

“ Plain speaking legal advice ”

**Pre-Budget Report.
How do we rate the changes
to inheritance tax?**

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How do we rate the changes to IHT?

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So what has the Pre Budget Report done for inheritance tax? It has made the nil rate band - that is the part of your estate that can pass free of tax to your children - transferable between husband and wife. Widows and widowers can now claim their spouses' unused nil rate band as well as their own. This means that married couples and civil partners have now 'doubled up' the amount of assets they can give away free of tax from £300,000 to £600,000, and this will rise to £700,000 by 2010.

But a few words of caution, the Revenue will want to make sure that if the husband used part of his nil rate band at his death then his wife should not be given credit for that part of the nil rate band when she dies. This is hardly surprising as a failure to cover this would mean that instead of getting two nil rate bands the family might get three, no self respective tax collector or Chancellor could cope with that!

On the face of it the idea of the transferable nil rate band is a simple formula but in practice it may be quite complex and there will be a need for very careful record keeping so as to ensure that the correct sum is transferred to the wife on the second death. Where, as is not uncommon, a husband died 20 years ago this may present some serious problems. It is not just what happened to the estate of the husband that will have to be carefully recorded but also care will have to be taken to ensure that there is a full record of the value of any gifts made by the husband within seven years of death meaning that in some cases we will need to go back for many years

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Below we set out the main questions that we expect to get asked in the next few months together with our answers based on our present knowledge and understanding of the changes.

My wife and I have Nil rate Band discretionary Wills, do we need to change them?

Probably not, these wills are highly flexible, the discretionary trust may no longer be appropriate but if need be it could be bypassed when the first of you dies.

My husband died 5 years ago and his Will created a Nil Rate Band Discretionary trust, I never really liked or understood the trust, can it now be disbanded?

No the Trust will have used up all or part of your husband's Nil Rate Band and if the trust is disbanded it is likely that that part of his nil rate band will be lost.

My husband died 9 months ago and his will created a Nil Rate Band Discretionary Trust, can I disband the trust?

Where it is less than 2 years since the death it is normally possible to disband a Nil Rate Band Discretionary trust and this may be advisable.

My husband and I can afford to provide that when the first of us dies the nil rate band is given to our children, should we do this or should everything be given to the survivor?

This is one of the most difficult questions to answer and probably the answer is not a legal one. How much will the Nil Rate band be worth to your children now? If they invest the money that they got would that be worth more than an extra Nil Rate band when the second of you dies? At the moment no one knows the answer to that question, it depends on whether investment returns are greater than the future increases in the Nil Rate Band. In practical terms the answer is probably that if you can afford to give away now you should continue to do so, but if you cannot afford to give away then simply provide in your will that everything passes to the survivor of you and hope that no future government back tracks on this latest and most welcome of IHT relief's!

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Is there still a place for trusts in a will?

Yes but we would probably recommend that instead of using a Discretionary Trust you use what is called a “Life interest Trust”. With such a trust the estate is held for the benefit of the surviving spouse who has the right to live in or use property or to receive income from the property. These sorts of trusts will not use up the Nil Rate Band of the first spouse to die but will protect the estate against such things as means testing as might happen if the surviving spouse has to move to some sort of care home.

The change in the law is most welcome. It will mean that many families will now be able to escape a tax that has increasingly hit the middle classes rather than the very wealthy that it was supposed to target. Not for the first time it is possible that those who have sought to plan ahead may end up slightly worse off than those who have done nothing. Furthermore there are still plenty of rumours around that the government might choose to tighten up on what are perceived as loopholes, in particular there are repeated rumours that Deeds of Variation may be banned (Norman Lamont tried to do this when he was at the Treasury) and that Business Property Relief may be tightened up.

The Pre-Budget Report also includes proposals for some far reaching changes to **Capital Gains Tax**, which are to take effect next April. Anyone holding assets which may be liable to this tax and which have been held for a long time will lose the benefit of Indexation and Taper Relief in exchange for a new lower rate of tax of 18%. Many people will benefit from this but it seems likely that an equal number will face an increased tax liability. If you hold assets of this sort it would be wise to get a professional review of the situation to see if there is anything you could or should do.

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If you would like to discuss any of these matters with me in more detail then please do contact me on 01252-322451 or by email to art@herrington-carmichael.com

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