

## GUIDANCE

### IHT: TRANSFER OF NIL-RATE BAND

1. In his Pre-Budget Report, the Chancellor of the Exchequer announced that from **9<sup>th</sup> October 2007**, it will be possible for spouses and civil partners to transfer their nil-rate band allowances so that any part of the nil-rate band that was not used when the first spouse or civil partner died can be transferred to the individual's surviving spouse or civil partner for use on their death.
2. HMRC will issue more detailed guidance shortly; what follows explains the basics of the scheme. Detailed guidance on other aspects of the IHT rules is available from the HMRC website as usual and should be read in conjunction with this document.

#### Commencement

3. The transferable allowance will be available to all survivors of a marriage or civil partnership who die on or after **9<sup>th</sup> October 2007**, no matter when the first partner died / dies
4. The claim to transfer unused nil-rate band must be made by the accountable persons when the surviving spouse or civil partner dies and not when the first spouse or civil partner dies. So if you are dealing with the estate of the first spouse or civil partner to die, there is nothing you need do now in terms of making a claim. However you will need to record the proportion of the nil-rate band that goes unused, and the detailed guidance will explain what sort of records will need to be kept in order to support a claim when the surviving spouse or civil partner dies.
5. If you are dealing with the estate of the surviving spouse or civil partner, you can make a claim to transfer the unused nil-rate band from the estate of the first spouse or civil partner to die. To make a claim, you will need to fill in a claim form, which will be available from the HMRC website shortly.
6. The form will ask for information about the estate of the first spouse or civil partner to die that is necessary to calculate the amount of the nil-rate band that was unused. You can then calculate the extent to which the nil-rate band available to the survivor may be increased (see paragraph 9 below) and use that revised nil-rate band to calculate the inheritance tax payable on the survivor's estate.
7. You should send the form to HMRC, together with the documents requested (for example, the death certificate of the first spouse or civil partner to die, a copy of their Will and the marriage certificate) at the same time as you send form IHT200 for the estate of the survivor to HMRC.
8. The increased nil-rate band does not replace the single nil-rate band available to the survivor that determines whether or not their estate is an excepted estate (see paragraph 17 below).

#### How the transfer will work

9. Where a valid claim to transfer unused nil-rate band is made, the nil-rate band that is available when the surviving spouse or civil partner dies will be increased by the proportion of the nil-rate band unused on the first death. For example, if on the first death the chargeable estate is £150,000 and the nil-rate band is £300,000, 50% of the nil-rate band would be unused. If the nil-rate band when the survivor dies is £325,000, then that would be increased by 50% to £487,500.

10. The amount of the nil-rate band that can be transferred does not depend on the value of the first spouse or civil partner's estate. Whatever proportion of the nil-rate band is unused on the first death is available for transfer to the survivor.
11. It is important to remember that even if all the assets passing under the Will are left to the surviving spouse or civil partner, there may be other components of the aggregate chargeable 'estate' on death for IHT purposes (such as assets in trust, or gifts to other people made within 7 years of death). If present, these may use up some or all of the nil-rate band in the normal way, and so reduce the amount of unused nil-rate band that may be available for transfer.
12. The rules apply in the same way whether the first spouse or civil partner to die leaves a Will or dies intestate.
13. The rules allow unused nil-rate band to be transferred from more than one deceased spouse or civil partner, up to a limit of one additional nil-rate band. So if someone has survived more than one spouse or civil partner, then on their death the accountable persons may be able to claim additional nil-rate band from more than one of the relevant estates. **A separate claim form should be completed for each spouse or civil partner who died before the deceased.** However the total additional nil-rate band accumulated for this purpose is limited to a maximum of the amount of the nil-rate band in force at the relevant time. Below are some examples showing how the scheme works.

#### Existing Wills

14. The new rules will not change the effect of existing Wills. So 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. But if someone wants to change their Will to take account of the new rules, that change can usually be made by a Codicil, rather than having to rewrite the Will.
15. Where someone dies after **9<sup>th</sup> October 2007** with a nil-rate band 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 assets had simply been left to the surviving spouse or civil partner outright. Ending the trust in this way would mean that the nil-rate band was not used on the first death, and so the amount available for eventual transfer to the surviving spouse or civil partner would be increased accordingly.

#### Immediate Post Death Interests

16. Where individuals leave assets on trust with a life interest for their surviving spouse or civil partner, with the remainder passing on their spouse or civil partner's death to someone else (for example their children), there is no IHT to pay on the first death because spouse or civil partner exemption applies. So if the entire estate is left in trust to the surviving spouse or civil partner, the nil-rate band would be available for transfer to the estate of the survivor on their eventual death in the same way as if the estate had been left to them absolutely.

#### Link with reporting 'excepted estates'

17. Any additional nil-rate band is only relevant in establishing whether or not any tax is payable on the estate of the survivor – it does not replace the individual nil-rate band amount that determines the excepted estate limit for reporting purposes. If when the survivor dies, their gross estate exceeds the individual nil-rate band amount applicable at the time of their death, the estate cannot qualify as an excepted estate. The accountable persons will still need to

deliver form IHT200 and make their claim for the transferable nil-rate band on the death of the survivor.

#### First death before 18 March 1986

18. Inheritance tax was introduced with effect from 18 March 1986, but before this date other estate taxes (Capital Transfer Tax and Estate Duty) applied. Where a surviving spouse dies on or after 9 October 2007 and their spouse died before the introduction of the current inheritance tax provisions, a claim may still be made for the nil-rate band of the surviving spouse to be increased by reference to unused allowances of their spouse.
19. Where the first spouse died between 13 March 1975 and 18 March 1986 then the estate would have been subject to Capital Transfer Tax. Any transfers to the spouse would have been exempt from tax in the same way as the under the current rules. The transfer of nil-rate band provisions will operate in these cases in the same way as it works for inheritance tax. So that if on the death of the first spouse all their estate was transferred to their surviving spouse, then a claim may be made on the death of the surviving spouse to increase the nil-rate band by 100%.
20. Before 13 March 1975 Estate Duty applied. Under Estate Duty there was no tax-free transfer permitted between spouses until 21 March 1972 when a tax-free transfer between spouses of up to £15,000 was introduced.
21. Where the first spouse died between 21 March 1972 and 13 March 1975 a claim to transfer the nil-rate band to the surviving spouse will be based on the amount of the tax-free band that was unused on the death of the first spouse. For example, a husband died in 1973 and left an estate valued at £10,000, which was all transferred to his wife. As this was all within the spouse's exemption, the individual tax-free band was unused. In this case the full amount of that allowance may be transferred, and a claim may be made on the death of the surviving spouse to increase the nil-rate band by 100%.
22. Where any part of the first spouse's individual tax-free band was used then there will be a proportionate reduction in the amount by which the nil-rate band of the surviving spouse may be increased.
23. Similarly, where the first spouse died before 21 March 1972 the transfer of nil-rate band will be based on the proportion of the individual tax-free band that was unused on the death of the first spouse. However, as there was no relief from Estate Duty for transfers to spouses, any transfer made on the death of the first spouse will use up part of the tax-free band and so reduce the amount by which the nil-rate band of the surviving spouse may be increased.
24. HMRC will shortly publish details of the tax-free bands that applied for Estate Duty and Capital Transfer Taxes. But if you need this information in the meantime, please contact the Inheritance Tax & Probate Helpline on 0845 3020900.

## 25. Examples of how the new rules will work

- A. A dies on 14 April 2007 with an estate of £400,000, which he leaves entirely to his spouse, B. B dies on 17 June 2009 leaving an estate of £600,000 equally between her two children. When B dies the nil-rate band is £325,000. As 100% of A's nil-rate band was unused, the nil-rate band on B's death is doubled to £650,000. As B's estate is £600,000 there is no IHT to pay on B's death.
- B. J dies on 27 May 2007, with an estate of £300,000. She leaves legacies of £40,000 to each of her three children with the remainder to her spouse K. The nil-rate band when J dies is £300,000. K dies on 15 September 2009 leaving his estate of £500,000 equally to his three children; the nil-rate band when K dies is £325,000. J used up 40% of her nil-rate band when she died, which means 60% is available to transfer to K on his death. So K's nil-rate band of £325,000 is increased by 60% to £520,000. As K's estate is only £500,000 there is no IHT to pay on K's death.
- C. R dies on 14 April 2007 with an estate of £450,000, which he leaves entirely to his spouse, S. S dies on 17 June 2009 leaving an estate of £675,000 which she leaves equally between her two children. When S dies the nil-rate band is £325,000. As 100% of R's nil-rate band was unused, the nil-rate band on S's death is doubled to £650,000. This leaves £25,000 chargeable to IHT on S's death.
- D. X dies on 14 April 2007 with an estate of £250,000, leaving £120,000 to his son Y and the remainder to his spouse Z. The nil-rate band when X dies is £300,000 so 60% of his nil-rate band is unused. Z later marries W who dies on 14 May 2008 and also leaves 60% of his nil-rate band unused. Z dies on 14 June 2009 with an estate of £700,000 when the individual nil-rate band is £325,000. Z's nil-rate band is increased to reflect the transfer from X and W, but the amount of increase is limited to 100% of the nil-rate band in force at the time. So Z's nil-rate band is £650,000, leaving £50,000 chargeable to IHT on Z's death.