

Will Planning & Inheritance Tax

IHT is the tax that is paid on your 'estate'. Broadly speaking this is everything you own at the time of your death, less what you owe. It's also sometimes payable on assets you may have given away during your lifetime. Assets include things like property, possessions, money and investments.

No tax is payable until cumulative transfers out of your estate (including those made on death) over a seven year period exceed the prevailing nil-rate IHT band (£325,000 in 2009/10). The rate of IHT is 40% on death and 20% on certain transfers within your lifetime (if death occurs within 7 years of the lifetime transfer, the rate is recalculated at 40%). Certain lifetime transfers are exempt from IHT, broadly these are:

- Transfers to a UK Domiciled Spouse or Civil Partner
- Transfers to Charities or Political Parties
- Regular gifts from excess income (where the gifts do not negatively impact standard of living)
- The first £3,000 of transfers each year (this exemption can be carried forward for one tax year if unused)
- Gifts to any person that do not exceed £250 in a tax year
- Gifts in consideration of Marriage/Civil Partnership (within certain limits)

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The majority of couples wish their assets to pass to the survivor on first death. In the majority of cases this will involve writing reciprocal wills, which achieve this aim.

As you may be aware, transfers between Spouses/Civil Partners are exempt from IHT and until October 2007, such a transfer occurring on death would effectively waste the nil-rate band of the first Partner/Spouse to die. In many cases clients wrote clauses within their wills to allow a Discretionary Trust to be set up on first death to make use of their nil-rate band. This would pass assets into a Trust from which the surviving spouse would be able to draw on income and capital, as would other potential beneficiaries.

Since October 2007, however, if the full IHT nil-rate band is not utilised on first death, a proportionate benefit would be applied to the survivor's estate. This would be in addition to their own nil-rate band and applied as a percentage of the prevailing nil-rate band on second death.

Therefore going forward, from an Inheritance Tax perspective, it is not necessary to have a Discretionary Will Trust or make Gifts on first death in order to utilise both nil rate bands. Having said this, of course, individual circumstances will vary. For some clients it may be appropriate to have your Will updated to remove any wording to ensure that the surviving spouse has increased financial freedom.

One of the problems with the new system is that the Executors need to prove that the first spouse has some or all of their Inheritance Tax Lifetime allowance available for use. To utilise any unused nil-rate band you will need all of the following documents from the first death:-

- a copy of the first Will (if there was one)
- a copy of the Grant of Probate (or confirmation in Scotland), or the Death Certificate if no Grant was taken out
- a copy of any 'Deed of Variation' if one was used to vary (or change) the Will
- If you need help finding the documents from the first death, you can get in touch with the relevant Court Service or General Register Office for the country you live in. The Court Service may be able to provide copies of Wills or Grants; the General Register Offices may be able to provide copies of Death Certificates.

Once you have the above information you will need to complete the relevant Inland Revenue forms to claim the unused threshold and you must make the claim within 24 months from the end of the month in which the second spouse or civil partner dies.

Further information can be found using the link below:-

www.hmrc.gov.uk/inheritancetax/intro/transfer-threshold.htm

It is important to have an up to date Will that reflects your current wishes and we would encourage you to speak to us and your Solicitor in relation to your own Estate.

However, Will planning is by no means the only IHT planning that we can assist with and we would be pleased to offer some ideas for discussion if you wish when we next meet.