



## WAY Investment Services Ltd Pre-Budget Report 2009 - Technical Comments

### Inheritance Tax & PBRN21

In his Pre-Budget Report on 9<sup>th</sup> December 2009, Chancellor Alistair Darling announced a freezing of the IHT Nil Rate Band for 2010/11 at the same level as for 2009/10 - £325,000. This was the only change to the rates and exemptions for capital taxes, despite many rumours of potential significant change made in the predictions game in the run up to the report.

#### **PBRN21**

The Chancellor also made a typically oblique reference to “anti-avoidance measures” that as usual proved to be a cover for a substantial amount of draft legislation ready to include in the Finance Bill 2010. In particular there are two sets of proposed amendments to the Inheritance Act 1984 under PBRN21 designed to defeat two particular types of IHT avoidance scheme. The second of these clauses deals with the situation where “a reversionary interest in relevant property comes to an end and the person takes the actual interest”. This has led to some enquiry as to whether the change bites upon popular flexible IHT mitigation arrangements that utilise reversionary interests, such as the WAY Inheritor Plans and traditional life office Discounted Gift Trusts.

The answer to this is no. A feature of the specific plan that HMRC have targeted with this legislation is that a reversionary interest was created in favour of the settlor of a new settlement, which would become an actual interest after a very short period of time. This interest was then gifted away to an individual beneficiary of the trust with the intent that the transfer would be a Potentially Exempt Transfer and not a Chargeable Lifetime Transfer which would have allowed a substantial value to be transferred to trust whilst avoiding the initial lifetime IHT charge. The new legislation will make the transfer of the reversionary interest a disposition for IHT purposes (i.e. a Chargeable Lifetime Transfer) and thus shut the door on this route to tax avoidance.

There are two key differences between this structure and the WAY Inheritor Plans:

1. Under the scheme attacked by the legislation the reversionary interest converted into an actual interest in the settlement (the relevant property). The reversionary interest under the WAY Inheritor Plan is an absolute interest in a proportion of the trust assets, contingent on the settlor’s survival to a specified anniversary date. The settlor of a WAY Inheritor Plan never has an interest in the relevant property itself.
2. There is never a transfer of the settlor’s reversionary interest under the WAY Inheritor Plans. The interest is retained in their estate for the remainder of their lifetime or until the latest anniversary has been reached.

It seems clear that HMRC are not presently seeking to attack the WAY Inheritor Plans, nor other life office products based upon similar principles. Indeed, the experience over a number of years and with the introduction of a number of significant changes to IHT legislation would support the view that such plans are consistently considered to be effective and founded upon sound principles.

## **The outlook for IHT mitigation planning**

The current fiscal position for the UK with reportedly the highest peacetime deficit since the 1920s would not seem to be an environment in which those hoping for a more benign IHT regime are likely to be satisfied any time soon. The view at WAY is that the freezing of the nil rate band is indicative of a likely widening of the IHT net, if only by way of fiscal drag, for the next few years until some sunnier times for the public finances. Furthermore, it is clear that HMRC will continue to keep a close look out for schemes that seek to blatantly exploit loopholes in the legislation and seek to swiftly block their path.

We would therefore continue to advocate the early commencement of IHT mitigation planning using well proven and uncontroversial strategies such as the WAY Inheritor Plans. Those hoping for the problem to go away may well have a very long wait and ultimately be disappointed. In the meantime, the opportunity may have been lost to make best use of the IHT rules by utilising the range of WAY Inheritor Plans.

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