TRANSFERABLE NIL RATE BAND

Information for clients who have made Tax Planning Wills

THE SITUATION BEFORE 9th OCTOBER 2007

Many people have made tax-planning Wills which state that, on the death of the first spouse, that person's nil-rate (or tax-free) band would be put into a Nil Rate Band Discretionary Trust and would therefore not be wasted on his/her death.

THE SITUATION SINCE 9th OCTOBER 2007

On 9th October 2007 the Chancellor announced the introduction of a ***Transferable Nil Rate Band***. This means that on the death of the second (or surviving) spouse, the nil rate (or tax-free) band of the first to die may be claimed on the second death if it has not been used or only partially used. The result of this could be a doubling of the second spouse's Nil Rate Band. In these circumstances it is no longer necessary to have a NRB Discretionary Trust in husband/wife or civil partnership Wills for tax-saving purposes.

WHAT TO DO?

In some cases people will choose to leave their tax-planning Wills in place but it will depend on the circumstances of each case whether it would be better to make new Wills without the NRB Trust. We would advise all those with Tax Planning Wills to review them with us now. We can advise you on whether in your particular circumstances they should be changed.

BENEFITS OF TAX-PLANNING WILLS (OTHER THAN SAVING TAX)

The point of making tax-planning Wills was to save Inheritance Tax. However since the Chancellor's statement, there may be no real tax-saving benefit in making NRB tax-planning Wills and, depending on circumstances and values, there could be a disadvantage. However, as the tax-planning Wills create a "Trust" there are benefits which may or may not be of interest to you. These include the following:

1. the money in the Trust is protected from creditors;
2. in the event of the survivor remarrying, the funds cannot be given to a new spouse or anyone other than the survivor and the children;
3. the money is not taken into account for means-tested long-term care and cannot be used for care without the survivor's permission (it is therefore ring-fenced for the other beneficiaries (usually the children));

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4. the funds are protected from financial abuse from third parties (which becomes a concern when a surviving spouse becomes elderly and vulnerable).

It is also important to consider that if there is a change of government the NRB could rise significantly. The Conservatives are promising a £1m NRB so a Transferable NRB could give a tax-free allowance of £2m.

If a spouse dies leaving a NRB Tax Planning Will then the surviving spouse can decide after taking advice whether to keep the Trust or bring it to an end immediately so as to take advantage of the Transferable Nil Rate Band on the second death.

At Stone Rowe Brewer we have a specialist department which deals with Wills and Trusts. We can advise you regarding your own personal situation to ensure that you have the best advice for your individual circumstances.

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