



Changes to inheritance tax

While the proposed amendments to inheritance tax have been 'warmly welcomed' by the Society for Trusts and Estate Practitioners as introducing a long wished for transferable nil rate band for spouses and civil partners, there may be some surprises for those who have prudently planned ahead.

The current law

Presently each taxpayer has an allowance, currently £300,000 for 2007/8, at which inheritance tax is payable at zero per cent (the nil rate band) on their death. As between spouses and civil partners it is common on a first death for the entire estate to be left to the survivor under the spousal exemption with the resultant effect that on the second death only one nil rate band will be available.

Previously, careful estate planning was necessary to utilise both nil rate bands.

The proposals

Under the proposals as contained in the Finance Bill 2008 the new rules will allow the unused proportion of the nil rate band of the first dying spouse or civil partner to be used on the death of the widow/er or civil partner at the rate applicable at the time of the second death.

For example, Mr X dies leaving £50,000 chargeable and the remainder of his estate to his wife. At that time, the nil rate band is £200,000, so he has not used 75% of the nil rate band. When Mrs X dies, the nil rate band is £300,000. Mrs X, therefore, benefits from an enhanced nil rate band of £525,000 (£300,000 plus 75% of £300,000).

The Finance Bill also makes provision for the utilisation of the unused nil rate band against any alternatively funded pension scheme charges.

A claim for the transfer of the unused nil rate band from a deceased spouse or civil partner (irrespective of the date of their death) may be made by the estate of their surviving spouse who dies on or after 9 October 2007. The claim should be made by the personal representative or, failing

them, the person liable to the inheritance tax charge within two years of the date of the second death.

What the proposals mean

The proposals have been widely reported as being an increase in the nil rate band for couples to £600,000. This is not in fact the case. What it represents is another method of ensuring that a couple jointly enjoy the benefit of two nil rate bands.

While the principle behind the proposal is welcomed, caution must be exercised in the case of people with existing nil rate band trust wills who may not obtain the benefit of the uplift to the nil rate band value at the date of the second death. This change in the rules may pose a dilemma for a person who may still wish to ring-fence their nil rate band for the ultimate use of the children, but at the risk of not receiving an uplift in the nil rate band value at time of second death, assuming that the surviving spouse has not remarried.

The proposals become complicated and do not fully address the complexities of what

happens on re-marriage of the surviving spouse, save to suggest that on a surviving spouse's death only one nil rate band is transferable. Potentially then, where a surviving spouse remarries, a nil rate band may still be lost.

It is anticipated that further discussion will follow the publication of the Pre-Budget Report and further guidance should follow.

For further information or to find out how you will be affected, contact your normal Scott-Moncrieff adviser.

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