

Has Mr. Darling shot the Tory IHT fox?

What has the Pre-Budget Report done for inheritance tax? Newspaper headlines, apart from accusing Mr. Darling of stealing Tory policy, have reported this as doubling the tax-free threshold for inheritance tax. Sadly, It is not quite that simple. It has made the nil rate band - which is the part of your estate that can pass free of tax to your children - transferable between husband and wife. Not only that, it has backdated this so that where for example a husband died ten years ago then his widow can use his nil rate band when she dies. But there are some important qualifications.

Firstly, at present the nil rate band is £300,000 having been increased year by year to take some account of inflation. So that the inflation increase is not lost the widow can use the current nil rate band for both herself and her husband.

Secondly the Revenue 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! This problem is overcome by working out the proportion of the nil rate band that the husband used when he died and applying that proportion to the band applicable at the wife's death.

On the face of it the idea of the transferable 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 the husband died some time 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!

The idea of the transferable nil rate band has been a talking point amongst lawyers and academics for many years, so its adoption is not a total surprise particularly as for many years tax planning experts (including Herrington & Carmichael) have helped clients to in effect achieve this through carefully constructed Wills.

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. What this is not going to be is a simplification of the law; it actually makes an already complicated area of law even more complex. It will mean that those who have planned ahead may have to review their plans while those who through ignorance or inertia have done nothing will be gratified to find that they have not lost out.

No government gives without taking and there are suspicions that in the Budget Mr.Darling may seek some further tightening of the tax rules, the most obvious targets would be the rules relating to lifetime giving and business property relief.

So has Mr.Darling shot the Tories' fox? I think my answer would be that he has wounded the fox rather than achieved a clean kill. The effective increase in the threshold is significantly less than that proposed by the Conservatives; it only benefits married couples and those in Civil Partnerships, and is far less transparent and easy to understand or apply than the Tory proposals. Only time will tell if the wounded fox is dangerous to the present government, for the moment many taxpayers will undoubtedly sleep a little easier.

For further advice please contact Tony Tahourdin at Herrington & Carmichael LLP on 01252 322451 or email art@herrington-carmichael.com

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