

Inheritance Tax (IHT) Planning through Wills The effects of the Finance Act 2008

Many married couples' and civil partners' wills currently contain IHT nil rate band discretionary legacies. The aim of these was to ensure maximum use of both parties' IHT nil rate band exemptions.

With the introduction of the new transferable IHT allowance for spouses and civil partners in the Finance Act 2008, IHT nil rate band discretionary legacies have ceased to be necessary for this purpose.

Instead, married couples and civil partners can now simply leave everything to each other. On the second death, the personal representatives of the survivor will then be able to claim not only his/her nil rate band exemption but also a transferable IHT allowance in relation to the first party to die.

This transferable IHT allowance will be based on the IHT nil rate band exemption at the time of the death of the survivor.

There could of course be a significant gap between the two deaths, during which time the IHT nil rate band exemption could increase significantly. This means that it is likely to be more IHT efficient, at least in terms of maximising exemptions, for the first party to die to leave everything to his/her spouse or civil partner.

This will also avoid the trouble and expense of using IHT nil rate band discretionary legacies.

The table illustrates how this might work

	Available exemptions using IHT nil rate band discretionary legacies	Available exemptions where whole estate left to surviving spouse/civil partner
	£	£
First party dies 2008/9 when exemption is £312,000	312,000	Surviving spouse/civil partner exemption applies
Second party dies when exemption is £350,000	350,000	350,000
Add		
Transferable IHT allowance for spouses/civil partners	n/a	350,000
Total exemptions available	<u>£662,000</u>	<u>£700,000</u>

Married couples and civil partners who have already made wills including IHT nil rate band discretionary legacies have no absolute need to change their wills purely to take advantage of the new transferable IHT allowance for spouses/civil partners. This is the case as long as the wills contain a power for the trustees of the IHT nil rate band discretionary legacy to "appoint" or transfer the trust fund to the survivor within 2 years of the death of the first party to die.

However, depending on the circumstances, consideration can be given to removing IHT nil rate band discretionary legacies when wills containing these legacies are next reviewed. This will simplify the wills and avoid the formality and cost of making a deed of appointment after the death of the first party.

There may be non-tax reasons to include IHT nil rate band discretionary legacies in wills, for example where it is desired to:

- Provide a degree of protection for intended inheritances of children and/or children of a first marriage after the death of the survivor
- Limit the value of the estate of the survivor as a shield against claims from creditors or to maximise their chances of obtaining means tested benefits (e.g. for care fees)

As ever with estate and IHT planning, all of the above depends upon rules remaining in place, which, the way things have gone in the last few years, must be regarded as highly unlikely. The rule of thumb must be, therefore, that a regular review of wills and any other planning is advisable to ensure that they are kept up to date with changes in the law.

We are pleased to be able to offer the Hart Brown Will Review Service. The service is designed to provide you with any relevant legal updates and an annual review of your will to let you know if your will appears to be out of date, based on changes in your circumstances and the law.

Please contact your lawyer at Hart Brown or Shaun Parry-Jones for further information.

This fact sheet is for general guidance purposes only. No steps should be taken relying only on it. Appropriate professional advice should be sought before any course of action is pursued.

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