

Coffin Mew Solicitors – Wills, Trusts & Probate

This briefing note applies to married couples and registered civil partners whose joint assets may exceed £325,000 (the current Inheritance Tax nil rate band until April 2015) and who therefore need to consider Inheritance Tax and estate planning.

All gifts between married couples or registered civil partners, whether during lifetime or on death, are free of Inheritance Tax provided both are domiciled in the UK. Prior to 9th October 2007, if one spouse/partner died and left all his or her estate to the survivor, on the survivor's subsequent death only one Inheritance Tax nil rate band would be available to set against the total value of her or his estate. This led to the use of Inheritance Tax discretionary will trust provisions on the death of the first spouse/partner to ensure that the IHT nil rate band could be used on the first death as well as the second death.

From 9th October 2007 the Inheritance Tax nil rate band can be transferred between married couples and registered civil partners. This means that where one spouse or civil partner dies without making full use of his or her nil rate band, the nil rate band of the survivor will be increased by adding the unused proportion of the nil rate band of the first to die.

The main requirements for this to apply

- The surviving spouse or civil partner must die on or after 9th October 2007
- It does not matter when the first spouse or civil partner died, which may be long before the 9th October 2007
- The relief is claimed by the Personal Representatives of the last spouse to die
- The claim for relief must be made within two years of the death of the surviving spouse/partner or, if later, three months from the date that the Personal Representatives first act in his or her estate administration

The claim

The claim is for the proportion of the nil rate band which was unused at the first death, which is then applied to the value of the nil rate band in force at the time of death of the surviving spouse/partner. It does not depend on the value of the first spouse's/partner's estate, only the proportion of the nil rate band which was unused at that time.

Examples

1. A husband died on 9th April 1998 and left his entire estate to his wife. If she dies in the tax year 2010/2011 the first £650,000 (2 x £325,000) of her estate will be free from inheritance tax.
2. A husband died on 9th April 2007 when nil rate band was £300,000 and left legacies totalling £150,000 (½ the nil rate band) to his children and the remainder of his estate to his wife (exempt). If she dies in the tax year 2010/2011 the first £487,500 of her estate will be free from inheritance tax (her nil rate band of £325,000 plus ½ x £325,000 in respect of her late husband's estate).

Coffin Mew: IHT Transferrable Nil Rate Band



Documentation

The documentation which is needed for the Personal representatives to make the claim to transfer the nil rate band is:-

- a. A Death Certificate of first spouse/partner to die;
- b. A copy of the Will (if there is one);
- c. A copy of their Marriage Certificate (or date and place of marriage);
- d. A copy of the Inland Revenue Account/Return (IHT200/400/205) relating to the estate of the first spouse/partner to die (if one was needed).

At Coffin Mew we can prepare a pack of documentation following the death of the first spouse in order to assist in making the claim in the administration of the surviving spouse's/partner's estate.

Important Points to Note

- The rules apply whether the first spouse/partner left a Will or died intestate (without a Will)
- The rules apply whether the first spouse/partner leaves everything to the survivor outright or in trust for life, as the inheritance tax spouse/partner exemption applies in both cases.
- The unused nil rate band can be transferred from more than one deceased spouse/partner, up to a limit of one additional full nil rate band. Therefore if someone has survived more than one spouse/partner, it may be possible to claim an additional nil rate band from more than one of their deceased spouses'/partners' estates. However the total additional nil rate bands accumulated for this purpose is limited to a maximum of the amount of one nil rate band in force on the death of the second spouse/partner.
- Valuable tax planning arrangements can be set up if one or both of a married couple / civil partnership have previously been widowed and have the potential benefit of an additional nil rate band each. Specialist advice is required in these circumstances to maximise those potential tax advantages, allowing up to four nil rate bands to be available for use between them.

For further advice and guidance on the availability of the transferrable nil rate band and its operation, please contact one of the specialist advisers in our Wills, Trusts and Probate or Wealth Management teams at Coffin Mew LLP on **023 9236 6005** or email: **wills@coffinmew.co.uk**.