

The Pre-Budget Report in October introduced significant changes to Inheritance Tax (IHT) rules:

How will the new regime affect you?

What are the changes?

New laws are to be brought in to allow claims to be made to transfer a person's unused nil rate band (NRB, which is £300,000 until April 2008, then £312,000 until April 2009) to the estate of their surviving spouse or civil partner on deaths after 9th October 2007. This may result in IHT at 40% being paid where assets are worth more than £600,000, rather than £300,000 under the old rules.

Who will benefit under the new rules?

The relief applies to married couples and civil partners. When the survivor dies on or after 9th October 2007, their executors may submit a claim. The date of the first death is not relevant as the new rules allow claims no matter when the first death happened.

Who will not benefit?

Relief is only for spouses and civil partners, and is not available to siblings, divorcees, single people, cohabitants or carers. These individuals should seek professional advice on their own position.

What is a Transferable nil rate band?

This is the proportion of the NRB which was not used on the first death. Any unused share can be transferred to the survivor's estate. When they die, their executors may claim the unused NRB of their partner in addition to their own NRB. If none of the NRB was used on the first death, twice the NRB will be available on the second death.

How is this calculated?

It depends on the value of the NRB in force at the time of the second death. For example, if the NRB is £350,000 at second death and 50% of the NRB was used on the first death, IHT is payable only if the estate is worth more than £525,000 (£350,000 + £175,000).

We have Discretionary Trusts in our Wills. What should we do?

If these trusts are set up on the first death, the NRB is fixed at that stage. If not, as NRB levels are set to increase in the future, the value of the estate on second death may not be taxable at all and the Trusts may not be needed. However, you should seek professional advice as Trusts will remain useful in certain situations.



Should we consider making lifetime gifts to our family?

It depends. If either of you die within seven years the amount of the gift will use up some of the NRB. It may be preferable to defer gifts until after the first death, but this will depend on your own circumstances.

Should I leave everything to my spouse or civil partner?

Generally, yes if you wish them to maintain a reasonable lifestyle and also keep IHT to a minimum when they die. However, you should also consider other family members' needs and the possibility of your partner remarrying.

My husband died a few years ago, is there anything I should do at this stage?

Your own executors will have

to calculate the transferable NRB and produce the paperwork for your husband's estate. To help with this and minimise future administration costs you should retain all the papers. We can store these alongside your Will for safe-keeping.

For more information on the how the IHT changes affect your position, or general advice on planning your estate, please speak to one of our solicitors in the Private Client Department.

INSIDE THIS ISSUE

Changes to self assessment	2
Power of Attorney	2
Why Use a Lawyer	3
Capital Gains Tax Reforms	3
Laws of Succession	4

CHANGES TO SELF ASSESSMENT TAX RETURN FILING DATES

In the 2007 Budget it was announced that changes were to be made to the date for lodging Self Assessment Tax Returns from 5th April 2008 which affect the lodgement of tax returns for the tax year 2007/2008 and for subsequent years.

The current position is that regardless of whether you have a paper tax return or use HM Revenue & Customs online service, you have to lodge your tax return by 31st January after the end of the tax year to which the return relates. For 2007/08 tax returns and those for subsequent years, there will now be two separate filing

dates. For paper returns, there will be a new date of 31st October (for tax year 2007/08 that will be 31st October 2008). For returns filed online, the date will remain at 31st January (for tax year 2007/08 that will be 31st January 2009). For taxpayers filing paper returns who want HMRC to calculate their tax liability for them, the cut off date will move from 30th September to 31st October to align with the new paper return filing deadline.

A calculation of tax liability is automatically provided when a return is filed online. The reason for the changes? The

Government has invested over £500 million in the HM Revenue & Customs online service and therefore they wish to increase the amount of tax returns lodged using the service in order to get a return from their investment.

By cutting the amount of time taxpayers have to lodge their paper returns they hope to encourage people to move over to the online service. If a paper return is not lodged by 31st October the online service must be used to lodge the tax return by 31st January otherwise a penalty of £100 will be issued. Although we anticipate no problems in hav-

ing all the tax returns we prepare for clients lodged by 31st October next year, we would encourage our clients to send the necessary information to us as soon as possible. It should also be noted that it is not only individuals who are affected by these changes but also trustees and partnerships.



POWERS OF ATTORNEY



In Scotland, a power of attorney can take one of three forms. For example, if a person is going abroad for a period of time they can authorise another person or persons to make decisions on their behalf. This is usually in a business context: the power of attorney document itself will detail the kind of steps that can be taken on behalf of the absentee. Most importantly, if the granter loses capacity to make decisions for themselves (i.e. through old age, mental illness or brain injury) then

the power of attorney falls and the appointed attorney can no longer use it as authority under which to act on behalf of the granter. This type of power of attorney is, naturally, not appropriate to the growing number of people who wish to ensure that, if they do lose capacity to make their own decisions, then a trusted friend, relative or solicitor will be able to then look after their affairs for them.

However, an individual can also grant what is called a Continuing Power of Attorney. This power relates to management of the granter's financial affairs, bank accounts and assets and, as the name suggests, it "continues" to be operational in the event that the granter loses capacity. The attorney can start to utilise the authority as soon as the granter signs it but there are safeguards to protect the granter (who may be elderly and frail and susceptible to

coercion.) A solicitor or doctor must confirm that they are satisfied that the granter understands the nature of the document and that no undue pressure has been exerted onto the granter. The solicitor or doctor must then sign a certificate to this effect. The signed power of attorney is then registered with the Office of the Public Guardian. This is the official body responsible for ensuring that attorneys do not abuse the powers that have been granted in their favour.

The Adults with Incapacity (Scotland) Act 2000 also, for the first time, addressed the issue of looking after another person's welfare and personal needs when they can no longer do it themselves. The Act created the Welfare Power of Attorney, which can give the attorney powers to make decisions about the granter's dress, diet, care home, medical treatment and general well-

being. Crucially, the attorney cannot use a Welfare Power of Attorney until the granter is unable to make decisions as to their personal needs. Even after the loss of capacity, the attorney still must take account of any views or wishes expressed by the granter, the best interests of the granter must always be paramount and the granter should be actively encouraged to still make decisions regarding their own welfare. If the granter recovers capacity then the attorney can no longer act under the Welfare Power of Attorney. As for Continuing Powers of Attorney, these documents are registered with and monitored by the Office of the Public Guardian and, secondly, a solicitor or a doctor has to confirm that the granter has capacity to understand the consequences of granting a Welfare Power of Attorney at the time of granting it.

WHY USE A LAWYER TO MAKE A WILL AND WIND UP AN ESTATE?

You may have seen packs for sale that allow you to make your own Will at a very reasonable cost. However, using one of these, even if you follow all the instructions correctly, could lead to your family having to pay a great deal of money to sort everything out.

Advertisements by companies "specialising" in Will preparation are also more common nowadays. The worry is that these are currently not regulated. In England, the Department for Constitutional Affairs is looking at the need to regulate the Will writing market, following an English Will and Probate Service company going into liquidation with nearly £5 million missing.

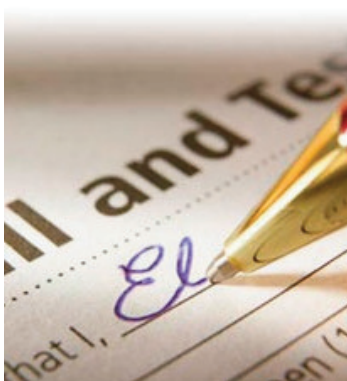
By using a Will writing service, you will get a very basic Will similar to thousands of others. The company might have a voluntary, self regulatory code, but how much protection does this give you? They are unlikely to take time to ask you about your family situation and suggest alternative ways to deal with your estate. If something goes wrong on your death, many years later, your family will have no recourse against a company which has long since disappeared. You might think such companies are the less costly option, so why should you use a solicitor to prepare your Will and deal with your relative's estate?

A major reason is that Solicitors are one of the most regulated professions in the UK. In addition to their knowledge of the different legal areas, all solicitors are required to meet high professional standards and

have professional indemnity insurance, which pays out in the event of any mistake being made. Solicitors also pay a levy each year into a guarantee fund so that anybody who loses money as a result of a solicitor's dishonesty will be fully reimbursed - no other profession or company offers this protection.

These days there are more and more concerns over dishonesty and fraud, with some charities estimating up to £150 million is being stolen from estates each year. A recent case in Newcastle involved a woman being sent to jail for a year for forging her partner's Will. She was only discovered because her partner's ex wife was not happy that their son had not been left anything under the new Will. She contacted the company that produced the Will form and discovered that it had not been printed until after the man had died so it could not have been genuine.

Using a solicitor to both draw up the Will and administer an estate gives peace of mind to you that your wishes will be put into practice, and to your family that if anything goes wrong, they are protected.



A CHRISTMAS MESSAGE FROM AC&H

This year the Partners and Staff of Archibald Campbell & Harley have nominated the charity Breast Cancer Care Scotland as the charity they wish to support throughout the coming year, and will be holding a number of fund raising events to raise money for them during the next few months.

As part of that fund raising programme, this year the firm will not be sending individual Christmas Cards, but will instead be donating an equivalent sum to this deserving cause.



We will be hosting a series of **FREE** seminars early next year on the following topics:

- ▶ **Inheritance Tax**
- ▶ **Wills**
- ▶ **Power of Attorney**

If you would like to attend, please contact Maxine on 0131 220 3000 or email: mh@achws.co.uk

CAPITAL GAINS TAX REFORMS

It has been announced in the Pre-Budget Report that changes are to be made to Capital Gains Tax with effect from 6th April 2008 which will affect individuals and trustees. A flat rate of Capital Gains Tax of 18% (for both higher and basic tax payers) is introduced although on the downside taper relief and indexation allowance will be scrapped on all disposals on or after 6th April 2008. Individuals and trustees will still have their Capital Gains Tax annual exemption which is not affected by the changes. This will simplify the calculation of Capital Gains Tax and as usual there will be winners and losers. For clients who held assets prior to 5th April 1998 this sees the disappearance of the relief of 40% on gains. Clients who have held assets since March 1982 will also be affected with the loss of indexation allowance which in effect uplifted their base cost by over 100%. In addition, gains on assets held as at 31st March 1982 will be calculated using the value of the asset as at 31st March 1982 value and not their original cost. If clients are looking to dispose of assets in the near future they should compare the tax payable on disposals of assets before and after the changes come into effect to see which of the rules benefits them the most.

LAWS OF SUCCESSION

Current laws were introduced more than forty years ago. What constitutes a 'family' has since changed. The Scottish Law Commission (SLC) are reviewing the Succession Act to bring it up to date. Their main proposals on intestacy and disinheritance are summarised below:

Surviving spouse or civil partner and no children

If a person dies without a Will, leaving no children, their surviving spouse or civil partner (the survivor) should receive the whole estate. They will no longer share the estate with the deceased's relatives and should be able to maintain a reasonable lifestyle as a result.

Surviving spouse or civil partner and children

SLC propose the way estates

are divided should be simplified if there is no Will. Survivors would receive a fixed sum for estates valued up to £300,000 and half of any excess. The remaining half share would be distributed between the children. Under the proposals the survivor would be given an opportunity to acquire the family home and its furniture by paying any excess.

Step-children and adopted children

SLC recommend maintaining the status quo. This means that step-children still have no right to property unless they are specifically named as a beneficiary in their step-parent's Will. Adopted children inherit from their adoptive parents and cannot inherit from their natural parents.

Cohabitants

Current rules are unchanged. These individuals will not be given automatic rights, and can only apply to the courts for an award from their partner's estate. However, applications are financially and emotionally expensive and the outcome is not guaranteed; the courts can decide what type of award to make and may even make no award.

Protection from disinheritance

Proposals impose a duty on individuals to provide for their family. Regardless of the terms of any Will, the husband or wife would receive a quarter share from the deceased's whole estate. The rules would be extended to allow cohabitants to apply to the courts for an award. Similarly, dependant children would be able to apply for maintenance. Claims would have to be made within five years from date of death.

Conclusion

These are far reaching changes and are subject to public debate. We will update you if and when they come into effect.

Intestacy causes uncertainty, distress and expense for those left behind. For peace of mind that your family is provided for when you die, you should make a Will. You can also decide who you wish to appoint as an Executor or Guardian, make legacies and express funeral arrangements. Individuals should seek proper legal advice to ensure their wishes are given effect. If you have a Will in place, this should be reviewed periodically and revised to reflect material changes in personal circumstances.

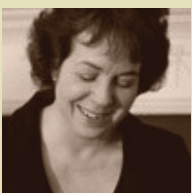
For more information on planning your estate, please contact one of our solicitors in the Private Client Department.

CONTRIBUTORS TO THIS EDITION INCLUDE:



Richard Murray

Richard has a wide area of expertise which includes the drafting of Wills, Deeds of Trust and Powers of Attorney, Adult Incapacity related issues, Estate Administration including Succession-related issues, and Inheritance Tax planning.



Liz MacKay

Liz joined the firm in 2006 and has a wide variety of legal experience. She advises a range of clients on issues involving Wills, Powers of Attorney and Trusts, Estate Administration and Inheritance Tax Planning.



Neil McNab

Neil joined the firm in 2006 taking up the post of Trust and Executry Manager bringing with him over 17 years of experience gained from two of Scotland's largest legal firms of solicitors. Neil's particular area of expertise is the administration of Investment Portfolios, Trusts and Estates.

ARCHIBALD CAMPBELL & HARLEY

37 Queen Street, Edinburgh EH2 1JX
1 Park Terrace, Glasgow G3 6BY

www.achws.co.uk

0131 220 3000

enquiries@achws.co.uk

AC&H