

Client Briefing

Transferable Nil-Rate Band – what are its implications?

Introduction

The Chancellor's Pre-Budget Report in October 2007 introduced the concept of a transferable 'Nil-Rate Band' (NRB) for spouses and civil partners for the first time. Up to that time, there was no inheritance tax to pay when an estate passed to a surviving partner, but the value of the estate above the amount of the exempt NRB (£300,000 for 2007/8 and £312,000 for 2008/9), and subject to any other reliefs and exemptions, was taxed at 40% when the second partner died. Now the unused percentage of the first partner's NRB is 'transferred' and applied to the NRB in force at the date of the second death.

The new rules came into effect on 9th October 2007 and apply in respect of any death of a surviving spouse or partner on or after that date, irrespective of when the first spouse died.

It is worth considering what the new rules mean and what should be done in terms of new or existing wills.

So has the NRB been doubled for individuals?

No – each individual still has only one single NRB allowance and, for example, any relevant lifetime transfers to trusts must be reviewed against the donor's individual NRB.

How do the new rules concerning NRBs work?

Put simply, the unused percentage of the NRB on first death of a spouse or civil partner is applied to the NRB in force at the date of second death.

Example 1 On the first death, none of the NRB is used because there are no chargeable lifetime transfers (gifts within 7 years of the date of death) and the entire estate is left to

surviving spouse. If the NRB at the date of the surviving partner's death is £312,000 (in line with the rates for 2008/9), this is then increased by 100% to £624,000.

Example 2 If on the first death the chargeable estate is £150,000 or 50% of the NRB of £300,000 (based on 2007/8 rates), this leaves 50% of the first NRB unused. The NRB at the date of the second death is then increased by 50%, so if the rate was £312,000 (based on 2008/9 rates), the exempt amount would be £468,000.

Do I need to do anything to take advantage of the new rules?

The new rules apply automatically to everyone (provided that the second death occurs on or after 9th October 2007).

In order to take advantage of the transferable NRB, it is necessary for the executors of the second partner to make the relevant claim within 24 months from the end of the month in which that partner dies.

In order to calculate the unused NRB and substantiate this, valuations, evidence of lifetime gifts, evidence supporting agricultural or business property relief and Inheritance Tax form IHT200 in respect of the first partner to die, are required along with supporting documentation in the form of:

- 1) a death certificate for the first partner to die;
- 2) the marriage certificate/civil partnership certificate for the couple;
- 3) a copy of the will (if any) of the first partner;
- 4) a copy of Confirmation of the first to die; and
- 5) a copy of any Deed of Variation or similar document in respect of the estate of the first partner.

What if the estate on the first death is less than the NRB in force at the time?

This does not matter and the unused proportion of the full NRB is still available to transfer to the second partner.

e.g. If the estate was £100,000, which all passed to surviving partner (when the NRB was £300,000), the NRB on the second death will be increased by 100%.

As a result of this, asset equalisation between partners, from an Inheritance Tax perspective, is no longer necessary.

What if one or both of partners die without having completed wills?

This doesn't matter – the rules apply equally to estates passing under the rules of intestacy.

What if one partner has been divorced and is predeceased by more than one spouse/civil partner?

The unused NRB allowance can be used for either or any of the predeceasing spouses/civil partners' estates but only up to a maximum of 100% of the NRB in force at the date of the survivor's death. Specific provision for use of the NRB under the will should therefore be considered carefully when there is a second marriage.

My will contains a Nil-Rate Band Trust – is there any immediate need to make a change to it?

No. There are several reasons for this:

- 1) If it is not needed it could be wound up by the executors (within two years of the date of death to make the decision);
- 2) It may be that the Trust is set up to receive assets qualifying for agricultural or business property relief – and it is still sensible to capture that relief as early as possible; and
- 3) Whether it is preferable to use a Nil-Rate Band Trust or rely on the new rules will come down, in part, to whether the assets available to utilise the NRB rise in value faster than the NRB between the first and second death. This is naturally an uncertainty but including Nil-Rate Band Trust affords the flexibility to make a decision on the first death.

I am thinking of drafting a new will. Should I consider including a Nil-Rate Band Trust or an outright Nil-Rate Band legacy?

There are certainly instances in which you should still give this consideration:

- 1) It may be appropriate for some value to be passed down a generation on the first death, although this could also be done by way of a gift by the surviving partner which may be more tax efficient.
- 2) It is still appropriate to try to capture any agricultural property relief or business property relief as early as possible.
- 3) Where there is a second marriage, this should be considered carefully, both for tax and asset protection reasons.
- 4) A Nil-Rate Band Trust or legacy could potentially protect assets from nursing home costs.
- 5) One cannot necessarily rely on the Deeds of Variation procedure to insert NRB provisions after the date of a death as beneficiaries under the will who need to consent may lack capacity (e.g. because they are under 16).

Conclusion

The introduction of the transferable Nil-Rate Band is to be welcomed. However, there are many situations where it is still appropriate to make specific provision under wills and it is best to take specialist advice to ensure that you realise the maximum relief from Inheritance Tax. If you wish to discuss any Inheritance Tax issue, please contact your usual Turcan Connell Partner or call one of our Trust and Tax specialists listed here on 0131 228 8111.

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