



## Howwow Online: Estate planning processes and procedures

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## Agenda

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**A. Probate application process changes**

- Major changes to applications for a grant of probate
- Limits to when you can apply online
- Large increase in information sought - how much is necessary?!

**B. Variations within 2 years of death: of estates and trusts**

- Some basics about using s. 142 (estates) & s.144 (trusts) IHTA 1984
- Introduction to some planning ideas – IHT & CGT;
- Potential uses of variations: securing spouse exemptions and BPR/APR;
- “Scratching the surface” of RNRB by planning through variations.

**C. IHT process changes for the Covid-19 crisis**

- IHT Accounts: new procedures to make “signing” easier
- Payments (& repayments) of IHT electronically
- Any help paying IHT during the crisis?

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## A1. Applying for a grant of probate for a Deceased's estate in England & Wales

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- 2 elements:-
  - **Reporting to HMRC**
    - details of assets & liabilities &
    - paying any Inheritance Tax due
  
  - **Applying for a Grant of Probate**
    - To "prove" the last Will &
    - Seek title to administer the estate

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## A2. Who can apply for Probate?

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- **Oaths** sworn by Executor
  - Were replaced by **Statements of Truth**
- **Now Legal Statements**
  - moving to a digitalised process.
- **Who can apply for Probate?**
  - Personal application or
  - Solicitor or other person licensed to provide Probate services
  - Different forms at moment
    - later in June will be combined in one
      - & all post will go to one office - Harlow
      - for "bulk scanning"

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### A3. Online or paper applications?

- **HMCTS encouraging all to use online if possible**
  - But is it?
- **Many cases not possible online: e.g.**
  - Applications by Trust Corporations;
  - Any attorneys for Executors;
  - Anyone non-domiciled, unless estate only immovable property
  - Any cases where no will, or no Executors,
    - and more than one applicant (e.g. 2 siblings)
- **PA1P = where a will, or**
- **PA1A if no will = Letters of Administration**

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### A4. How much sensitive information must be given?

- Forms aim to capture all info may need,
  - E.g. if queries re valid will? or
  - who has right to take out a grant;
- Lots of new data required = time consuming,
- **But lots does not need completing**
  - **if clear valid will & Executor(s):**
    - E.g. marriages & divorces;
    - Children & grandchildren; &
    - Relatives "adopted in or out" of family!

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## B.1 Estates & trusts: variations within 2 years of death

- **ss.142 & 144 IHTA 1984**
  - **Variations within 2 years of death**
  - **So that "read back" to date of death,**
    - **as if by the Deceased for IHT purposes**
      - Different for CGT & income tax
- **s.142: Deeds of Variation**
  - beneficiaries varying terms of will or intestacy,
- **s.144: Trustees varying a trust**
  - created by will or intestacy
  - usually Trustees using powers in the will - or statutory powers

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## B.2 Wills & Variations s.142 IHTA: Deed of Variation

- **Deed of Variation**, signed by all beneficiaries together entitled
  - **E.g. spouse giving up absolute entitlement**
    - **to create an NRB D/T = Nil Rate Band Discretionary Trust**
  - E.g. by a life tenant & reversionary beneficiaries
    - Who are together absolutely entitled
      - Rearranging their rights, to qualify for RNRB
  - E.g. 3 beneficiaries share estate, one does not qualify for RNRB;
    - So 2 who do "closely inherit" for RNRB get the house
      - & 3<sup>rd</sup> gets cash etc.

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## B.3 Wills & Variations

### s.144 IHTA: Variation of Trust

- **Trustees varying terms of a trust**
  - **E.g. to appoint or advance out absolutely or on correct trusts**
    - **to comply with RNRB**
      - E.g. a grandchild to have a bare trust;
      - Or children to have an 18-25 Trust
  - **E.g. deed of appointment by trustees**
    - To change a Discretionary trust to an IPDI trust for a spouse
      - To claim IHT spouse exemption

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## B.4 Wills & Variations

### 2 parallel trust worlds: RPTs & QIIPs

- **RPTs = Relevant property trusts**
  - **E.g. Discretionary Trusts**
    - But also other trusts that don't qualify with specific trust forms
  - Taxed every 10 years or on exit from trust
    - But not on death of a beneficiary
- **QIIPs = Qualifying Interests in Possession**
  - **E.g. IPDIs = Immediate Post Death Interests**
    - E.g. Life interests for spouses, to use spouse exemption
  - Taxed on death of Life Tenant = trust aggregated with estate
- Variations often = choosing between one trust world & the other

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## B.5 Wills & Variations: IHT planning

### To use or not to use – NRB & RNRB

- **NRB = £325K** = frozen for 12<sup>th</sup> year in 20/21
- **RNRB = £175K**
  - now each person can leave £500K free of IHT
  - & each married couple / Civil Partners together £1m!
- But can be 3<sup>rd</sup> NRB if TNRB from late spouse
  - & 3<sup>rd</sup> RNRB if TRNRB
  - But only 1 NRB can be transferred
    - & only 1 RNRB can be carried forward
    - **So use them** –on death of 1<sup>st</sup> spouse;
    - **or lose them!**

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## B.6 Wills & Variations: IHT planning

### Using NRB by NRB D/T

- **NRB of £325K e.g. used by NRB Discretionary Trust**
  - Spouse a beneficiary with children, g/c etc.
  - Spouse can benefit as much as needed
    - use of property or income from D/T
  - **2 years from DoD in which to review,**
    - Keep as RPT = not subject to IHT on 2<sup>nd</sup> death
    - or appoint out on IPDI trust to spouse or absolutely
      - = subject to IHT on 2<sup>nd</sup> death but can have TNRB
- **If not in Will, NRB D/T can be set up by Deed of Variation**

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## B.7 Wills & Variations: IHT planning Using NRB: APR & BPR

- **Maximise value of APR & BPR when use NRB D/T**
- **BPR at 100%:** £325K + all BPR assets to trust
  - Say Business = £500K
    - then sell shares/business
    - → cash £825K free of IHT
- **BPR at 50%:**
  - e.g. land occupied by
    - (i) partnership or
    - (ii) company controlled by testator
    - **BPR assets up to £650K to trust** (= £325K for IHT)

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## B.8 Wills & Variations: IHT planning Using NRB by NRB D/T: APR & BPR

- **NRB D/T uses NRB**
  - **so not included in calculation of estate**
  - **for £2m RNRB Threshold**
- **RNRB: £2m taper threshold**
  - **takes no account of APR or BPR,**
- So to avoid loss of RNRB by taper
  - **works well for RNRB planning**
    - **to put farm or business etc. into NRB D/T**
- Especially if farm or business might be sold before 2<sup>nd</sup> death
  - Or rules might change

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## B9. "Scratching the surface" of RNRB Key RNRB planning areas

- **4 key planning areas:**
  - Clients owning right interest in property, incl trust interests;
  - **Wills or Variations so that is "closely inherited"**
    - Can closely inherit through some trusts
      - but not D/T or RPT
    - **Some trusts need changing - by variation**
      - E.g. grandchildren –may need to use s.144.
    - Problem area:
      - "step-children" ok, but not children of unmarried partner
  - **Planning around £2m threshold** – see B.10
  - Lifetime gifts on deathbed– to reduce below £2m -as last resort!

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## B10. "Scratching the surface" of RNRB Planning around £2m RNRB threshold

- **Moderately wealthy - say £1m to £5m**
  - see if can plan to reduce below £2m
- **Financial planning**
- **Review whole use of assets including pension funds**
  - e.g. by spending capital rather than using Pension
  - With help of cash flow modelling!
- **Review planning between spouses**
  - re what one passes on
  - Whether outright or in IPDI trust
  - & whether "use" the NRB & /or RNRB

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## Not using NRB & relying on TNRB & RNRB?

- **Example to avoid losing RNRB by estate over £2m**
- **Option A: not using NRB & relying on TNRB & RNRB**
- E.g. Henry dies in 2012 leaving whole £1.3m estate to wife Sarah
  - Including ½ share of home value £750K (total £1.5m)
- Sarah dies in 2021 when her total estate =£2.5m
  - £500K over £2m threshold so lose £1 for every £2 over limit
  - So double RNRB =£175K x2 = £350K tapers to £100K
  - & lose £250K RNRB & pay extra £100K IHT.

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## Cf. Using NRB & not relying on TNRB

- **Example to avoid losing RNRB by estate over £2m**
- **Option B: Using NRB & not relying on TNRB**
- Say Henry had left ¼ house to a Discretionary Trust
  - £375K ¼ share, less 15% discount =within £325K NRB
  - No RNRB when he dies as before 6.4.17
- Then on Sarah's death in 2021, she will have a RNRB x 2
  - Say house increased in value to £2m, with £1.5m in Sarah's estate
    - ¼ in Henry's trust = £500K
  - Her estate is £2.5m – £500K H left to D/T= £2m =threshold
  - So 2 x RNRB £175K =total £350K
    - So IHT saving compared with option (a) £250K x 40% =£100K

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## B.11 Scratching the surface of RNRB: Spouses To use or not to use NRB & RNRB?

- **Spouses: what to do in wills on 1<sup>st</sup> death?**
  - **To use NRB – e.g. by NRB D/T**
    - Retain as RPT; may help preserve RNRB
      - by taking 2<sup>nd</sup> estate below the £2m threshold
  - **Or to use RNRB – e.g. by IPDI to children** so closely inherit;
    - & not rely on c/f RNRB,
    - Or if widowed & a b/f RNRB could use 2 RNRB on 1<sup>st</sup> death
  - **Or to use both NRB & RNRB – e.g. by IPDI to children**
    - E.g. £325K + £175K in 20/21

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## B.12 Scratching the surface of RNRB Conclusions re Spouses

- **RNRBs:** check gifts comply – is variation needed?
  - & estate not over £2m – variation to use NRB (& RNRB)?
- **Pensions:** consider spending other cash/assets
  - Before draw pension = leave more to pass on tax effectively
- **ISAs:** Real new opportunity – if right for FP/tax reasons;
  - But NB. asset protection & family / beneficiaries.
- **Important to see whole picture**
  - **look at all assets/income that will pass on death**
  - E.g. may be ISA gets transferred to Spouse,
    - freeing up Pension to pass on to family by FAD?

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## C. IHT process changes for Covid-19 crisis

### 1. Inheritance Tax Accounts

- **HMRC introduced sensible procedure changes**
  - To help signing of IHT Accounts:
    - IHT 400 (Estates) &
    - IHT 100 (Trusts)
  - Where a professional firm acts for Executors or Trustees.
- **Forms can be sent to the client(s) for approval,**
  - **e.g. by Email**
    - & sent to HMRC electronically
    - with statement from the professional,
    - so don't need actual signatures/docs through post.
  - N/A to other tax forms, but a helpful start.

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## C 2. Payments (& repayments) of Inheritance Tax

- Updates to payments and repayments:

Inheritance Tax payments  
cannot be made by cheque

No repayment cheques  
will be sent out

**All payments will now be made electronically**



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## C 3. IHT: other process changes?

- **HMRC** exploring filing IHT Accounts online
- **IHT 421s** – acknowledging IHT 400 delivered & any IHT paid
  - HMRC now send by Email to Probate Registry;
    - aim to issue IHT 421 within 15 working days;
- **HMRC exploring if can help estates re paying IHT**
  - during crisis
  - E.g. some assets effectively frozen, so illiquid
    - e.g. property in some areas
  - & significant falls in value of property and shares

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## John Bunker LLB. CTA TEP

Consultant Solicitor & Chartered Tax Adviser,  
Tax Trusts & Estates, Irwin Mitchell and freelance lecturer

- John has over 25 years of experience as a solicitor specialising in wills, trusts, estate and tax planning.
- A Chartered Tax Adviser for 20 years, he serves as Chair of CIOT's Private Client (UK) Taxes Committee, and on HMRC's Capital Taxes Liaison Group and on the Probate Users Forum.
- John moved in 2012 to his technical & training role after 23 years as a partner of Thomas Eggar. This role developed within Irwin Mitchell's national team, including the Leeds, Manchester and Sheffield offices.
- John developed external training work in a freelance capacity. With enthusiasm for his subject, John seeks to illuminate technical details with practical insight, in training for local law societies, branches of STEP, CIOT, SFE and other professional groups, as well as MBL, CLT and individual firms.

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