



# Inheritance Tax Mitigation

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This Information Sheet provides an overview of the main reliefs and considerations for Inheritance Tax (IHT) planning.

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If tax planning is carried out during your lifetime then IHT should be greatly reduced. However, actions to reduce tax should never leave you financially insecure later in life. Tax planning needs to be carried out carefully; ideally in conjunction with your solicitor, financial advisor and accountant.

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## Gifting assets

When gifting assets during your lifetime, you should ensure that you retain sufficient assets to live in comfort for the rest of your life. In addition to the IHT considerations, you ought to consider whether you will be making a disposal for Capital Gains Tax (CGT) purposes. If you gift anything other than cash or an ISA and the market value of the asset exceeds the acquisition cost, CGT will arise on the gain subject to allowable deductions and your available annual exemption to Capital Gains Tax, which is currently £12,300.

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## Potentially Exempt Transfers

A gift made within seven years of death is a Potentially Exempt Transfer (PET). If you gift assets (of unlimited value) and survive the seventh anniversary date of the gift, the gift will not be brought into account for IHT purposes. If you gift assets and die within seven years, the value of the gift will be brought into account for IHT purposes subject to the exemptions below. If you make significant PETs during your lifetime, exceeding the value of your IHT allowance (the Nil Rate Band, currently £325,000), do note:

- 1) The IHT due on the PETs is normally payable by the recipient unless your Will states otherwise. However, the executors are liable for the IHT if unpaid after one year from death.
- 2) The IHT due on the PETs depends on how long the donor survives the gift. This is known as taper relief.

### Taper relief

Taper relief only applies on the tax due on the gift, not the value of the gift itself, so it will not apply if you have made lifetime gifts below the Nil Rate Band. The longer you survive after making the gift the lower the IHT, as the IHT reduces by 20% each year after the third anniversary of the gift.

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## Gifting Exemptions

### Annual exemption

Everyone has an allowance of £3,000 per tax year (or a maximum of £6,000 if unused from previous tax year) with no IHT implications. This allowance is for the total value of gifts, not per recipient.

### Small gifts to any one person

Lifetime gifts of up to £250 to any person during a tax year are exempt. The exemption is only available if the gift (or gifts) to that individual does not exceed £250 in total. It is not possible to carry forward any unused portion to the next tax year.

### Wedding and civil partnership gifts

These are exempt within limits. The limit depends on the relationship of the donor to the couple, as follows:

- 1) Each parent can give £5,000.
- 2) Each grandparent (or remoter ancestor) can give £2,500.
- 3) Either of the couple can give to each other £2,500.
- 4) Any other person can give £1,000.

The gifts can be made to either party of the marriage or civil partnership or to the couple jointly. The gift must take place on or before the ceremony and must be conditional on the ceremony taking place. The exemption is not available if the ceremony does not take place.

#### **Gifts as normal expenditure out of income**

Lifetime gifts are immediately exempt if made from surplus income. Such gifts do not affect your annual allowance for capital gifts and are not considered PETs.

These gifts will only qualify for the relief provided that the payments:

- 1) Form part of normal expenditure, taking one tax year with another;
- 2) Are made from income which is surplus for your particular living expenses; and
- 3) The regular payments leave you with sufficient income to maintain your ordinary standard of living without resorting to capital.

It is very important to keep a record of the gifts, your income and expenditure when claiming the relief in HMRC's IHT 403 schedule in form IHT 400.

#### **Transferring excess income into trust**

Transfers into trust in excess of £325,000 give rise to an immediate 20% IHT charge and periodic IHT charges on trust assets. Gifting excess income can be scrutinised by HMRC and needs careful monitoring.

#### **Gifts with Reservation of Benefit (GROBs)**

It is important that, after making the gift, you do not reserve any benefit from it. Any such benefit will mean the full value of the gift forms part of your taxable estate on death. For example, if you give your home to your adult children (who live elsewhere) and continue to live there rent-free this is a GROB. If you release the benefit (for example, by moving out or paying the children full

market rent), this is a PET. Provided you survive for 7 years after release, the value of the gift is not in your taxable estate.

#### **Business Property Relief (BPR) and Agricultural Property Relief (APR)**

You can gift qualifying business and agricultural property free of IHT during your lifetime, or on death in your Will. HMRC will look carefully at the type of asset and its use to determine if it qualifies for BPR or APR.

##### **BPR**

100% BPR is available for:

- 1) Unquoted shareholdings in a trading company; and
- 2) Interests in a business (whether owned as a sole trade or in partnership).

50% BPR is available for:

- 1) Shares in a quoted company (where the donor had control of the company); and
- 2) Assets, such as land and buildings, used by the donor's partnership or company.

You must have owned the business assets for at least 2 years.

There are opportunities for further IHT savings by "crystallising" BPR relief in a carefully drafted Will Trust. BPR assets can be transferred into the Will Trust and the surviving spouse can either purchase the assets with cash transferred into the trust, or by way of a loan left outstanding to the trustees and discharged on the survivor's death. After owning those assets for 2 years, they will once again become BPR exempt from IHT. This is an effective way of removing assets subject to IHT from the survivor's estate and maximising use of BPR for estate planning.

##### **APR**

Qualifying agricultural property benefits from relief at 100% or 50% (depending on who farms the land and how long the land has been owned). Relief is given on the agricultural value of the land and not market value. BPR may also be available (after APR has been given), for example, where a farmer owns the land and farms it as a business.

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This document has been drafted and provided by Kingsley Napley LLP.

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