

NEW INHERITANCE TAX RULES HAVE WIDE RANGING AFFECTS

DOES YOUR WILL AND TRUSTS NEED REVIEWING?

Camberley 16th May – Gordon Brown's Budget last March announced far-reaching changes to the inheritance tax treatment of trusts. The changes were detailed in a Budget Note (BN25) under the innocuous heading "Aligning the inheritance tax treatment for trusts". These changes, which are designed to close tax avoidance loopholes, will affect new and (from 2008) existing trusts and are likely to cover all but the simplest of Wills.

KEY POINTS

Trusts for Children and Grandchildren

This ends the special regime protecting trusts for children under the age of 25. Any new trust made during a person's lifetime may trigger an immediate charge to IHT (inheritance tax) at 20%. In addition, such trusts will be assessed to IHT on each tenth anniversary and the maximum rate of tax on these periodic IHT charges will be 6%.

Where existing trusts are changed so that the children/grandchildren inherit the capital of their share at an age of no later than eighteen, the trust will escape the new periodic IHT charges. Trustees have been given until 6th April 2008 to make the any changes.

Life Interest Trusts

The new rules concerning both new and existing Life Interest Trusts came into effect on the 23rd March 2006 and include an automatic trigger of an immediate charge to IHT at 20% of a lifetime transfer to a life interest. There are also special rules for successive life interests arising in the transitional period to 6 April 2008.

Trusts created by a Will

The new provisions will catch trusts for children and grandchildren created on death after 22nd March 2006 unless the deceased parent for the minor children had made them. Such 'bereaved minors' must still become entitled to their share of the estate no later than the age of eighteen to avoid the periodic IHT charges.

Life interest trusts created by Will or on intestacy after 22nd March 2006 only escape the new periodic charges and only qualify for survivors spouse exemption if they have fixed non-flexible terms.

Commenting on the changes Tony Tahourdin Solicitor and part at Herrington & Carmichael said "This is a significant blow to IHT efficient Wills which were drafted with flexibility in mind to allow the surviving spouse to decide on the extent to which he or she required assets for their future use. Fortunately it looks as though it will not affect the basic Nil Rate Band Discretionary Trust that many couples now include in their Wills". He also added "It is important to note that grandparents can no longer leave assets for their grandchildren without triggering the periodic IHT charges".

ACTION

The new provisions are taking effect retrospectively and will have a significant impact on many existing trusts. The new provisions may require many individuals to review and if necessary change the terms of their Wills if they wish to avoid the additional IHT periodic charges after they have died.

Tony Tahourdin's final word of advice is "I am closely monitoring the progress of the changes through parliament and if and when they receive Royal Assent I recommend that clients make an appointment with their lawyer to discuss the new provisions and how they affect their wills and trusts".

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