

Wills and Probate Inheritance Tax and Tax Efficient Wills

Inheritance Tax legislation is constantly changing and it is as important as ever to ensure that your loved ones are adequately provided for in your Will.

Making a Will can help to ensure that your estate pays as little inheritance tax as possible as well as ensuring that your estate passes to those beneficiaries that you choose and not those dictated by the Intestacy Rules.

Inheritance Tax is currently payable at 40% on all estates valued over the Inheritance Tax threshold which currently stands at £312,000 for 2008/09 and is set to increase to £325,000 in 2009/10.

Recent changes to Inheritance Tax mean that married couples with larger estates can benefit more from the nil rate band by passing on any unused proportion to the second estate. The proportion of the nil rate band which is unused on the first death can be claimed on the death of the second spouse at the rate in force at the date of the second death. Simple Wills which pass the estate directly to the spouse may now be tax effective, however it does mean that the first spouse has no control over the ultimate destination of their assets. This can be overcome by giving the surviving spouse a life interest in the assets which provides a degree of control and protection.

There are similar provisions for partners in a civil partnership. In order to take advantage of a second nil rate band the Executors have to apply within two years of the second death for the transfer of the nil rate band and provide the Inland Revenue with death and marriage

certificates along with the earlier grant of probate and Inheritance Tax return. You may also be required to provide details of any joint accounts held and any gifts made seven years prior to the death of the first spouse. It is therefore extremely important that you keep this paperwork safe so that your Executors can locate it easily.

To find out if Inheritance Tax is due on an estate, all assets which make up that estate need to be valued and all debts deducted from that total to give the value of the estate. It is important to note that certain gifts that the deceased made during their lifetime may also need to be taken into account as they may now be liable for Inheritance Tax, for example, any gifts made during the last 7 years prior to their death. In certain circumstances, some gifts may be exempt from Inheritance Tax, some examples of this are as follows:

- Each year you are allowed to make one or more gifts totaling up to £3,000 in one year;
- All gifts under £250 to individuals;
- On a sliding scale dependant upon your relationship to the parties involved, you can make an exempt gift to a couple who are getting married or entering into a civil partnership;
- If you survive 7 years after you have made a gift, no inheritance tax is payable. This is known as a potentially exempt transfer. Furthermore there is a sliding scale on the amount of tax payable dependant on how many years that you survive after the gift was made;

- Any gifts made to a UK registered charity, either during your lifetime or in your Will; and
- For certain business and agricultural related gifts reliefs from Inheritance Tax may be available.

Tax efficient wills

Rising affluence in recent years, particularly from property, means that there is genuine threat of paying significant taxes upon a person's death; Inheritance Tax at a rate of 40% means the size of the potential tax bill can be a genuine worry but, fortunately, with some astute planning, it is possible to produce a Will that still conforms to the deceased's wishes but avoids the payment of a significant amount if not at all tax.

The objectives of a tax efficient will

Wanting to avoid tax is a rather obvious objective, but because a tax efficient will can bring about other changes to the status of the survivor and possibly their family, it is as well to state other key objectives:

- Retain full ownership and control of your capital during your lifetime
- After the first death, to allow the survivor to have access to these funds
- To allow the survivor to retain maximum benefit from all assets (such as continuing to live in the family home)
- Preserve assets within the Will Trust for future generations

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How does a tax efficient will work?

Tax Efficient Wills involve making the most of two reliefs. These are:

The Nil Rate Band

Everyone has a fixed amount they can give away free from tax (called the 'Nil Rate Band'). For 2008/9 this is £312,000 which they can give away free from IHT. So if the will takes advantage of the deceased's Nil Rate Band but leaves an amount equivalent to the Nil Rate Band maximum allowance of £312,000 away from the survivor then the total tax liability is reduced. The Government have changed the Inheritance Tax system by allowing a person's Nil Rate Band to be transferred to their surviving spouse or civil partner if this has not been used on their death. Despite this, a Will Trust is a good idea if you wish to preserve your assets for future generations (such as if you are in a second marriage).

Gifts to a spouse or civil partner

These gifts are tax free (co-habitees are currently excluded from this arrangement).

The common misconception

It is still a widely held belief that if you simply leave everything to your spouse or civil partner, that this is the best course of action. Unfortunately, if the joint estates are greater than £312,000, a will leaving everything to each other and to their children and perhaps others will result in Inheritance Tax (currently charged at 40%) being payable on the value of the combined estate upon the second death.

As you will see, there are many ways in which you can reduce your Inheritance Tax bill by tax planning and having a valid Will in place. If you would like any further information on this or a related topic, please do not hesitate to contact us on 01284 767766.