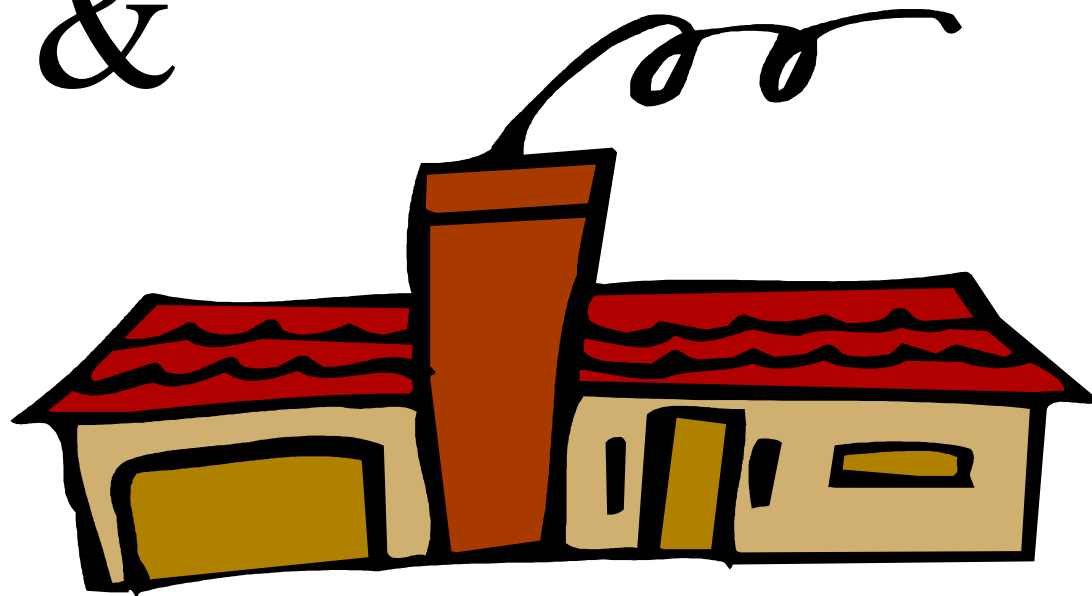


# **Estate Planning Workshop**

**Tuesday 19 May 2009**

**Brian Lawless**

IHT &



The house!!

Can I/we give it away?

And still live in it?

Basic problem – gift with reservation

Pre-owned assets tax

Full commercial rent?

- Will  
Discretionary  
Trust?



Is this planning still necessary in light of “transferable nil rate bands”?

In case property increases faster than the NRB (care re debt or charge scheme)

To protect in case of survivor remarries or enters a new civil partnership and value of property goes to new spouse/civil partner in lifetime, on death or on divorce/break up of civil partnership

To give trustees control, particularly  
with children in mind

To give trustees control, particularly  
with children in mind

To save property from attack if survivor  
needs “care”



**BIDE-A-WEE  
REST HOME**

If Will DWT is relevant for married couples/civil partners

Joint Tenancy

Married couples/Civil partners

Joint Tenancy

Sever

Tenancy in Common

Beneficiaries' equal right to  
occupation/right to sell

Use share as part of "NRB" planning?

On first death

Leave share to children?

Problems?

Or to a discretionary trust?

Problems?

So! Debt or Charge scheme!

“I.O.U!”



So! Debt or Charge scheme!

Leave share to survivor subject  
to a debt to a WDT

The Phizackerley conundrum!

Mr P – university lecturer until retirement

Until then lived in Uni. Accommodation – didn't own!

Mrs P had not worked throughout the marriage

Then purchased a house as Jt. T's.

1996 severed Jt. T. created T. in C.

April 2000 Mrs P died

Her T. in C. share passed to Mr P  
subject to a debt of £150,000 (indexed  
linked) to her WDT

July 2002 Mr P died

HMRC refused to allow the deductibility  
of his debt to her WDT for IHT  
purposes! Quoting s103 FA'86

HMRC said Mrs P did not contribute therefore her T. in C. share was property “derived from the deceased” (Mr P)

On her previous death she had therefore passed him an asset that he had previously owned

Sufficient to disallow the debt!

What if:-

- Mrs P had worked and been able to contribute? Would the quantum of her earnings have had a bearing?
- Mrs P had given up a career so Mr P could pursue his to a greater extent?
- Mrs P had given up a career to look after children?
- Mr P had died first?

No appeal

Care re loans from trusts  
(especially WDT's) where it could  
be said that the borrower once  
owned the asset loan is derived  
from!

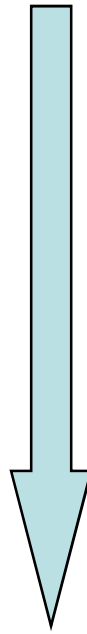
Be **VERY, VERY** careful in giving  
advice in this whole area

# IHT and the CREDIT CRUNCH!



Claim for loss relief on the **sale** (NOT the transfer) of quoted shares (NOT AIM per HMRC!)

**VALUE**



Claim for loss relief on the **sale** (not just the transfer) of quoted shares (NOT AIM per HMRC!)

- within 12 months of date of death if value less than at the date of death

- sale by person liable for IHT

- must be an overall loss - of ALL shares **sold** within the 12 months - NOT just those sold at a loss (i.e. could keep those that have increased)

## Claim for loss relief on the sale of land

- within 4 years of death if value less than at the date of death
- loss must be at least £1,000 or 5% of value at date of death
- sale by person liable for IHT
- all sales within the 4 years taken into account – but provisional relief can be claimed on particular piece of land being sold

What if 4 year limit approaching and no sale ?

PRs could sell to an “in-house” company and then wait until prices recover (if they ever do!?)

Could sell to beneficiaries as long as the purchasers do not EXACTLY match those individuals

Relief provided by IHTA 1984 section 191 (3)

## Relief on fall in value of PETs that become chargeable on death

- asset must still be wholly or partly owned by donee (or spouse or registered civil partner)
- or possibly “replacement” asset
- claim to be submitted by person liable to pay IHT on the gift

# BUSINESS RELIEF

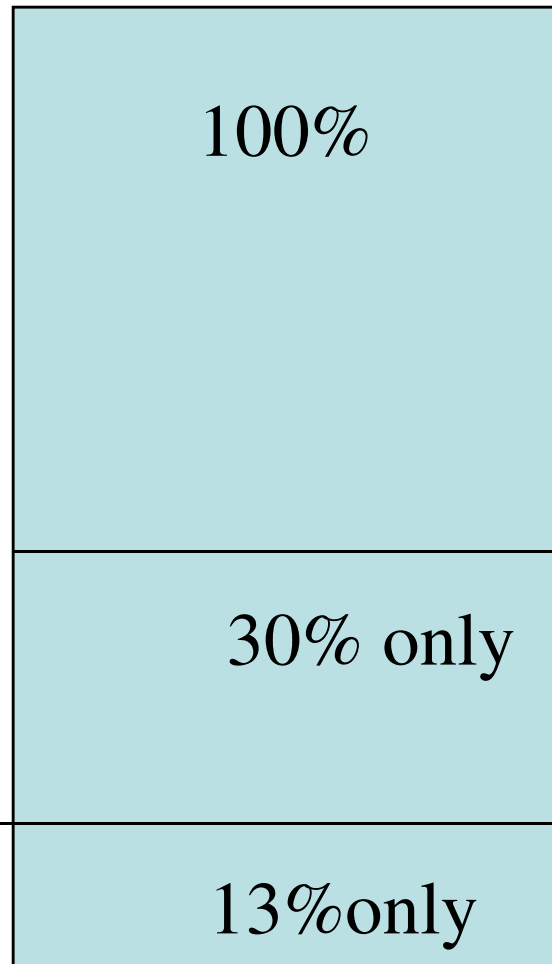
	<u>Red'n</u>
Sole proprietor or Partner	100%
Unquoted & AIM shareholding	100%
Quoted s'holding with control	50%
Assets owned by a partner or controlling s'holder & used wholly or mainly in the business	50%
Transfers of settled property used by life tenant in own business	50%

# BRITISH COMPANIES



75% Family Owned

# FAMILY BUSINESSES



Make Next Generation!

Make One After!

Source: Stoy Hayward

## Asset is not an excepted asset if:-

1. Asset has been used wholly or mainly for business purposes throughout the 2 years prior to the transfer, or
2. Asset is required at time of transfer for future use in the business

### Main Exceptions

1. Property rented to 3rd parties
2. Investments - e.g. shares, unit trusts, gilts etc.
3. Large cash balances in excess of business requirements

# Excepted Assets

## Barclays Bank Trust Co. v IRC (1998) (S.C.)

- Wife died November 1990 - owned 50% of shares in a trading company
- Company held approx £450,000 in cash at bank on her death.
- Question: Was this an “excepted asset”?

# HISTORY

- Turnover usually around £600,000
- Tried to buy out another local firm in Feb. 1990 but deal fell through
- 1997 £355,000 spent on business venture importing goods from China
- Revenue accepted £150,000 in cash needed at deceased's death. Balance - excepted assets.
- Appellant contended the whole £450,000 was required for business purposes.

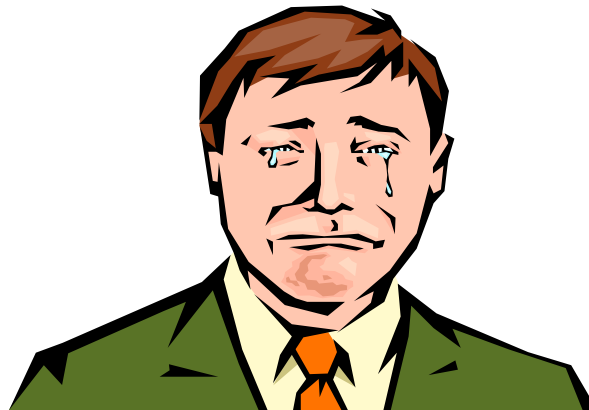
# HELD

The £300,000 held was not “required” for business purposes at the date of death

“Required” did not mean it would be needed should an opportunity arise in the next 2,3 or 7 years time.

“Required” must have some imperative use for a given project

Appeal dismissed - £300,000 an excepted asset - no relief!



~~HUSBAND~~

WILL



WIFE

Other assets



Widow buys business  
assets with cash

CARE !

Widow should not be a  
trustee -

Duty against self - dealing

NRB Will  
Disc Trust

- i) Poss. liquid  
assets  
up to N.R.B.
- ii) Also Business  
assets with  
100% relief

Will Trust  
has cash

Wife has “Business”  
assets - on her death  
100% Business relief  
(if 2 y’rs + owned)

**Effect**

Cash moved from Wife’s Estate - no IHT

She can have “Income” subject to Trustees’ discretion

Business relief obtained twice on same asset!

# Lifetime gifting of family business

# Pass to next generation?

## Points to make :-

- 70% don't! (from Stoy Hayward survey)
- no funds received!
- loss of dividends and dividend planning
- are family interested in the business?
- who are they married to/their partners?

# Capital Gains Tax

Many points to make BUT

If trading – can hold-over gain to donee

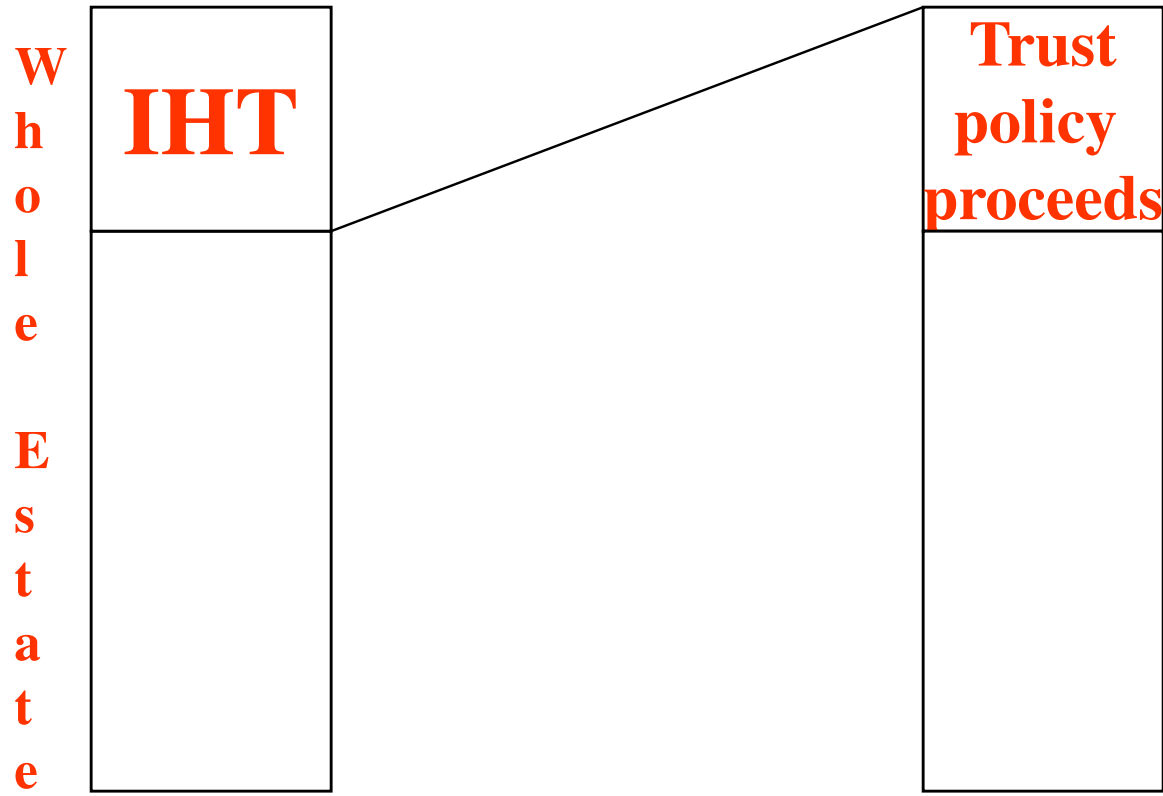
# TYPES OF TRANSFER

- Exempt
- Potentially Exempt
- Chargeable

# THE MAIN IHT EXEMPTIONS

- Transfers between U.K. domiciled spouses
- £3,000 Annual
- “Normal expenditure from income”
- £250 small gifts
- Gifts in consideration of marriage
- Gifts to charity
- Gifts to political parties

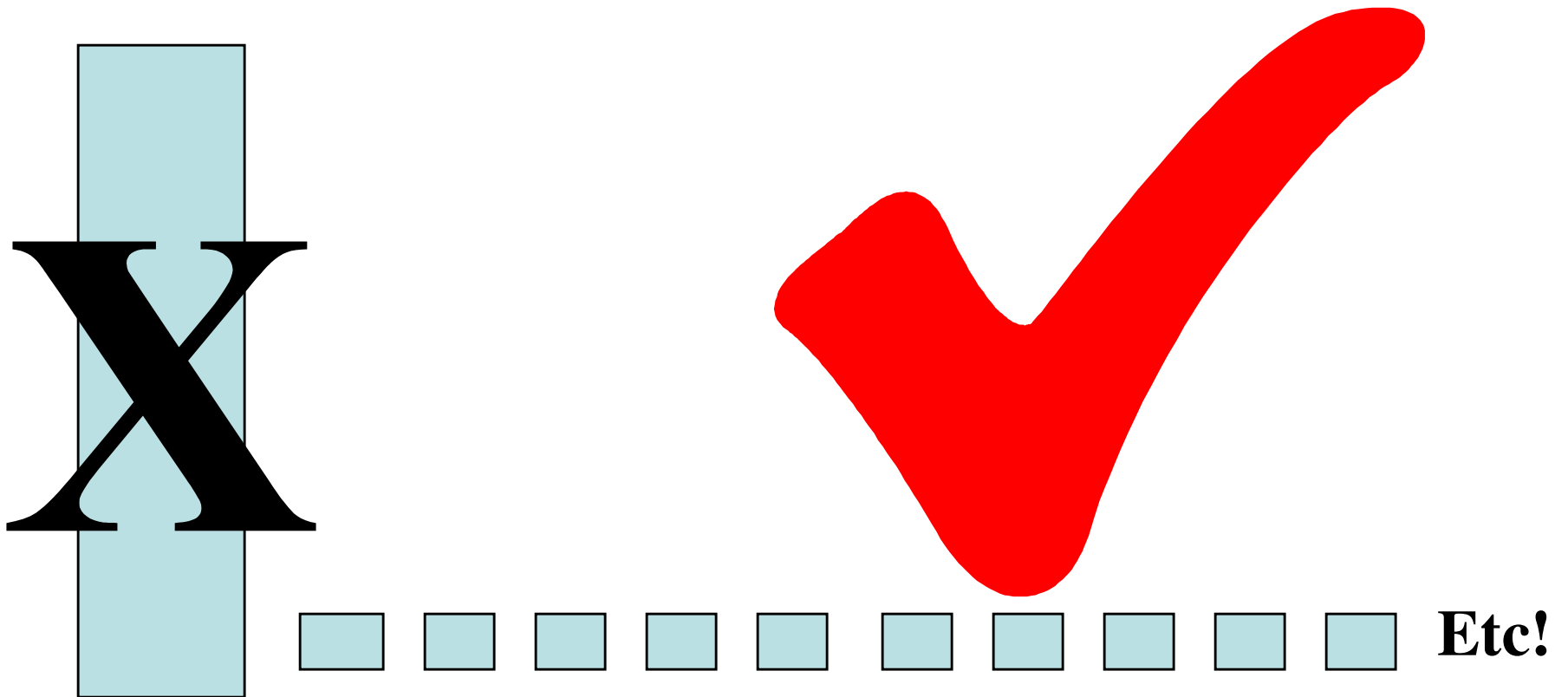
# IHT and life assurance in trust



If premiums not prohibitive  
– not just IHT planning “of  
last resort”?!

Can leave your life  
unchanged (apart from the  
outflow of premiums)

The cost could be seen as paying the IHT in instalments – even if “in advance”!



# THE CRUNCH!!



# HOW MUCH?!

Lady – non-smoker – whole of life policy – ordinary rates of premium – guaranteed not to increase

£100,000 – in trust

<u>Age</u>	<u>Monthly cost</u> <u>£</u>	<u>Total cost</u> <u>to age 90</u>	<u>After IHT</u> <u>at 40%</u>
60	181	£65,160	£39,096
65	235	£70,500	£42,300
70	313	£75,120	£45,072
75	418	£75,240	£45,144
80	546	£65,520	£39,312

Gentleman – non-smoker – whole of life policy  
– ordinary rates of premium – guaranteed not to  
increase

£100,000 – in trust

<u>Age</u>	<u>Monthly cost</u> <u>£</u>	<u>Total cost</u> <u>to age 90</u>	<u>After IHT</u> <u>at 40%</u>
60	231	£83,160	£49,896
65	306	£91,800	£55,080
70	409	£98,160	£58,896
75	523	£94,140	£56,484
80	669	£80,280	£48,168

Lady and gentleman – both non-smokers – last survivor whole of life policy – ordinary rates of premium – guaranteed not to increase

£100,000 – in trust

<u>Both</u> <u>Age</u>	<u>Monthly cost</u> <u>£</u>	<u>Total cost</u> <u>to age 90</u>	<u>After IHT</u> <u>at 40%</u>
60	142	£51,120	£30,672
65	183	£54,900	£32,940
70	243	£58,320	£34,992
75	327	£58,860	£35,316
80	444	£53,280	£31,968

# Trusts and IHT

FA 2006 introduced major IHT changes from 22 March 2006

Old criterion used to be

with – or without (discretionary) -  
an interest in possession

**Finance Act 2006 changed  
all this!!**

**Now need to get used  
to:-**

**DPIs!**

**TBMs!**

**IPDIs!**

**“18-25” trusts!**

**TSIs!**

New “lifetime” trusts – IIP etc. -  
(with ONE exception) adopt pre  
22 March 2006 “discretionary”  
regime on transfers in

**CHARGEABLE TO IHT ON  
CREATION**

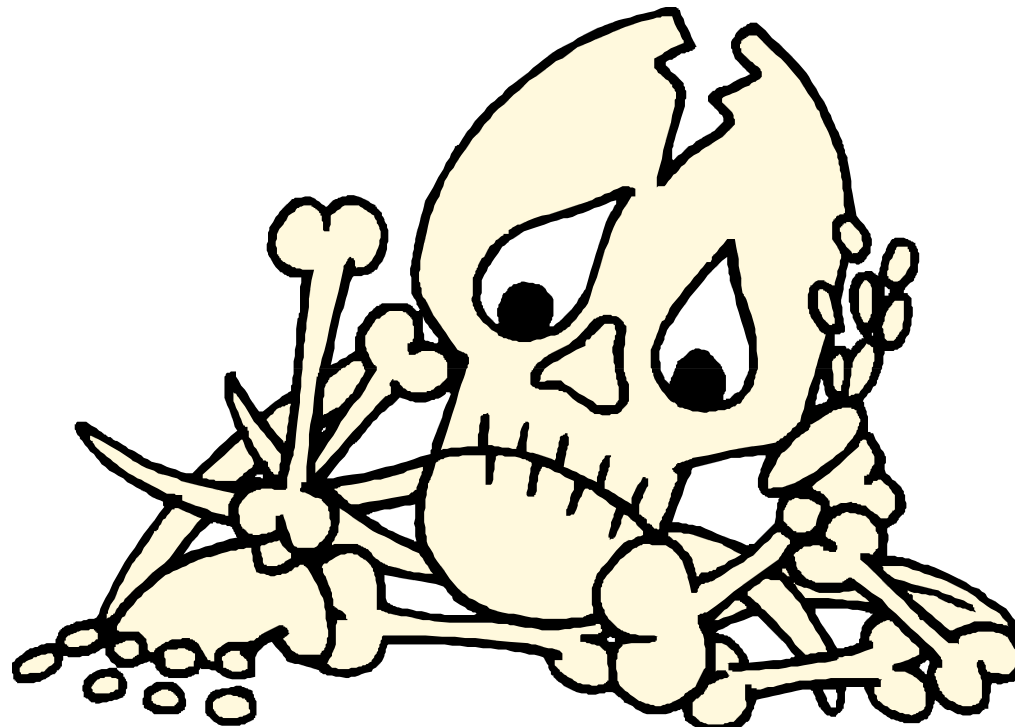
The exception

Trust for a disabled person (DPI)

And for a person who **expects** to become disabled as a result of an existing (in early stage) degenerative disease

Can create trust conferring an IIP on himself/herself WITHOUT an “entry” charge

Trusts created on death **AFTER**  
21 March 2006!



Old IIP rules apply to **new** trusts created

- on **death** of a parent, step parent or any adult with parental responsibility (legal guardian) for a minor child absolutely entitled at age 18 (by will, intestacy, or under CICS)

**NO** “periodic” or “exit” charges

**K/as a “Trust For A Bereaved Minor” (TBM)**

If similar to some “old” A&Ms – ie trust continues after age 18 but absolute interest arises NO LATER than age 25

NO IHT “entry” charge at 18

**BUT**

An IHT “exit” charge will apply

If eg, absolute interest arises at age 25

7 years (28/40ths) into 10 year period from age 18

Charge is 4.2% of “relevant property” above nil rate band at that time  
( $28/40 \times 30\%$  of 20% lifetime rate)

Mr X dies – will creates an “18-25” trust for £350,000 – if value and 2006/7 IHT rates unchanged at vesting – charge to trustees is £2,730

Mr X may see the IHT charge as worth paying to stop money going to children at too early an age!!

Old IIP rules still apply to **new** trusts created

- on death with IIP created by will or intestacy

k/as “immediate post-death interest” (IPDI)

IIP for SPOUSE/CP created  
by WILL

Spouse exemption applies  
– value of asset forms part  
of estate on death of  
“surviving” spouse/cp

Termination of an “IPDI” in  
favour of ongoing trusts for a  
bereaved minor or a  
“transitional serial interest”

**= ?**

**PET!**

# Existing IIP trusts

Keep “old” rules until existing interest ends

If property still remains on trust

- if “transferor” still alive – chargeable transfer - becomes “relevant property”

- if on death of “transferor” – part of his/her estate (as before) BUT becomes “relevant property” **BUT**

**BUT**

If **SPOUSE OR CP** takes a successive life interest –  
**SPOUSE EXEMPTION** applies –  
not “relevant property” until death  
of “successive” life tenant

When do 10<sup>th</sup> anniversaries occur if property becomes “relevant property” from IIP trust?

When IIP replaced by another IIP

# VERY IMPORTANT

Care – if IIP “effectively” comes to an end after 21 March 2006 and individual whose IIP terminates still retains use of settled property

**“GWR”!**

Even if under a power of appointment IIP trust and previous IIP “owner” still a potential beneficiary

So – does this mean that ALL new “lifetime” trusts are “discretionary”?

Quite likely - depends on – e.g. – if settlor actually **WANTS** a beneficiary(ies) to have the **RIGHT** to income or use of capital

Any reason to create a new  
lifetime A&M trust?



**NO!**

# Trusts, nil rate band gearing and discounted gift trusts

Male 65 – 5% w/ds – no age loading – no previous IHT planning

£704,393 out of estate

What is the chargeable transfer?

£325,000

Potential IHT liability – 130,000 for 7 years – assurable? Level term? (Use the “income”?)

£3,000 exemption (and NE from I?) available?

What if £704,393 transferred to normal (not “bare”) family trust?

IHT £75,878 (£94,848 if “grossed-up”)

## “Periodic” charge

Assume:-

- Settlor still alive
- NRB increases by 2.5%pa compound (for 10 years)  
to £416,000
- Unit value increases by 7%pa compound to £858,651
- New “discount” £345,332

Unit value £858,651 less “discount”  
£345,332 = £513,319

Less NRB (£416,000) = £97,319

@ 6% = £5,840

Alternative trust ALSO subject  
to periodic and exit charges

WITH NO DISCOUNT FOR  
FUTURE ABSOLUTE  
ENTITLEMENTS!!

# Same assumptions

	Investment	Chargeable Transfer
M75	£543,642	£325,000
M85	£489,841	£325,000

# Excluded property trusts

- Relevant for non UK domiciled clients
- Relevant where such clients have non UK based assets e.g offshore bank accounts, offshore property
- Putting such assets into trust whilst non UK domicile takes them outside the scope of IHT
- Even if they then become UK domicile, can benefit without infringing the GWR rules

# Overseas situs assets in general

If UK domicile (or deemed domicile) –  
form part of estate for IHT purposes

May be double tax treaty

If non-UK domicile – outside of estate  
for IHT purposes

Transfers from UK domiciled spouse/civil partner to non-UK domiciled spouse/civil partner – spouse exemption limited to £55,000 only

But not the other way

# AGRICULTURAL RELIEF

	<u>Red'n</u>
Owner occupied farmlands	100%
Farm tenancies	100%
Interests of landlords in let farms	100%



The Antrobus case!

December 2005 – Land Tribunal

Agricultural Property Relief will only cover agricultural value of a farmhouse – NOT its market value.

In this case – 30% lower – increase in IHT - £73,600!!

## IHT 100 Limits

Inheritance Tax (Delivery of  
Accounts) (Excepted Transfers and  
Excepted Terminations)  
Regulations 2008 SI 605

Apply to all transfers made from 6  
April 2007

## CLTs **BEFORE** 6 April 2007

No IHT 100 where CLT and other CLTs in same tax year does not exceed £10,000

**AND**

The CLT and any other CLTs in the 10 years ending on the date of the current CLT does not exceed £40,000

## New Rules

Apply to CLTs including termination of life interest

- where IIP created before 22 March 2006

- TBM

- IPDI

- in general, disabled trusts

- TSI

Now, different rules apply:-

**Confusing?**

**Complicated?**

**Possibly!**

Now, different rules apply:-

- where value transferred attributable to cash or quoted shares or securities (or a mixture of both)
- where value transferred attributable to any other property
- where value attributable to insurance linked products

Where value transferred attributable to cash or quoted shares or securities (or a mixture of both)

No IHT 100 required where cumulative total of all CLTs in last 7 years plus the current CLT does not exceed NRB

Only the current CLT has to be in this category – doesn't matter what other CLTs in 7 years before transfer were

Where value transferred attributable to any other property

For no IHT 100 to be required transfer must pass 2 tests

1. Where cumulative total of all CLTs in last 7 years plus the current CLT does not exceed 80% of NRB

2. Value transferred giving rise to the CLT must not exceed available NRB  
EXCLUDING the operation of APR or BPR

Where value attributable to insurance linked products

Is it “cash” or not?

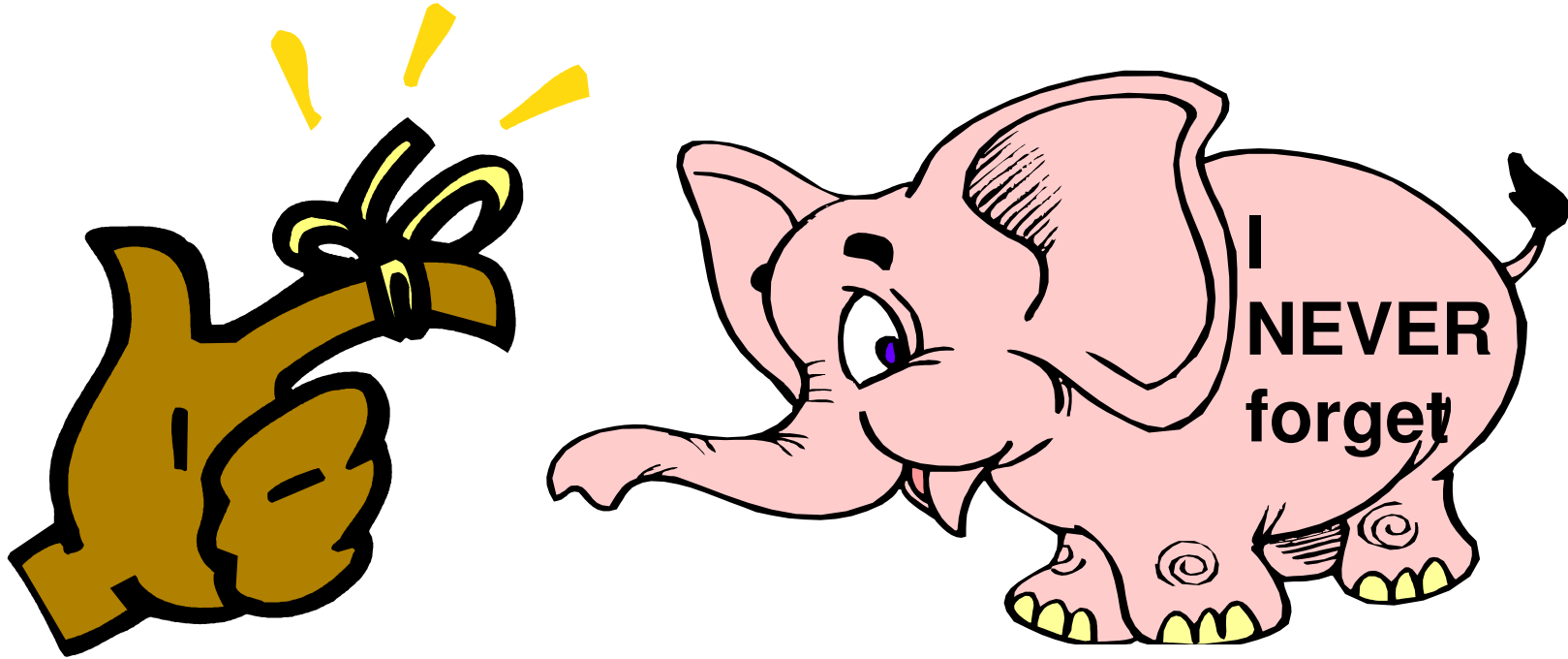
HMRC view:-

“Cash” if cash, cheque or bank transfer with no further action necessary for completion of CLT

Normally where insurance policy “requested” to be in trust and all documents completed before policy effected

Where existing policy placed in trust the 80% limit applies

Don't forget



It's the **DISCOUNTED** gift that counts for IHT 100 purposes!!

# **Inheritance Tax and Family Limited Partnerships (FLP)**

Large estates and lifetime gifting?

Gift direct to children, grandchildren?

Problems?

How old are they?

Will they spend it?

How will it affect them as individuals?

What are their spouses/partners like? Position on divorce, relationship break-up etc!

So, use trusts?

Problems?

IHT – from 22 March 2006 for most trusts (apart from “bare” or “disabled”)

- 20% tax above available NRB!

- can use NRBs every 7 years

- can still use for assets subject to 100% BPR or APR – even above NRB (care re “periodic” and “exit” charges)

- and for surplus income (NE from I)

For very wealthy people trusts may only scratch the surface!

So, what about FLP?

What is it?

A business structure governed by contract law under Limited Partnership Act 1907

Enables gifts to be made through the generations WITHOUT immediate IHT (but potential disposal for CGT with no hold-over relief – unless assets are cash or subject to 100% BPR or APR )

BUT – allows donor some control and protection of the assets for the long term

- gifts to FLP = PETs
- each partner taxed to income tax and CGT according to their share
- adults can enter partnership on behalf of minors – once no longer minors must agree to become limited partners unless they forgo their interests
- care re income tax if minor ben's (parental liability if >£100pa

- needs at least one “general partner” responsible for day to day management
- “general partner” has small capital interest and income entitlement
- has UNLIMITED liability re claims against partnership – BUT
- GP is usually a limited company to achieve limited liability for those in control

- any number of “limited partners” with economic interest in the capital and – entitlement to income
- liability to amount of capital contributed
- interests fixed at outset – alteration gives potential CGT and IHT (PETs)
- must be no possibility of gifts being “clawed back”  
– if so, GWR
- if limited partner participates in management – limited liability protection lost

- “general partners” must consent to “limited partners” withdrawing their capital or transferring their interests
- FLP must have a “view to a profit” – achieved by active management of assets
- CANNOT hold assets that partners will “use” – eg family or holiday home

Nicholas and Eliza donate cash/assets in exchange for limited partner and GP interests

They gift limited partnership interests to the children – eg 4 children each get a 20% interest

Nicholas and Eliza own all of the shares in the GP company

# What if a limited partner runs into trouble?

- divorce etc? – interest probably part of assets but capital locked away – poss. only a proportion of the income available
- partner's business in trouble? – cannot be withdrawn without general partner's consent so probably protected
- partner's bankruptcy? – could provide that bankruptcy disqualifies a partner

- as usual any regulated investments must be “FSA’d” – GP to delegate investment management to an auth’d body

- FLPs to be registered at Companies House but don’t usually need accounts

- quite expensive BUT only for the very wealthy – need an expert firm behind them