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Nil Rate Band Trust Wills:
Are they still a good thing?

A Nil Rate Band Trust Will was a useful tool to ensure maximum tax savings on death when assets were eventually transferring to children, but when on the first death a husband and wife wanted to provide for each other.

Prior to October 2007, the position was as follows:

Mr White dies and leaves all his estate, worth £350,000, to his wife. This is exempt from Inheritance Tax as transfers between a husband and wife are exempt under a spouse exemption.

Mrs White then dies in May 2009 leaving an estate of £700,000, which passes to her children. £325,000 is subject to tax at a rate of 0% (known as the Nil Rate Band (NRB)) and the balance is subject to Inheritance Tax at a rate of 40%, giving a liability of £150,000.

If Mr and Mrs White had included a NRB Trust in their Wills, when Mr White died (say in October 2006) Mrs White would have been able to benefit from the assets but £285,000 (the NRB in October 2006) would have been placed into the Trust. On Mrs White's death, her estate would have been £700,000 less the £285,000 now held in Trust, leaving £415,000. From this can be deducted her NRB of £325,000 (rate applicable in 2009/2010), leaving £90,000 and a reduced tax bill of £36,000.

Prior to October 2007, Nil Rate Band Trusts were clearly essential tools in mitigating Inheritance Tax

In October 2007 the Chancellor introduced the Transferable Nil Rate Band. In the first example above for Mr and Mrs White, the position is now that on Mrs White's death her executors can apply to transfer the unused portion of Mr White's NRB to her estate. As Mr White left everything to Mrs White, 100% of his NRB is available. The tax position is as follows:

Mrs White's estate	**£700,000**
Less	
Her NRB	**£325,000**
Mr White's NRB (100%)	**£325,000**
Net estate	**£50,000**
Tax @ 40%	**£20,000**

From this calculation it would appear that the tax saving is greater without the Trust than with it. This is true, whilst the NRB keeps increasing, but without a crystal ball no-one really knows whether it will continue to rise.

If your Wills include a Nil Rate Band Trust, is there any reason to keep it?

We would not advise anyone to rush to change their Will. For some people the benefits of keeping the Trust may outweigh the slight financial gain identified above in not having one.

The Transferable Nil Rate Band is only available between a husband and wife and civil partners. Of course, it is also available for widows and widowers even if their spouses died many years ago. It is not however available to single people, unmarried couples or brothers and sisters who live together. For some groups of people the NRB Trust will still be the only way to mitigate the Inheritance Tax liability whilst providing for someone you care about.

There may be other reasons for keeping the Nil Rate Band Trust in your Will:

1. Assets held in the Trust are not treated as belonging to the beneficiaries and should therefore not be taken into account when determining means-tested benefits, such as contributions to nursing or residential care home fees.

   As a couple, it is a way of protecting at least part of the estate from being eaten up by these rising fees. The number of people living to a greater age and needing such care is also set to rise, so this may be important to more and more people.

2. With the increase in the number of couples who divorce, we are seeing more and more people who are trying to ensure that their Will protects more than one family. A Trust is a useful way of enabling one family or person (usually a spouse) to benefit during their lifetime whilst ensuring that on their death it is possible for children from a former marriage to be protected.

   Some people choose to trust their spouse to ensure that children from a former marriage would be provided for, but sometimes events may occur which mean that this may not happen, such as bankruptcy or remarriage.

3. An NRB Trust may also be known as a Family Trust. It is not automatic that on the death of the surviving spouse the Trust is brought to an end in favour of the children. On the second death it may be that the children are comfortably off and may wish to provide for their own children, thus mitigating Inheritance Tax.

   The Trust would be a way of providing them with the security of knowing the funds are available to their children if they need them, but if the funds are not needed by the children they can be excluded from their estate for Inheritance Tax purposes. Of course, proper advice on the tax implications of keeping the Trust should be taken at each appropriate milestone/key time.

4. It is not always the case that the NRB Trust is funded by cash; it may be funded by an asset. If the likely increase in value of that asset would exceed the current increases in the NRB then it may be advantageous to put that asset into a Trust so the increase in value is outside the surviving spouse's estate for Inheritance Tax purposes.

   This may be the case with an interest in a property. There are also advantages in placing assets which qualify for 100% Business Property Relief or Agricultural Property Relief into a Trust on the first death.

It is clear that what is right for one client may not be right for another. We would therefore recommend that advice specific to the circumstances should be taken before a decision is made. If a spouse dies before making a decision about whether or not to keep the Trust, within two years of their death it is possible to bring the Trust to an end and have it treated as if it never existed. This would then still allow the full use of the Transferable Nil Rate Band.

Of course in some of these cases the Trust is still useful and can be kept. This provision gives you time to consider your options fully.

For more information contact our Wills, Trusts & Probate team today, email **wtp@goughs.co.uk** or visit our website **www.goughs.co.uk**

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