The transferable nil rate band

08 FEBRUARY 2011

Paul Hewitt
PARTNER | UK

CATEGORY:
ARTICLE

The Finance Act 2008 introduced the transferable nil rate band.

In simple terms it means that if the first spouse or civil partner to die did not use part or all of his or her nil rate band then, from 9 October 2007, on the death of the survivor the nil rate band available on that death is increased by the equivalent percentage of the first deceased spouse/civil partner's unused nil rate band.

The benefit of the transferable nil rate band must be claimed by the survivor's personal representatives within two years of the end of the month of the survivor's death.

HMRC have published guidance with example clauses. This can be helpful. For instance the following clause is described as being effective only to transfer the single nil rate band:

'To my trustees such sum as I can leave immediately before my death without inheritance tax becoming payable.'

That is because the sum that can be transferred immediately before death cannot include the transferable nil rate band which is only available post death by making an election.

Similarly clauses which refer to the nil rate band are limited to the single nil rate band.

Where there is a clear limitation imposed by the will, e.g. to the amount available before death or the nil rate band there should be no difficulty. However, there are a significant number of wills which contain a gift of the maximum sum available free of tax to non exempt beneficiaries and leaving residue to charity.

The effect of clauses which do carry the transferable nil rate band is that the residue passing to charity reduces not by the single nil rate band (£300,000 for 2007/08, £312,000 for 2008/09, £325,000 for 2009/10 and 2010/11) but by as much as double that figure (£600,000 for 2007/08, £624,000 for 2008/09, £650,000 for 2009/10 and 2010/11).

There are testators whose overriding objective is purely to save tax. However, in many instances we believe the desire to avoid tax is balanced with a genuine desire to benefit charity. An automatic assumption that the nil rate band is doubled can do violence to the testator's intentions. In these instances we have advised, supported by the advice of Leading Counsel Gilead Cooper QC, that the original intention of the testator must be considered. In order to do so it is important to review the will file (and any other admissible extrinsic evidence) to establish whether there is a record of instructions to show that the testator had the nil rate band in mind and a desire to benefit charity.

Authors

Paul Hewitt

PARTNER | LONDON

Trust, estate and inheritance disputes

+44 20 7597 6197

paul.hewitt@withersworldwide.com