



**GENERAL GUIDANCE ON CHANGES TO INHERITANCE TAX
ANNOUNCED IN OCTOBER 2007**

[In this note, the term “spouse(s)” includes civil partner(s).]

1. Legislation was introduced in the Finance Act 2008, to allow a claim to be made to transfer any unused nil rate band on a person’s death to their surviving spouse, who dies on or after 9th October 2007. The claim is made after the second death and must be supported with the relevant documents.
2. This applies however long ago the first spouse died and however small the estate of the first spouse. Thus, if the first spouse has no assets, the nil rate band on the death of the surviving spouse will be doubled.
3. For example, if the Will of the first spouse gives one third of the nil rate band to children, with residue to the surviving spouse, leaving two thirds of the nil rate band unused, then on the death of the surviving spouse the nil rate band at that time will be increased by two thirds. In this example, if the nil rate band on the second death is £450,000, this will be increased by £300,000 to £750,000.
4. In Wills for married people and civil partners, nil rate band discretionary trusts have been popular as a means of ensuring that children or other beneficiaries receive the benefit of two nil rate bands. In practice, these changes now normally make these trusts obsolete, for such persons.
5. For spouses with children, the most popular options in future for Will making are likely to be:
 - (a) Give all assets to surviving spouse absolutely or, if spouse fails to survive, to children absolutely.
 - (b) Give all assets to surviving spouse for life only and then to children absolutely.
 - (c) Give part assets to surviving spouse absolutely and give remaining assets as in (b) above.

In all the above cases, the nil rate band on the second death is normally doubled.

6. Any gifts to charity in the Will of the first spouse to die will enjoy charity exemption and so will not affect the nil rate band increase on the death of the surviving spouse.
7. Spouses who are both alive and who have already made Wills containing nil rate discretionary trusts might want to make simple Codicils revoking the nil rate trust clauses, for the sake of simplicity. In my view, there is much to be said for this approach. However, it can be argued that a more flexible, though more complicated, alternative would be to do nothing. Then, between 3 and 24 months after the death of the first spouse, the Trustees of the Will could appoint the nil rate sum to the surviving spouse, either absolutely or by way of life interest, depending on the circumstances at that time, achieving the same result as in (a), (b) or (c) above. Under Section 144, this action would be “read back” for inheritance tax purposes to the date of death. Alternatively, (and this will affect the doubling of the nil rate band on the second death) they could of course decide to proceed with a discretionary trust or to make absolute gifts to individuals other than the surviving spouse.

**October 2008
Allen Chubb
Consultant Solicitor TEP
Child & Child
Tel: 020 7201 5596 (Mon/Tues)
01428 654654 (Other days)**

N.B. These notes are intended for general guidance only. They are not a substitute for obtaining legal advice specific to the circumstances of each case. No responsibility can be accepted for any loss occasioned through acting or refraining from action in reliance on anything obtained herein.