUCTION FORM

This form **instructs us**, provides contact details and pays the fee for a normal Will etc. If you need Inheritance Tax, Asset Protection, Business Wills, Disability Trusts etc the extra fee will be discussed. We will also discuss two optional, separate, documents: Enduring Powers of Attorney and Advance Medical Directives. These appoint someone else to act for you in the event of incapacity in the everyday (EPA) and medical areas (AMD) and are £35 each if written with your Will rather than £50 separately.

We will email (or post if need be) a list of the information you will need to give us when we **ring** you to discuss your requirements in more detail. We operate by phone, email and post. If you are jointly worth significantly over £300,000, couples may care to consider Inheritance Tax Planning Wills, which may save over £120,000 in tax. Protective Property Trusts can protect your home against Community Care Tax, and creditors, and the issue of children being potentially disinherited on remarriage. **If in doubt – just order a normal Will: we will discuss all the issues with you.**



Your FULL name:	
Spouse/ partners FULL name (if any):	
Your address:	Postcode:
Contact: Email:	Day Tel:
Home Tel:	Best time to call: Day/Evening/Weekend MOBILES +34p pm
Payment details: ? £79.95 normal single persons Will ? £129.95 pair of very similar normal Wills	
EPA wanted? ? AMD wanted? ? (our consultant will discuss these with you anyway)	
? £299 (inc – the pair) Protective Property Trust Wills Severance & registration extra if needed £50.	
? £487 (inc – the pair) IHT Wills Severance & registration extra if needed £50.	
? £1m + Estate – £849 as above plus report prepared by STEP member (FAs fact find needed)	
? EPA/s <i>only</i> £50 each	AMD/s <i>only</i> £50 each

Provided your home country is England or Wales, for normal family Wills. Charges may vary especially with large or complex estates. Tick here if Muslim Will Home country may not UK – we only prepare UK Wills with no advice as to possible international issues for more information on domicile see <http://www.hmrc.gov.uk/pdfs/ir20.pdf> Deaf (need MSN Messenger) Blind

Please prepare Wills (after discussion) on the basis of the information I will supply, subject to your terms and conditions of business (<http://www.apww.co.uk/t+c.htm> - or on request). I understand that **I am responsible for ensuring ALL documents are checked** and are **correctly signed** and **witnessed** in accordance with the instructions provided: and that **they are NOT VALID unless and until correctly signed and witnessed.** I will indemnify APWW in respect of any claims arising as a result of my failure to comply. APWW may consult external consultants and will retain paper and computer files. My financial adviser is merely introducing me to Allied Professional Will Writers Ltd and not providing me with legal advice. *I undertake to check and return documents within 7 days. A cheque or card details must be included*

Signature 1) _____ Signature 2) _____ Dated: _____.

Return of this form even if unsigned constitutes acceptance of APWWs terms and conditions

To pay by debit (or credit) card please complete the following: (**Fee MUST accompany this form** full payment is taken up to £150, above that we take 50% immediately, and the balance when the documents are ready.)

Name as shown on card:		
Card number:	Start date:	Expiry
date:	Security code (on rear)	Card issue number (if any):

Introducer: APWW

Email: wills@apww.co.uk