



**crombie wilkinson  
solicitors**

## **Changes to the law concerning Inheritance Tax**

On 9<sup>th</sup> October 2007 the government announced changes in the law concerning Inheritance Tax.

The new rules mean that a surviving spouse can claim the Nil Rate Band (NRB) of the first spouse to die (if it was not used) against their estate for Inheritance Tax purposes. The NRB for the 2008/09 tax year is £312,000. Therefore a surviving spouse, who was left the entire estate of their deceased spouse, can gift assets worth up to £624,000 (in the 2008/09 tax year) to beneficiaries such as children or grandchildren free of Inheritance Tax on their death.

The new rules will not change the effect of existing Wills. People who have, for example, a nil-rate band trust written into their Will do not have to take any action as a result of this measure.

Where someone dies after 9<sup>th</sup> October 2007 with a NRB discretionary trust in their Will, an appointment of the trust assets in favour of the surviving spouse or civil partner (before the second anniversary of the death, but not within the three months immediately following the death) would normally be treated for IHT purposes as if the Will had stated that those assets had simply been left to the surviving spouse or civil partner outright. Ending the trust in this way would mean that the NRB was not used on the first death, and therefore the surviving spouse or civil partner would have two NRB's to apply against their estate on their death.

However, by retaining a NRB discretionary trust in your Will, you can achieve maximum flexibility as to the treatment of your estate after your death. The advantages of containing such a trust in your Will are:

You still retain an element of control of those assets after your death. For example, if your spouse re-marries or civil partner enters into a new civil partnership, you can ensure that those assets do not pass to their new spouse or civil partner after their death. They can be protected for your children, grandchildren or other beneficiaries, as you would wish.

If any of your children get divorced or become bankrupt, their share of the trust assets can be protected within the NRB discretionary trust, until such a time as the monies can be paid out to them.

If your children or grandchildren are spendthrift, they would not have their share of the trust assets to spend as they wished. Instead the assets could be protected within the trust and only distributed to them as and when it was required or for what you would deem a good purpose perhaps, for example, a deposit on a house.

Of great importance to many people, is the protection of assets against Nursing Home Fees. If the surviving spouse or civil partner has to go into nursing or residential care, the assets in a NRB discretionary trust are protected from any Local Authority calculation in respect of the payment of fees.

Generally, capital held in such a trust is not treated as capital and is therefore effectively disregarded for local authority funding. Therefore any property and assets that you place in the trust will be protected for your children, grandchildren or other beneficiaries, even if the assets of the surviving spouse or civil partner are used up to pay for their nursing home care.

If the assets in the Trust increase in value, their value will not increase the estate of the surviving spouse or civil partner on their death. If you do not have a trust and those assets are in the survivor's estate this will mean that any growth in the value of those assets will be in the survivor's estate not the trust and may become subject to Inheritance Tax on their death. If it is possible or likely the growth in the capital value of such assets will outstrip the NRB increases then it will probably be better for those assets to be in the Trust.

(Notes - any growth may be subject to CGT but the rate of CGT fell to 18% for gains made after 6/4/08

- NRB's for the next 2 tax years are: £325,000 for deaths in 2009/10  
£350,000 for deaths in 2010/11)

If you would like to discuss any aspect of this information sheet then please contact:

<b>Sharon Richardson – s.richardson@crombiewilkinson.co.uk</b>	<b>(York)</b>
<b>Belinda Poulter – b.poulter@crombiewilkinson.co.uk</b>	<b>(York)</b>
<b>Richard Watson – r.watson@crombiewilkinson.co.uk</b>	<b>(York)</b>
<b>Darren Norgate – d.norgate@crombieiwlkinson.co.uk</b>	<b>(Selby)</b>
<b>Jennifer Bartram – j.bartram@crombieiwlkinson.co.uk</b>	<b>(Malton)</b>

**Or by telephone on 01904 624185 (York) 01757 708957 (Selby) 01653 600070 (Malton) or 01262 609585 (Bridlington)**

**Alternatively, please call in to any of our offices to arrange an appointment.**

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