

Transferable inheritance tax nil rate bands

In the past, the well advised have always taken great care in drafting the provisions of their wills to ensure that the inheritance tax nil rate band does not go to waste. As a simple example, if on the death of the husband all the assets in his estate are left to his wife who survives, there will of course be no inheritance tax payable on the death because gifts to the spouse are exempt. The same provision applies to civil partners. But the husband could in any event leave (currently) up to £312,000 to any third parties and no inheritance tax would be due because that is the amount of the nil rate band. So leaving all assets to the spouse is not tax efficient, and gifts other than to the spouse up to the amount of the nil rate band were advisable. Of course, one would normally want to ensure that the surviving spouse is not left with insufficient assets, and accordingly it became a very common practice to leave the amount of the nil rate band upon discretionary trusts in which the surviving spouse was one of the beneficiaries.

Virtually all professionally drafted wills in recent years contained provisions for a nil rate band discretionary trust of this type and it was always a matter of speculation as to whether HM Revenue & Customs would take action to counteract or prevent this form of tax mitigation.

Although the press campaign in recent years for the abolition of inheritance tax did not in itself achieved any success with its main objective, it has served to mobilise a certain degree of public support for a reduction in the burden of inheritance tax. It had therefore become politically inadvisable for the burden of inheritance tax to be tightened, and instead, the Government has taken the more popular line of approach which is to offer the possibility of the nil rate band being transferred between spouses or civil partners where it has not been used on the first death.

The way this new relief works in practice is as follows. The basic provision is that the inheritance tax nil rate band available to the survivor will be increased by the percentage amount of the inheritance tax nil rate band which was unused on the death of the first to die. The actual amount of the nil rate band which applied on the first death is irrelevant; all that matters is the percentage amount of it which was unused.

So for example if the husband dies and 50 per cent of his nil rate band remains unused at the time of his death for whatever reason (it might be because the estate was insufficient, or because there were exempt gifts) then on the death of the survivor an additional 50 per cent of the nil rate band *at that time* is available in calculating the inheritance tax position on the survivor's estate. At the present time this would give the survivor a nil rate band of £312,000 plus an addition of 50 per cent of that amount, total nil rate band £468,000.

In cases where none of the nil rate band was used on the death of the first spouse, the relief will allow two nil rate bands to be claimed on the death of the survivor. That however is the upper limit on the relief available; no more

than twice the nil rate band applying at the date of death of the survivor can be claimed.

It is permissible to make a claim in respect of more than one former spouse. For example if a person has been remarried after the death of the first spouse and has also survived the second spouse, the unused percentage of the inheritance tax nil rate bands of both previously deceased spouses can be added together to provide extra relief, but not so as to allow any more than twice the nil rate band at the time of death of the spouse who survived both the other two. Thus, if 20 per cent of the nil rate band was unused on the death of the first spouse, and a further 60 per cent on the death of the second spouse, the survivor can add 80 per cent of the nil rate band at the time of his or her death on to his or her own nil rate band.

If, however, there was a divorce before the death of any ex-spouse, it will not be possible to add on any unused nil band because the parties were not married (or civil partners) at the time of the death.

It will be seen therefore that if both parties to a current marriage had previously been married to another who had predeceased in both cases leaving everything as an exempt gift to the survivor, the parties will now between them have four inheritance tax nil rate bands available. It will still be essential to ensure that these do not go to waste and discretionary will trusts will be important planning in this regard.

It is also relevant to bear in mind that existing wills which contain discretionary trusts of the nil rate band need not be redrafted. The discretionary trusts will invariably be completely flexible and will allow for outright gifts to the surviving spouse. So long as the appointment is made within two years of the death (but for technical reasons not within the first three months) it will be treated as having been made as at the date of death for inheritance tax purposes and as if the discretionary trust never existed.

It will be appreciated from the foregoing that there are complications in this area and professional advice is still advisable so as not to fall into unexpected traps.

Parmentier Arthur Group Plc

**90 Long Acre
Covent Garden
London
WC2E 9RZ**

**7 The Waits
St Ives
Cambs
PE27 5BY**

**Tel: 020 7849 3018
Fax: 020 7849 3171**

**Tel: 01480 465522
Fax: 01480 461221**

Disclaimer

These notes are not intended to be exhaustive and they should not be regarded as such. Neither do these notes offer specific advice. They are merely an outline of the subject matter.

No liability will be accepted in respect of actions taken or refrained from as a result of information given herein or given by the author during the presentation. Specific professional advice should always be obtained.