

Transferable Nil Rate Band

Until October 2007 it was valuable for married couples to seek to use the Inheritance Tax (IHT) allowance (known as the nil rate band) applicable at the time of the first death, in addition to the allowance which would in any case be available when the survivor died. The same was true for civil partners.

The nil rate band currently stands at £325,000 for tax year 2010/11. It is to remain at the same level for the next four tax years. The simplest way of making use of the nil rate band on the first death was to leave an equivalent sum to children or other beneficiaries. The main drawback to this, however, was that the amount involved was then not available to the surviving spouse.

The way round the above problem was to leave a legacy on the first death equivalent to the nil rate band to a Discretionary Trust which included the survivor, children and others as possible beneficiaries, known as a Nil Rate Band Discretionary Trust in Wills for Spouses or Civil Partners.

The Pre-Budget Statement on 9 October 2007 announced that the unused nil rate band on the first spouse's death would be 'transferable' to the survivor. In fact how the transferable nil rate band works is to

allow the nil rate band on the survivor's death (which may be considerably higher by that time) to be increased by the proportion of the nil rate band which is not used on the first death.

This change in the law simplifies the drafting of married couples' Wills and the administration of their estates. The IHT position on the survivor's death should be relatively straightforward, provided there is a record of the unused balance of the nil rate band on the previous death(s) of the spouse or spouses. In addition, it will be necessary to produce for each previous spouse:

- the death certificate;
- the marriage (or civil partnership) certificate(s);
- a copy of the grant of representation;
- a copy of any Will and Codicil(s), and any Deed of Variation.

If couples already have nil rate band Discretionary Trusts in their Wills, it is possible within two years of the first death for the Discretionary Trust to be ended. This is done by transferring the assets either outright or in trust to the surviving spouse. Therefore, leaving the nil rate band unused on the first death.



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Wills leaving legacies on the first death to the eventual heirs should be reviewed. If they remain as they are, it will be possible for the children within two years of the first death to do a Deed of Variation in favour of the surviving spouse intended to liberate the nil rate band on the first death.

Where a Will has been previously drafted, these need to be reviewed in light of the changes in the law and the suitability of any nil rate band trusts under Wills. Clients may wish to review their wills to see if they would potentially benefit from the redrafting of their wills.

For more information of the applicability of the Nil Rate Band or the Transferrable Nil Rate Band to your particular circumstances, including the amendment of your Will for tax efficient purposes contact our Private Client Department.

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