



Inheritance Tax Planning Handbook



Two women are sitting at a white marble kitchen counter, laughing heartily. The woman on the left is younger, with blonde hair, wearing an orange sweater and holding a grey mug. The woman on the right is older, with white hair, wearing a light orange sweater and holding a dark mug. They are both looking at each other and laughing. In the background, there is a large window showing a view of a garden, a round clock on the wall, and a dishwasher under the counter.

Welcome



John D Bunker

Author, Consultant Solicitor and
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Watch our 'IHT in 2021' webinar

[Watch the webinar here](#)

Welcome

We are delighted to share with you the new inheritance tax planning handbook, published by the Law Society and authored by our very own Irwin Mitchell experts.

The handbook is written to support private client practitioners, solicitors, tax advisers, financial planners or others who advise on inheritance tax (IHT).

It provides a practical overview of the pitfalls around IHT, and encourages proactive thinking to offer clients tax mitigation opportunities in the course of writing Wills or administering estates.

In this document our experts and authors of the handbook provide a quick overview and key points for each of the 28 chapters. There are no easy answers when it comes to helping clients mitigate you with a range of ideas you can put into practice.

Whether your clients need support with **Business Wealth, International matters, Rural or Agricultural Business, or planning for Later Life**, our working handbook is a valuable resource to find the best possible solution for them.

We hope those looking to learn more about the handbook will find this to be a useful guide and deliver some inspiration to help your clients in the future.



Like receiving tax advice over a coffee from a good friend, who also happens to be an IHT expert.

How We Can Help Your Clients

IHT is often described as the most disliked tax, but it's also true that it combines Benjamin Franklin's two certainties: death and taxes.

IHT law is complicated, and it can be a challenge to stay on top of your various tax obligations.

Everyone's personal situation is different, and so are their taxes – so whatever your clients' circumstances are, our handbook will give you the tools to help them protect what matters most.

As well as addressing specific needs for planning advice, the handbook aims to encourage thinking about proactive ways to offer clients tax mitigation opportunities in the course of writing Wills or administering estates or lifetime planning.

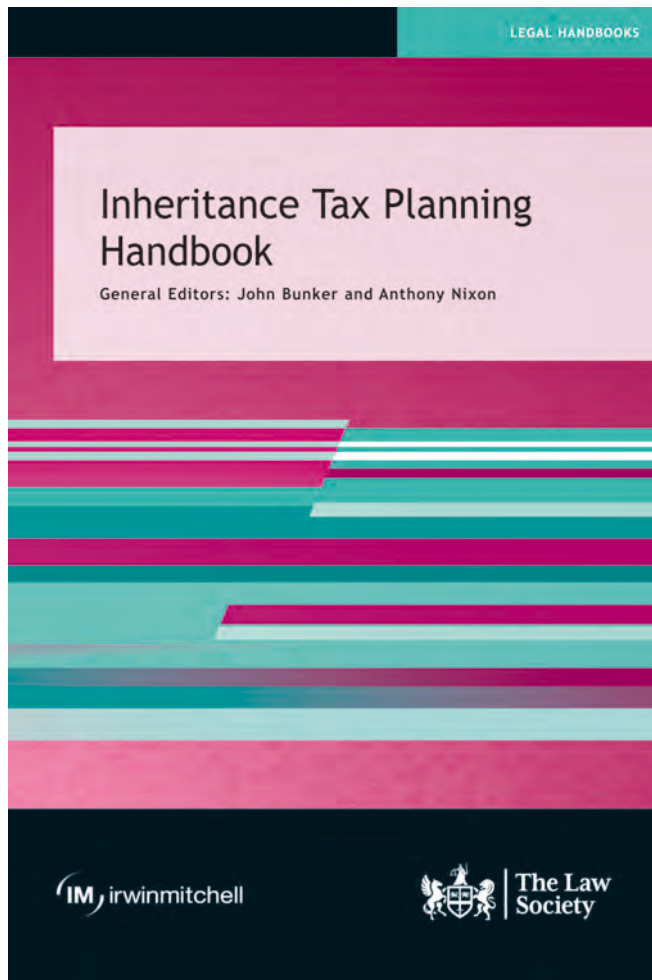
This is particularly relevant to the Residence Nil Rate Band (RNRB) where the law is very complex and still quite new, and a really good example of where clients don't know what they don't know.

We also cover the main anti-avoidance measures, through which any planning needs to navigate.

Care must be taken with the Professional Conduct in Relation to Taxation (PCRT) rules, as breaching them could be disastrous for professional reputations, and of course it's necessary to help clients avoid engaging in 'tax evasion', which is illegal.

It's important to uphold genuine tax planning and our handbook will help you make the most of the legitimate planning opportunities that IHT legislation and practice allow, without straying into dangerous territory which might be considered tax avoidance.





In the handbook we aim to reflect our belief in estate planning, in the value of bringing together the three elements below to find better solutions for all of our clients:

- Legal
- Tax planning
- Financial planning.

While we can offer clients any or all of these elements we also work regularly with financial planners, wealth and investment managers, tax advisers and accountants in seeking comprehensive results.

In the following pages we have drafted an outline of the key areas of the handbook, and introduce you to our expert team who can help you with any questions.

Watch our 'IHT in 2021' webinar

In our recent webinar we explored some of the key themes for IHT mitigation at the start of a significant year for tax. With tax rises inevitable at some stage, to pay for all 2020's emergency measures, it's a timely opportunity to reflect on this unpopular tax.

[Watch the webinar here](#)

A close-up photograph of an older woman with short, straight white hair and bangs. She is wearing dark-rimmed glasses and a large, dark, leaf-shaped earring. She is looking down at a white document she is holding. She is wearing a dark blue or black blazer over a white top. A small, gold-colored necklace with a triangular pendant is visible. The background is softly blurred, showing what appears to be a window with light coming through. The overall tone is professional and focused.

Part I Estate and Trust Essentials



Chapter 1: Inheritance Tax Principles

Vicky Day - Senior Associate

Chapter 1 is a run-through of some of the basics, for ease of reference in planning. This IHT Planning Handbook is not intended to be a comprehensive text book but here are some of the principles to be aware of in planning.

What is IHT and when is it payable?

IHT is primarily a tax on the value of a person's estate on their death. It replaced the old capital transfer tax, which was designed as a tax on lifetime gifts as well as on death. Only a few lifetime gifts now attract IHT.

It's also charged on the value of assets in some types of trust. With judicious planning, a taxpayer may arrange their affairs to take advantage of the generous reliefs and exemptions from IHT to reduce their tax liability.

Key Points

This chapter sets out some of the basic principles of and terminology used when describing IHT:

- What is IHT and when is it payable?
- The key concepts of 'transfers of value', 'chargeable transfers' and 'potentially exempt transfers' (PETs)
- The meaning of 'estate' and the relevance of domicile and worldwide assets
- The differences between lifetime charges to IHT and charges on death
- Rates of tax; the key concept of 'open market value' for valuation; and liabilities.



Chapter 2: Exemptions, Reliefs and Allowances

Vicky Day - Senior Associate

There are a number of occasions when property is transferred and no IHT is payable. This may be because the transfer of value is exempt, because there's a relief according to the type of property being transferred or because of an allowance.

Key Points

This chapter will cover:

- The main exemptions and gifts between spouses and civil partners (IHT Act (IHTA) 1984, s.18)
- Annual exemption (s.19) and other exemptions
- Allowances, reliefs, and events that aren't transfers of value.



Chapter 3: Further Nil Rate Bands (NRBs)

Hollie Marcham - Associate Solicitor

A brief introduction to the concept of two further NRBs which are important building blocks in planning. They're both crucial to effective planning, as estates that qualify for them can save significant amounts of tax.

Key Points

This chapter will cover:

- The basics of how Transferable Nil Rate Bands (TNRB) work
- A basic introduction to Residence Nil Rate Band (RNRB) which is covered more fully in chapters 16 and 17. The legislation (all 15 new clauses in the IHTA 1984 are outlined in chapter 16).



Chapter 4: Inheritance Tax Planning Anti-Avoidance

Anthony Nixon - Partner

Any IHT planning must have regard to the anti-avoidance provisions, which put limits on what's possible. It's important to be aware of these rules in general, and to refer back to the details in certain specific cases.

Professional Conduct in Relation to Taxation (PCRT)

This chapter discusses the PCRT rules, which must be followed by members of various professional bodies in dealing with tax compliance and planning, and the accompanying Solicitors Regulation Authority (SRA) guidance for all regulated by the SRA.

Key Points

This chapter will cover:

- Anti-avoidance provisions to avoid potential pitfalls
- The six main provisions that have been introduced to thwart IHT avoidance:
 - Restrictions on deducting liabilities – introduced in 2013
 - Associated operations – introduced in the IHTA 1984
 - Reservation of benefit – introduced with the change to IHT in 1986
 - Pre-owned assets tax (POAT) charge – introduced in 2004
 - General anti-avoidance rule (GAAR) in 2013
 - Disclosure of tax avoidance schemes (DOTAS) in 2011, but extended in a major way in 2018.



Chapter 5: Forms of Trust for IHT Purposes

Vicky Day - Senior Associate

Trusts are a fundamental element of IHT planning, so it's important to have a good understanding of how they work and their treatment for IHT. This is both because of the need to understand existing structures clients have, and the IHT effect of any trusts, but also to see the huge potential trusts have to open up tax planning opportunities.

The detailed planning ideas are covered in Part III, building on the foundations set out here. In this chapter, the terms 'trust' and 'settlement' are used interchangeably. The word 'trust' is used more commonly in texts, general usage, precedents and in HMRC guidance, but the word 'settlement' is used in the IHTA 1984.

Different types of trust have different IHT treatment and sometimes the same type of interest has different IHT treatment depending on whether it

was created in the taxpayer's lifetime or on their death. There were major changes in 2006. Different IHT charges can apply to the same type of interest depending whether it was created before or on or after 22 March 2006.

Key points

This chapter covers:

- What constitutes a settlement for IHT purposes sets out the different types of trust that can be created – first categorised by type of trust (i.e. by the underlying beneficial interest) and then categorised by their IHT treatment and whether they are created in lifetime or on death
- The treatment of trusts still in existence but created before 22 March 2006 ('pre-2006 trusts')
- Treatment of disabled person's trusts (DPTs).



Chapter 6: Aggregable Trusts

Tanya Wadeson - Trust Compliance Manager

John Bunker - Consultant Solicitor and Chartered Tax Adviser

The concept of an aggregable trust is a significant one for IHT, a trust that gets taxed on the death of the main beneficiary, so understanding how they work is important.

The alternative, of a relevant property trust, is explored in Chapter 7.

A lot of IHT planning revolves around choosing between these alternative trust tax treatments, deciding when to set up one or the other, or to switch from one to the other within two years of a death and when to bring a trust (or part of it) to an end.

Key Points

This chapter will cover:

- What an aggregable trust is, and how they work, with examples provided
- The IHT effect of terminating an aggregable trust, in whole or part, with an example.

A portrait of Tanya Wadeson, a woman with short blonde hair, smiling. She is wearing a dark blue top with a red grid pattern. The background is a blurred outdoor setting with green foliage.

Chapter 7: Relevant Property Trust (RPT) Regime

Tanya Wadeson - Trust Compliance Manager

Understanding how the RPT regime works is important, compared to the alternative of the aggregable trust explored in Chapter 6. A lot of IHT planning revolves around choosing between these alternative trust tax treatments, deciding when to set up one or the other and when to bring a trust (or part of it) to an end.

Key Points

This chapter covers:

- An introduction to the IHT treatment of RPTs
- 10-year charges (periodic charges) and exit charges (proportionate charges) and examples
- A brief introduction to the complex issue of 'grossing up'.



Chapter 8: Compliance

Tanya Wadeson - Trust Compliance Manager

John Bunker - Consultant Solicitor and Chartered Tax Adviser

It's worth taking note of some compliance aspects, so in this chapter we outline issues relevant to IHT, estates and trusts.

Key Points

This chapter covers:

- The IHT account forms needed, and those trusts and estates that are excepted from the obligation to account
- Payment of tax obligations, including situations where an instalment option is available and when interest is payable
- An introduction to the Office of Tax Simplification (OTS) reports on IHT in November 2018 and July 2019, the first of which was concerned with the process of accounting for and paying IHT
- An outline of a number of ways that HM Revenue and Customs (HMRC) helps online with notes, toolkits, newsletters and manuals. These can all help both compliance and understanding of HMRC practice when considering planning options.

Part II Practical Probate and Trusts





Chapter 9: Probate

Emma McCann - Partner

John Bunker - Consultant Solicitor and Chartered Tax Adviser

Probate work and the administration of estates, is the starting point for paying IHT. There's also a crucial interaction with capital gains tax (CGT).

Many opportunities arise in the course of this work, to either save tax in an estate, or to review the structure for a better future tax treatment for example on the death of a second spouse.

Some planning is outlined in this chapter, and then many further ideas are explored in Part III, which concerns estate planning in more detail.

Key Points

This chapter covers the following:

- Alongside the IHT planning in the handbook, it's valuable to note practical compliance issues, starting with completion of IHT forms and paying IHT by instalments
- Claiming the downsizing addition for the residence nil rate band (RNRB) – an introduction to one of the most complex areas of IHT law
- Losses and gains in estates: claiming loss relief for IHT and how this interacts with CGT and the gains of the estate and individuals
- Appropriation: analysing a key tax planning tool in estates, the form of appropriation, the nature of the power and values at which assets are appropriated; as well as the key role in dealing with losses and gains post-death.



Chapter 10: Practical Trust Compliance and Administration

Kirstie Williamson - Associate

While this handbook's focus is IHT planning, trusts are such a major part of planning that it is helpful to note some trust compliance aspects, including some very practical administration points. Practitioners who don't do much trust work might feel able to do more basic trusts themselves, even if referring to specialists on some aspects or more complex cases.

Key Points

This chapter covers the following:

- How to start with trust creation, choosing the form of trust, the choice of trustees and beneficiaries
- An introduction to the HMRC Trust Registration Service (TRS) for online registration to deal with HMRC's relationship with the trust, including a brief reference to the changes due in 2020/22 with the Fifth Money Laundering Directive (5MLD)
- Technical and practical issues that come with investing trust funds and trusts with property
- Trusts with property: rental or occupied property
- Key points on trust tax returns and accounts, which are sometimes outsourced by solicitors to accountants
- Thoughts on when trusts reach vesting and the winding-up of a trust
- The master documents that might, as a matter of good practice, be kept on a separate permanent file.

Part III Estate Planning, Wills and Variations





Chapter 11: Introduction to Variations

John Bunker - Consultant Solicitor and Chartered Tax Adviser

Variations of estates or trusts, within two years of death, are a crucial part of IHT planning, to ensure that the right provisions operate 'with the benefit of hindsight'. This mitigates the IHT payable either on that death or on a future occasion.

Key Points

This chapter covers:

- The basics of the three forms of variation, including examples of how they work
- Which statutory provision applies and what powers are used to effect the variation? It's important to be clear about the difference between:
 - The statutory provision that applies
 - The powers used to achieve the variation, which may depend on the powers given to executors and trustees in the Will, which often extend statutory powers, or the limited statutory powers themselves
 - The rights of beneficiaries under any Will or intestacy, and any agreement to amend those rights.



Chapter 12: Planning with Lifetime Gifts

Vicky Day - Senior Associate

This chapter sets out practical ways to reduce IHT on death by making lifetime gifts. It also identifies potential traps when certain gifts are made.

Key Points

This chapter covers:

- The usefulness of the small gifts exemption and the annual exemption, despite being relatively small
- Normal expenditure out of income is explored in some detail, as it's both an exemption with huge potential and one that's easy to get wrong
- Interaction with Capital Gains Tax (CGT), as to gifts to trust with the benefit of holdover relief and the traps with residential property, which are important in practice – both for planning and for trust compliance if running any trusts
- Bare trusts are an underutilised tool but may be beneficial for minors, people with a mild disability or potentially vulnerable people
- Reservation of benefit, is a major issue in IHT planning. We illustrate how this can operate as ‘the worst of all worlds’
- The use of death-bed CGT planning is a niche aspect of lifetime planning in the right circumstances. For example, where one spouse is terminally ill and seeks to do some planning to benefit their spouse when they've passed away.



Chapter 13: Spouses/Civil Partners: Will Planning with Trusts

John Bunker - Consultant Solicitor and Chartered Tax Adviser

For married couples and civil partners (“spouses”), the writing of Wills with reference to IHT planning objectives is fundamentally important.

It affects the way that assets in estates and trusts will be subject to IHT. The introduction of the Residence Nil Rate Band (RNRB) in 2017 has transformed the IHT planning around Wills, and raised great potential for pro-active advice to clients, offering alternatives to consider that might be more tax effective.

This chapter explores the best options for spouses to mitigate IHT in the long-term, even if this benefits their descendants or other beneficiaries rather than themselves.

It also raises planning ideas that can be dealt with by variations within two years of death, if not by the Wills themselves.

Chapter 13: Spouses/Civil Partners: Will Planning with Trusts

Key Points

This chapter covers:

- To use, or not to use, the NRB, RNRB, or both is a key question in IHT planning for spouses, along with how to use the spouse exemption. The planning changed with the introduction of the transferable NRB (TNRB) in October 2007, and again with the advent of the RNRB in April 2017
- The NRB discretionary trust (NRB D/T) is hugely important. Its purpose has changed since 2007, but it has had a new lease of life with the RNRB with reference to planning around the £2 million threshold. Using the NRB with this form of trust takes assets out of the potential 'estate' for the purpose of the £2 million threshold, above which the RNRB is tapered away, and thus serves a major role
- IHT planning for spouses who cannot claim RNRB: what can be done? One of the answers is using the NRB D/T
- This can help secure many tax benefits, even when there are no descendants to claim RNRB or the estate is well over the £2 million threshold and so the RNRB is bound to be tapered away. These include:
 - Securing a third NRB
 - Securing a valuable discount on the appropriation of a property interest to the D/T and assets likely to increase significantly in value.
- Variations: The increasing importance of considering variations within two years of death, of both estates and trusts, to secure the best structure. While variations are normally a second best option, with some drawbacks, they're often the only way to secure reliefs after the first spouse dies, where up-to-date planning wasn't arranged prior to death. Changes in law and practice mean spouses often don't the most effective IHT structure in their Wills
- Clients considering the costs of a better structure? A simple form of cost/benefit analysis helps to show the extra value offered by a better structure, so clients can decide whether to incur the extra fees for a variation.



Chapter 14: Planning Within Two Years of Death

John Bunker - Consultant Solicitor and Chartered Tax Adviser

It's increasingly important to consider variations within two years of death to secure the best structure – variations of both estates and trusts. While normally a second best option, with some drawbacks, they're often the only way to secure reliefs and the most effective arrangement to mitigate IHT.

Whatever the reason a variation may be needed (for example, lack of advice or failure of clients to take the advice or clients not wanting to spend the money for the advice at the time of making the Will), practitioners should never be afraid to proactively suggest an improved structure that could work more effectively.

Key Points

- The two-year window offers an opportunity to switch between two trust regimes, that of the relevant property trust (RPT) and that of the qualifying interest in possession (QIIP) which is an aggregable trust. The different IHT treatments mean this is a crucial choice, according to the specific circumstances
- Two crucial points for spouse planning are features of post-death planning:
 - To use, or not to use, the NRB, the RNRB, or both? This is a key question in IHT planning for spouses, along with using the spouse exemption
 - The nil rate band discretionary trust (NRB D/T) is hugely important - for both RNRB planning (see also Chapter 17) and those who don't qualify for RNRB.

Key Points (continued)

- DOTAS (Disclosure of Tax Avoidance Schemes) and the new rules from 2018 are considered, with reference to deeds of variation. This leads to the reminder to encourage clients to plan by Will, as far as possible, as Wills cannot be challenged under DOTAS as variations can be
- Eight examples to show how variations can be used, to enable effective use of NRB and/or RNRB
- Variations to secure the lower (36%) rate of IHT on leaving 10% of a net estate to charity are also outlined, to show the potential of this under-used tax mitigation option.



Chapter 15: Reliefs for Agricultural and Business Property

Anthony Nixon - Partner

Agricultural property relief (APR) and business property reliefs (BPR) are extraordinarily generous. 100 percent reliefs aren't to be taken lightly.

They also shouldn't be taken for granted, and while they're available it's a waste not to utilise them as fully as possible.

Careful planning is called for. At first glance the reliefs look very much the same. However, while they have many common elements, there are crucial differences which we explore.

One common factor is that there is usually no relief unless the asset concerned has been owned for a minimum of two years.

Key Points

This chapter covers:

- Assets qualifying for both reliefs
- **APR:** Basic conditions for agricultural relief; what is agriculture; minimum ownership and occupation periods; the split between 100% and 50% relief; that it is only on agricultural value and the special requirements for farmhouses
- **BPR:** Basic conditions for business relief and what is a business; valuing a business or an interest in a business and how the loss to the donor applies for business relief; and restrictions on liabilities
- Investment businesses and the bar to relief; how the 'mainly' trading concept works and analysis of the key cases of Farmer, George, Pawson, Graham and Vigne, and the Balfour case, which is one of the most critical and contentious areas of IHT law
- BPR and APR and Wills for spouses; and lifetime gifts with relief.



Chapter 16: The Residence Nil Rate Band

John Bunker - Consultant Solicitor and Chartered Tax Adviser

The RNRB, introduced in 2017, is complex and not easy to use, but it's valuable for those who qualify so it's worth the effort. This chapter outlines the key ingredients, the specific requirements in order to secure the benefits and some of the technical traps to avoid. The next chapter then covers more complex planning issues.

Key Points

To claim RNRB there are four main requirements:

The target to enable spouses (married couples and civil partners) to leave £1m free of IHT was reached in 2020/21. This was achieved by adding the RNRB of £175,000 (in 2020/21) to the nil rate band (NRB) of £325,000, or a total of £500,000 or £1m for a couple.

In 2020/21, the total IHT saving is £70,000, or £140,000 for two RNRBs, if the transferable RNRB (TRNRB) is claimed in full on the death of the second party to the marriage or civil partnership.

1. **Qualifying residential interest (QRI):** The taxpayer owns the right interest in a residential property, including a trust interest; or can claim a 'downsizing addition'
2. **Closely inheriting:** The taxpayer leaves that interest to children or remoter descendants who 'closely inherit', either outright or through the permitted form of trust
3. **The £2m threshold:** the taxpayer's estate (including any aggregable trust) is not over £2 million, or if it is, the RNRB is tapered away by £1 for every £2 over that threshold
4. RNRB doesn't take into account lifetime gifts, although they may come within the downsizing addition. Gifts can be made at any time before death, so long as they're completed, valid gifts. They can serve to reduce an estate



Chapter 17: RNRB Planning

John Bunker - Consultant Solicitor and Chartered Tax Adviser

RNRB is a new and complex concept, so many Wills and trusts that were drawn up before and even after the provisions came into effect may not reflect the optimum arrangement for tax.

Key Points

To secure maximum benefit from RNRB, there are four main planning areas:

1. Ensure the client owns the right interest in a residential property, including a trust interest, or can claim a ‘downsizing addition’.

This chapter outlines three key planning issues for advisers, on checking the values of property, and the ownership structure; and when administering an estate, if there is any second estate (of a spouse or partner) to come in the future to consider a possible variation of the estate or trust.

2. Ensure the client leaves the right interests to children or remoter descendants, so that they ‘closely inherit’, either outright or through the right form of trust.

This chapter considers two main planning opportunities, in Will drafting and estate administration, and also outlines options for grandchildren, step-children and children of unmarried partners from previous relationships who can fall foul of the legislation. This chapter also covers what to do with discretionary trusts, which need review within the two years post death.

Key Points (continued)

3. Ensure your IHT estate (including any aggregable trust) is not over £2 million, as if it is the RNRB will be tapered away by £1 for every £2 over that threshold.

This chapter explores three main planning approaches to optimise the figures:

- Arrangements for passing assets between spouses, to maximise the use of RNRBs
- Estate planning to use capital and income effectively, with an eye on the £2 million value, especially (but not only) spouses
- Lifetime gifts, a strategy in itself for some, and death-bed planning as a valuable last resort, to make gifts to bring the 'estate' below £2 million at death.

4. Ensure you use lifetime gifts effectively. Gifts of any assets, including property, can be made at any time before death, to reduce the value of an estate for the £2 million threshold purposes.





Chapter 18: Estate Planning from Lawyer/Tax Perspective

John Bunker - Consultant Solicitor and Chartered Tax Adviser

Estate planning is the process of managing your estate to achieve your objectives in your lifetime and when you pass away.

It's a mix of three elements: legal, tax planning, and financial planning. This chapter seeks to bring these three together, with practical tips and examples.

It's a core principle that runs through much of our work, where we regularly work with outside financial planners and discretionary fund managers, to produce integrated solutions for clients.

Key Points

- Estate planning can help IHT mitigation by giving better integrated solutions for clients
- It's important to explore client objectives and the elements to consider in seeking to achieve them
- It's also important to consider 'letters of wishes' and other tools available to advisers in this process
- We must consider how advisers can work together, in practice, for the benefit of clients
- Referral of work to a select panel of financial planners can also be good for lawyers.

A portrait of David Gooding, a middle-aged man with grey hair, smiling and wearing a light blue button-down shirt. He is positioned on the left side of the page, with a blurred office background.

Chapter 19: Estate Planning - Financial Planner's Perspective

David Gooding - Wealth Manager, Senior Associate

Much of this handbook is based on legal planning, such as drafting Wills, carrying out estate administration and the setting up, rearranging and winding up of trusts. For many lawyers, tax planning is linked with these legal structures – but financial planning is a vital element.

Key Points

A financial planner's (FP's) input is important in five ways:

- The financial planning process, including objective setting, can be central to a client achieving their priorities. It can also help them to see how IHT mitigation fits in with meeting their own needs
- Cash flow analysis, now offered by most FPs, can be an invaluable tool in identifying what clients can afford to do, and to do without, and to consider the consequences of different options for gifting and/or structuring their finances
- The RNRB and the £2m taper threshold mean it's important to review the use of assets and sources of income to determine whether there's a more efficient way to structure them. An FP may have a vital contribution to make, to help lower the IHT bill by avoiding the taper thereby increasing the amount that can be passed on tax-free.



Key Points (continued)

- Pension death benefits are now a vital tool in IHT planning, especially as they don't usually come into the equation for the £2m threshold. While lawyers may be aware of some of the tax considerations, a good FP (who understands pensions well) is needed to explore the detailed options
- Life assurance products, which FPs can advise on, offer specific solutions to IHT planning, as a key part of a wider plan for some clients.

This chapter also covers some specific life assurance based arrangements used widely in IHT planning: investment bonds, discounted gift trusts, loan trusts and reversionary trusts, as well as comments on business relief and long-term care.

For many clients, an FP can play a key role in IHT planning even if none of these arrangements are appropriate or made, just simply through the review of objectives, attitude to risk, assessment of assets held and the invaluable cash flow analysis.



Chapter 20: Business Planning with Wills and Cross-Options

John Bunker - Consultant Solicitor and Chartered Tax Adviser

IHT reliefs need to be fully utilised – it's not something to be taken for granted, and planning between spouses is especially important. The potential to maximise business property relief using BPR or APR by restructuring to secure a higher rate of relief is worth consideration.

Key Points

- Possible tax changes need to be taken into account, not to try to avoid tax charges by crystal-ball gazing, but to make the right decisions for families enlightened by perspective
- Two reports – one from the Office of Tax Simplification (OTS) on IHT and the other from the All-Party Parliamentary Group (APPG) on Inheritance and Intergenerational Fairness – highlight problems with the current IHT law relating to farms and businesses and suggest different ways ahead. We should learn from these reports, to advise clients in the light they shed on our current situation
- This handbook was written in part during the COVID-19 crisis which has other specific impacts upon the context in which clients make decisions. While we can't be blown off course by temporary events, this is such a significant time, with potentially long-lasting effects for the nation and its economy, and also for the way it might be taxed
- Cross-option agreements are a valuable addition to the planning here and should be considered in all cases where agricultural and business holdings are held in company shares. They're also helpful to enable the full benefits of the NRB discretionary trust (D/T) to be realised in an effective way. They also represent a good opportunity for the estate planning teamwork, with referrals between lawyers and financial planners. It's important that things such as shareholders agreements are carefully considered when planning for clients in this way.



Chapter 21: Business and Lifetime Planning

Helen Clarke - Partner

Lifetime planning for businesses naturally follows from business planning in Wills. The release of this book at the end of 2020, in the midst of the COVID-19 crisis which has affected so many businesses so hugely, perhaps makes this chapter one of the most timely. Many are reviewing their business plans, and possible succession planning, or sales of all or part of their business, and this chapter seeks to put this into the IHT planning context. We explore some key tax issues to consider with all the personal and commercial ones.

Key Points

- Consideration of lifetime succession planning options for businesses
- The contrasting tax treatment of trading and investment businesses
- Tax reliefs for businesses
- Types of business structure
- Relevance of close company status for IHT
- Contrasting the tax position of lifetime gifting and transfer on death
- Share transfer to family members
- The use of trusts
- Third party sale
- Management buy-out or employee ownership trust
- 'Death-bed' planning.

Part IV Specialist Areas





Chapter 22: Alternative Structuring Vehicles

Helen Clarke - Partner

Eleanor Black - Practice Development Lawyer

We continue on from business planning to explore two means of transferring wealth in lifetimes, to alternative structures that may meet the combined need for both tax planning and asset protection. Following the 2006 changes to the taxation of trusts, these two options are worth considering when asset values are more significant, and control and protection are important criteria.

Key Points

This chapter covers the two main alternative structures for protecting family legacies for future generations:

- Family investment companies (FICs)
- Family limited partnerships (FLPs).



Chapter 23: Grossing Up etc. on Death

Anthony Nixon - Partner

This chapter covers one of the least favourite and most complex areas of IHT practice. It's important to be aware of the situations where grossing up will apply, to plan to avoid it or at least to make your clients aware that it will apply and what it means in practice. We explain the rules and provide five planning points on how examples might be better arranged.

Key Points

- Simple grossing up: This is the classic form of grossing up
- Charity gifts and 36% IHT: A different grossing up calculation applies where at least 10% of the 'baseline amount' is given to charity
- Double (or 'four-stage') grossing up
- Abatement: A grossed up legacy for IHT can never exceed the value of the taxable estate and so abates to that value
- IHTA 1984, s.39A: This section comes into play in estates which are partly exempt and partly taxable, and which include assets that qualify for BPR and/or APR. However, for some assets s.39A doesn't apply and can be ignored.



Chapter 24: Introduction to Business Asset Disposal Relief (BADR) (Formerly Entrepreneurs' Relief)

Liz Beadsley - Partner (non-lawyer)

In business planning, the capital gains position needs careful attention alongside IHT planning. Clients need to know their potential CGT liabilities, or at least the consequences of action.

In many cases, IHT planning with businesses will be undertaken in liaison with the tax adviser or accountant who deals with the tax compliance for the business. If they can't advise on CGT, they need to bring in a specialist tax adviser or accountant.

Key Points

- BADR reduces the effective rate of CGT to 10% on a material disposal of business assets by individuals up to a lifetime limit of £1 million of gains
- What qualifies as a material disposal of business assets depends on whether the individual is in business on their own as a sole trader, a partner in a partnership, or a shareholder in their personal company. Trustees can also benefit from this lower rate of CGT in certain circumstances
- This chapter addresses a number of concepts, which determine whether the relief applies and how it works, including:
 - What are qualifying disposals by individuals
 - The disposal of part of a business
 - What is a personal company, a trading company, an associated disposal of an asset
 - What is the qualifying period of ownership
 - Qualifying disposals by trustees.



Chapter 25: SDLT Issues in Estate Planning

John Bunker - Consultant Solicitor and Chartered Tax Adviser

Sarah Cardew - Partner

It may seem strange to cover SDLT in an IHT planning handbook. However, two big developments in SDLT – the higher rate on additional dwellings and first time buyer's relief – do both interact with a lot of tax planning.

If it's possible to flag up to clients a potential significant SDLT charge, or potential loss of a relief, and advise clients of potential alternative ways of dealing with a situation, that could be really beneficial for clients, and client relationships, and in some cases proper fees for advice may be justified if there's a large SDLT bill to save.

Key Points

- In two of the three elements of estate planning – legal and tax planning – it's always valuable to consider whether there might be potential tax consequences, including SDLT, that need further consideration
- SDLT only applies in England and Northern Ireland, as land and buildings transaction tax (LBTT) applies in Scotland (from 1 April 2015); and land transaction tax (LTT) applies in Wales (from 1 April 2018)
- IHT mitigation can interact with SDLT measures in three important areas for planning:
 - **Estates:** How beneficiaries are treated, and whether we can adapt our estate administration or structure inheritances better in Wills or post-death variations
 - **Trusts:** What interests are held in any trust and, if that trust may affect SDLT on a property purchase, whether the trust might be restructured before the transaction is completed or the purchase needs to be made differently
 - **Lifetime gifts:** Before we advise on gifts, or even simply assist with the legal documentation, can we ensure that no SDLT issue arises that may need review?

Key Points (continued)

Two big SDLT developments are key for beneficiaries of estates, trusts or lifetime gifts.

- Three per cent higher rate additional dwellings (HRAD) charge, from 1 April 2016:
 - Where you buy a property but already have an interest in another
 - Many beneficiaries first buy a property after inheriting money, etc.
 - so if a residential property in an estate or trust:
 - When are they treated as owning, for SDLT purposes?
 - Can we help avoid an HRAD charge?
- First time buyers' relief (FTBR) from 22 November 2017:
 - This reduced the SDLT charge on buying a first home
 - Which may be lost if one had previously owned a residential property interest
 - So we need to consider how inheritances might affect this, and whether we can structure any gifts differently to avoid beneficiaries losing FTBR.





Chapter 26: Tax Planning and Mental Incapacity

Kelly Grieg - Partner

It's sometimes thought that all is lost if an individual loses mental capacity in terms of the ability to carry out effective tax planning.

However, this isn't necessarily the case. It depends on the nature of the act that's intended. It may be possible, for example, for someone who has lost mental capacity to still utilise their ISA allowance each year and make use of their annual CGT exemption, but find it much more difficult to undertake effective IHT planning.

Key Points

While inter vivos tax planning for someone who lacks the necessary mental capacity is a very broad area, this chapter will focus on IHT planning, covering the following areas:

- Mental Capacity Act (MCA) 2005
- Mental capacity to gift
- What if the donor lacks the necessary mental capacity?
- What constitutes a gift?
- What if a Court of Protection (COP) application is necessary?
- What is in P's 'best interests'?
- BPR
- Statutory Wills
- Disclosure of P's Will
- Post-death tax planning.



Chapter 27: Domicile and Deemed Domicile

Eleanor Black - Practice Development Lawyer

Ashley Hill - Partner

Alex Ruffel - Partner

Domicile is a fundamental concept in IHT law, determining who gets taxed on what, if they have assets in the UK but also elsewhere. It's important to have some understanding of these concepts, and to be able to give outline advice in straightforward cases.

This chapter and the next may also help advisers avoid a potential trap, or recognise a case where more specialist advice may be required. It's a huge and complex subject, but this introduction to it will help advise.

Key Points

This chapter covers:

- Common law domicile
- Deemed domicile
- Domicile election.



Chapter 28: Excluded Property & Double Taxation

Eleanor Black - Practice Development Lawyer

Ashley Hill - Partner

Alex Ruffel - Partner

This chapter addresses issues of where an asset is located for IHT purposes, and the concept of excluded property for IHT. Planning here is very complex, with the need to tread carefully around many anti-avoidance provisions and in a field that's constantly changing with new legislation, guidance and HMRC practice to adjust to a fast moving world.

This introduction will help advisers avoid some potential traps, and recognise cases where more specialist advice may be required. We'd be pleased to advise on any of these international planning aspects, including the question of how those living across different jurisdictions structure their assets.

Key Points

This chapter covers the following:

- Establishing the location of an asset for IHT purposes
- Understanding key categories of 'excluded property'
- An overview of unilateral and bilateral relief for double taxation.

Your Key Contacts





Your Key Contacts

We're always pleased to work alongside other advisers. We regularly work alongside tax advisers, accountants, financial planners and investment managers who may need legal and trust input or a particular expertise on IHT.

We also work with tax advisers who focus on tax compliance and need an expert on IHT planning to help their clients.

Some tax advisers aren't comfortable with trusts, and we can assist with trust, estate and IHT compliance where required, including “white labelling” estate and trust accounts. We cover all aspects of trust work, which is often integral to IHT planning, so if you have a problem of any sort do let us know.

Here is our expert IHT team who would love to hear from you...



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“

It is the sort of book that sits on your desk, rather than your shelf, and is highly likely to be well used in the office by everyone ranging from the trainee solicitor to the head of the department.

Caroline Bielanska,
Solicitor, TEP, Independent
Consultant

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Here is a link to purchase the book from the Law Society. We hope you'll find this a practical handbook, valuable to dip into for ideas and understanding from time to time, as it's not a formal textbook.

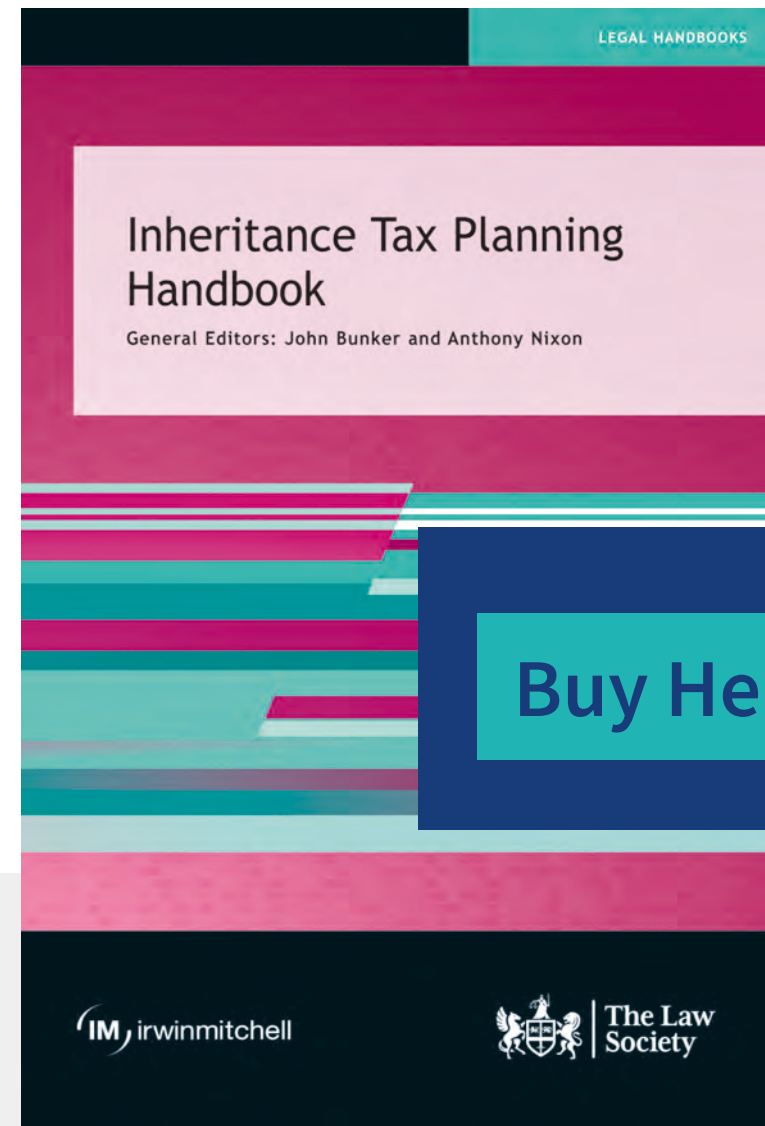
We hope it will open new ideas and opportunities not seen before. If we can help any of your clients, to implement any of these ideas, please do let one of us know.



It is written in a really approachable, accessible style while imparting a huge amount of extremely complex information.

Watch our 'IHT in 2021' webinar

[Watch the webinar here](#)



Thank you for reading

IHT Planning Handbook