

IHT Changes - 30 day survivorship clauses

Review Your Will

With the change in the inheritance tax rules, as a married couple or in a civil partnership you are entitled to two nil rate band inheritance tax allowances on second death if the first to die leaves everything to the survivor. The Revenue has taken the view that it doesn't matter in whose name the property initially started out. As long as the first to die doesn't use up the full amount of the nil rate band available to them on first death, the second to die will get their own allowance and the unused allowance or part thereof of the first to die. This is best illustrated with some examples as shown below.

1. Bill died in Nov 07 when the nil rate band was £300,000. His entire estate was worth £100,000. If he left this to his wife Mary, when she dies, she will have available to her estate, two full nil rate band allowances at whatever the level of the nil rate band applicable when she dies. At today's rate this would mean £624,000 worth of assets exempt from inheritance tax.
2. If Bill left the whole of his estate to his children, then he has still only used up one third of what was available to him by way of nil rate band allowance at the time of his death. This is the case despite the fact that he only ever had £100K in his estate and therefore has given away the whole of his estate. On Mary's death in these circumstances, her estate will be entitled to one and two thirds of the nil rate band exemption, current at the time of her death. She gets to use up the unused two thirds of Bill's nil rate band. This would amount in total to £520,000 at today's rate.
3. Let's assume Bill's estate was worth £500,000, and he left his nil rate band to his children and the rest to Mary, there would be no inheritance tax to pay on his death, but he has used up his allowance and Mary's estate will only have one allowance available on her death.
4. If Bill had left the whole of his estate of £500,000 to his children, then there would have been inheritance tax to pay on his death on the £200,000 which was in excess of his nil rate band. This at 40% would amount to £80,000 of tax payable. Mary would still have her nil rate band available on her death.
5. However, what if Bill had assets of £500,000 but Mary only had £100,000 of assets? Together their assets are within two nil rate bands. However, if here, as in example 4, Bill had left everything to the children, then inheritance tax would have been payable and Mary hasn't sufficient assets to use up her own nil rate band. As a result the tax would

have been paid unnecessarily. If Bill had either left everything to Mary or followed the scenario in example 3 and left only the nil rate band to the children and the balance to Mary, then no tax would have been paid, and the children would have been £80,000 better off. Even if Mary had gifted the money she received from Bill's estate to the children immediately she had received it, and had died within 7 years there would have been no tax payable. Yes the gift she made would have been added back to her estate but with only £100,000 of assets in her own estate, the total would have been comfortably within the two allowances..

Under the previous inheritance tax rules where it was essential to use up the nil rate band on first death or the benefit of it was lost, many wills were sensibly drafted on the basis that that the surviving spouse would take the estate of the first to die **only** if he or she survived for 30 days. This was an arbitrary time limit used in the hope that it would cover the unfortunate situation of a common calamity such as a car crash, where one spouse died of injuries later than the other, but within that timescale. This prevented the estate of the first to die transferring to the survivor only then to be taxed as only one allowance was available on second death.

However with the rule changes, if you have the scenario set out in example 5 and the surviving spouse dies within the 30 days, and doesn't inherit because of the survivorship provision, you end up in the situation where the children take Bill's whole estate, and tax will be paid. If the estate had gone to Mary, the cumulative total would have been £600,000, well within two nil rate band allowances, and no tax would have been paid. A change to your will should therefore be considered now or at the very least when you feel a review would be beneficial.



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