

***IHT Planning via Wills***  
***IHT nil rate band discretionary will trusts***  
***“The best of both worlds”***

In the Chancellors pre budget report on 9<sup>th</sup> October 2007 he announced changes to the way in which the Inheritance Tax Nil Rate band would be treated for married couples and those in a Civil Partnership. For further information on the topic please see our factsheet entitled “Inheritance Tax Planning through Wills, the effects of the Finance Act 2008”

**Introduction**

Amongst popular misconceptions about IHT planning are that it is only for the very rich and that it involves giving assets away during one's lifetime.

This fact sheet outlines a relatively straightforward measure which married couples, or those who have entered into a Civil Partnership, whose estates come within the scope of IHT, can take without necessarily giving assets away during their lifetimes.

**Relevant Rules**

Under present rules, transfers between spouses or Civil Partners are exempt from IHT. For transfers which are not exempt, there is a "nil rate band" exemption of £325,000 (for the tax year 2009/10).

IHT is payable on death on relevant transfers made by the deceased (including relevant lifetime transfers) which exceed available exemptions.

The IHT rate on death is 40%.

**Example :**

**A married couple**

Between them, Mr and Mrs X have assets valued at £650,000, make no lifetime gifts, leave everything to each other in their Wills, Mr X dies first, Mrs X dies later and her estate then passes to their children.

On Mr X's death, no IHT is payable as the surviving spouse exemption applies.

On Mrs X's death, her estate is worth £650,000 and £130,000 IHT is payable (i.e. 40% of £650,000 less Mrs X's nil rate band exemption of £325,000). The net inheritance for the children is £520,000.

**The Alternative**

Mr and Mrs X make Wills including "IHT nil rate band discretionary legacies".

On Mr X's death, £325,000 from his estate passes into a discretionary trust. For IHT purposes, the discretionary trust fund is treated as separate from Mrs X's estate. Mrs X and the children are all potential beneficiaries (so Mrs X has access to the trust fund if needed) and, if desired, she can also be a trustee. During Mrs X's lifetime, the trust assets (and any income from them) can be made available for Mrs X's benefit if needed (so she need not suffer any loss of financial security).

On Mrs X's death, her estate is valued at £325,000, does not therefore exceed her IHT nil rate band exemption of £325,000 and passes to the children free of IHT. If the discretionary trust fund is then worth £325,000, under present rules, it should also pass to the children free of IHT.

Thus, the children's inheritance is £650,000 rather than £520,000, a tax saving of £130,000, and Mr and Mrs X suffer no loss of financial security during their lifetimes.

It is even possible to charge the estate of Mr X with payment of the discretionary legacy or for it to be covered by a promissory note from Mrs X. In this way, although regular reviews should be carried out, the trust should need relatively little active administration and Mrs X becomes legal and beneficial owner of the whole of Mr X's estate, subject only to any such charge or promissory note.

Thus, by making use of IHT nil rate band discretionary legacies, married people really can have "the best of both worlds".

Please contact Shaun Parry-Jones for more information

*This fact sheet is for general guidance purposes only. Appropriate professional advice should be sought before any course of action is pursued.*