

### **Nil Rate Band Wills/Discretionary Will Trusts:**

For married couples and civil partners, it may be worthwhile to consider leaving assets up to the value of the nil rate band (£285,000 in tax year 2006/07) directly to their children on the first death. This transfer of assets would be free of tax, as it would fall within the deceased's nil rate band. Of course a second nil rate band would still be available to set against the survivor's estate. Using two nil rate bands in this way means that £570,000 in tax year 2006/07 can be removed from the joint estate free of Inheritance Tax. The problem with this is that the surviving spouse will then lose access to the income and the capital of those assets passed to the children on the first death. To overcome this problem, yet still make use of the deceased's nil rate band, a suitable trust can be used.

Typically a discretionary trust will be used under which there is a wide class of beneficiaries including the deceased's spouse, children, grandchildren and their spouses. So, for example, if the husband died first the trustees would have discretion to pay income or capital to the widow while she is still alive.

It is important to note that the trust will not come into existence until the individual's death as it is incorporated in a Will and, of course, both spouses will need to incorporate such a clause in their respective Wills because they do not know who will die first. In order that the assets can pass into the Will Trust it is clearly important that both the husband and wife own assets in their own right that can be left to the trust. Jointly owned assets, such as those held in joint tenancy, would normally automatically pass to the surviving spouse and so would prevent this type of planning.

For further tax efficiency, the trust should give the trustees power to grant loans on an interest-free basis to beneficiaries under the trust. The trustees could make interest-free loans repayable on demand to the surviving spouse and he/she could spend the money as income. This would mean that on the widow/widowers subsequent death, provided that they have not made any lifetime gifts to their now deceased spouse, the outstanding loan would be regarded as forming a debt on their taxable estate and therefore further reduce the IHT liability at that time.

Another practical point to consider is that there should always be at least two trustees acting under the trust to avoid any conflict of interest when amounts are paid out of the trust to the surviving spouse.

Enquire Now – See our enquiry page.