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Issued on behalf of Sweet & Maxwell

## **Taxpayers given welcome extension on IHT and trusts**

∞ **New book from Sweet & Maxwell by Emma Chamberlain and Chris Whitehouse**

Taxpayers were given a reprieve in the Budget and now have until October 5<sup>th</sup> 2008 to reorganise their trusts so as to minimise future inheritance tax charges, according to leading tax barrister Emma Chamberlain in *'Inheritance Tax Planning'*, a new book published by Sweet & Maxwell, the legal information provider.

The changes announced in March 2006 originally gave trusts a transitional period during which they could be reorganised. This ends on 5 April 2008. In relation to interest in possession trusts (where the beneficiary has an entitlement to income) the period permitted for reorganisation has been extended to 5 October 2008 and this will give trustees more time to consider what to do. Accumulation and maintenance trusts for minors or grandchildren will still need to be reviewed before 6 April 2008.

The new book analyses the pros and cons of reorganising trusts and the points to consider. It also looks at how the new inheritance tax regime will operate in the future for existing trusts, if they are not reorganised.

The new book considers Will drafting in the light of the changes effective from 9 October 2007. The transferable nil rate band provisions will mean that any unused nil-rate band of the first spouse to die can be transferred to the surviving spouse and used on that second spouse's death. This potentially means that £600,000 worth of assets can pass tax free on the second spouse's death.

The changes mean that existing Wills should be reviewed since it may no longer be necessary to set up complicated trusts in the Will. The book analyses the advantages and disadvantages of having a nil rate band discretionary trust in the Will and how existing nil rate band discretionary trusts that have already arisen because the first spouse has died should be dealt with.

Chris Whitehouse says: "The introduction by the Government of the transferable nil-rate band is a welcome simplification, but where the first spouse has already died, careful consideration needs to be given as to whether any nil rate band trust should be unscrambled. If the first spouse died more than two years ago unscrambling will not generally be advisable."

Emma Chamberlain suggests taxpayers who are reviewing their Wills consider the following:

- ∞ Since 9<sup>th</sup> October and the introduction of the transferable nil rate band, NRB trusts set up in a Will may provide little or no additional IHT protection over a simple estate and can cause complications
- ∞ There is a two-year limitation on unscrambling of trusts where the first spouse has died, so in some cases taxpayers may need to act quickly
- ∞ There may be attractions to maintaining trusts to provide income and capital for beneficiaries apart from the wife e.g. children of an earlier marriage
- ∞ A concern that the survivor may eventually have to go into a nursing home may also make the use of a trust beneficial to shield capital against nursing home fees
- ∞ If the value of property transferred to the nil rate band trust on the first death is anticipated to outstrip further increases in the NRB, it will still be advantageous to use a NRB trust on the first death
- ∞ Two separate NRB discretionary trusts may have long-term tax advantages if it is intended to keep the property in trust after the second spouse's death
- ∞ There may be cases where the family will be subject to greater foreign tax overall if assets are left outright to the surviving spouse
- ∞ Where spouses have been widowed in the past and have then remarried it may still be desirable for there to be nil rate band trusts in their wills because their families may then benefit from three nil rate bands!
- ∞ Where there is agricultural property or business property a Will trust is still very useful

## **ENDS**

Notes to Editors:

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