

Forward planning pays dividends

By Su England, head of wills and probate at Glazer Delmar Solicitors

THINKING ABOUT HOW much you are worth if you die can seem morbid, so many people avoid the issue and fail to make a will.

Changes to inheritance tax rules, however, mean it will benefit you to find out your value sooner rather than later. Inheritance tax is payable at 40% on anything you leave over £312,000, unless you leave everything to your partner. This is the Nil Rate Band (NRB), which rose to £300,000 last year, £312,000 this year, and will be £325,000 in 2009.

The rule changes in the last budget mean that any unused inheritance tax NRB can be

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transferred on a person's death to the estate of their surviving partner, if they died on or after 9 October 2007.

So, in theory, they can combine their NRBs, and beneficiaries could receive £624,000 from their estate before they have to pay tax.

The transferable NRBs will also affect people who have lost a family member. In the past, people who thought they would leave possessions and property that would attract inheritance tax set up a discretionary trust in their wills. The NRB of the first partner to die went into the trust and was not counted as part of the survivor's estate.

The assets in a trust are protected, potentially free from inheritance tax, and the council cannot take them into account when calculating care home fees, so trusts are sometimes set up specifically to ring fence a sum of money to deal with these things.

Under the new rules, it looks as if NRB discretionary trusts will not be needed because the deceased partner's NRB can be claimed when the surviving partner dies. But there are still circumstances under which a NRB discretionary trust would be a good idea.

Our financial lives have become much more complicated because of rapid rises in house prices and social changes. Big jumps in property values have meant more people's estates come within reach of the taxman.

The NRB has traditionally grown more slowly than house prices and inflation, so setting up a trust on the first death might mean you get a better return on your money.

A new government might change the rules, so it could be worth banking the NRB on the first death. Business assets are exempt from inheritance tax, so specific legal advice is very important if you have a business to pass on.

So, by simply relying on transferable NRBs, people can miss out on additional tax savings that could be made with the right legal advice.

More of us will divorce and remarry, become civil partners or cohabit over a lifetime, which often means children from previous relationships to consider. Take the Smiths: Mr Smith died from a heart attack aged 68 and left his wife everything.

Because of the new rules, Mr Smith's NRB can be transferred to Mrs Smith's estate and be combined with her NRB. When she dies, the Smith children can inherit £624,000 before they pay any tax.

Some people use some of their NRB to leave a cash legacy to their children and then leave the rest of the estate to their partner. If they used 40% of their NRB allowance making the legacy, the remaining 60% could be transferred to their partner.

If Mr Smith had a previous relationship and children by a first marriage, he could put some assets in a discretionary trust for them.

Each person's estate has to be looked at individually to help them make the greatest tax savings. Advice tailored to individual circumstances can provide a way to guard assets.

Glazer Delmar can give you advice and help with other related areas of the law such as estate administration, obtaining grants of probate, lasting powers of attorney, court of protection and care home funding.

Glazer Delmar Solicitors, 223-229 Rye Lane SE15 4TZ

Tel: 020 7639 8801 ext 209

Fax: 020 7358 0581

willsandprobate@glazerdelmar.com

www.glazerdelmar.com