# The Residential Nil Rate Band:
## A Path through the Maze

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# THE RESIDENTIAL NIL RATE BAND

## 1. INTRODUCTION

### 1.1. Aim of legislation

The Government announced in the July 2015 Budget that an additional nil rate band ("RNRB") would be introduced where a deceased person's interest in their residence is "closely inherited" by their children and other descendants, on a death on or after 6 April 2017. The relevant legislation is contained in sections 8D to 8M of the Inheritance Tax Act 1984 ("IHTA 1984"), which came into force on 18 November 2015.

The objective was to meet the criticism that the estates of persons, who are by no means wealthy, were being dragged into the IHT net by virtue only of the historic rise in residential property prices. Why should an ordinary person, who has worked hard all their life, paying tax on income used to finance the purchase of their home, not be able to leave their home to their children free of IHT? One solution is to increase the value at which IHT is charged at a nil rate, provided that the deceased's estate includes an interest in their home, and that interest is inherited by direct descendants.

Unfortunately, the legislation is of mind-blowing complexity and almost impossible, even for a lawyer, to decipher, let alone apply. It introduces a whole host of different terms, many of which are represented by symbols such as NV/100, TT or VT. As will be seen, there are many circumstances in which the RNRB is of little or no assistance, e.g. in the case of high-value estates, or conversely where the deceased's residence is of low value, and also where the deceased has no direct descendants, or none whom he or she wishes to benefit.

It might simply have been better to have increased the standard nil rate band. Nonetheless, an attempt is made in this paper to unravel the complexities of the RNRB, and to give some guidance as to its impact on will drafting, and lifetime tax planning.

### 1.2. Summary of contents

This paper contains the following sections:

1. Introduction;
2. Residential enhancement;
3. Closely inherited;
4. Estates above £2m;

5. Brought-forward allowance;
6. Downsizing relief;
7. Residence nil rate amount;
8. Will drafting;

8A. Life interest trusts for the surviving spouse;

8B. 2-year discretionary trusts;

9. Lifetime planning.

### 1.3. HMRC Guidance

HMRC have published the following guidance:

(a) Inheritance Tax Manual, paras. 46000 to 46100;

(b) Inheritance Tax, how to apply the additional threshold with examples at: https://www.gov.uk/guidance/inheritance-tax-residence-nil-rate-band;

(c) Online calculator: https://www.tax.service.gov.uk/calculate-additional-inheritance-tax-threshold.

### 1.4. Downsizing relief

Under the original legislation, the RNRB was only available if the deceased person owned an interest in their residence, or former residence, immediately before their death. This prompted a concern that the introduction of the RNRB would penalise elderly persons who might not own a residence on death, or only one of minimal value. This could be a disincentive to those who might otherwise wish to downsize to a less valuable home, or to sell and move into a rented property or residential care. Accordingly, the Finance Act 2016 contained additional provisions extending the RNRB to cases where the deceased had, on or after 8 July 2015, downsized from a "high value residence" to a lower value one, or disposed of their residence without owning another at death, provided that other assets are "closely inherited". These downsizing provisions came into force on 15 September 2016 (see **6** below)

### 1.5. Nil rate bands

IHT is charged at 40% on the value of chargeable transfers in excess of the nil rate band. Prior to the introduction of the RNRB, two nil rate bands potentially applied for IHT purposes:

(a) The standard nil rate band ("SNRB") frozen at £325,000 up to and including 2020/21, which applies to both lifetime and death transfers; and

(b) The transferable nil rate band ("TNRB"), if and to the extent that the SNRB was unused on the death of a predeceasing spouse or civil partner (up to 100% of the SNRB). This applies so as to reduce the charge on death, including the charge on failed PETs.

In addition, the RNRB is now available in certain circumstances. The RNRB operates as a nil rate band: if the residence nil rate amount is greater than nil, the portion of the chargeable transfer on death that does not exceed that amount is charged at the rate of 0% (IHTA 1984, s. 8D(2)). A claim to the RNRB can be made on Form IHT435.

As the RNRB only applies to the value of a chargeable transfer on death, it does not apply to the value of failed PETs, or to the additional tax payable on death on chargeable transfers made in the 7 years prior to death.

### 1.6. Elements of RNRB

There are two elements to the RNRB:

(a) "The residential enhancement" applying on the death of an individual on or after 6 April 2017 (IHTA 1984, s. 8D(5)); and

(b) "The brought-forward allowance" also applicable on the death of such an individual, where the RNRB has not been fully used on the death of a predeceasing spouse or civil partner, up to a maximum of two times the residential enhancement (IHTA 1984, s. 8G). This is, in effect, a transferable RNRB.

The aggregate of a deceased person's residential enhancement and the brought-forward allowance is referred to as that person's "default allowance" (IHTA 1984, s. 8D(5)(f)).

### 1.7. Maximum RNRB

The maximum residential enhancement (IHTA 1984, s. 8D(5)(a)) is:

| | | |
|---|---|---|
| (a) | 2017/18: | £100,000 |
| (b) | 2018/19: | £125,000 |
| (c) | 2019/20: | £150,000 |
| (d) | 2020/21: | £175,000 |
| (e) | 2021/22 and following: | Increasing in line with CPI, unless the Treasury specifies an alternative value. |

In addition, the amount of the RNRB can be increased, by as much as 100%, if the brought-forward allowance applies (see **5** below). It follows that the maximum nil rate band on a death of a surviving spouse or civil partner in 2020/21 is £1m:

| | | |
|---|---|---|
| (a) | SNRB | £325,000 |
| (b) | TNRB | £325,000 |
| (c) | RNRB (residential enhancement) | £175,000 |
| (d) | RNRB (brought-forward allowance) | £175,000 |

The RNRB, therefore, gives rise to a maximum IHT saving in 2020/21 of 40% of £350,000, i.e. £140,000, or £70,000 in the case of a person who is not married, nor in a civil partnership. The total of all the nil rate bands, in the case of a married couple, in 2020/21, can be as much as £1m, giving rise to a potential saving of £400,000.

### 1.8. RNRB for benefit of estate as a whole

The RNRB applies for the benefit of the estate as a whole. It is not set against the value of the residence itself.

Peter dies in 2021, leaving his share in his residence, worth £200,000 to his son, Bert, subject to tax, and the residue of his estate, worth £600,000, to his partner, Ena. Peter's estate is entitled to a RNRB of £175,000 on his death, and a SNRB of £325,000 (as Peter did not make any chargeable transfers in the 7 years prior to his death).

The estate of £800,000 is entitled to (in order of priority):

| | | |
|---|---|---|
| (1) | RNRB: | £175,000; plus |
| (2) | SNRB: | £325,000. |
| | Total: | £500,000. |

| | |
|---|---|
| Chargeable estate: | £800,000 |
| Deduct total NRBs: | (£500,000) |
| Estate taxable at 40%: | £300,000 |
| IHT at 40% x £300,000: | £120,000 |
| IHT attributable to residence (2/8 x £120,000) | £30,000 |
| Bert's entitlement (£200,000 - £30,000) | £170,000 |
| IHT out of residue of £600,000: | £90,000 |

Even if the gift were free of IHT, the RNRB applies to reduce the IHT on the estate as a whole.

### 1.9. RNRB takes priority

The RNRB applies in priority to the SNRB and the TNRB (IHTA 1984, s. 8D(3)). However, the SNRB and the TNRB apply to chargeable transfers made in the 7

years before death, whereas the RNB does not. The following steps should, therefore, be taken:

(1) apply the SNRB and any TNRB to chargeable transfers in the 7 years before death to calculate IHT on such transfers, and to determine whether there is any balance to be set against the value of the chargeable estate on death;

(2) deduct the RNRB (if any) from the value of the chargeable estate on death; and

(3) apply any remaining SNRB or TNRB to the remainder of the chargeable estate.

### 1.10. Limitations on RNRB

In practice, the RNRB may be less than the maximum amount, or even nil, because:

(a) The residential enhancement is withdrawn at a rate of £1 for every £2 above £2m if the deceased person's estate exceeds £2m on death (see **4** below). There is no relief if the estate exceeds £2.35m (disregarding the brought-forward allowance), or £2.7m (including the brought-forward allowance, if applicable).

(b) The brought-forward allowance will itself be subject to tapering, if the value of the estate of the predeceasing spouse or civil partner exceeds £2m (see **5.5 and 5.6** below).

(c) Subject to downsizing relief, the deceased must have owned a "qualifying residential interest" at death. To qualify for downsizing relief in full, the deceased must have owned a sufficiently-valuable interest in a residence, which was disposed of on or after 8 July 2015. The RNRB will, therefore, be of no use to someone who has never owned a qualifying residential interest, or who disposed of such an interest before 8 July 2015.

(d) The RNRB only applies where a qualifying residential interest is "closely inherited" by direct descendants (see **3** below). It does not apply where such an interest is inherited by a spouse, a partner, sibling, or collateral relative.

(e) The brought-forward allowance does not apply in the case of individuals who have not been married or entered into a civil partnership.

(f) Where the value of the qualifying residential interest which is closely inherited is less than the maximum RNRB, the RNRB is limited to that value.

(g) The RNRB cannot in any event exceed the value of the chargeable estate.

## 2. RESIDENTIAL ENHANCEMENT

### 2.1. Conditions

The residential enhancement will be available where:

(a) a person dies on or after 6 April 2017 (IHTA 1984, s. 8D(1)); and

(b) that person's estate immediately before death included a qualifying residential interest ("**QRI**") (IHTA 1984, s. 8E(1)(a));

(c) which is "closely inherited" (IHTA 1984, s. 8E(1)(b)).

### 2.2. Residential property interest

A residential property interest, in relation to a person, means (IHTA 1984, s. 8H(2)):

(a) an interest in a dwelling-house;

(b) which has been a person's residence;

(c) at a time when the person's estate included that, or any other, interest in the dwelling-house.

A dwelling-house:

(a) includes any land occupied or enjoyed with it as its garden or grounds (there being no restriction as to size); but

(b) does not include any trees or underwood in relation to which an election is made for woodlands relief pursuant to IHTA 1984, s. 125.

"Residence" is not defined, but, as a matter of general law, denotes some degree of continuity (***Goodwin v Curtis*** [1998] STC 475) albeit this factor should not be overstated (see ***Dutton-Forshaw v RCC*** [2015] UKFTT 478 (TC) where the period of residence was only 7 weeks, but the taxpayer had no other residence during the relevant period, and intended to live at the property on a permanent or continuous basis). HMRC consider that an elderly person who has recently moved into their new home, but has barely finished unpacking, when they are taken ill and have to move into a nursing home, would have established residence. However, someone who just stays in a property for a number of weeks living out of a suitcase would not have done so (IHTM, para. 46031).

The QRI must be comprised in the deceased's IHT estate on death. This will not be the case if the deceased was non-UK domiciled at death, and the QRI was situated outside the UK, since the QRI will be "excluded property" outside the scope of IHT. However, an interest in an overseas residence, owned by a UK-domiciliary, will qualify. Indeed, an overseas dwelling-house which, when occupied, was owned

by a non-UK domiciliary (X) will attract relief if, at the date of X's death, X is UK-domiciled.

### 2.3. Qualifying residential interest

Relief is limited to a person's interests in only one residential property. However, the residence need not have been the individual's main residence, e.g. for the purposes of CGT principal private residence relief.

Where a person's estate immediately before death includes residential property interests in just one dwelling-house, that person's interests in that dwelling-house are a QRI in relation to that person (IHTA 1984, s. 8H(3)).

*Jane has an absolute interest in a half share in her home, and a life interest in the other half share.*

Both interests comprise a single QRI in one dwelling-house.

### 2.4. Nomination of QRI

There can only be one QRI, and if there is more than one such interest, the personal representatives must nominate the dwelling-house in which the QRI subsists. Therefore, where:

(a) a person's estate immediately before death includes residential property interests in each of two or more dwelling-houses; and

(b) the person's personal representatives nominate one (and only one) of those dwelling-houses

the person's interests in the nominated dwelling-house are a QRI in relation to that person (IHTA 1984, 8H(4)).

*Jane has a half share her London home, and owns the whole beneficial interest in a cottage in the country.*

Jane's personal representatives must nominate either the London home, or the country cottage, as the relevant dwelling-house. They would be advised to nominate the dwelling-house in which the more valuable interest subsists.

### 2.5. Ownership

The general rule is that the deceased person's estate immediately before death must include a QRI if the RNRB is to be available (IHTA 1984, s. 8E(1); s. 8F(1)(a), (2)). However:

(a) property subject to which the gifts with a reservation of benefit rules apply is deemed, by Finance Act 1986, s. 102(3), to be included in the estate

of the donor for IHT purposes generally, and may be treated as being "inherited" for the purposes of the RNRB (see **3.5** below);

(b) settled property, in which the deceased had a qualifying interest in possession on death, may qualify for the RNRB as, in certain cases, it is deemed to be "inherited" (see **3.9.4** below); and

(c) downsizing relief may apply where the deceased no longer has, but did at some time prior to death have, a qualifying residence at the date of death.

### 2.6. Timing of residence

It is not a requirement that the deceased resided in the dwelling-house immediately before death. It is sufficient if the deceased owned an interest in the dwelling-house immediately before death, and it was his residence at a time when his estate included that, or any other interest, in the dwelling-house.

*Jack resided at "Homefields" until 2016. He owned the freehold during his period of residence. He ceased to reside at Homefields in 2017, when he granted a lease of Homefields to a third party, and moved into a residential care home. On his death, in 2021, he still owns the freehold reversion of Homefields.*

Jack's interest in Homefields will be a qualifying residential interest on his death even though:

(a) he owned the freehold reversion on his death, whereas he had owned the unencumbered freehold when he resided at Homefields, on the basis that it was his residence at a time when his estate included "any other interest" in Homefields; and

(b) he was living in rented accommodation immediately before his death.

## 3. CLOSELY INHERITED

### 3.1. Meaning of closely inherited

The QRI in the deceased person's estate must be "closely inherited". IHTA 1984, s. 8J deals with what is meant by "inherited", s. 8K with what is meant by "closely".

In relation to the death of any person ("D"), something is "closely inherited" if (IHTA 1984, s. 8K) it is "inherited" by:

(a) a lineal descendant of D (i.e. children, grandchildren, great-grandchildren, but not collateral descendants such as nephews and nieces);

(b) a person who, at the time of D's death, is the spouse or civil partner of a lineal descendant of D; and

(c) a surviving spouse or civil partner of a pre-deceasing lineal descendant (LD) who has not between LD's death and D's death become the spouse or civil partner of another person.

A step-child is treated at all times as the child of their step-parent; a foster child as the foster parent's child; an adopted child as the child of both natural and adopted parents; and a guardian as the parent of a child where the appointment as guardian took effect when the child was under the age of 18.

*Fred acquired a step-son, Doug, on his marriage to Doris. Doug has a child, Emma, who was born before Doug became Fred's step-son.*

Emma is treated as being a lineal descendant of Fred, on the basis that Doug is treated as being Fred's child, and Doug's lineal descendants are treated as Fred's, even if born before Doug became the child of Fred (IHTA 1984, s. 8K(8)).

### 3.2. Direct descendants

In their Inheritance Tax Manual HMRC refer to the class of persons in **3.1** above as "direct descendants", even though that is not a phrase used in the legislation. The same terminology is adopted in this paper.

The RNRB is, therefore, of no benefit to an individual who has no direct descendants, nor where an individual wishes to leave a QRI to persons others than direct descendants. A QRI passing to the deceased's parents, siblings, nephews and nieces, is not closely inherited.

### 3.3. Inherited

The RNRB only applies to the deemed chargeable transfer made on death. It does not apply to lifetime transfers. This limitation is reflected in the requirement that the QRI must be "inherited".

A person ("B") must "inherit" from a person who has died ("D"). B inherits for these purposes if (IHTA 1984, s. 8J(2)):

(a) there is a disposition to B;

(b) of property which forms part of D's estate immediately before D's death;

(c) whether effected by will or intestacy or otherwise, e.g. survivorship.

If, therefore, B becomes absolutely entitled to a QRI, under D's will or intestacy, or by survivorship, the QRI is inherited. In some circumstances, B is also treated as inheriting where D's property becomes comprised in a settlement, in which B has an interest, on D's death (see **3.9** below).

### 3.4. Residuary gifts

A QRI can be closely inherited, even though it was comprised in the residuary estate, rather than being a specific gift (see **8.7** below).

The QRI need not end up in the hands of D's direct descendants. The personal representatives can sell the QRI as part of the administration of the estate, or at the request of direct descendants entitled thereto, and pass the sale proceeds to those direct descendants. Indeed, the QRI will be closely inherited even if the Will directs that the personal representatives should sell the QRI, so long as it provides that the sale proceeds be paid to a direct descendant.

However, an appropriation of a QRI to a direct descendant in or towards satisfaction of a legacy or share of residue is not a disposition of the QRI by D, and the QRI will not be closely inherited.

### 3.5. Gifts with a reservation of benefit

Where property forms part of D's estate immediately before D's death as a result of Finance Act 1986, s. 102(3) (gifts with reservation) in relation to a disposal made by D by way of gift, B inherits the property if B is the person to whom the disposal was made (IHTA 1984, s. 8J(6)). This makes sense as the gifted property is deemed to form part of D's estate. For the purposes of calculating the IHT due on a death after 29 October 2018, B inherits the property if the property originally comprised in the gift became comprised in B's estate on the making of the disposal.

*Margaret gives her residence to her son, David, but continues to use it without paying full consideration. Margaret has made a gift with a reservation of benefit, and her residence is deemed to form part of her estate on death.*

The residence is deemed to be inherited by David. He is a direct descendant, and the RNRB is available. The same result should apply if Margaret settles her residence on a bare trust for David, reserving a benefit to herself in the residence.

However, B (a direct descendant) must be the person to whom the gift was made by D, subject to D's reservation of benefit. This will not be the case where D makes a gift to a trust for the benefit of B (other than a bare trust).

*Margaret gives her residence to trustees upon trust for her son, David for life, but continues in de facto occupation, thereby reserving a benefit. Margaret dies, and the residence is deemed to form part of her estate.*

David is not the person to whom the gift was made: the recipients of the gift are the trustees. As David's interest in possession arose on or after 22 March 2006, he is not treated as the beneficial owner by virtue of his interest in possession (IHTA 1984, s. 49(1A)). The residence is not, therefore, closely inherited by David. This is made explicit by an amendment made to s. 8J(6), by clause 65 of the Finance Bill 2019, with regard to a person's death after 29 October 2018. The amended s. 8J(6) only applies where the gifted property becomes immediately comprised in the donee's estate. A gift to a trust, in which the donor reserves a benefit, will, therefore, only qualify if it is a gift to a bare trust or a disabled person's trust for direct descendant(s).

### 3.6. Deed of Variation

*Sue leaves her house to her partner, Terry, who executes a Deed of Variation, within 2 years of Sue's death, containing an IHTA 1984, s. 142 election, redirecting the house to Sue's grandson, Peter, absolutely.*

Peter is deemed for IHT purposes to have inherited the house absolutely on Sue's death. He is a direct descendant, unlike Terry. The house is, therefore, closely inherited. The RNRB will be available.

### 3.7. Family provision order

An order under the Inheritance (Provision for Family and Dependants) Act 1975 is retrospective to death for IHT purposes by virtue of s. 146 of that Act. An order which has the effect that a direct descendant inherits a QRI is, therefore, to be taken into account for the purposes of applying the RNRB.

### 3.8. Appointments out of relevant property trusts settled by will

The RNRB is not available where a QRI is left on discretionary will trusts, even if all the beneficiaries are direct descendants. However, advantage can be taken of IHTA 1984, s. 144, to appoint a QRI in a discretionary trust to a direct descendant within 2 years of death (see **8B** below). The direct descendant will be treated as having inherited the QRI, as the gift of the QRI to the direct descendant will be treated as having been effected by the deceased on death.

### 3.9. Will trusts

#### 3.9.1. Trust property closely inherited

The general rule is that property is not inherited, where it becomes comprised in a settlement on D's death (IHTA 1984, s. 8J(3)(a)). However, there are exceptions to this rule.

Where the property becomes comprised in a settlement on D's death, B inherits the property if (IHTA 1984, s. 8J(4)):

(a) B becomes beneficially entitled on D's death to an interest in possession, being an IPDI or disabled person's interest ("DPI"); or

(b) the property becomes on D's death settled property:

  (i) to which s. 71A or 71D applies (bereaved minor's trust, or 18-25 trust, for children of D); or

  (ii) held on trusts for the benefit of B (a bare trust).

To fulfil the additional requirement of being "closely" inherited, B must be a direct descendant of D. The RNRB can, therefore, apply where D leaves a QRI upon trust for:

(a) one or more direct descendants on IPDI or DPI trusts; or

(b) D's children at 18, on bereaved minor's trusts, or at an age up to 25 on 18-25 trusts.

A gift of a QRI to a discretionary trust for the benefit of direct descendants will not, therefore, be closely inherited.

#### 3.9.2. Trusts on attaining a specified age

Children who become entitled to a QRI on attaining a specified age will not "inherit" if the child has failed to attain that age on the death of the testator, unless the trust is a bereaved minor's trust, or an 18-25 trust. Furthermore, there can be no bereaved minor's trust, nor an 18-25 trust, for a grandchild:

*(1) Francesca leaves a QRI to her son, Miles, on attaining the age of 18. Miles is 5 when Francesca dies.*

The trust qualifies as a bereaved minor's trust. The QRI is closely inherited.

*(2) Francesca leaves a QRI to her grandson, Paul, on attaining the age of 18. Paul is 20 when Francesca dies.*

The QRI will be closely inherited. Paul is absolutely entitled on Francesca's death.

*(3) Francesca leaves a QRI to her grandson, Paul, on attaining the age of 18. Paul is 12 when Francesca dies.*

The trust for Paul cannot be a bereaved minor's trust, nor an 18-25, as such trusts can only benefit children, not grandchildren. The trust is a relevant property trust.

*(4) Francesca leaves a QRI to her daughter, Bridget, subject to a proviso that, should Bridget fail to survive her, her estate should pass to any children of Bridget living at Francesca's death on attaining the age of 18 in equal shares. Bridget fails to survive Francesca. Bridget has three children, one of whom, Paul, is below the age of 18 on Francesca's death.*

Paul's 1/3 share in the QRI will not be closely inherited. He is only contingently entitled on attaining the age of 18. The trust, being one for a grandchild, cannot be a BMT, nor an 18-25 trust. This may not matter if the remaining 2/3 share which is closely inherited equals or exceeds the value of the RNRB.

As to the effect on Will drafting, see 8.4 below.

### 3.9.3. Close inheritance assessed at death

The legislation focuses on the position at death. Therefore, B will be treated as having "inherited" if B becomes entitled to an IPDI on D's death, even if that IPDI is soon thereafter terminated.

*Brian leaves a QRI, upon trust for his granddaughter, Clare, upon IPDI trusts. Clare's IPDI is terminated, shortly after Brian's death, in favour of Brian's partner, Florence, giving rise to a deemed PET by Clare.*

The QRI will be closely inherited, by virtue of Clare's IPDI, even though Florence becomes entitled thereto after his death.

### 3.9.4. D has a qualifying interest in possession on death

Property may be inherited by B from D where D did not have an absolute interest, but a qualifying interest in possession, in a QRI on death. Where, immediately before D's death, the property was settled property in which D was beneficially entitled to an interest in possession, B inherits the property if B becomes beneficially entitled to it on D's death (IHTA 1984, s. 8J(5)).

This necessarily implies that the QRI must be held either on pre-22 March 2006 trusts for D, or alternatively it must be held on IPDI trusts for D, otherwise the essential condition that the property must form part of the person's estate before death would not be satisfied.

B will only become "beneficially entitled" to the property on D's death if B becomes absolutely entitled, or has a beneficiary-taxed interest in possession. In order for the property to be "closely" inherited, B must be a direct descendant of D, such as D's child or step-child. As to the consequences for Will drafting (see **8A** below).

*Meera, died leaving her half share in the matrimonial home, on trust for her husband, Raj for life (an IPDI) and subject thereto to their son, Rabinder, absolutely.*

On Raj's death, Rabinder will be treated as having inherited the settled half share because he acquires an absolute interest therein.

*Raj has a life interest, but on his death, Rabinder becomes entitled to a life, rather than an absolute, interest.*

Rabinder will only be treated as being beneficially entitled to the half share, if his successive interest in possession is a beneficiary-taxed interest in possession. In this context, this means that his interest must be a disabled person's interest, unless his interest in possession was created by Raj pursuant to a general power of appointment, in which case it can be an IPDI.

### 3.10. QRI closely inherited

In summary, a QRI will be closely inherited on D's death where:

(1) D was a joint tenant in equity in a residence, and D's interest passes by survivorship to direct descendant(s);

(2) D dies intestate, and direct descendant(s) of D inherit D's residuary estate, including a QRI, absolutely, or in the case of minor children, at 18 on bereaved minor's trusts;

(3) D makes a gift of a QRI to direct descendant(s), reserving a benefit therein at the date of D's death;

(4) D has a beneficiary-taxed interest in possession on death in property which passes to D's direct descendant(s) absolutely, or on disabled person's trusts, on D's death;

(5) D makes a Will leaving a QRI, or residue including a QRI, to direct descendant(s) absolutely, or on IPDI trusts, or other specified trusts (see **8.2** below).

## 4. ESTATES ABOVE £2m

### 4.1. Tapering

The deceased's default allowance, i.e. the aggregate of his residential allowance and brought-forward allowance, is liable to be reduced if and to the extent that the value of the deceased's estate exceeds the taper threshold (£2m until 2020/21, increasing thereafter in line with the CPI). For every £2 that the estate exceeds the taper threshold, there is a reduction of £1. The reduced default allowance is referred to as the adjusted allowance (IHTA 1984, s. 8D(4)(g)).

The RNRB is, therefore, nil in 2017-18 where the value of the estate exceeds £2.2m (disregarding the brought-forward allowance) or £2.4m (including the brought-forward allowance); and in 2020-21 where it exceeds £2.35m (disregarding the brought-forward allowance) and £2.7m (including the brought-forward allowance).

*Brian, who was previously married to Trish, who died in 2010, dies in 2020-21 with an estate worth £2.1m. He is entitled to a residential enhancement of £175,000, plus a brought-forward allowance of £175,000.*

Brian's "default allowance" is, therefore, £350,000. However, the default allowance is liable to be reduced by £50,000, to produce an "adjusted allowance" of £300,000, as his estate exceeds £2m by £100,000. Having calculated the adjusted allowance, it is still necessary to determine the residence nil rate amount (see **7** below). This may be less than the adjusted allowance of £300,000 if, say, the value of the QRI which is closely inherited on Brian's death is less than £300,000.

The brought-forward allowance will also be reduced if the value of the predeceasing spouse's estate exceeded £2m (see **5.5** and **5.6** below).

### 4.2. Value of estate

The value of the estate, for the purposes of determining whether it exceeds the taper threshold ("TT"), is the value immediately before death of that person's property for IHT purposes ("E"). E is defined to mean the value of the person's estate immediately before the person's death (IHTA 1984, s. 8D(5)(d)). A person's estate is, generally, the aggregate of all the property to which a person is beneficially entitled (IHTA 1984, s. 5(1)). It is not the same as "VT", i.e. the value transferred by the chargeable transfer under s. 4 on the person's death (IHTA 1984, s. 8D(5)(e)) and so is not reduced by exemptions and reliefs which reduce the value transferred, or which render the transfer exempt. On that basis, E:

(a) includes property deemed to form part of the estate for IHT purposes, by

virtue of a reservation of benefit, or by reason of the deceased having a beneficiary-taxed interest in possession;

(b) leaves out of account the value of any "excluded property" (IHTA 1984, s. 5(1)(b));

(c) is determined after the deduction of liabilities which reduce the value of the estate (IHTA 1984, s. 5(3));

(d) includes property qualifying for business property relief and/or agricultural property relief which reduce the value transferred;

(e) includes any part of the estate which passes by way of an exempt transfer; and

(f) excludes the value of failed PETs or chargeable transfers within 7 years of death, since property subject to such transfers is not part of the estate immediately before death.

*The deceased's estate includes assets of £3m, and liabilities of £200,000. There is a legacy of £100,000 to charity, and a specific gift of agricultural property worth £500,000 attracting 100% agricultural property relief.*

The value of E is £3m - £200,000 = £2.8m. The value of the estate, therefore, exceeds the taper threshold of £2m. Indeed the RNRB will be nil.

## 5. BROUGHT-FORWARD ALLOWANCE

### 5.1. Introduction

In addition to the "residential enhancement", the estate of a person (P) dying on or after 6 April 2017, may be entitled to a "brought-forward allowance" if and to the extent that the residential enhancement of a "related person" (R) was not used on R's death. A "related person" means a person other than P where the other person dies before P, and immediately before that other person dies, P is the other person's spouse or civil partner (IHTA 1984, s. 8G(2)). That part of the RNRB, not used on R's death, can, therefore, be brought-forward, to be utilised on P's death.

The RNRB may have been 100% unused on R's death, because R did not own a QRI, or because such a QRI was not closely-inherited on R's death, or because R died before 6 April 2017 when the RNRB first became available. Alternatively, a percentage (less than 100%) may have been unused, e.g. if the value of the QRI which was closely inherited was less than the RNRB on R's death.

The unused part of the RNRB is calculated as a percentage of the residential enhancement on P's death. However, that percentage cannot exceed 100% (which might otherwise be the case if P had two predeceasing spouses). If, therefore, P dies in 2020/21, the maximum brought-forward allowance will be £175,000. This will be added to P's residential enhancement of £175,000, to produce a "default allowance" of £350,000.

### 5.2. Calculation of brought-forward allowance

There are 4 prescribed steps for calculating the amount of the brought-forward allowance (IHTA 1984, s. 8G(3)(a) to (d)).

*Frank dies before his wife, Janet, in 2019/20, with an estate of £750,000. His estate does not include a QRI because he and his wife lived in rented accommodation at the date of his death. Alternatively, his estate does include a residence, worth £500,000, which passes to Janet (by will or survivorship). On either basis, Frank's maximum residential enhancement on his death in 2019/20 (£150,000) is unused.*

*Janet dies in 2020/21, with an estate of £1m. She leaves her residence (worth £550,000) to her children. The residential enhancement on her death is £175,000.*

*Step 1*

The first step is to calculate the amount that is available for carry-forward from the death of a related person, in this case, Frank. For these purposes, it is necessary to apply IHTA 1984, sections 8E, 8F, 8FD and 8G(4) and (5) which prescribe the amount which is available for carry-forward, dependent upon a number of differ-

ent factors (see **7.5** and **7.6** below). On the above example, the amount available for carry-forward is the full amount of Frank's default allowance on his death of £150,000, which was wholly unused (IHTA 1984, s. 8F(3)).

*Step 2*

The second step is to express each amount, available for carry-forward, as a percentage of the residential enhancement at the death of the related person concerned, i.e. Frank. That percentage is 100%, because the amount available for carry-forward (£150,000) represents 100% of the residential enhancement on Frank's death (£150,000).

*Step 3*

The third step is to calculate the percentage which is the total of those percentages. There is, in this case, only one percentage, i.e. 100%.

Step 4

The amount that is that total percentage of the residential enhancement at Janet's death is her brought-forward allowance or, if that total percentage is greater than 100%, Janet's brought-forward allowance is the amount of the residential enhancement at her death. Her brought-forward allowance is, therefore, 100% of the residential enhancement on her death, i.e. £175,000, provided that it is claimed.

If Frank had left a QRI, worth £90,000, to his son, then £60,000 of his default allowance would have been available for carry-forward, representing 40% of the default allowance of £150,000. On Janet's death, her estate would be entitled to a brought-forward allowance of 40% of £175,000, i.e. £70,000.

### 5.3. Survivor's estate

It is not necessary, in order to claim the brought-forward allowance, that the survivor (Janet in the example in 5.2 above) should leave a QRI to her direct descendants, or that she should own a QRI at the date of her death. Her estate will still be entitled to a brought-forward allowance of £175,000. However, her RNRB will be nil, if the value of the QRI and/or downsizing addition which is closely inherited on her death is nil (IHTA 1984, s. 8F(2), 8FD(3)).

Janet's estate can, therefore, only make full use of her total RNRB if a QRI, or other assets sufficient to claim the downsizing addition, worth at least £350,000, are closely inherited by her direct descendants. Her RNRB may also be reduced or eliminated if her estate exceeds £2m (see **4** above) and the brought-forward allowance may also be reduced or eliminated if the value of Frank's estate exceeded £2m (see **5.5** and **5.6** below).

### 5.4. Death of related person before 6 April 2017

Where the related person (R) died before 6 April 2017, the RNRB will not have been used at all, as it was not available in respect of deaths before that date. An amount equal to £100,000 is deemed to be available for carry-forward for the benefit of P's estate (IHTA 1984, s. 8G(4)(a)). The residential enhancement on R's death is also deemed to be £100,000 (IHTA 1984, s. 8G(4)(b)). If, therefore, the residential enhancement on P's death is, say, £175,0000, the brought-forward allowance will be 100% of £175,000, i.e. £175,000 (IHTA 1984, s. 8G(3)).

The brought-forward allowance will, however, be withdrawn on a tapering basis in the event that the value of R's estate exceeds £2m (see **5.5** below).

Where, therefore, R died before 6 April 2017, with an estate not exceeding £2m, the brought-forward allowance will always be 100% of P's residential enhancement.

### 5.5. Estate in excess of £2m: death before 6 April 2017

Where R's death occurred before 6 April 2017, and the value of R's estate exceeded £2m, the amount of the brought-forward allowance will be withdrawn on a tapering basis. The amount available for carry-forward is reduced (but not below nil) by RPE, i.e. (the value of R's estate - £2m) /2 (IHTA 1984, s. 8G(5)).

If, therefore, the value of R's estate was £2.2m, the amount otherwise available to be carried forward, i.e. £100,000 (see **5.4** above) is reduced, by £100,000, to nil. In short, no amount can be carried forward if the value of R's estate exceeded £2.2m. On an estate of £2.1m, only £50,000 of the amount which would otherwise be available for carry-forward (£100,000) can be carried forward, resulting in a 50% uplift in the residential enhancement on P's death.

### 5.6. Estate in excess of £2m: death on or after 6 April 2017

Where R dies on or after 6 April 2017, the brought-forward allowance will also be subject to tapering if R's estate exceeds £2m. If R dies in 2020-21 with an estate of at least £2.35m, there will be no amount available to be carried forward.

*Frank dies in 2020-21, with an estate of £2.35m, all of which he leaves to his wife, Janet, who survives him. Frank was not previously married, so his estate does not have a brought-forward allowance.*

The amount available for carry-forward would, subject to tapering, be equal to Frank's "default allowance", i.e. the total of his residential enhancement (£175,000) and his brought-forward allowance (nil). However, where the value of Frank's estate is greater than the taper threshold (£2m) only the amount of his "adjusted allowance" is available for carry-forward (IHTA 1984, s. 8F(3)(b)). Frank's adjusted allowance,

on an estate of £2.35m, is nil, since there is a reduction of £1 for every £2 above £2m (IHTA 1984, s. 8D(5)(g)). Therefore, the amount available for carry-forward will be nil.

*Frank died in 2020-21 with an estate of £2.35m, leaving a QRI worth £100,000 to his son, and the remainder of his estate to his wife, Janet. He had not previously married.*

In this case, part of the RNRB has been used on Frank's death. Here again tapering occurs, so that there is no amount available to be carried forward. The amount available for carry-forward will be the difference between the value of the QRI that is closely-inherited on Frank's death (£100,000) and Frank's adjusted allowance, i.e. after tapering (IHTA 1984, s. 8E(4)). Frank's default allowance of £175,000 will be reduced to an adjusted allowance of nil, in the case of an estate worth at least £2.35m (IHTA 1984, s. 8D(4)(g)). As nil is less than £100,000, no amount can be carried forward.

### 5.7. More than one predeceasing spouse

The brought-forward allowance can derive from more than one predeceasing spouse or civil partner of the deceased, so long as the marriage or civil partnership was still in force on the first death (IHTA 1984, s. 8G(2)). However, the brought-forward allowance can never exceed the amount of the survivor's residential enhancement.

*Jenny dies in 2020/21 when her residential enhancement is £175,000. She was predeceased by two husbands: Jack, who died in 2014, and Jeremy who died in 2019, leaving the whole of their estates to Jenny. The estates of both Jack and Jeremy were worth less than £2m.*

The brought-forward allowance from Jack is 100% of Jenny's residential enhancement (see **5.4** above). The brought-forward allowance from Jeremy is also 100% of Jenny's residential enhancement, as his RNRB was wholly unused. The aggregate percentage is 200%. However, the brought-forward allowance is limited to 100% of Jenny's residential enhancement of £175,000 (IHTA 1984, s. 8G(3)(d)).

### 5.8. Claim for brought-forward allowance

The brought-forward allowance will be nil if no claim is made for it under IHTA 1984, s. 8L (IHTA 1984, s. 8G(3)). The allowance must, therefore, be claimed, if it is to be available. IHT436 should be used.

The claim may be made by the deceased's personal representatives within "the permitted period" or, if no claim is so made, by any other person liable to the tax chargeable on the deceased's death within such later period as an officer of HMRC

may in a particular case allow (IHTA 1984, s. 8L(1)). The trustees of an IPDI trust for the deceased could, therefore, make a claim, if the personal representatives fail to do so within the permitted period, as they are liable for the IHT on the death of the IPDI beneficiary (IHTA 1984, s. 200(1)(b)).

The permitted period in the case of a claim by personal representatives is (IHTA 1984, s. 8L(2)):

(a) the period of 2 years from the end of the month in which the deceased dies; or

(b) (if it ends later) the period of 3 months beginning with the date when the personal representatives first act as such; or

(c) such longer period as an officer of HMRC may in a particular case allow.

If, therefore, a grant is only obtained 23 months after death, there having been no intermeddling in the intervening period, the claim can be made within 26 months of death.

A claim, made within either of the periods in (a) or (b) above, may be withdrawn no later than one month after the end of the period concerned (IHTA 1984, s. 8L(3)). It is not clear why the PRs, or other person chargeable, would want to withdraw a claim.

### 5.9. Claim where series of deaths

There are provisions (IHTA 1984, s. 8L(4) to (7)) for a person's personal representatives to claim a brought-forward allowance for a person, whose estate has not made such a claim, within an "allowed period", i.e. where:

(a) no claim has been made for a brought-forward allowance for a person ("P");

(b) the amount of the charge to IHT on the death of another person ("A") would be different if a claim had been made for a brought-forward allowance for P; and

(c) the amount of the charge to IHT on the death of P, and the amount of the charge to tax on the death of any person who is neither P nor A, would not have been different if a claim had been made for brought-forward allowance for P.

*Adrian (A) dies in 2021-22 predeceased by his late wife, Petra (P), who had died in 2019-20. Petra had been married before to Jack, who died in 2005, leaving the whole of his estate to Petra. Petra left a QRI in her residence, worth £250,000, to her children by Jack, and the remainder of her estate, worth £300,000, to Adrian for life.*

Petra's personal representatives were entitled to claim a brought-forward allowance from Jack's estate of £150,000. However, they did not make such a claim as her total chargeable estate was worth less than her SNRB (£325,000), TNRB (£325,000) and residential enhancement (£150,000).

Adrian's personal representatives can make a claim for a brought-forward allowance for Petra, if (a) the amount of the IHT chargeable on his death would be different (presumably less) had Petra's personal representatives claimed a brought-forward allowance for Petra, and (b) the amount of IHT on the deaths of Petra and Jack would not have been different if a claim had been made for a brought-forward allowance for Petra.

These conditions are satisfied on the above example. It would have made no difference to the IHT payable on Petra's death (or, indeed, Jack's) if a brought-forward allowance had, or had not, been claimed on Petra's death. However, if it had been claimed, that claim would save IHT in Adrian's estate. The brought-forward allowance is nil if no claim is made to such an allowance (IHTA 1984, s. 8G(3)). If a claim had been made by Petra's personal representatives to the brought-forward allowance from Jack's estate, her default allowance would have been increased by 100% from £150,000 to £300,000. The amount available to be carried forward for the benefit of Adrian's estate would have been the difference between the value of the chargeable estate which was closely inherited on Petra's death (£250,000) and the default allowance on Petra's death (£300,000), i.e. £50,000 (IHTA 1984, s. 8E(2)). Adrian's personal representatives would, therefore, have been able to claim 50,000/300,00 x £175,000 (£29,166.66) as the brought-forward allowance in his estate, if Petra's personal representatives had claimed the brought-forward allowance from Jack's estate.

The effect of IHTA 1984, s. 8L(4) to (7) is that Adrian's personal representatives can, notwithstanding the failure of Petra's personal representatives to do so, themselves make a claim to the brought-forward allowance of £29,166.66. This will make no difference to the IHT payable in Petra's estate, but will save some IHT in Adrian's estate. The claim must be made during the "allowed period" of 2 years from the end of the month in which Adrian dies or (if it ends later) the period of 3 months beginning with the date on which his personal representatives first act as such, or such longer period as an officer of HMRC may in the particular case allow.

## 6. DOWNSIZING RELIEF

### 6.1. Relief

The general principle is that the deceased's estate must include a QRI on death which is closely inherited by direct descendants. The consequence is that the RNRB would not be available in the not-uncommon case where an elderly person has sold their residence, and moved into rented accommodation or a nursing home, or downsized to a less valuable residence which does not make full use of the RNRB.

Downsizing relief is designed to ensure that the RNRB is not lost as a result of such "downsizing". The relief may apply in two circumstances, in the case of a person (P) dying on or after 6 April 2017, i.e. where on or after 8 July 2015 P disposed of a QRI and:

(a) P's estate on death includes a less valuable QRI (IHTA 1984, s. 8FA); or

(b) P's estate does not include a QRI immediately before their death (IHTA 1984, s. 8F(B)).

In short, downsizing relief applies where:

(a) there is a lower value QRI in P's estate on death than formerly ("low-value death interest in home"); or

(b) there is no QRI in P's estate on death ("no residential interest at death").

Without such relief, individuals might be forced to retain a residence which they might otherwise wish to sell, or be discouraged from moving to a less valuable residence, out of fear of losing the whole or part of the RNRB. A "downsizing addition" is, therefore, available to P's estate so as to, in broad terms, compensate for the loss of any part of the RNRB by reason of such downsizing.

### 6.2. Disposal of QFRI

Under both heads of relief, there must have been a qualifying former residential interest ("QFRI") in relation to P, i.e. one which would have qualified for the RNRB if it had been comprised in P's estate on death (IHTA 1984, s. 8FA(4) and 8FB(4) applying s. 8H(4A) to (4F) and 8HA to determine whether there is a QFRI).

It is first necessary to identify a dwelling-house in which P has disposed of a residential property interest on or after 8 July 2015 and before P's death (IHTA 1984, s. 8H(4A)(a)). A disposal before 8 July 2015 will not, therefore, be taken into account. If the disposal is under a contract which is completed by a conveyance, the disposal occurs when the interest is conveyed (IHTA 1984, s. 8H(4G)). This means that if P dies, after exchange of contracts but before completion, downsizing relief cannot ap-

ply. Nor will the residence form part of P's estate on death for the purposes of claiming the RNRB, since beneficial ownership will have passed on exchange of contracts.

### 6.2.1. Dwelling house

A dwelling-house includes any land occupied and enjoyed with it as its garden or grounds, but excluding any trees or underwood to which an election applies under IHTA 1984, s. 125 (IHTA 1984, s. 8H(5)). The dwelling-house must have been P's residence at any time when his estate included that, or another, interest in the dwelling-house (IHTA 1984, s. 8(H)(2)). P must, therefore, have resided in the dwelling-house at some time when he owned some interest therein, but not necessarily the same interest as at the date of the disposal. P is deemed to reside in a dwelling-house which he intends to occupy as his residence in due course, at a time when he resides in living accommodation which is job-related (IHTA 1984, s. 8H(6)).

### 6.2.2. Nomination of dwelling house

There can only be one dwelling-house in which there is a QFRI, which must be nominated by P's personal representatives. Where there has only been one dwelling-house, disposed of by P between 8 July 2015 and P's death, and P's personal representatives nominate that dwelling-house, that dwelling-house is the nominated dwelling-house. Thus, a nomination must be made even if there was only one such dwelling-house, in respect of that dwelling-house (IHTA 1984, s. 8H(3) and 8H(4A)(b)(i)).

Where there are two or more such dwelling-houses, one and only one such dwelling-house may be nominated (IHTA 1984, s. 8H(4A)(b)(ii)).

P's personal representatives must make a claim for the downsizing addition (see **6.7** below) and will at the same time nominate the relevant dwelling house.

### 6.2.3. Relevant QFRI

Having identified the nominated dwelling-house, it is then necessary to identify the relevant QFRI in respect of that dwelling-house. In most cases P will only have made a single disposal of a single interest in the nominated dwelling-house, in which case that interest will be the QFRI. However, P may have disposed of more than one interest in the nominated dwelling-house, either by disposing of two or more interests at the same time, or at different times.

For these purposes, only disposals taking place at a "post-occupation time" can be taken into account, i.e. disposals (IHTA 1984, s. 8H(4F)):

(a) on or after 8 July 2015;

(b) after the nominated dwelling-house first became P's residence; and

(c) before P dies.

P will, therefore, have made a disposal at a post-occupation time, even if P did not reside there at the date of the disposal, provided that P had resided therein previously. P must, however, have disposed of a residential property interest, which will only be the case if P had, while in residence, some interest in the dwelling-house, even if it was a different interest (IHTA 1984, s. 8H(2)).

### 6.2.4. More than one residential property interest

If P disposed of one residential property interest in the nominated dwelling-house at a "post-occupation time", or disposed of two or more such interests at the same post-occupation time, or at post-occupation times on the same day, the interest, or interests, disposed of are a QFRI in relation to P (IHTA 1984, s. 8H(4B)) subject to the proviso that P did not dispose of other residential property interests in the nominated dwelling-house at post-occupation times.

*P had a half share in the freehold of her house, "Salcombe", and also a leasehold interest. In 2016, P disposed of both interests on the same day (whether at the same time or not, it does not matter). P was then residing, and had been residing for some time, at Salcombe. She dies in 2020. Her personal representatives nominate Salcombe as the nominated dwelling house. She did not dispose of any other interests in Salcombe after 8 July 2015.*

The QFRI will comprise P's half share in the freehold, and the leasehold interest.

However, if P disposed of residential property interests in the nominated dwelling-house at post-occupation times on two or more days, P's personal representatives must nominate one and only one of those days. In that event, the interest or interests disposed of at post-occupation times on the nominated day is, or are, a QFRI in relation to P (IHTA 1984, s. 8H(4C)).

*As in the last example, but P disposed of the leasehold interest on 30 December 2015, and her half share in the freehold on 30 June 2016.*

The personal representatives must nominate one of those dates (preferably the date of disposal of the more valuable interest).

In short, there can only be one downsizing event, albeit that same-day disposals of more than one interest can be treated as a single disposal of one QFRI.

### 6.2.5. Deemed disposal by interest in possession beneficiary

P may be treated as having made a disposal of an interest in a dwelling house, for the purposes of determining whether P has disposed of a QFRI, where P had an interest in possession in settled property, and the settled property consists of, or includes, an interest in a dwelling-house (IHTA 1984, s. 8HA(1) and (2)). P's interest in possession must be one to which P was, in broad terms, deemed to be beneficially entitled for IHT purposes as a result of the operation of IHTA 1984, s. 49(1), i.e:

(a) an interest in possession to which P became beneficially entitled before 22 March 2006, to which IHTA 1984, s. 71A (trusts for bereaved minors) does not apply (IHTA 1984, s. 8HA(7)(a));

(b) an interest in possession to which P became beneficially entitled on or after 22 March 2006, which is an immediate post-death interest (IPDI), a disabled person's interest (DPI) or a transitional serial interest (TSI) (IHTA 1984, s. 8HA(7)(b)); or

(c) an interest in possession to which P became beneficially entitled on or after 22 March 2006 falling within IHTA 1984, s. 5(1B), i.e. an interest acquired by UK domiciliary pursuant to transaction which was prevented from being a transfer of value by IHTA 1984, s. 10 (IHTA 1984, s. 8HA(8)).

There are two circumstances in which there is a deemed disposal by P of an interest in a dwelling house in which P had an interest in possession (see **6.2.6** and **6.2.7** below).

### 6.2.6. Disposal by trustees

There is a deemed disposal by P of the interest in the dwelling-house to which P is beneficially entitled as a result of IHTA 1984, s. 49(1) where:

(a) the trustees of a settlement dispose of the interest in the dwelling-house to a person other than P;

(b) P's interest in possession in the property subsists immediately before the disposal; and

(c) P's interest in possession is one specified in IHTA 1984, s. 8HA(7) throughout the period beginning with P becoming beneficially entitled to it and ending with the disposal, or falls within IHTA 1984, s. 5(1)(B) (see **6.2.5** above).

*Desmond died leaving a half share in his house, "Windward" to trustees upon IPDI trusts (upon trust for Emma for life, then to her children). Emma resided at Windward*

*after Desmond's death. After 8 July 2015 the trustees sold Windward to a purchaser on the open market, as Emma wished to move into a nursing home. Emma's IPDI remained intact from Desmond's death until the date of the disposal.*

Emma will be deemed to have disposed of a QFRI, i.e. a half share in Windward. If she owned the other half share absolutely, and sold it on the same day as the disposal by the trustees, her QFRI would extend to the whole beneficial interest (see **6.2.4** above).

### 6.2.7. Disposal of interest in possession

There is also deemed disposal of an interest in a dwelling house by P where:

a) P disposes of the interest in possession in settled property, or P's interest in possession in the settled property comes to an end in P's lifetime;

(b) the interest in the dwelling-house is, or is part of, the settled property immediately before the time when that happens; and

(c) P's interest in possession is one specified in IHTA 1984, s. 8HA(7) (see **6.2.5** above) throughout the period beginning with P becoming beneficially entitled to it and ending with the disposal, or falls within IHTA 1984, s. 5(1)(B). The disposal by P of the interest in possession, or the termination of P's interest in possession, as the case may be, will be treated as a disposal by P of the interest.

*As in the example in 6.2.6 above, but Emma surrenders after 8 July 2015 her life interest in Desmond's half share in Windward in favour of her children, or her interest is terminated on a specified date under Desmond's Will.*

Again, Emma will be deemed to have disposed of a half share in Windward.

### 6.2.8. QFRI and reservation of benefit

A gift with a reservation of benefit is not generally a disposal for these purposes. However, there is a deemed disposal on the cessation of the benefit.

*Ronald gave his residence, No. 1 Acacia Avenue, to his son, John, but continued to reserve a benefit therein by continuing to occupy.*

Ronald will not be making a disposal of a QFRI, for the purposes of downsizing relief, at the date of the gift (IHTA 1984, s. 8H(4D)(a)). The RNRB will apply in any event as John will be deemed to have inherited the residence (IHTA 1984, s. 8J(6); see 3.5 above).

*Ronald moves out of No. 1 Acacia Avenue after the gift to John.*

Ronald will be deemed to have made a PET of No. 1 on the cessation of his reservation of benefit (FA 1986, s. 102(4)). He will make a disposal of No. 1, for the

purposes of downsizing relief, on that occasion (IHTA 1984, 8H(4D)(b)).

### 6.3. No residential interest at death: conditions

There are 5 conditions (Conditions G to K) all of which must be satisfied if the estate of a person (P), with no residential interest at death, is to be entitled to the downsizing addition (IHTA 1984, s. 8FB):

**Condition G** is that P's estate immediately before death does not include a residential property interest.

P's estate may not include a residential property interest at death because: (a) P does not own an interest in a dwelling-house at death or (b) P owns such an interest, but it has never been his residence at a time when his estate included that, or any other, interest in the dwelling-house, e.g. a property which has always been a buy-to-let property.

**Condition H** is that the value transferred by the chargeable transfer on P's death (VT) is greater than nil.

There is no need for a downsizing addition if the value of the chargeable transfer on death is nil, e.g. because the whole estate is left to a surviving spouse or to charity. No IHT will be payable in any event.

**Condition I** is that there is a QFRI in relation to P.

See **6.2** above. In essence, P must have owned a residential interest, which was disposed of on or after 8 July 2015, but before P's death.

**Condition J** is that at least some of the estate is closely inherited.

At least part of the estate must, therefore, be inherited by direct descendants. Indeed, the amount of the downsizing addition is limited to the value of the property which is closely inherited.

**Condition K** is that a claim is made for the downsizing addition.

See 6.7 below.

### 6.4. No residential interest at death: example

*Mrs P (a widow whose husband had died before 6 April 2017) sold her flat in 2018/19 for £300,000 and moved into residential care, owning no residential property interest on her death in 2020/21. Her estate is* £1m*. She leaves 25% of her estate (£250,000) to her son, with the remainder to her sister. Her personal representatives make a claim for the downsizing addition. On her death Mrs P's estate is entitled to a default allowance of £350,000, i.e. a residential enhancement of £175,000, and a brought-forward allowance of £175,000 (see* **5.4** *above).*

Conditions G to J are all satisfied. Condition K will be satisfied if a claim is made for downsizing relief. However, if Mrs P left all of her estate to her sister, Condition J would not be satisfied. If she left all of her estate to charity or to a surviving spouse, Conditions H and J would not be satisfied. If she had sold her flat before 8 July 2015, Condition I would not be satisfied.

### 6.4A. Amount of RNRB

In order to calculate the amount of the RNRB in Mrs P's estate (see **6.4** above), it is first necessary to calculate the "lost relievable amount" (see **6.8** below) as a result of the disposal of the flat (a QFRI). The value of the QFRI (£300,000) must be determined as a percentage of Mrs P's "former allowance" (see **6.10** to **6.12** below). Mrs P's former allowance will be the aggregate of: (a) the residential enhancement at the time of the disposal of the flat in 2018/19 (£125,000); (b) the brought-forward allowance in 2018/19 (£125,000); and (c) the difference between the brought-forward allowance on her death in 2020/21 (£175,000) and that in 2018/19 (£125,000), i.e. £50,000. The former allowance is, therefore, £300,000. The value of the flat, when sold, was £300,000, with the result that the lost relievable amount is 100% of Mrs P's default allowance on death, i.e. £350,000.

It is then necessary to calculate the value of the "downsizing addition" which will be the lesser of the lost relievable amount and that part of the chargeable estate which is closely inherited (see **6.14** below), i.e. the lesser of £350,000 and £250,000.

As Mrs P's estate does not include a QRI, the amount of the downsizing addition (£250,000) will determine the amount of the RNRB, or RNRA (see **7.5** below). The RNRA will be £250,000.

### 6.5. Low-value death interest in home: conditions

Broadly, the deceased (P) must have disposed of a former residential property interest (QFRI) on or after 8 July 2015, and P must have died owning a QRI of lower value at death than the value of the QFRI on disposal. The value of the QRI on death must be less than P's default or adjusted allowance, so that, without downsizing relief, the RNRB would not otherwise be available in full. The QRI does not need to be closely inherited on death, but there must be some other assets which are closely inherited.

There are 6 specific conditions (Conditions A to F) all of which must be satisfied in such a case, if the estate of P is to be entitled to the downsizing addition (IHTA 1984, s. 8FA):

**Condition A** is that:

(a) P's residence nil rate amount is given by IHTA 1984, s. 8E(2) or (4) on the basis that s. 8E(6) and (7) do not apply and any entitlement to the downsizing addition is to be ignored.

This will be the case, in general terms, where the estate includes a QRI, the whole or part of the value of which is closely inherited, but where that value is less than the default or adjusted allowance, ignoring downsizing relief.

(b) Alternatively, P's estate immediately before death includes a QRI, but none of it is closely inherited, and so much of the value transferred by the chargeable transfer on P's death ("VT") or, in the case of a death after 29 October 2018, so much of the value transferred (whether chargeable or exempt) by the transfer of value under IHTA 1984, s. 4 on the person's death, as is attributable to the QRI is less than P's default allowance (in the case of an estate less than or equal to £2m) or of P's adjusted allowance (in the case of an estate greater than £2m).

In short, after 29th October 2018, Condition A is that there is a QRI in the estate on death (whether the whole, part, or none is closely inherited) the value of which is less than the RNRB.

**Condition B** is that not all of the value transferred by the chargeable transfer on P's death (VT) is attributable to P's QRI.

There must, therefore, be some chargeable estate other than the QRI. This Condition would not be satisfied if P left £400,000 in cash to P's spouse, and a QRI, worth £100,000, to P's son, S. The chargeable transfer would be limited to the value of the QRI, which already benefits from the RNRB, being closely inherited. There is, therefore, no need for downsizing relief. However, the Condition would apply if P left £30,000 in cash to S.

**Condition C** is that there is a QFRI in relation to P.

See **6.2** above as to a QFRI. In essence, P must have owned a residential interest which was disposed of on or after 8 July 2015, but before P's death.

**Condition D** is that the value of the QFRI exceeds so much of VT or, in the case of a death after 29 October 2018 so much of the value transferred by the transfer of value (whether chargeable or exempt) under IHTA 1984, s. 4 on the person's death, as is attributable to P's QRI.

This Condition reflects the notion that P must have "downsized" to a less valuable QRI by the date of death (whether chargeable or exempt after 29 October 2018).

The value of the QFRI is ascertained as at the time of the completion of the disposal of the interest, i.e. at the date of conveyance where the disposal is under a contract completed by a conveyance (IHTA 1984, s. 8FE(2), (8)).

**Condition E** is that at least some of the remainder, i.e. everything included in P's estate immediately before death other than P's QRI, is closely inherited.

If, therefore, P's estate includes a QRI and some investments, some of the investments, at least, must be inherited by a direct descendant.

**Condition F** is that a claim is made for the addition.

See 6.7 below.

### 6.6. Low-value death interest in home: example

*Mr P (a widower whose wife died before 6 April 2017) sold his flat in 2018/19 for £500,000, and moved into the home of his new wife, Mrs P2, retaining only a country cottage worth £250,000 at the date of his death. He leaves the cottage to his daughter, and the remainder of his estate of £1.25m (subject to a tax free legacy of £50,000 to his daughter) upon life interest trusts for Mrs P2. On his death he is entitled to a default allowance of £350,000, including a brought-forward allowance of £175,000.*

Condition A is satisfied as the whole of the cottage is closely inherited, and the value thereof (£250,000) is less than the RNRB of £350,000. Condition B is satisfied because part of the chargeable transfer on death (£50,000) is not attributable to the cottage. Condition C is satisfied because the flat was sold on or after 8 July 2015, and had been P's residence. Condition D is satisfied because the value of the cottage on death is less than the value of the flat at the date of its disposal. Condition E is satisfied because part of the estate, other than the cottage, is closely inherited (£50,000 to daughter). Condition F is satisfied if the personal representatives make a claim for downsizing relief.

### 6.6A. Amount of RNRB

The lost relievable amount in Mr P's estate (see **6.6** above) will need to be calculated (see **6.13** below). The value of the flat on sale (£500,000) was more than the value of Mr P's "former allowance" (assume that it is £300,000 see **6.10** below) with the result that the percentage at Step 1 in **6.13** is 100%. The value of the cottage on Mr P's death (£250,000) represents 71.43% of

Mr P's default allowance on death of £350,000. This percentage is subtracted from 100%, to give a percentage of 28.57%. The lost relievable amount is, therefore,

28.57% of Mr P's default allowance on death of £350,000, i.e. £99,995.

It is then necessary to calculate the value of the "downsizing addition" (see **6.14** below). This will be the lesser of the lost relievable amount (£99,995) and the value attributable to that part of the estate, other than the QRI, which is closely inherited (£50,000). The downsizing addition will, therefore, be £50,000.

Finally, the residence nil rate amount or RNRA will be calculated in accordance with **7.6.1** below, since the NV/100 (see **7.3** below) of £250,000 (the value of the cottage which is closely inherited) plus the downsizing addition (£50,000) is less than the default allowance of £350,000 in an estate worth less than £2m. The RNRA will be NV/100 (£250,000) plus the downsizing addition (£50,000), i.e. £300,000, or if lower, the value of the chargeable estate (£300,000). The amount of RNRB (the RNRA), is therefore, £300,000.

### 6.7. Claims for downsizing relief

The downsizing addition must be claimed (IHTA 1984, s. 8FA(7) and 8FB(6)). The claims procedure is in accordance with IHTA 1984, s. 8L(1) to (3) (see **5.8** above). In general terms, the personal representatives should make the claim within the period of 2 years from the end of the month in which the deceased died.

### 6.8. Lost relievable amount

Having determined whether the conditions for downsizing relief apply (in either of its two forms) it is necessary to determine the "lost relievable amount". The lost relievable amount is calculated in accordance with IHTA 1984, s. 8FE, and differs depending upon whether it is a low-value death interest, or a no residential interest on death, case.

Once the lost relievable amount has been determined, it is then necessary to determine the amount of the downsizing addition, which is limited to the value of the closely-inherited chargeable estate, if that is less than the lost relievable amount (see **6.14** below**).** Finally, it is necessary to calculate the residence nil rate amount taking into account the downsizing addition (see **7** below).

### 6.9. Lost relievable amount: general objective

The general objective is that the lost relievable amount should be equivalent to such part of the RNRB which would have applied, if P had not downsized to a less valuable home, or if P had not disposed of a QFRI and died with no QRI at death.

Thus, the first step is to calculate the value of P's QFRI as a percentage of his "former allowance" (see **6.10** below). The former allowance is, subject to one adjust-

ment, the aggregate of the residential enhancement and brought-forward allowance to which P's estate would have been entitled at the date of disposal of the QFRI. This percentage cannot exceed 100%. In many cases, the percentage will be more than 100% - and therefore deemed to be 100% - because the value of the QFRI on disposal will have exceeded the amount of P's "former allowance".

In a case where the value of the QFRI equalled or exceeded the value of P's former allowance, and P's estate does not include a QRI, 100% of the RNRB has, in effect, been lost. Therefore, the lost relievable amount will be 100% of P's "allowance" on death, i.e. P's default allowance (in the case of an estate less than or equal to £2m) and P's adjusted allowance (in the case of an estate greater than £2m).

The calculation is a little more complex where P has retained a lower-value QRI at death because the RNRB will not have been wholly lost by reason of the disposal of the QFRI. It is necessary to make a percentage deduction if and to the extent that part of the chargeable estate on death is attributable to a QRI which, if left to direct descendants, would itself attract the RNRB. If, therefore, P had in his chargeable estate on death a QRI worth £105,000, and his RNRB on death totalled £350,000, the deductible percentage would be 30%. This percentage must be deducted from the percentage of the former allowance, attributable to the QFRI (say 100%), with the result that the lost relievable amount on death will be 70% of P's default, or adjusted, allowance, depending upon whether the value of the estate exceeds £2m.

### 6.10. Former allowance

It is necessary – whether in a no residential interest at death, or in a low-value interest at death, case – to determine the value of P's QFRI as a percentage of P's "former allowance". The former allowance is defined by IHTA 1984, s. 8FE(3) as being the total of:

(a) the residential enhancement at the time of completion of the disposal of the QFRI (deemed to be £100,000 if completion occurred after 7 July 2015 and before 6 April 2017: s. 8FE(6));

(b) any brought-forward allowance that P would have had if P had died at that time, having regard to the circumstances of P at that time (deemed to be nil in respect of disposals between 7 July 2015 and 6 April 2017: s. 8FE(6)(b)); and

(c) if P's allowance on death includes an amount of brought-forward allowance which is greater than the amount of brought-forward allowance given by (b), the difference between those two amounts (the brought-forward allowance being reduced by £1 for every £2 above the taper threshold of £2m: s. 8FE(5)).

For the purposes of calculating the brought-forward allowance under (b) above, the provisions relating to the brought-forward allowance in IHTA 1984, s. 8G (see **5** above) apply, but:

(a) as if references to the residential enhancement at the date of P's death were references to the residential enhancement at the time of the completion of the disposal of the QFRI; and

(b) on the assumption that a claim for brought-forward allowance was made in relation to an amount available for carry-forward from a related person's death if, on P's death, a claim was in fact made in relation to the amount (IHTA 1984, s. 8FE(4)(a) and (b)).

### 6.11. Former allowance: example

*P sold his former flat (QFRI) in 2016. P's former spouse had died in 2010. P dies in 2020-21 with an estate of less than £2m, and a brought-forward allowance of £175,000, which is claimed by P's personal representatives.*

P's former allowance is the total of:

(a) P's residential enhancement at the time of completion of the disposal of the QFRI in 2016 (deemed to be £100,000 as the disposal took place before 6 April 2017);

(b) any brought-forward allowance that P would have had if P had died in 2016, assuming that such an allowance was available and claimed in respect of the disposal (deemed to be nil as the disposal took place before 6 April 2017);

(c) the difference between (b) (nil) and the brought-forward allowance on P's death in 2020-21 of £175,000, i.e. £175,000.

The former allowance is, therefore, £275,000 (£100,000 plus £175,000). If the value of the flat on sale was at least £275,000, then the lost relievable amount will be 100% of the RNRB on P's death (see **6.12** and **6.13** below).

### 6.12. Calculation of lost relievable amount: no QRI on death

In a no residential interest at death case, within IHTA 1984, s. 8FB, there are only two steps which need to be taken in order to calculate the lost relievable amount. Those steps are prescribed by IHTA 1984, s. 8FE(10).

#### Step 1

Express the value of P's QFRI as a percentage, not exceeding 100%, of P's former allowance.

The value of the QFRI is ascertained as at the time of the completion of the disposal of the interest, i.e. at the date of conveyance where the disposal is under a contract completed by a conveyance (IHTA 1984, s. 8FE(2), (8)).

*P sold a QFRI in 2016 for £250,000. P's former allowance at the date of disposal is £275,000* (see **6.11** above).

The relevant percentage is, therefore, 72.59%.

**Step 2**

Calculate that percentage of P's allowance on death. The result is P's lost relievable amount.

*P died in 2020-21 with an estate of less than £2m. P's default allowance, including a brought-forward allowance, would have been £350,000. P's estate was valued at £2m.*

P's lost relievable allowance is 72.59% of £350,000, i.e. £254,065.

### 6.13. Calculation of lost relievable amount: low-value interest at death

There are 4 steps for calculating the lost relievable amount in P's estate (IHTA 1984, s. 8FE(9)).

**Step 1**

Express the value of P's QFRI as a percentage, not exceeding 100%, of P's "former allowance".

The value of the QFRI is ascertained as at the time of the completion of the disposal of the interest, i.e. at the date of conveyance where the disposal is under a contract completed by a conveyance (IHTA 1984, s. 8FE(2), (8)). The value of the QRI is its net value after deduction of liabilities secured thereon.

*P sold a QFRI in 2016 for £450,000. P's former allowance at the date of disposal is £275,000* (see **6.11** above).

The value of the QFRI, therefore, exceeded P's former allowance, and the relevant percentage, as a result of Step 1, is 100%.

**Step 2**

Express QRI as a percentage (up to a maximum of 100%) of P's allowance on death, where QRI is so much of VT or, in the case of a death after 29 October 2019, so much of the value transferred by the transfer of value under IHTA 1984, s. 4 (whether chargeable or exempt) on P's death, as is attributable to P's QRI.

*P died in 2020-21 with an estate of £1.5m, entitled to a default allowance (residential enhancement plus brought-forward allowance) of £350,000. P owned a QRI at death, after downsizing, worth £200,000. The QRI was left to P's daughter, thereby forming part of P's chargeable estate.*

The value of the estate attributable to the QRI on death (£200,000) represents 57.14% of P's default allowance on death (£350,000).

**Step 3**

Subtract the percentage given by step 2 from the percentage given by step 1, but take the result to be 0% if it would otherwise be negative. The result is P%.

P% is, on the facts contained in this example, 100% - 57.14% = 42.86%.

**Step 4**

P's lost relievable amount is equal to P% of the person's allowance on death.

P's lost relievable amount is, therefore, 42.86% of P's default allowance on death (£350,000) = £150,010.

### 6.14. Amount of downsizing addition

The lost relievable amount is not necessarily equal to the downsizing addition. The amount of the downsizing addition is equal to the lost relievable amount if the lost relievable amount is less than so much of the value transferred by the deemed chargeable transfer on death after exemptions (VT), as is attributable to so much of the estate (excluding any QRI in a low-value interest at death case) that is closely inherited (VTC); and is equal to VTC, if VTC is equal or greater than the lost relievable amount (IHTA 1984, s. 8FA(8) and 8FB(7)); and it is also subject to a reduction in certain cases involving conditional exemption by virtue of IHTA 1984, s. 8M(2G).

The downsizing addition can, therefore, never exceed, in a low value interest in death case, the value of the chargeable estate, other than the QRI, which is closely inherited, or the value of the chargeable estate which is closely inherited in a no residential interest at death case. If none of the estate so passes, there will be no downsizing addition.

*P dies without owning a QRI, but with a lost relievable amount of 100% of P's default allowance on death (£350,000). P's estate of £600,000 is divided as to: (a) £100,000 to charity; (b) £200,000 to P's children (closely inherited); and (c) £300,000 to P's partner.*

The downsizing addition will be limited to the £200,000, which is chargeable and

closely inherited, even though the lost relievable amount is £350,000.

### 6.15. Downsizing addition and RNRB

Having calculated the downsizing addition, it is then necessary to determine its effect on P's residence nil-rate amount ("RNRA"), i.e. the amount of the RNRB. The effect depends upon whether P's estate on death includes a QRI which is closely inherited; or, on the other hand, whether P's estate does not include a QRI, or none which is closely inherited (see **7** below).

Where P's estate on death includes a QRI which is closely inherited IHTA 1984, s. 8E applies, with modifications to take into account the downsizing addition (IHTA 1984, s. 8FC). The amounts prescribed by s. 8E as the RNRA, and the amount available for carry-forward, have effect as if each reference to NV/100 were a reference to NV/100 plus the downsizing addition (IHTA 1984, s. 8FC(2)). NV/100 represents the percentage of the estate which is attributable to the QRI (IHTA 1984, s. 8E(1)) (see **7.3** below). In short, the downsizing addition operates as an addition to the RNRB.

If, however, P's estate does not include a QRI, or none which is closely inherited, the RNRA would, but for the downsizing addition, be nil (IHTA 1984, s. 8F(2)). In such a case, the RNRA will be equal to the downsizing addition (IHTA 1984, s. 8FD(3)). The downsizing addition will be all that there is to contribute to the RNRA.

If the downsizing addition is less than the default allowance or adjusted allowance (in a case of an estate exceeding £2m) an amount equal to the difference is available for carry-forward (IHTA 1984, s. 8FD(5) and (6)).

## 7. RESIDENCE NIL RATE AMOUNT

### 7.1. Maximum RNRA

The maximum RNRA is £200,000 in 2017-18 (£100,000 residential enhancement, and £100,000 brought-forward allowance) and £350,000 in 2020-21 (£175,000 residential enhancement, and £175,000 brought-forward allowance): see **1.7** above.

However, these are maximum figures. The RNRA may be less, even nil, as:

(a) the RNRA cannot exceed the value of the QRI which is closely inherited, i.e. NV/100 (see **7.3** below) plus the downsizing addition;

(b) the RNRA cannot exceed the value of the deceased's chargeable estate on death ("VT") because, if it did, the excess would be exempt in any event;

(c) if the value of the estate on death ("E") exceeds the taper threshold ("TT"), currently £2m, the RNRA cannot exceed the adjusted allowance, i.e. the default allowance, after tapering which reduces the default allowance by £1 for every £2 above TT.

### 7.2. Value of QRI

For the purposes of downsizing, and also for determining the RNRA, it is often necessary to determine the value of a QRI. In calculating that value:

(a) liabilities charged against the QRI are deducted from the value of the QRI (IHTA 1984, s. 162(4)); and

(b) the value of the chargeable transfer on death attributable to the QRI is the value reduced by any agricultural or business property relief (that being the effect of IHTA 1984, s. 8(1)(b)).

*George dies owning a farmhouse which he leaves to his son, George Jnr. The value of the farmhouse is £1m. There is a mortgage secured against the farmhouse of £200,000. The farmhouse qualifies for APR on its agricultural value, i.e. 70% of its value.*

The value of the QRI that is closely inherited is, therefore, £240,000, i.e. 30% of the net value of £800,000.

### 7.3. NV/100

A key value is NV/100. If:

(a) P's estate immediately before death includes a QRI, and

(b) N% of the interest is closely inherited, where N is a number:

(i) greater than 0, and

(ii) less than or equal to 100,

NV/100 means N% of so much (if any) of the value transferred by the transfer of value under IHTA 1984, s. 4 on the person's death as is attributable to that interest (IHTA 1984, s. 8E(1)).

*P dies in 2020/21 leaving his residence, worth £300,000, as to 50% to his children absolutely, and as to 50% upon discretionary trusts. P's estate on death is £1m.*

50% of the QRI is closely inherited. Therefore, NV/100 is equal to 50% of the value of the estate that is attributable to the QRI (£300,000) i.e. £150,000.

### 7.4. RNRA in different factual scenarios

The legislation prescribes, in a number of different factual scenarios, both:

(a) the RNRA on the death of P on or after 6 April 2017; and

(b) the amount which is available for carry-forward, following P's death, for the purposes of calculating the brought-forward allowance on the death of P's surviving spouse or civil partner.

HMRC have published a calculator so as to determine the amount of the RNRA: https://www.tax.service.gov.uk/calculate-additional-inheritance-tax-threshold.

If the estate includes a QRI, and at least some part of that QRI is closely inherited, the RNRA is determined by IHTA 1984, s. 8E (see **7.6.** below). Where, however, the estate does not include a QRI, or includes a QRI, but none of it is closely inherited, the RNRA is determined by IHTA 1984, s. 8F (see **7.5.** below).

### 7.5. Estate does not include a QRI, or none that is closely inherited.

| | |
|---|---|
| RNRA: | Nil if no downsizing addition (IHTA 1984, s. 8F(2)). Amount equal to the downsizing addition if addition applies (IHTA 1984, s. 8FD(3)). |
| Carry-forward: (no downsizing addition) | Amount equal to default allowance, or adjusted allowance (IHTA 1984, s. 8F(3)). |
| Carry-forward: (downsizing addition) | No amount, if downsizing addition at least equal to default, or adjusted allowance (IHTA 1984, s. 8FD(4)). |
| | Amount equal to difference between downsizing addition and default, or adjusted, allowance, if the downsizing addition is less than such allowance (IHTA 1984, s. 8FD(5) and (6)). |

### 7.6. Estate includes QRI, part at least of which is closely inherited

#### 7.6.1. Value of estate less than or equal to taper threshold (currently £2m) and NV/100 plus any downsizing addition is less than default allowance.

IHTA 1984, s. 8E(2), (6), (7) and s. 8FC(2).

| | |
|---|---|
| RNRA: | NV/100 plus any downsizing addition (or, if lower, the value of the chargeable estate). |
| Carry-forward: | Amount equal to difference between NV/100 plus downsizing addition (or, if lower, the value of the chargeable estate) and the default allowance. |

*Joe dies in 2020-21 leaving a QRI to his children worth £300,000, and the remainder of his estate, worth £500,000, to his wife, Rose, who survives him. Joe's estate is entitled to a default allowance of £350,000, including a brought-forward allowance of £175,000 from the death of his former wife, Ruby. There is no downsizing addition.*

The RNRA will be NV/100 (£300,000), and the amount available for carry-forward will be £50,000.

If Joe had left 50% of his QRI to Rose, the chargeable estate would only have been £150,000, and that would have been the RNRA. The amount available for carry-forward would have been £200,000.

#### 7.6.2. Value of estate less than or equal to taper threshold (currently £2m) and NV/100 plus any downsizing addition is greater than or equal to default allowance.

IHTA 1984, s. 8E(3), (6), (7) and s. 8FC(2).

| | |
|---|---|
| RNRA: | Default allowance or, if lower, the value of the chargeable estate. |
| Carry-forward: | None. |

*Joe left a QRI worth £800,000 to his children. He was married to Rose at the date of his death, but had not been previously married. His default allowance on death was £175,000. His estate on death was £1.5m.*

The RNRA is the amount of Joe's default allowance (£175,000). No amount is available for carry-forward.

### 7.6.3. Value of estate more than taper threshold (currently £2m) and NV/100 plus any downsizing addition is less than the adjusted allowance.

IHTA 1984, s. 8E(4), (6), (7) and s. 8FC(2).

| | |
|---|---|
| RNRA: | NV/100 plus any downsizing addition (or, if lower, the value of the chargeable estate) |
| Carry-forward: | Amount equal to difference between NV/100 plus any downsizing addition (or, if lower, the value of the chargeable estate) and the adjusted allowance. |

*Joe dies with an estate worth £2.1m. His default allowance, including a brought-forward allowance, is £350,000. He leaves a QRI, worth £200,000 (NV/100) and a downsizing addition of £50,000 to his children, and the remainder of his estate to his surviving spouse, Rose.*

The default allowance of £350,000 is subject to tapering. It is reduced from £350,000 by £50,000 (£2.1m - £2m x ½) to produce an adjusted allowance of £300,000 which is, however, greater than NV/100 plus the downsizing addition (£250,000 in total). The RNRA will, therefore, be £250,000. The amount available for carry-forward will be £50,000.

### 7.6.4. Value of estate more than taper threshold (currently £2m) and NV/100 plus any downsizing addition is greater than the adjusted allowance.

IHTA 1984, s. 8E(5), (6), (7) and s. 8FC(2).

| | |
|---|---|
| RNRA: | Amount equal to adjusted allowance or, if lower, the value of the chargeable estate. |
| Carry-forward: | No amount. |

*Joe died with an estate worth £2.1m. His default allowance, including a brought-forward allowance, is £350,000. He leaves a QRI, worth £700,000 to his children, and the remainder of his estate to his surviving spouse, Rose.*

The RNRA is an amount equal to the adjusted allowance, in this case £300,000, i.e. £350,000 – (£2.1m - £2m x ½)). There is no amount available for carry-forward. If the QRI were left as to £200,000 to the children, and as to £500,000 to Rose, and the rest of the estate to Rose, the RNRA would be £200,000.

## 8. WILL DRAFTING

### 8.1. When RNRB gift not appropriate

In many cases, there will be no need for a specific gift of a QRI to direct descendants absolutely, or on IPDI trusts, with a view to making full use of the RNRB. This will be the case where:

(a) the value of the testator's estate is so large (in 2020/21 above £2.7m if the brought-forward allowance applies, otherwise above £2.35m) that the RNRB would be tapered to nil;

(b) conversely, where the value of the chargeable estate, having regard to any exemptions, is so low that it is within the SNRB and TNRB;

(c) there are no direct descendants of the testator, or none whom the testator wishes to benefit; or

(d) the testator is married, in which case it will, subject to exceptions, normally be better to leave the estate to the surviving spouse absolutely or on IPDI trusts.

### 8.2. Gift attracting the RNRB

Where it is desired to make full use of the RNRB, the deceased (D) may make a gift of either:

(a) a QRI and/or any downsizing addition, limited to the RNRB (see **8.6.** below); or

(b) of the full, or part of the, value of the testator's QRI even if such value exceeds the RNRB (see **8.4.** below)

in such a way that the QRI is "closely inherited".

This will be achieved where D leaves a QRI and/or any downsizing addition, limited to the RNRB or of a greater value, to one or more direct descendants by Will:

(a) absolutely;

(b) on IPDI trusts within IHTA 1984, s. 49A;

(c) on trusts in which there is a disabled person's interest within IHTA 1984, s. 89B; or

(d) upon trust for D's children at 18 on trusts for a bereaved minor within IHTA 1984, s. 71A, or at an age between 18 and 25 on an 18-25 trust within IHTA 1984, s. 71D.

### 8.3. RNRB not available

The RNRB will not, however, be available in respect of gifts of a QRI and/or of the downsizing addition:

(a) on discretionary trusts (unless an appointment is made to a direct descendant within 2 years of death, having retrospective effect under IHTA 1984, s. 144: see **8B** below);

(b) to a spouse, sibling or collateral relative, absolutely or on trust;

(c) upon age-contingent trusts for children who have not attained the specified age on the death of the testator, unless the trust qualifies as an IPDI trust, a bereaved minor's trust, an 18-25 trust, or on a disabled person's trust; or

(d) upon age-contingent trusts for grandchildren who have not attained the specified age on the death of the testator, unless the trust qualifies as an IPDI or disabled person's trust (albeit that an appointment can be made out of a relevant property trust to the grandchild absolutely or on IPDI trusts, within 2 years of death, having retrospective effect under IHTA 1984, s. 144).

Nor will the RNRB be available in respect of a pecuniary legacy (even if there is subsequently an appropriation of a QRI to satisfy that legacy). It is not, therefore, applicable to a nil rate band legacy of a sum of money.

### 8.4. Age-contingent gifts

Age-contingent gifts of a QRI to children of the testator should, if the benefit of the RNRB is desired, be contingent upon the child attaining the age of 18 or 25, and should qualify as a trust for a bereaved minor, or as an 18-25 trust (see **3.9.2.** above).

Grandchildren, on the other hand, will not closely inherit if their entitlement to capital is contingent on attaining any age and they have failed to attain that age on the testator's death. This will be of particular relevance to substitutionary gifts for grandchildren, taking effect in the event that a child of the testator has predeceased the testator. The testator might, therefore, leave a QRI to his children in equal shares, provided that if any of his children predecease him, leaving children living at the date of death of the testator, such children, i.e. grandchildren, shall be absolutely entitled to their parent's share in equal shares.

Alternatively, the share of a grandchild could be settled on IPDI trusts, excluding Trustee Act 1925, s. 31. That share can be appointed or advanced to the grandchild absolutely on attaining the age of 18, or even at a greater age, without any IHT charge (IHTA 1984, s. 53(2)).

### 8.5. Age-contingent gifts: consequences and solutions

It is not the end of the world if the testator's QRI is left in such a way that the QRI is not closely inherited, e.g. by grandchildren.

First, some of the grandchildren may have attained the age of 21 on the death of the testator, in which case the shares of those grandchildren will be closely inherited. The value of those shares may equal or exceed the maximum RNRB, in which case the RNRB is available in full.

Second, a grandchild who has attained the age of 18 on the death of the testator will have a right to the income, by virtue of s. 31 of the Trustee Act 1925 (unless excluded). The grandchild's right to the income will be an IPDI, with the result that their share will be closely inherited.

Third, if a grandchild is still a minor on the death of the testator, or there is power to accumulate income after the age of 18, a relevant property trust will arise. The trustees could, within 2 years of the testator's death advance or appoint (if they have power to do so) the QRI to the grandchild absolutely, or on IPDI trusts. Unless excluded, the statutory power of advancement in s. 32 of the Trustee Act 1925 will enable the trustees to appoint capital to a beneficiary with a contingent interest therein. Such an advance or appointment will be retrospective to the testator's death (IHTA 1984, s. 144). However, it is a requirement of IHTA 1984, s. 144 that no interest in possession has arisen before the appointment or advance.

Fourth, it may be possible for the grandchildren to execute a Deed of Variation so that all the grandchildren are absolutely entitled to their shares, or have an IPDI therein, provided that all the grandchildren are over the age of 18, capable, and are the only persons interested in the property which is subject to the variation.

### 8.6. Gift of QRI not limited to RNRB

The testator may wish to make a gift of a QRI, or of residue including a QRI (see **8.7.** below) to direct descendant(s) even though the value of the gift exceeds that which is sufficient to make full use of the RNRB.

*Tania is unmarried or widowed, or she is married, in which case she may, of course, survive her spouse. She has adult children. She owns an interest in her home worth £700,000, and other assets of £500,000.*

Tania could make a specific gift of all, or a large part of, her beneficial interest in her home, or of any property which is principal residence at the date of her death, to her children absolutely or on IPDI trusts. Alternatively, she could simply leave her residuary estate, or a share thereof which is more than sufficient to take full advantage of

the RNRB, to her children absolutely, or on IPDI trusts. If a QRI is settled on IPDI trusts, then the remainder beneficiaries, on the death of the IPDI beneficiary, should be absolutely entitled, if the RNRB is to be available on that death (see **8A** below in relation to an IPDI trust for a surviving spouse). The downsizing addition will be available if Tania has downsized before death.

Another option is for Tania to leave the whole of her residuary estate on discretionary trusts, subject to a letter of wishes, thereby giving maximum flexibility. The trustees can make appointments within 2 years of death which will be retrospective to death for IHT purposes (see **8B** below).

### 8.7. Residuary gifts

A QRI can be closely inherited, even though it is comprised in the residuary estate, rather than being the subject of a specific gift so long as the residuary estate, or a share thereof, is closely inherited.

*Pedro leaves his residuary estate, worth £1m, including a QRI, worth £500,000, as to a 2/5 share to his son, Francesco, and to his sister, Frederica, as to a 3/5 share. He dies in 2017/18 with a RNRB of £100,000.*

IHTA 1984, s. 8E(1) provides, in effect, that the value of a QRI which is closely inherited is equal to the percentage share of the value transferred on death which is attributable to the QRI. As 2/5 of the residuary estate, including the QRI, is closely inherited by Francesco, then 2/5 of the value of the QRI will be treated as being closely inherited. The value of the QRI which is closely inherited is, therefore, £200,000.

The RNRB will be available in full (£100,000) because the value transferred on death attributable to the QRI (NV/100) is £200,000, which is greater than the default allowance of £100,000 (IHTA 1984, s. 8E(3)). The RNRB is, therefore, £100,000, not 3/5 of £100,000.

If, however, the QRI were only worth £200,000, the value of the QRI which is closely inherited would be 2/5 of £200,000, i.e. £80,000. The available RNRB would be limited to £80,000, as that value is less than the default allowance of £100,000 (IHTA 1984, s. 8E(2)).

### 8.8. RNRB gift: form

Where it is desired to take advantage of the RNRB, the testator may want to limit the gift of a QRI to a share in their residence plus any downsizing addition, limited to the value of the RNRB, to direct descendants absolutely, or on IPDI trusts. This will make maximum use of the RNRB whilst making the lowest value gift to direct

descendants which is consistent with that objective.

There are a number of possible ways of drafting such a gift. However, the general form is as follows:

(a) a gift of the whole or such share of any QRI of the testator as would entitle the estate to the maximum benefit of the RNRB; plus (in order to make use of any downsizing addition);

(b) a pecuniary legacy of such amount (if any) as is necessary to ensure that the estate obtains such maximum benefit if and to the extent that the value of the QRI is insufficient for that purpose; and

(c) with a direction to the Executors to make such claims and nominations to ensure that the estate obtains the maximum benefit of the RNRB (such as claims to the brought-forward allowance and to the downsizing addition, and where the testator had a QRI or QFRI in more than one dwelling-house, a nomination of one of those dwelling-houses pursuant to IHTA 1984, s. 8H).

The gift will, therefore, be of the testator's QRI and a pecuniary legacy sufficient to utilise the testator's RNRB, including any downsizing addition and brought-forward allowance.

The gift should be to direct descendants in such a way that it is closely inherited (see **8.2** above). This will be the case if the gifts are to direct descendants absolutely, or on IPDI trusts. However, another option is to make the gift to a 23-month discretionary trust with a view to appointing to direct descendants within the 23-month period, if so desired (see **8B** below).

### 8.9. Interaction with nil rate band discretionary trusts

It may be desirable, on the death of a predeceasing spouse, to combine:

(a) a nil rate band legacy, i.e. of the maximum amount of cash which can be given without incurring any IHT on the testator's death, to a discretionary trust for the benefit of the testator's family, including the surviving spouse; and

(b) a gift of the testator's QRI and downsizing addition (if any) limited to the RNRB (see **8.10** below as to the donee); and

(c) a gift of the residuary estate upon trust for the surviving spouse absolutely, or on IPDI trusts.

The nil rate band legacy, being to a discretionary trust, will not amount to a closely-inherited gift of a QRI or of the downsizing addition.

The combination of a nil rate band legacy and a RNRB gift will maximise the value

passing outside the estate of the surviving spouse, which may assist in keeping that estate within the taper threshold (see **8.11.5** below). A nil rate band legacy and a RNRB gift, will also be advantageous if the value of such assets, outside the estate of the surviving spouse, is greater than the value of the TNRB and the brought-forward allowance would be on the death of the surviving spouse.

### 8.10. Destination of RNRB gift

The gift of the QRI and downsizing addition (if any) could be made to:

(a) direct descendants absolutely;

(b) direct descendants on IPDI trusts; or

(c) the discretionary trust to which the nil rate legacy is payable.

A gift of a QRI to children absolutely may compromise the security of the surviving spouse in the former matrimonial home. A gift of the QRI upon IPDI trusts for children and/or grandchildren may, therefore, be preferable. The surviving spouse could be a trustee, and be given the power to appoint new trustees. The nil rate band discretionary trust and the IPDI trust will be "related settlements" for the purposes of IHTA 1984, s. 62, having been made by the same settlor on the same day. However, the value of property in a related property settlement which has never been relevant property will be excluded when calculating periodic and 10-year charges (IHTA 1984, s. 66(4) and 68(5)).

The other option is to give a share in the residence, limited to the RNRB, plus any downsizing addition, to the nil rate band discretionary trust, in addition to the nil rate band legacy, with a view to making appointments within 2 years of death, within IHTA 1984, s. 144, to direct descendants absolutely so as to take advantage of the RNRB. Alternatively, there could be an appointment to the surviving spouse absolutely or on IPDI trusts, which would be retrospectively exempt. Either way, there will be an up-front liability for the IHT payable on the first death which would have to be reclaimed following the appointment. The discretionary trust could even be continued beyond the 2-year period, even though this would mean that exit and 10-year charges would be taxed at more than the nil rate.

### 8.11. Married Couples

#### 8.11.1. Estate to surviving spouse absolutely or on IPDI trusts on first death

On the first death of a married couple, it would not generally be advisable to make a RNRB gift to direct descendants. A married testator should generally be advised to

leave their QRI to their surviving spouse, either absolutely or on IPDI trusts, rather than leaving the whole, or part of sufficient value to claim the maximum RNRB, to direct descendants.

The transfer on the first death will be spouse exempt. No use will have been made of the RNRB, with the result that the brought-forward allowance will be available on the second death. The TNRB will also be available.

*Trevor dies in 2017/18 leaving his whole estate of £1m including his share in the matrimonial home, to his wife, Tina, absolutely. The residential enhancement in 2017/18 is £100,000. Tina dies in 2020-21 leaving her whole estate, including her home, to her children. Tina's residential enhancement in 2020-21 is £175,000, and an SNRB and TNRB of £650,000. Tina's estate is worth £1.8m.*

Tina's estate will be entitled to a RNRB in 2020-21 of £350,000 (including a brought-forward allowance of £175,000). This will save more IHT than if Trevor had left a QRI on his death equal to his RNRB (£100,000) and Tina's RNRB were limited to £175,000, with no brought-forward allowance. In short, due to the increase in the RNRB between 2017/18 and 2020-21, it would be better to make use of a 100% uplift in the RNRB on the second death, rather than the lower RNRB on the first death.

### 8.11.2. Testator entitled to brought-forward allowance, but spouse not

There are, however, some cases where it would be advisable for a married couple to make use of the RNRB on the first death. One situation arises where a married testator has been previously married, and the brought-forward allowance is available from that previous marriage.

*William and Mary are married, and their home is owned by them in equal shares. William was married to Anne when she died before 6 April 2017 (the RNRB not then being available). The RNRB was, therefore, unused on Anne's death, so that William is entitled to a brought-forward allowance, equal to 100% of the residential enhancement on his death. William marries Mary in 2017/18, and leaves his whole estate to her, if she survives him (which she does).*

The brought-forward allowance from Anne will be wasted if William leaves his whole estate to Mary. Mary's estate cannot claim the benefit of the brought-forward allowance to which William's estate was entitled, since Mary was not married to Anne. It is only possible for P to claim a brought-forward allowance from a "related person" being a person who dies before P, where P is that other person's spouse or civil partner, immediately before that other person died (IHTA 1984, s. 8G(2)) (but see 5.9 above).

In order to avoid wasting the brought-forward allowance from Anne, William could

make a gift, if he predeceases Mary, of such share in his QRI and of any downsizing addition as is sufficient to utilise his brought-forward allowance (but not necessarily his residential enhancement) to his direct descendants absolutely or on IPDI trusts. His residuary estate would pass to Mary.

It may be that William is only entitled to, say, 50% of the brought-forward allowance, e.g. because Anne dies on or after 6 April 2017, and utilises 50% of the RNRB on her death. However, William can still make a gift sufficient to make use of his brought-forward allowance (whether it is 100% or less).

### 8.11.3. Testator's spouse, but not testator, entitled to brought-forward allowance

It may be that the testator's spouse, but not the testator, has been married before and is entitled to a brought-forward allowance from a previous marriage.

*William and Mary are married, and own their home in equal shares. Mary, but not William, has been married previously. She is entitled to a brought-forward allowance equal to 100% of the residential enhancement, following the death of her former husband, Charles, before 6 April 2017. She survives William.*

If William leaves his share in the matrimonial home to Mary, her estate will only be entitled to one brought-forward allowance, but not two, from both William and Charles (IHTA 1984, s. 8G(3)(d)). William would be better advised, if he predeceases Mary, to make a gift to his direct descendants absolutely or on IPDI trusts of such a share in his QRI, and any downsizing addition, as is sufficient to utilise his RNRB to the maximum. In this way, the RNRB on his death will not have been wasted.

Mary may be entitled to 50% of the brought-forward allowance from Charles, e.g. if Charles dies on or after 6 April 2017, and 50% of the RNRB is utilised on his death. William might then make a gift to direct descendants of a share in his QRI, and any downsizing addition, sufficient to ensure that his estate obtains the maximum benefit of the RNRB, but without reducing the amount by which the RNRB applicable on the death of Mary would otherwise be increased by the brought-forward allowance on his death. This should enable her to claim a 100% brought-forward allowance.

### 8.11.4. Both spouses entitled to brought-forward allowances

In such a case, both spouses should make gifts to direct descendants, absolutely or on IPDI trusts, of a share in their QRI and any downsizing addition sufficient to ensure that their estate obtains the maximum benefit of the RNRB, but without reducing the amount by which the RNRB applicable on the death of the survivor would otherwise be increased by the brought-forward allowance on the first death. Other-

wise, the full RNRB (residential enhancement and brought-forward allowance) will be wasted on the first death.

### 8.11.5. Avoidance of tapering in estate of surviving spouse

It may be advisable for the predeceasing spouse to make a RNRB gift in order to avoid bunching in the estate of the survivor leading to tapering of the RNRB on the death of the survivor, e.g. where the respective estates of each spouse are less than £2m, but their combined estates may exceed £2m.

*William died in 2018/19 with an estate of £1.7m, including a half share in the matrimonial home worth £750,000. William leaves the whole of his estate to his wife, Mary, with whom he has children. She has an estate of £800,000 in her own right. She survives William, but dies in 2020/21 with an estate then worth £2.7m. She leaves her estate, including the former matrimonial home, to the children.*

Although Mary's estate would be entitled to a residential enhancement and brought-forward allowance, the RNRB would be reduced to nil due to tapering (see **4** above). William could, instead, have made use of his full nil rate band on death (£325,000 plus RNRB of £175,000 = £500,000) by including a nil rate band legacy and a RNRB gift in his Will. His estate will be entitled to the RNRB (being less than £2m). Mary's estate will not include the assets, then worth £500,000, which passed into the nil rate band trust on William's death (which, if worth £700,000 on her death, should mean that her estate does not exceed £2m).

Mary should make a Will in similar terms, in the event that William survives her, keeping £500,000 out of William's estate on her death, so that his estate on death does not exceed £2m.

### 8.11.6. Gift to step-child of one party to marriage

*Mark and Amanda are married. Mark was previously married to Peggy, who already had a child, Ben, by a previous marriage. Mark and Amanda have no children.*

Mark might be advised to make a RNRB gift to Ben. A person who is at any time a step-child of another person is to be treated, at that and all subsequent times, as if the person was that other person's child (IHTA 1984, s. 8K(3)). Ben is, therefore, treated as being Mark's child, but not Amanda's. If Mark left his QRI to Amanda, who survives him, for life, and subject thereto, to Ben absolutely, the RNRB would not apply on Amanda's death. However, if Mark left a QRI, limited to the RNRB, to Ben on his death, the QRI would be closely inherited.

### 8.11.7. Gift to direct descendants of downsizing addition

If the matrimonial home has been sold during the joint lifetime of a married couple, a gift of the downsizing addition to the direct descendants, on the first death, might be advisable.

*Paul and Chrissie are a married couple with children. Paul was the sole owner of the matrimonial home worth £500,000. He sold the home on or after 8 July 2015 and moved into rented accommodation with Chrissie. Paul dies first in 2017/18, with an estate worth less than £2m, leaving his estate to Chrissie absolutely. Chrissie dies in 2020/21.*

On Paul's death, the downsizing addition would be nil: none of his QRI would be closely inherited, as his estate passes to Chrissie (IHTA 1984, s. 8F(2)). An amount equal to Paul's default allowance (£100,000) would be available for carry-forward for the benefit of Chrissie's estate (IHTA 1984, s. 8F(3)). However, the RNRA on Chrissie's death will be nil: she does not own a QRI, and is not herself entitled to a downsizing addition because she had no interest in the former matrimonial home. She is not entitled to claim a downsizing addition in respect of Paul's former interest in the matrimonial home. The benefit of Paul's downsizing addition will, therefore, be lost.

Paul might, therefore, be advised to leave an amount equal to the downsizing addition to his children absolutely, or on IPDI trusts, if he is survived by Chrissie and the downsizing addition is available on his death.

### 8.11.8. 2-year discretionary trust on first death

This may be an attractive option (see **8B** below).

### 8.11.9. Surviving spouse

A surviving spouse with children or grandchildren might normally be expected to leave their estate, or the majority of it, including any QRI, to their children or grandchildren absolutely, or on IPDI trusts.

However, it may be that the primary, intended, beneficiary is not a direct descendant.

*Frank is a widower. He has a grown-up grandchild, Tim. He has also a close friendship with Tricia, whom he would like to be the main beneficiary of his estate.*

In order to make full use of the RNRB, Frank could make a gift of his QRI and any downsizing addition, limited to the RNRB, to Tim absolutely or on IPDI trusts, and the remainder of his estate to Tricia (perhaps for life, remainder to Tim absolutely).

Alternatively, he could settle the QRI and any downsizing addition on IPDI trusts for Tim, and his trustees could (pursuant to a letter of wishes) terminate Tim's IPDI, in

whole or in part, in favour of Tricia absolutely shortly after his death, giving rise to a deemed PET by Tim. Indeed, Frank's Will could provide that Tim's IPDI should terminate, say 6 months after his death. The RNRB would apply on Frank's death, since a direct descendant (Tim) would inherit by virtue of his IPDI, even if it is subsequently terminated (see **3.9.3.** above).

Another option is a 2-year discretionary trust (see **8B** below).

## 8A. LIFE INTEREST TRUSTS FOR THE SURVIVING SPOUSE

### 8A.1. IPDI trust of residue for surviving spouse

It is common practice for a testator to settle his or her residuary estate on IPDI trusts for the surviving spouse, rather than making an absolute gift, particularly where the testator has children by a previous marriage or relationship. The testator has a measure of control over the ultimate destination of the trust assets.

The surviving spouse will be entitled to an IPDI. No IHT will be payable on the first death (as the spouse exemption will apply). On the surviving spouse's death the TNRB can be claimed.

The use of an IPDI trust of residue, including a QRI, for the surviving spouse is entirely consistent with optimum use of the RNRB. The RNRB will not have been used on the first death. The brought-forward allowance should, therefore, be available in full on the second death, provided that the value of the surviving spouse's estate (including property in which the survivor has an IPDI) is below the taper threshold. If necessary, in order to ensure that the value of the survivor's estate is below the taper threshold, the Will trustees could partially terminate the survivor's IPDI in residue in favour of the children absolutely. The termination would give rise to a PET. The value of a failed PET would not be taken into account, in determining the value of the survivor's estate, for the purposes of tapering.

### 8A.2. Absolute interests in remainder

On the death of a life tenant (D), a QRI will only be inherited if the beneficiary entitled in remainder (B) becomes "beneficially entitled" to it (see **3.9.4** above). In general terms, this means that a direct descendant (including a step-child) of D must become absolutely entitled on D's death.

*James makes a Will settling his share in the matrimonial home upon trust for his wife, Joan, for life, remainder to their children.*

The children must be absolutely entitled on Joan's death if the RNRB is to be available in respect of the settled share. The children can be children of James and/or of Joan.

### 8A.3. Where no need for absolute remainder interests

There may, however, be no need to secure that the children are absolutely entitled in remainder if the surviving spouse has a share in the matrimonial home (or entitlement to the downsizing addition in respect of a share formerly owned by her) of a value which equals or exceeds the RNRB.

*James and Joan own their matrimonial home in equal shares. Joan survives James. In that event, she has left her share, worth £500,000, upon IPDI trusts for her children. James had settled his share, also worth £500,000, upon trust for Joan for life, and subject thereto upon IPDI trusts for the children.*

James' share will not be closely inherited on Joan's death, since the children will not be absolutely entitled to that share. However, Joan's estate will be entitled to claim the full RNRB in respect of her half share worth £500,000, so that it will not matter whether the children become absolutely entitled to James' share on Joan's death.

### 8A.4. Absolute entitlement: points to watch

In order to ensure that direct descendants are absolutely entitled on the death of the life tenant, it is important that:

(a) on the death of the life tenant, the gift over to the children should be an absolute gift free of contingencies; and

(b) any overriding powers of appointment conferred on the trustees should not be exercisable after the death of the surviving spouse.

### 8A.5. Avoidance of age-contingencies

The interest of a direct descendant in remainder will not be absolute if it is subject to an age contingency, e.g. survival to the age of 25, and the direct descendant has not attained that age on the death of the surviving spouse/life tenant.

In most cases, it will be necessary to ensure that direct descendants are absolutely entitled on the death of the surviving spouse/life tenant. This is most likely to be a problem in the case of substitutionary gifts over to grandchildren on the death of their parent before the life tenant (see **8.4** above).

### 8A.6. Survivorship

The benefit of the RNRB may be lost if the interest of the direct descendant(s) in remainder is contingent upon surviving the testator, but not the surviving spouse/life tenant.

*Robert settles a QRI on trust for his wife, Claire, for life, and on her death for his son, James absolutely, if he survives Robert. James survives Robert but not Claire. James has children.*

On Claire's death, Robert's QRI would pass under his Will or intestacy, possibly to someone whom Robert and Claire would not wish to benefit. HMRC take the view that the RNRB will only apply in these circumstances if, on Claire's death, a direct

descendant of Claire becomes beneficially entitled to the QRI under James' Will or intestacy (IHTM, para. 46034). That will be the case if James leaves his estate to his widow, but not, say, to his unmarried partner.

Robert could stipulate that, in the event that James predeceases Claire, James' children should become absolutely entitled to James' share, without having to satisfy any age contingency. The RNRB would then be available on Claire's death. Claire could, however, be given a power to appoint, while she is a life tenant, that the remainder interests be subject to age restrictions, if that is desired, notwithstanding any potential loss of the RNRB.

### 8A.7. Overriding powers of appointment exercisable after second death

It is not uncommon to provide for a full discretionary trust of capital and income to arise on the death of the surviving spouse/life tenant, and/or that, notwithstanding any apparent gift over to the children absolutely after the death of the surviving spouse/life tenant, the trustees should during the Trust Period (80 or 125 years from death) have overriding powers of appointment. If so, the RNRB will not be available on the death of the surviving spouse in respect of the settled QRI.

It is, therefore, important (at least for the purposes of the RNRB) to provide that direct descendants are absolutely entitled on the death of the surviving spouse/life tenant, and that any overriding powers should not be exercisable after the death of the surviving spouse/life tenant, if this affects any entitlement to the RNRB on the second death.

### 8A.8. Maximum flexibility while preserving the RNRB on death of surviving spouse

One option is for the testator to provide that the whole residuary estate (including the testator's QRI) be settled upon trust to pay the income to the surviving spouse for life and that:

(a) on the death of the surviving spouse/life tenant, there should be a gift of any QRI and any downsizing addition, sufficient to ensure that the maximum RNRB is available, to direct descendants absolutely, with no age contingencies, and subject to any overriding powers of appointment being restricted so as not to be exercisable after the death of the surviving spouse; and

(b) subject to the proviso that such overriding powers can be exercised during such longer period, not exceeding 125 years commencing on the date of the testator's death, if the trustees, by deed executed before the surviving spouse's death, specify such longer period (even if this means that the RNRB is not available on the death of the surviving spouse); and

(c) subject to the above, the residuary estate should be held upon trust for direct descendants subject to age contingencies and/or subject to the exercise of overriding powers and/or subject to wide discretionary trusts, as desired.

This will preserve flexibility with regard to the residuary estate, other than that part which is necessary to claim the RNRB, but at the same time will preserve any entitlement to the RNRB on the death of the surviving spouse. It is not necessary to provide that the whole residuary estate be settled on trusts which are RNRB-compliant.

### 8A.9. Position after first death

One spouse, but not both, may already have died, and a life interest trust already constituted, which is non-RNRB compliant because (a) the remainder interests of direct descendants are age-contingent and/or (b) the trustees retain overriding powers of appointment exercisable after the death of the surviving spouse/life tenant. It may not too late to rectify the situation between the two deaths.

#### 8A.9.1 Appointment to surviving spouse absolutely

The trustees could appoint or advance the settled QRI, or a sufficient share therein to ensure the RNRB is available to the maximum extent, to the surviving spouse absolutely. Of course, they must have power to do so. There will be no IHT charge (IHTA 1984, s. 53(2)). Principal private residence relief may well apply.

The surviving spouse can then deal with the QRI under her Will. She could settle the QRI on flexible IPDI trusts for her children or grandchildren, or subject to age-contingencies up to a maximum age of 25 pursuant to a BMT or 18-25 trust. The brought-forward allowance should still be available on her death, if no part of the RNRB was used on her former spouse's death. The TNRB should also be available, if no part of the standard NRB was used on the first death.

#### 8A.9.2. Release of power of appointment

*Teddy has died having settled his residuary estate, including his QRI, on trust for his widow, Helena, for life, remainder to two children, Fred and Frances, in equal shares, but subject to the exercise by the Trustees of an overriding power appointment during the Trust Period of 125 years from Teddy's death.*

The trustees could release their power of appointment to the extent that it is exercisable after Helena's death, in respect of the QRI. Teddy's Will must authorise the trustees to release the power, but such a power of release is commonly conferred on

trustees (see para. 4.7 of the STEP Standard Provisions (2nd Ed)).

### 8A.9.3. Appointment on new remainder trusts

*On Helena's death (see **8A.9.2** above) the residuary estate, including any QRI or downsizing addition, is held upon trust to accumulate income during the Trust Period and, subject thereto, to pay or apply the income to or for the benefit of any Beneffiiaries pursuant to the trustees' discretion. The trustees have an overriding power to appoint the capital and income of the trust fund for the benefit of discretionary beneficiaries at their discretion which can be exercised in Helena's lifetime.*

The Trustees could exercise their power of appointment in Helena's lifetime by revoking the existing remainder trusts in respect of the QRI and/or downsizing additions, and appointing that, subject to Helena's life interest, those assets should be held upon trust for Helena's children absolutely, and not subject to any overriding powers, if they survive Helena (with gifts over to their surviving children absolutely if they do not survive Helena).

### 8A.9.4. Tax consequences of release or appointment

An appointment (see **8A.9.3** above) and/or partial release (see **8A.9.2** above) should not have any adverse tax consequences.

Helena's IPDI will not be terminated, so that there is no IHT charge in that respect. None of the beneficiaries will have made dispositions as a consequence of the trustees' release or exercise of their powers of appointment. To the extent that their remainder interests are reversionary interests, they are in any event excluded property (IHTA 1984, s. 48(1)) and can generally be left out of account for IHT purposes.

No beneficiary will become absolutely entitled for CGT purposes giving rise to a deemed disposal by the trustees (TCGA 1992, s. 71). Nor should there be a resettlement whereby the trustees become absolutely entitled against themselves if the trustees remain the same, the administrative provisions are unchanged, Helena's IPDI is preserve, and the ultimate default trust is unchanged. None of the beneficiaries will be disposing of any asset for CGT purposes. Even if they did, no chargeable gain arises on the disposal of an interest under a settlement (TCGA 1992, s. 76).

## 8A.10. Position after second death

It will be too late to do anything after the death of the surviving spouse/life tenant if a QRI is then held upon trust for a child who has not satisfied an age-contingency, or if the trustees retain an overriding power of appointment, or if there is then a full discretionary trust. Even though a relevant property trust may arise, it will not be

possible to rely on IHTA 1984, s. 144 to make a retrospective appointment to the child absolutely. No doubt, more than 2 years will have expired since the death of the testator. In any event, s. 144 does not apply in a case where an interest in possession has subsisted in the settled property.

## 8B. 2-YEAR DISCRETIONARY TRUSTS

### 8B.1. Advantages of 2-year discretionary trust

A gift of a QRI and/or of the downsizing addition to a discretionary trust will not qualify for the RNRB, since it will not be closely inherited. However, in circumstances where a RNRB gift might be advisable, advantage could be taken of IHTA 1984, s. 144 so as to obtain the benefit of the RNRB if, within 2 years of death, it is appropriate for the whole or part of the QRI and/or downsizing addition to be appointed to direct descendants absolutely, or on trusts which attract the RNRB.

The use of a discretionary trust be particularly appropriate in the case of a married couple following the first death. The predeceasing spouse could make a gift to the discretionary trust of such a share in his or her QRI, and any downsizing addition, sufficient to claim the maximum RNRB on their death. Alternatively, the whole estate could pass into such a discretionary trust. The beneficiaries would include the surviving spouse and direct descendants.

The Will could provide that any appointment must be made within a period ending on the day before the second anniversary of the testator's death. The trustees would then have the option, within 2 years of the death of the testator, of appointing the whole or part of the trust assets:

(a) to children absolutely or on IPDI trusts, thereby taking advantage of the RNRB;

(b) to the surviving spouse absolutely or on IPDI trusts, taking advantage of the spouse exemption; or

(c) upon long-term discretionary trusts out of which appointments can be made after the expiry of the 2-year period, e.g. to the surviving spouse for life.

An appointment to the surviving spouse might be appropriate if, say, the testator's estate is above the taper threshold, or because the trustees determine that the IHT benefits of the RNRB are less important than the survivor having full control and ownership of the house. The testator could give guidance to the trustees in a letter of wishes.

The Will would contain a default provision if and to the extent that an appointment is not made within the discretionary period, such as:

(a) a trust for the children in equal shares absolutely; or

(b) a trust for the surviving spouse absolutely, if she is then living, and in default to the children in equal shares absolutely.

### 8B.2. Risk of IPDI for surviving spouse

If the RNRB gift to a discretionary trust is of the testator's residence or of a share therein (as opposed to a cash legacy of the downsizing addition) there is a risk that the surviving spouse will be deemed to have an IPDI therein, by virtue of her exclusive occupation of the residence without paying an occupation rent to the trustees. Her occupation may be deemed to be pursuant to the trustees' express, or implied, grant of permission (see Statement of Practice 10/79).

An interest in possession which arises within 2 years of death will be backdated to death by reason of IHTA 1984, s. 144 and would, therefore, qualify as an IPDI subject to IHT at full death rates in the survivor's estate. This may not be of great concern where the TNRB and the brought-forward allowance can be claimed on the survivor's death. However, it would be unfortunate where the aim is to avoid wasting the brought-forward allowance and/or TNRB (see **8.11.5** above). It would also not be possible to make an appointment to direct descendants within 2 years of death, thereby making use of the RNRB, since it is a requirement of IHTA 1984, s. 144 that an IPDI has not arisen before the appointment.

### 8B.3. Arguments against an IPDI

The risk of an IPDI is not so great where the surviving spouse owned a share in the residence in her own right before the first death. The surviving spouse will, no doubt, have a right of occupation under TLATA 1996, s. 12 by virtue of her own share. The same reasoning should apply if the predeceasing spouse owned the whole beneficial interest, but devised a share equal to the RNRB to the discretionary trust, and the remaining share to the surviving spouse absolutely, or on IPDI trusts. The surviving spouse occupies by virtue of her entitlement to, or in, the remaining share.

In any event, an interest in possession cannot arise unless the trustees consciously determine, expressly or tacitly, to confer a right of occupation (Judge v HMRC [2005] STC (SCD) 874). Indeed, HMRC have confirmed, at least in a case where a discretionary trust is funded by a share in property, that an IPDI should not arise if the surviving spouse merely continues in occupation on the same terms as before the testator's death without the trustees doing anything positive to affect the survivor's occupation.

It is, therefore, strongly arguable that the surviving spouse would not acquire an interest in possession in the trust's interest, pending a decision by the trustees whether to appoint to the surviving spouse, or for the benefit of the children. Indeed, that argument would be even stronger if the default trust is in favour of the children.

The risk of an IPDI is, however, more acute where the testator owned the whole

beneficial interest in the residence, and the whole interest is settled on discretionary trusts. If the surviving spouse continues to reside, it may be an irresistible inference that she does so pursuant to the trustees' permission.

Furthermore, even where the surviving spouse owns a share in her own right, an IPDI might be inferred if the residence is sold, and the trustees reinvest the trust's share of the sale proceeds within 2 years of death in the purchase of another property, occupied by the surviving spouse. The trustees would then have taken positive steps within the 2-year period to confer a right of occupation on the surviving spouse, with regard to the trustees' share, thereby conferring an IPDI therein.

It may be considered, however, that the flexibility of appointing to the surviving spouse, or to children so as to take advantage of the RNRB, outweighs the relatively remote risk of conferring an IPDI on the surviving spouse.

### 8B.4. CGT

An appointment out of the discretionary trust within 2 years of death to the children, or to the surviving spouse, absolutely, may give rise to a deemed disposal at market value by the trustees for CGT purposes, on a beneficiary becoming absolutely entitled (TCGA 1992, s. 71). Holdover relief will not be available under TCGA 1992, s. 260(2)(a). However, this will not matter if the appointment is made before the administration is complete. In that event, the appointee will take as a "legatee". The appointee will be deemed to acquire the appointed property at probate value, so that there is no chargeable gain (TCGA 1992, s. 62(4); CGT Manual, para. 31430).

If the appointment is made within the 2-year period, to the children absolutely or upon IPDI trusts, so as to take advantage of the RNRB, the question arises whether principal private residence relief would be available in respect of the children's share on the subsequent sale of the property, assuming that the property is not the children's only or main residence. Relief should apply if there is an appointment of part of the testator's QRI upon IPDI trusts for the children, and of the remainder of the QRI upon IPDI trusts for the surviving spouse, who occupies the property as her only or main residence. Under TCGA 1992, s. 225 relief is available so long as a beneficiary (but not necessarily all of the beneficiaries) of a trust of an interest in a dwelling-house reside in the dwelling-house. The testator's share of the dwelling-house will be comprised in one trust, following an appointment for the benefit of the children and the spouse. Indeed, the whole of the testator's share should be regarded as settled in one trust even if the trustees appoint part to the children absolutely, so long as the remaining part is settled on IPDI trusts for the surviving spouse (see Crowe v Appleby (1975) 51 TC 457).

## 9. LIFETIME PLANNING

### 9.1. Gifts to reduce estate below £2m

Tapering will begin to reduce the RNRB in an estate worth more than £2m (see **4** above). Lifetime, and even deathbed, gifts could, therefore, be made to reduce the estate to or below £2m.

*Constance is a widow who in 2020/21 is diagnosed with cancer and has a few months to live. She has an estate of £2.7m, and would on her death be entitled to a RNRB of £350,000, including a brought-forward allowance. She has adult children.*

Constance could make gifts of £700,000 to her children absolutely. This would not reduce the aggregate of her IHT estate, since the £700,000 gift will form part of her cumulative total on death, being a failed PET. However, her estate would be entitled to a RNRB of £350,000 which would not otherwise be the case if she made no lifetime gifts. Note that a *donatio mortis causa* involving delivery of the subject-matter of a gift, in contemplation of death, is only perfected on the donor's death. It does not, therefore, reduce the value of the donor's estate immediately before death for the purposes of IHT and will, therefore, be ineffective for these purposes.

Constance should, if possible, make gifts which do not give rise to a significant CGT liability. A gift of chargeable assets to her children will be at deemed market value (TCGA 1992, s. 17). The tax-free uplift on death will be lost by making a lifetime gift. Gifts of cash would be preferable, so long as chargeable assets do not have to be sold at a significant gain in order to realise the cash.

### 9.2. Lifetime gifts and married couples

Lifetime gifts should be considered in the case of married couples.

*Jeffrey has an estate worth £2.2m, including a house worth £1m. He has recently married Jean, who is much younger than him. She has no interest in Jeffrey's house, and no assets of her own. Jeffrey has children, as does Jean. Advice is sought in 2017/18 when Jeffrey's residential enhancement is £100,000.*

If Jeffrey died in 2017/18 leaving the whole of his estate to Jean absolutely or on IPDI trusts, the brought-forward allowance could not be claimed on Jean's death, as the brought-forward allowance on Jean's death would be tapered to nil (see 5.6 above). If Jeffrey made a gift in his Will to his children of a share in his house, equal to the RNRB, the RNRB would also be nil if Jeffrey died in 2017/18, due to tapering in the case of an estate exceeding £2m (see **4** above).

Jeffrey should consider making lifetime gifts sufficient to reduce his estate below

£2m. He could:

(a) make lifetime gifts to his children absolutely (which would be PETs, but hold-over relief would not be available under TCGA 1992, s. 260(2)(a)));

(b) settle a sum, not exceeding his nil rate band, on discretionary trusts for his children and step-children and their children (in respect of which any gain could be held over so long as dependent children are excluded);

(c) make a lifetime gift to Jean absolutely; or

(d) settle a sum, not exceeding his nil rate band, on trust for Jean for life, remainder to his children.

A gift by one spouse to the other absolutely is exempt for IHT purposes. However, it would be at a no gain/no loss for CGT purposes. Care would need to be taken not to gift assets which are pregnant with gain, as the tax-free uplift on Jeffrey's death will be lost. Care should also be taken to ensure that Jean's estate is within the taper threshold on her death.

### 9.3. Gift of QRI

Jeffrey (see **9.2** above) could assign a share in his house, rather than other assets, to Jean (if he is prepared for her to have a share in her own right in the new matrimonial home). If, say, the share given to Jean were worth £350,000, this would be sufficient to reduce Jeffrey's estate below £2m. Jean would also be entitled to the downsizing addition, if the home were sold after the gift to her, so long as her estate is worth less than the taper threshold on her death. She would have no such entitlement if the house were sold at a time when she had no interest therein.

### 9.4. Severance of joint tenancy

Commonly the matrimonial home is held by the spouses as equitable joint tenants. The whole beneficial interest will pass to the survivor absolutely. This may mean that the survivor's estate exceeds £2m, and that the RNRB is subject to tapering. Unless the joint tenancy is severed (so that both spouses have 50% shares) it may not be possible to make a RNRB gift on the first death so as to keep the survivor's estate within the taper threshold (see **8.11.5** above).

### 9.5. Farmhouses

A farmhouse or former farmhouse may not qualify for APR because it is no longer occupied for the purposes of agriculture, or is not of a character appropriate to the agricultural land. Even if it qualifies for APR, it will only be entitled to relief on its agricultural value, which may be 70% of its open market value.

The RNRB may, therefore, reduce IHT exposure in respect of the non-agricultural value so long as the farmhouse is closely inherited by direct descendants. It may, therefore, be desirable to review the Will to ensure that the farmhouse is closely inherited.

However, in many cases, the value of the farmer's whole estate, including any agricultural property attracting APR (see **4.2** above) will exceed £2m, so that tapering applies to reduce or extinguish the RNRB. Therefore, consideration should be given to the farmer making lifetime gifts (perhaps of farmland attracting APR) to reduce the value of the farmer's estate before death. If a lifetime gift were made to a non-settlor interested, relevant property, settlement, an election could be made to hold over the gain. A lifetime gift of farmland to the next generation would be attractive, if that farmland is not needed to support a claim to APR on the farmhouse.

### 9.6. Assuming a reservation of benefit

It may even be advantageous to reserve a benefit after a gift has been made.

*In 2014 Sam gives his house to his daughter, Pixie, and did not reserve a benefit therein. He moved into rented accommodation. He is subsequently diagnosed with a fatal illness, and is unlikely to survive for 7 years from the date of his gift. The value of his estate, including his house which will form part of his cumulative total on death by reason of the failed PET, will exceed his SNRB and any TNRB, but will not exceed £2m.*

The RNRB will not be available on Sam's death, as the house will not be comprised in Sam's estate, and so will not be closely inherited. Downsizing relief will not apply as Sam disposed of his house before 8 July 2015.

If, however, Sam resumed his former occupation of the house, thereby giving rise to a reservation of benefit, the house would be closely inherited (see 3.5 above). The RNRB would then be available. Sam's estate will not disadvantaged by reason of the reservation of benefit, since the value of the house will in any event be aggregated with his estate on death by reason of the failed PET. The point is that the estate will have the benefit of the RNRB.

There would, however, be no point in assuming a reservation of benefit, if the effect of doing so were to increase the value of the taxable estate (including GWROB property) so that tapering reduces the RNRB to nil (see 4 above). Nor would there be any point if Sam retains another residence which is of sufficient value to make full use of the RNRB.

### 9.7. Downsizing and gift of surplus sale proceeds

A parent might well be advised to sell their home, and to downsize to a less valuable property, or even to move into rented accommodation, whilst making a gift of the whole or part of the surplus sale proceeds to their children.

*Alexandra, a widow, sells her home in 2017/18 for £1m, and moves into a nursing home. She makes a gift of £500,000 to her two children. She survives for 7 years, and dies leaving the whole of her estate to her children absolutely. On her death her RNRB is £350,000.*

The gift of £500,000 will be exempt if Alexandra survives for 7 years. Downsizing relief will apply in full on Alexandra's death, as her estate will be closely inherited, provided that it is worth at least £350,000. Of course, there is a danger that, having regard to care home fees, her estate will be worth less than £350,000 by the date of her death, in which case downsizing relief may not be available in full.

### 9.8. Acquisition of QRI

There may be no present entitlement to the RNRB, due to the lack of a QRI, in which case it may be worth acquiring one.

*Colin sold his flat before 8 July 2015, and is not, therefore, entitled to the downsizing addition. He is living in rented accommodation, or in a flat worth less than the RNRB, including a brought-forward allowance from the death of his late wife. His estate is worth less than £2m, and he has children and grandchildren.*

Colin could buy a property worth at least £350,000, and move into the property at least for a period. He does not need to reside there at the date of his death, so long as he then owns it, and has resided there when he owned an interest therein. Alternatively, he could sell the property before his death, and downsize to a lesser value property, or to none at all.

Colin should leave the property (by way of a specific or residuary gift) or other assets (if he has downsized) to his children absolutely or on IPDI trusts. His estate should then be entitled to the full RNRB.

### 9.9. Move into rented property

An individual may own an investment property, in which they have never resided, and also have no other QRI. Consideration should be given to taking up residence at some point during the period of ownership.

*Francois, who is non-domiciled in the UK, has purchased a flat in London worth £1.5m, as an investment. He has no other residence, or assets, in the UK.*

Francois might consider residing in the flat for a period before renting it, or during rental voids, so that the residence requirement is satisfied. If, say, Francois becomes ill, and wishes to receive medical treatment in London, he could move into the flat, if he is never resided there before. If he retains the flat until his death, or sells it and downsizes, the RNRB should be available, so long as the flat is closely inherited.

### 9.10. Mortgages

One way of increasing the value of a QRI may be to discharge a mortgage.

*Anita owns a property worth £500,000, subject to a mortgage of £250,000, so that the net value of her QRI is £250,000. She has other assets of £1m. If she died in 2020/21 her estate would be entitled to a RNRB of £350,000. She has children.*

Anita should, if possible, pay £100,000 to reduce the mortgage to £150,000, thereby increasing the equity to £350,000.

*Anita owns an unmortgaged property worth £200,000, in addition to her main property (net equity of £250,000).*

Anita could switch £100,000 of the mortgage to her unmortgaged property, so that the net value of her main property is increased to £350,000.

Generally, indebtedness should, if possible, not be secured against the residence or most valuable residence, rather than against other assets, if the effect is to reduce the equity below the RNRB.

Charles Holbech
Radcliffe Chambers

## About Charles Holbech | Call 1988

### Profile: Overview

Charles specialises in private client work, both contentious and non-contentious, and increasingly involving technical advice on tax, trusts and estates. Whether advising in conference, on paper, or in court, Charles applies a detailed, but clear, analysis to complex issues.

*"A real expert on tax and he always knows how to work through even the most complex of problems. His advice is always very helpful and is spot-on. His technical skills are outstanding and he has a very strong grasp of some of the most complex legal concepts."*

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### Experience and Expertise

Charles is recognised by Chambers UK Bar and Legal 500 UK Bar as a leading junior for Chancery and private client work. He is also ranked in Chambers HNW, in which a client reports: "He's good for the particularly contentious matters and is very quick thinking. He is a committed practitioner and always goes the extra mile for his clients." Charles is regularly instructed in reported cases and writes extensively on estate planning, Inheritance Tax and trusts. He has also edited Halsbury's Laws of England on Inheritance Tax.

### Cases and Work of Note

- Newman v Clarke [2016] EWHC 2959 (Ch); [2017] 4 WLR 26: Charles Holbech acted for D1, and succeeded in obtaining summary judgment on the basis that D1 was unilaterally exercising a statutory right, vested in him on the grant of the tenancy, prior to his appointment as a trustee. He did not forfeit those rights by agreeing to act as a trustee.
- Breslin v Bromley [2015] EWHC 3760 (Ch): A Will was unsuccessfully challenged on the grounds of want of due execution. One of the challengers relied on CPR 57.7(5) that she would only cross-examine the attesting witnesses without making any positive case. The other challenger advanced a positive case that the will was invalid. The will was upheld. The judgment addresses the costs consequences for the parties.
- All England Reporter [2012] EWHC 3214 (Ch): Evidence - Conviction - Admission as evidence in civil proceedings - First defendant being convicted

of offence in 1995 - Claimant seeking to adduce evidence of spent conviction in probate proceedings - Whether first defendant committing offence of dishonesty - Whether evidence of conviction should be admitted. Evidence Conviction. In an underlying probate action, a beneficiary under a will sought to adduce evidence of her brother's spent conviction to establish his dishonesty. The Chancery Division, in refusing to admit the evidence held that the mere fact of the conviction did not support the proposition that her brother had been dishonest.

- C v D [2012] 3214 Ch: A beneficiary under a will, who sought to establish that a fellow beneficiary had procured the will by undue influence, failed in her attempt to adduce a spent conviction as evidence of the other beneficiary's propensity for dishonesty. Even though national newspapers had reported the conviction as that of a "crooked director" who had tried to "trick the state" of money, dishonesty was not an ingredient of the actual offence convicted of and, therefore, none could be inferred.
- Erskine Trust [2012] All ER (D) 03 (Apr): The High Court held that two adopted children were not, as a matter of construction of a provision in 1984 settlement, entitled to benefit as "statutory next of kin" of an individual. However, such a construction was unfair and discriminatory on Human Rights, which became part of English law pursuant to the Human Rights Act 1998. A non-discriminatory construction could be applied retrospectively without.
- Thompson v Humphrey [2009] EWHC 3576 (Ch): A leading case on constructive trusts and cohabitees.
- Stephenson v Stephenson [2009] WTLR 1467: A case on rectification of a settlement.
- Singh v Albert [2005] All ER (D) 240 (Feb): A High Court case involving a dispute as to the resealing of a foreign grant of probate.
- Sammut v Manzi [2008] UKPC 58.: A leading case in the Privy Council on the construction of wills, where Charles successfully argued in favour of a per capita, as opposed to a per stripes distribution.
- Garland v Morris [2007] 2 FLR 528 and Robinson v Bird [2004] WTLR 25: Charles acted in these two leading cases in regard to claims by adult children under The Inheritance (Provision for Family and Dependants) Act 1975.

## Recommendations

*Recent directory editorial comment has included the following:*

- "Excellent on really complex and intricate details." "He really knows his stuff." (Chancery: Traditional, Chambers UK, 2018)
- "Very meticulous and methodical." (Private Client: trusts and probate, Legal 500, 2017)

- “A pragmatic barrister who gets to the crux of the matter and offers sensible, straight forward advice” which “invariably chimes with the objectives of the clients.” (Chambers UK, 2017).
- “He is academically bright, has great technical skills and can assimilate and deal with a great amount of detail and documentation.” (Chancery: Traditional, Chambers UK, 2016)
- “Superb on detail and particularly technical points of law” (Legal 500, 2016)

### Publications

Charles is the sole contributor of White v Jones liability for negligent advice published in Oxford Journals - October 2016. He also wrote A hard case to make: Bromley v Breslin [2015] published in Trusts & Estates Law Journal July/Aug 2016, and the chapter on Taxation in Williams Mortimer & Sunnucks on ‘Executors, Administrators & Probate’ (2018) published by Sweet and Maxwell.

In 2012 Charles wrote an article entitled Has the golden rule lost its lustre? which was published in Trusts and Estates Law & Tax April 2012.

### Qualifications

Christ Church, Oxford – Classics Mods; BA in Law

### Memberships

Association of Contentious Trust and Probate Specialists (ACTAPS)

Society of Trust and Estate Practitioners (STEP)

Chancery Bar Association

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