

## **Estate Planning Matters**

**January 2026**

This is the third edition of Estate Planning Matters, designed to provide an insight into topical tax planning issues linked to writing life policies in trust. Budget changes have inevitably created higher inheritance tax liabilities on death and that means more people will wish to make lifetime gifts. This will create a greater demand for writing life policies in trust to provide funds to meet inheritance tax on a person's death.

Date published: 04.02.2026

### **Content...**

- More changes to business relief and agricultural relief.
- The inheritance tax implications of paying premiums into a policy held in a discretionary trust.
- How gifts from a joint bank account owned by a husband and wife are treated for inheritance tax purposes and how the normal expenditure out of income exemption might apply to those gifts
- Pensions and inheritance tax.

### **More changes to business relief and agricultural relief**

In the October 2024 Budget the Government announced that, from 6 April 2026, 100% business relief (BPR) and/ or agricultural relief (APR) would be limited to the first £1mn of qualifying assets with any excess receiving 50% relief. The £1mn limit does not include AIM investments – see (c) below.

After an initial consultation process, a briefing document was issued in July 2025 with draft legislation. This provided little change to the main thrust of the initial proposals.

The Government has now announced two important relaxations to their original proposals...

#### **(a) Transferable unused 100% band**

Firstly, the November 2025 Budget announced that, on a person's death, any of their unused £1mn 100% BPR and/ or APR allowance can be transferred to a surviving spouse or civil partner. This transferable allowance is expected to work in a similar way to the transferable residence nil rate band. We shall have to wait and see the final legislation on this to be sure.

### **(b) Increase in 100% band**

Secondly, in a surprise announcement on 23 December 2025, the Government stated that the 100% allowance would increase from £1mn to the first £2.5mn of qualifying business and/or agricultural assets. This means that if an individual died not using any of their 100% allowance, his or her surviving spouse would be entitled to a 100% allowance of £5mn on their subsequent death.

As well as shares in family trading companies and agricultural property, these new rules extend to investments in unquoted (“business relief”) trading companies offered by venture capital firms.

### **What do these changes mean in terms of planning for business/farm owners?**

The effect of these changes on those who own “family” business assets that they wish to pass on to the next generation will depend on...

- The value of the business assets;
- Whether they are married or have a civil partner;
- Whether they wish to pass the assets to other family members; and
- Whether they have already made gifts of business assets, possibly as a result of the 2024 Budget announcement.

The following is a general overview on the options available to such people and assumes that all business assets qualify for 100% business relief (i.e. there are no restrictions for investment assets)...

### **(i) Owners of qualifying business assets worth up to the 100% allowance**

Where business assets are worth less than £5 million and the business owner is married or has a civil partner, the transferable allowance means that, with sensible planning, no inheritance tax needs be paid on those assets on death after 5 April 2026.

So, for example, if qualifying business assets worth up to £5 million were split between husband and wife on a 50/50 basis and each left their interest to, say, their children on death, no inheritance tax liability would arise.

Alternatively, a business owner dying as the survivor of a married couple, where the first to die had not used any of their 100% allowance, would have a £5 million 100% allowance from 6 April 2026. So, a married couple could each leave their estate to the survivor on the first death enabling the survivor to use up to the full £5 million 100% allowance on their subsequent death.

An additional benefit of leaving assets to the surviving on death is that no capital gains tax liability then arises and asset values are rebased for future CGT purposes.

### **(ii) Owners of qualifying business assets worth more than the 100% allowance**

Inheritance tax can still apply to qualifying business assets worth more than the available £2.5 million 100% allowance (£5 million for a married couple) at an effective rate of 20% on the excess over the available 100% allowance.

While business assets may currently be worth less than the 100% allowance threshold, some consideration may need to be given to the future potential growth of the assets as they may increase in value to be worth more than the available 100% allowance threshold.

Owners who feel that inheritance tax might apply to their business assets could consider gifting some or all of those assets. On surviving the gift by 7 years, it would then fall outside their estate for inheritance tax purposes. Of course, capital gains tax (CGT) on such gifts would need to be considered but CGT hold-over relief could normally be claimed.

Where the gift is outright, it will be a potentially exempt transfer (PET). If made to a discretionary or interest in possession trust, it would be a chargeable lifetime transfer but no immediate inheritance tax liability would arise if the gift was made before 6 April 2026. If made after that date, no inheritance tax would arise provided the transfer of value does not exceed the sum of the donor's available 100% allowance and nil rate band (see below)

### **(iii) Those who have made recent gifts of business assets**

Following the 2024 Budget, some business owners have taken action to transfer some or all of their business assets to their children, either directly or via discretionary trusts. Irrespective of whether these gifts were made into trust or not, they can be made before 6 April 2026 without incurring an inheritance tax liability, provided the donor survives the gift by 7 years.

Inheritance tax is due 6 months following the end of the month of a person's death and inheritance tax due on business and agricultural assets can be paid in interest free instalments over 10 years.

The House of Lords Economic Affairs Sub-Committee have, in a recent report, recommended that the inheritance tax on business and agricultural property should be payable 12 months after death as "a much needed step to address the liquidity problems many of these estates will suffer".

*Having determined the appropriate planning options and implemented them, it will then be important for business owners to effect life assurance policies in trust to cover any residual inheritance tax liabilities that might apply on the death of the owner of a family business and help alleviate any liquidity problems that then arise.*

### **(c) AIM Shares**

From 6 April 2026, shares 'not listed' on the markets of a recognised stock exchange, such as AIM shares, will only receive business relief at 50% on lifetime

gifting by, or on the death of, the shareholder. Such shares will not count towards the £1 million limit.

*Some people may have invested in AIM stock as one of the solutions to inheritance tax planning. AIM investments will no longer be fully effective and so such people may be more inclined to use a life policy in trust as a means of providing for inheritance tax.*

## **The inheritance tax implications of paying premiums into a policy held in a discretionary trust**

With more and more clients choosing to deal with inheritance tax by taking out protection policies written subject to a discretionary trust, it is worth having a reminder of the main inheritance tax implications of this action, as follows...

- Premium payments will be chargeable lifetime transfers (CLTs)
- As such, it will be possible to offset the £3,000 annual exemption (if not used elsewhere) and the normal expenditure out of income exemption against the premium payments
- The availability of the normal expenditure exemption is, in general, left to the settlor (donor) when premium payments are made. If the settlor feels the payments are within the normal expenditure exemption, then no action needs to be taken with HMRC when premiums are paid (but see below for when premiums cause the nil rate band to be exceeded)
- The normal expenditure exemption needs to be claimed on death. The claim will need to be backed up by completion of details on income and expenditure on the last page of IHT403.
- When the settlor pays a premium that would otherwise be a CLT and causes the CLTs made over the last 7 years to exceed the nil rate band, as set out in [IHTM06106](#), he or she will need to agree the availability of the normal expenditure exemption at that time with HMRC. This will therefore take account of previous CLTs made by the settlor in that 7 year period.

### **Example – Josh**

Josh is paying an annual premium of £60,000 to a term assurance subject to a discretionary trust. These premiums are all CLTs which he believes fall within the normal expenditure out of income exemption.

After the payment of the 6<sup>th</sup> premium, he will need to confirm the availability of the normal expenditure exemption with HMRC because, over a seven year period, he has exceeded his nil rate band

Josh is paying the same premiums described above. Two years after setting up the policy, he places £200,000 into a separate discretionary trust.

Josh will need to agree the availability of the normal expenditure exemption after payment of the 3<sup>rd</sup> premium because this will take the total of chargeable lifetime transfers in the 7 year period over the nil rate band.

## **How gifts from a joint bank account owned by a husband and wife are treated for inheritance tax purposes and how the normal expenditure out of income exemption might apply to those gifts**

### **Gifts of premium payments made from joint bank accounts**

Where premium payments are made from the joint bank account of a husband and wife, is it always the case that those premiums will be counted as 50/50 gifts from husband and wife?

In most cases, it would be expected that HMRC would treat the gifts as being made 50/50 by husband and wife for inheritance tax purpose.

However, the strict position is that, when considering gifts from joint bank accounts, the amount of gift being made by each of a husband and wife will depend on how much each has contributed to the joint account (see [IHTM15042](#) and [IHTM15043](#) from HMRC'S internal IHT manual). This could be relevant in a case where, say, one spouse (usually the husband) contributed most of the funds to the bank account or one spouse is in worse health than the other and so more likely to die within a 7 year period.

In circumstances where the husband contributed more to the joint account, if the premiums exceed their annual exemptions and normal expenditure out of income exemptions, it could be worth arguing that most of the "joint" gift has been made by the husband. This could be documented in a memorandum when the gifts are made. Of course, if they are making PETs, no return will be necessary at that time and if both survive 7 years, the gift will be outside their estate for IHT purposes. No return of those gifts will be necessary on death

### **Claiming the normal expenditure exemption – a resume of the rules**

As inheritance tax (IHT) liabilities increase and impact on more people, the normal expenditure from income (NEI) exemption has become much more important as a means of IHT planning.

As a reminder, gifts that fall within the NEI exemption are treated as exempt from IHT when made – there is no need for the donor to survive 7 years for the gift to fall outside the donor's taxable estate for IHT. This is, of course, subject to HMRC agreeing the availability of the exemption when a return is made on the donor's death.

To qualify for the NEI exemption, gifts must be made...

- out of income;

- on a regular basis; and
- without reducing the donor's standard of living

Given that IHT liabilities are generally increasing, an efficient way of using the NEI exemption is to pay premiums into a life policy in trust so that the death benefits are available to meet any potential IHT liability on death.

In order to make life easier for the legal personal representatives to claim the NEI exemption on the donor's death, it can make sense for the donor(s) to complete [Form IHT403](#) when making the gifts. Form IHT403 sets out details of lifetime gifts made in the 7 years before a donor's death. It is also used by the personal representatives to claim the NEI exemption on gifts made in the 7 years before the donor's death.

For the purposes of the NEI exemption, section 20 of Form IHT403 requires the personal representatives to itemise the donor's income, the donor's expenditure and give details on the amount and regularity of gifts. The personal representatives might find it difficult to obtain all of this information without the donor's help and that is why the donor should complete the form while he or she is alive. Each donor should complete a separate form detailing the gifts attributable to him or her, his or her income and his or her share of expenditure.

### **Normal Expenditure and premiums paid out of joint bank accounts to trust policies**

Another important point concerns the identity of who is making the gift. In this respect, particular problems can arise when gifts are made out of a husband and wife's joint bank account. HMRC will probably, in most cases, adopt a pragmatic approach and treat gifts as made on a 50/50 basis unless there is evidence to the contrary. But the position can change when a claim is being made that gifts fall within the NEI exemption.

Because IHT is a tax on individuals, HMRC reserves the right to test normal expenditure against payments in and out of that account for the spouse in question. Indeed the NEI part (Section 20) of Form IHT403 asks for details of the income and expenditure of the deceased person in the 7 years before their death.

For example, assume that the income passing into a joint account is £150,000 p.a. from the husband and £54,000 p.a. from the wife with expenditure of £100,000 p.a. shared equally between them. They pay a premium of £20,000 a year to a joint life last survivor whole of life policy in trust. Each wishes to claim the NEI exemption against their £10,000 share of the gift (the premium) being made each year.

Here, it will not necessarily follow that each can claim that his or her gift of £10,000 p.a. is covered by the NEI exemption. Based on the above figures, whilst the husband has surplus annual income of £100,000, the wife only has surplus annual income of £4,000. On the wife's death, it is therefore likely that HMRC will decline to give the NEI exemption on the wife's full £10,000 share of the gift and instead

treat up to £6,000 each year (after deduction of any other available exemptions) as an amount that falls within her nil rate band.

In such a case, it might be easier to draw up a memorandum specifying the proportion of gifts being paid by each of the 2 parties, so that if say, the husband dies first, his share of the gifts can be tested against his higher share of the net income. So, in the above example, the husband could specify that he pays £16,000 of the premium out of the joint account and the wife pays £4,000 per annum. The NEI exemption should then be available against both gifts.

Alternatively, it might be worth considering whether the spouse with the dominant share of the income should alone make the gift. To avoid confusion, it may be easier to pay the premiums from an account in that person's sole name. So, in the above example, if the husband alone made the gift of £20,000 per annum, it would, hopefully, fully qualify for the NEI exemption.

If this approach were taken where a couple are setting up a joint life last survivor policy under a discretionary trust, it may be appropriate for the husband to be the sole settlor so that he is treated as paying all the premiums and making all the gifts for the NEI exemption purposes.

However, thought would need to be given to what happens if he dies first and premium payments need to continue. These would then presumably need to be paid by his wife, as the surviving spouse, so she would, at that, point, need to have sufficient income to justify the NEI exemption on all continuing premium payments.

Whilst this issue needs to be addressed where a couple are paying premiums 50/50, it becomes more of an acute issue where the one who is paying a significant proportion of the premiums dies first.

If the husband dies first and, at that time, his wife inherited her husband's pension fund, ongoing gifts could perhaps be justified because of her increased pension entitlement or by her making drawdown payments from the inherited pension fund. The settlor's spouse and widow/widower (in this case, the wife) would also, of course, need to be excluded under the trust to avoid a gift with reservation problem at this time.

Each case needs to be considered on its own merits and circumstances but it is important to remember that Form IHT403 requests details of the income and expenditure of the deceased and so, in cases where large gifts have been made and a claim is made for the NEI exemption, HMRC is likely to examine this information.

***With more and more people taking out last survivor life assurance policies subject to a discretionary trust, those who intend to make premium payments out of joint bank accounts and claim the NEI exemption on those premium payments need to consider the above points very carefully.***



## **Pensions and inheritance tax**

As announced in the Autumn 2024 Budget, unused pension funds on an individual's death after 5 April 2027 will be treated as part of the deceased's estate for inheritance tax purposes. Following a consultation which concluded earlier this year and a technical paper issued in the summer of 2025, those original proposals remained broadly as outlined in the Autumn 2024 Budget.

One difference was that the July 2025 document confirmed that the responsibility for reporting and paying any inheritance tax due on pension assets would move from the pension scheme administrators (PSAs) to the deceased's personal representatives. At that time, the government also confirmed that death-in-service benefits from registered pension schemes would remain out of scope of inheritance tax.

There was general concern amongst the legal profession that these new provisions would place legal personal representatives in a very difficult position as they would then be liable for inheritance tax on assets that they had no control over. As a result of the pressure that was exerted by professional bodies, the Chancellor announced some further important changes in the 2025 Budget, as follows...

- Personal representatives will be able to instruct PSAs to withhold up to 50% of the taxable pension benefits for a period of up to 15 months and, in some circumstances, compel them to pay the inheritance tax due. The withholding of up to 50% of the pension assets is to ensure that sufficient money is available to meet the inheritance tax liability and any interest on the pension assets. This does not apply to any exempt pension assets (such as those passing to a surviving spouse or civil partner) or those that may be covered by the deceased's nil rate band.
- Personal representatives will be discharged from being liable to pay any inheritance tax on 'later discovered pensions' – pension pots that are discovered after the personal representatives have received clearance from HMRC. The pension scheme beneficiary(ies) will remain liable for any inheritance tax but will be able to instruct the PSAs of such pension pots to pay the liability to HMRC from the pension death benefits before the balance is paid to the beneficiary(ies).

### **Impact of the change**

The introduction of inheritance on unused pension funds for deaths after 5 April 2027 will significantly add to the administration of an estate for personal representatives. Many 'lay' people nominated as personal representatives may decide not to accept their position. The Budget 2025 proposal does, at least, deflect the inheritance tax liability on the pension fund onto the PSAs.

Inheritance tax is due 6 months following the end of the month of death and any delays in establishing, and paying, inheritance tax liabilities could incur late payment interest charges of 4% over bank base rate – so currently 7.75% p.a.



The House of Lords Economic Sub-Committee have recently recommended that the 6 months from death time limit for paying inheritance tax should be extended to 12 months for inheritance tax on pension pots.

### **Planning Tips**

Although these measures apply where death occurs after 5 April 2027, it is worth considering action now in contemplation of them coming into effect.

Whilst assets held in pension funds remain free of inheritance tax, previous accepted planning was to draw down other assets in the estate before pension assets to minimise inheritance tax liabilities on the estate.

Moving forward, it might be more efficient to draw down pension assets first and to consider gifting any 'surplus' assets in the estate so that these will then fall out of the inheritance tax net, provided that the donor survives the gift(s) by at least 7 years. Use of trusts, such as discounted gift trusts or loan trusts, could allow an income stream or access to capital to be retained.

Pension scheme members should review any expressions of wishes or nominations to the pension scheme administrators in light of the changes to the taxation of pensions on death. As ever, much will depend on the circumstances, but an expression of wish in favour of the member's spouse may avoid inheritance tax on the member's death but then bring any remaining death benefits within the estate of the surviving spouse on their subsequent death.

### **Tax-free cash**

Those who will be aged 75 or over by 6 April 2027 who have not taken all of their tax-free cash entitlement should consider taking this before 6 April 2027 and, if not required, gifting it to, say, family members or a trust.

If these sums have not been taken and remain in the pension when death occurs after 6 April 2027, they could be subject to both inheritance tax (at up to 40%) and income tax when drawn down by the beneficiary (at the beneficiary's marginal rates of income tax). This could lead to a potential marginal tax rate on these funds of up to 76% (or even more if the value of the unused pension fund causes a reduction in the availability of the residence nil rate band on the pension member's death).

If a gift is made, then once the gift is survived for 7 years, it falls out of account for inheritance tax. Certain trusts can allow access to an income stream or to capital whilst still keeping the gifted assets outside of the donor's estate.

### **Residual pension fund**

Those with large pension funds may wish to draw down additional amounts as income from the pension(s) and then gift any surplus income over their expenditure using the inheritance tax normal expenditure from income (NEI) exemption. Benefits drawn down from the pension fund are taxed as income, so this strategy may work best where such income is taxed at a lower rate than the

rate of inheritance tax. There are conditions that need to be met to qualify for the normal expenditure from income exemption.

### **Planning for business owners with surplus pension funds**

Business owners, who have attained the age of 55, could consider reducing their remuneration from the business and replacing it by drawing down from their pension fund (which is not subject to National Insurance contributions).

While the increased profits retained by the company will be subject to corporation tax, this is charged at a lower rate (between 19% and 25% depending on the level of the company's profits) than the inheritance tax suffered on the pension fund.

On the business owner's subsequent death, business relief may provide 100% relief from inheritance tax on up to £2.5 million of the value of the company, with any excess receiving 50% relief, compared to the pension funds being liable to inheritance tax of up to 40% for deaths after 5 April 2027. Should additional income be required in the future, remuneration from the company can always be increased.

### **Using life assurance in trust**

*Life assurance policies written in trust (including relevant life policies (for business owners), death-in-service benefits and excepted group life schemes) can be used to pass funds to, say, family members, without being subject to probate. The recipient family members can then lend funds to the deceased's personal representatives to meet inheritance tax liabilities on the free estate. These payments can also be used to 'top up' the amounts received by the beneficiaries to compensate for increased inheritance tax liabilities. It may also be possible to lend life assurance death benefits to the PSAs of pension pots – an area that is being researched at the moment.*

**This document is based on Risk Assured's understanding of applicable legislation and current HMRC practice as at 4 February 2026. Professional advice should be taken before any planning is implemented.**

020 7183 3931

[www.riskassured.co.uk](http://www.riskassured.co.uk)