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Will we see Inheritance Tax abolished? Legal expert weighs in on the IHT debate

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With the general election just weeks away, Oliver Embley(<https://wedlakebell.com/people/oliver-embley/>), Partner in the Private Client team at independent law firm, Wedlake Bell, talks us through some of the issues involved when it comes to decisions on whether or not to change the IHT rules

There have been murmurings in the Conservative Party since the 2023 Autumn Statement about the possible abolition of inheritance tax ("IHT"). These have become louder ahead of the 2024 General Election with senior conservative MPs calling for Rishi Sunak to make it a manifesto pledge to abolish IHT. Chancellor Jeremy Hunt has described IHT as 'profoundly anti-Conservative' but he has so far fallen short of calling for IHT to be abolished and the Conservative Party Manifesto published on 11 June was silent on the issue.

An Avoidable Tax?

For the vast majority of estates where a married couple's assets are below £1m, there should not be any IHT because of the IHT nil-rate

band ("**NRB**") and the residence nil-rate band ("**RNRB**"), both of which are transferable between spouses. In practice, it is not quite as straightforward as it sounds as these reliefs are complicated and the RNRB can only be claimed by those who own a residence and have children/descendants.

IHT has also been described as a tax which is easy to avoid for the 'healthy, wealthy, and well advised' so individuals can easily take steps to significantly reduce or even eliminate their IHT burden. It is no secret that if a person gives away an asset and survives that gift by more than seven years, the value will be taken out of their estate for IHT provided the individual is not deemed to have 'reserved a benefit' in what they have given away.. Anne Robinson has been in the news recently publicising how she has given away her £50m fortune and that she consequently does not expect to pay IHT.

Reliefs and Exemptions

There are already generous IHT reliefs and exemptions including the 'normal expenditure out of income exemption'[1]. This allows individuals with high incomes to gift surplus income (i.e. income over and above their normal expenditure) without any IHT no matter how much the gift is. For example, if an individual earns £1m per year they would be liable for income tax and national insurance of around £460,000. Assuming that individual's outgoings are £200,000 per year, they could gift their remaining income (£340,000) to their children or settle it into trust each year with no IHT, even if they do not survive the gift by seven years.

Surprisingly, because of the already generous reliefs and exemptions, IHT is a regressive tax with estates worth £2m to £5m paying the greatest percentage of IHT. Larger estates will generally hold interests in business or agricultural assets which qualify for Business Property Relief ("**BPR**")^[2] or Agricultural Property Relief ("**APR**")^[3] which are exempt from IHT. In practice, I have seen £100m estates pay less IHT than £2m estates. If a Labour government is elected, it is likely that they would seek reform of those reliefs. Unlike the Conservative Party's manifesto, there was no pledge in the Labour Party manifesto to retain these reliefs. BPR and APR are important reliefs as they encourage entrepreneurs to build up businesses, safe in the knowledge that they will not need to be broken up to pay IHT.

Could Abolishing IHT Raise More Tax?

By abolishing IHT, the next government would make it more attractive for non-UK domiciled individuals ("**non doms**") to make the UK their base particularly if the proposed reforms to the tax regime for non doms are passed. An argument against this is that it will further distort the UK (in particular, London) property market and lead to further wealth inequality. However, non doms contribute £8.5bn per year to HM Treasury in the form of income tax, national insurance, capital gains tax ("**CGT**") and stamp duty land tax, so the abolition of IHT (which raises £7bn per year) could protect the already significant taxes raised from non doms and encourage further investment in the UK (and therefore increase tax revenue).

Although IHT currently raises around £7bn per year, by 2028/29 this figure is anticipated to be near £10bn due to inflation and the current freeze on IHT allowances; so if the next government does abolish IHT, this would need to be costed in. The most obvious way to replace at

least some of the lost IHT revenue would be for the government to introduce a CGT charge whereby an individual's death would be a 'deemed disposal' of their assets. Their estate would pay CGT on any gains between the deceased's acquisition (or base) cost and the value of those assets on their death. In practice, this would place a significant burden on the families of deceased individuals because they would need to establish both base costs for CGT **and** values at the date of death. HMRC would also need further resources as inevitably there would be disputes over valuations. A more radical way to replace lost IHT revenue would be for the government to introduce a wealth tax.

Future Planning

There is a maxim that you can either have asset protection or save IHT, but you cannot have both. However, if IHT is abolished there may no longer be a trade-off. Trusts are a good way of protecting generational wealth but, as the IHT legislation stands, individuals can only settle capital of up to £325,000 without an upfront IHT charge. If IHT is abolished, it may increase the use of trusts meaning family wealth is better protected; for example, against claims by divorcing spouses or creditors. Settling assets in trust also circumvents the probate process (this is common in the US) so the abolition of IHT could mean an end to long delays at the Probate Registry.

Wills could also be simplified if IHT is abolished. At present, emphasis is put on saving IHT on the death of the first spouse by leaving assets or a life interest to a surviving spouse to secure the IHT spouse exemption. The abolition of IHT would give testators more freedom to leave assets directly to children rather than routing them through

a surviving spouse. In the case of blended families, this would likely result in fewer inheritance disputes.

It does seem unlikely that the next government (whichever party that is) will abolish IHT, at least in the short-term; particularly as the parties' election manifestos made no pledges on the topic. However, it is interesting that the Conservatives have been rumoured to be looking at it; especially as abolition may bring wider benefits to the economy and simplification of estate planning.

[1] section 21 Inheritance Tax Act 1984

[2] section 104 Inheritance Tax Act 1984

[3] section 116 Inheritance Tax Act 1984

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