

Trust Me... Revisited

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As most of you will be aware the Chancellor in his pre-budget report on 9 October 2007 made some concessions in relation to Inheritance Tax. The main changes are that with effect from that date, on the death of a widow or widower or the surviving partner in a civil partnership, their estate will be entitled to an exemption for inheritance purposes of not only their own nil rate band allowance but also the percentage of their late spouse's or civil partner's allowance in so far as it wasn't used up at the time of their death.

So how does this work? At the moment the nil rate band is £325,000 worth of exempt property for every individual. If someone died in the tax year 1996–97 the nil rate band was then £200,000. If at that time, everything was left to the surviving spouse, and in addition (i) the deceased had made no gifts in the seven years up to date of death which had to be added back to the estate and (ii) there had been no claims on their estate for legal rights from any children, there will still be 100% of their nil rate band available when their spouse dies. If the spouse dies in this tax year, there would therefore be £650,000 of estate which would be exempt from IHT, that figure being twice the present allowance.

However, using the same example, if on first death either the will of the first to die left legacies of £100,000 to the children or indeed if for very good tax reasons at the time, the will was varied to this effect, then 50% of the allowance available at the time would have been used up, (i.e £100,000 from the £200,000 allowance). If the surviving spouse dies this tax year, the value of the exempt estate will be £487,500 being the full allowance of £325,000 of the person who has just died and an additional 50% of that allowance.

Has this therefore made nil rate band discretionary trusts redundant? The answer to that is yes and no.

In the vast majority of cases where there is a straightforward family situation there is now no need to use a nil rate band trust as the second spouse or civil partner will be able to use up the allowance of the first to die. All that has really changed is that the government has allowed what most sensible couples had already put in place i.e the legitimate utilisation of the two allowances.

However if the survivor holds the entire joint estate, the capital would be wholly attachable to pay for care should that be required and in addition the survivor is at perfect liberty to change their will. This may be a worry where the wills, as initially drafted, benefited two families and the second will is then changed to benefit only the family of the survivor. In these circumstances where the first to die may wish to preserve part of the estate for their preferred beneficiaries, whilst still being able to let the survivor of the couple enjoy the benefits of the whole estate, a nil rate band discretionary trust would still be advisable.



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