



## TAX SAVING WILLS FOR UNMARRIED COUPLES

### WHAT HAPPENS ON THE DEATH OF AN UNMARRIED COUPLE

1. IHT (Inheritance Tax) is payable on the value of what an individual owns when he/she dies.
2. For an unmarried couple IHT is payable on the death of both partners. When a person dies the first part of the estate - called the Nil Rate Band (NRB) - is free of tax. Then the rest of the estate is taxed at 40%. At the moment the NRB is £325,000.
3. On the second death, it is likely that the surviving partner's estate will include the assets from the first estate as well as their own assets and tax will be charged at 40% on the total value over £325,000.
4. The following shows how much tax is payable where a couple leave their assets to each other on the first death.

#### **Example 1:**

A Couple own the following jointly:

		<b>Value</b>		
<b>House</b>		£800,000		
<b>Savings</b>		£200,000		
<b>Total</b>		£1,000,000		
			<b>Partner A</b>	<b>Partner B</b>
			£500,000	£500,000
<b>On first death</b>	No tax on £325,000 (NRB) Tax at 40% on balance of £175,000		-£70,000	
<b>Due to Partner B</b>	(£500,000 - £70,000)			£430,000
<b>Value of Partner B's Estate</b>				£930,000
<b>On second death</b>	No tax on £325,000 (NRB) Tax at 40% on balance of £605,000			-£242,000
<b>Due to Children</b>	<b>(£930,000 - £242,000) =</b>			<b>£688,000</b>
<b>Tax burden as percentage of total value</b>	<b>31.2%</b>			

*Don't Waste the Nil Rate Band on the First Death!*

## **WHAT YOU SHOULD DO**

1. Give the NRB to your children on the first death - this way you save IHT on the second death because the NRB does not become part of the Surviving Partner's estate.
2. If you have enough surplus assets in the name of each Partner to the value of the NRB (without leaving the Surviving Partner short of income or capital) then you can make an absolute gift to your children on the death of the first Partner.
3. However many couples cannot do this as it would leave their Partner short of income or capital. They also find that the value of their home forms a substantial part of their estate and it is often not advisable to give this on the first death.

*Give the NRB on the First Death but....Protect the Surviving Partner too!*

## **THE SOLUTION**

1. On the first death, put the value of the NRB into a Trust for the benefit of the Surviving Partner, your children and grandchildren. This takes the money out of the first Partner's estate tax-free but does not put it into the Surviving Partner's estate - you can think of it going onto an imaginary "shelf"!
2. The money or value in the Trust is there for the benefit of all the family with priority for the Surviving Partner.
3. The Trust can be used to ensure that the Surviving Partner will own the family home outright.

See Example 2 on the next page.

**Example 2:**

A Couple own the following:

				<b>Value</b>
<b>House</b>				£800,000
<b>Savings</b>				£200,000
<b>Total</b>				£1,000,000
		<b>Partner A</b>	<b>Discretionary Trust</b>	<b>Partner B</b>
		£500,000		£500,000
<b>On first death</b>	Nil Rate Band to Trust £325,000 (NRB) – Survivor has full access to assets Tax at 40% on balance of £175,000	-£70,000	£325,000	
<b>Due to Partner B</b>	(£175,000 - £70,000)			£105,000
<b>Value of Partner B's Estate</b>				£605,000
<b>On second death</b>	No tax on £325,000 (NRB) Tax at 40% on balance of £280,000			-£112,000
			<b>£325,000</b>	<b>£493,000</b>
<b>Due to Children</b>				<b>£818,000</b>
<b>Tax burden as percentage of total value</b>	<b>18.2%</b>			

## QUESTIONS

### ***Is it complicated?***

It sounds complicated but in practice it is quite straightforward.

### ***Is it legal?***

Yes, it is accepted by Revenue and Customs, Capital Taxes Office.

### ***Is the Surviving Partner protected?***

Yes, you will have a Letter of Wishes with your Will which makes it clear that the Surviving Partner is the primary beneficiary. We also recommend that the Surviving Partner is a Trustee of the Trust with a professional Trustee, e.g. an accountant or solicitor. We do not recommend that the children are Trustees.

### ***Does it save much tax?***

The Nil Rate Band increases every year but on a Nil Rate Band of £325,000 the saving is £130,000 on the second death. Every year the tax saving increases when the Nil Rate Band is increased without any action being taken on your part.

### ***Will it work if we own our house jointly?***

It will be necessary to "sever" the joint ownership of the house. This can be done at the time the Wills are drawn up. You continue to be co-owners but you will not automatically inherit each other's share of the house; it will pass in accordance with your Wills.

### ***Can we continue to hold our savings jointly?***

Joint assets pass by survivorship. The Trust can only apply to assets held individually so you should ensure that you each have sufficient savings (or your shares in your home are sufficient) to the value of the NRB. After that, joint assets can be held.

### ***Are there any other taxes which might apply?***

Yes, although there is a significant tax advantage in using the NRB in this way, there are tax disadvantages. There is a 10 year tax rule and the income tax rate on funds in Discretionary Trust is higher than the usual rate of income tax. It is therefore advisable for the Trustees of the fund to take tax advice at the time the Trust comes into operation so that they can consider the best investment for the fund in order to gain the maximum amount of tax relief. Again, this is another reason why professional Trustees are advisable to work with the Surviving Partner.

### ***Can my share of our house be put into the Trust?***

It is best for the Trustee to "charge" the deceased's share of the house with the amount of the Nil Rate Band by an equitable charge and then to transfer the house to the Surviving Partner. This does not affect the Surviving Partner's ability to live in the house or to move house whenever he or she wants to.

### ***Are there any disadvantages?***

Once the Trust has been established (i.e. after the first death) some on-going legal advice will be needed and some administrative costs should be expected which will arise from annual Trustee meetings.

## WHAT IS THE COST?

The legal costs involved in dealing with Nil Rate Band Discretionary Trust Wills depend on the time spent and the amount of work involved. However, as a guide, we set out below the likely cost:

Preparing Wills containing Trust (including interview with clients)	£650.00
Severing joint ownership of house (includes notice of severance, restriction at Land Registry)	£100.00
Letter of Wishes	£100.00
	<b>£850.00</b>
VAT	

For more information on Tax Planning Wills please contact:

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