

HECKFORD NORTON

PRIVATE CLIENT NEWSLETTER

November 2009

Tax facts 2009-2010

Inheritance Tax threshold or tax free allowance
nil-rate band:

From 6 April 2009	£325,000
Death rate over £325,000	40%
Lifetime chargeable transfers	20%

Inheritance Tax relief on gifts:

Gifts between spouses Exempt
(includes transfers on death)

This exemption is limited to £55,000 where transferor is UK domiciled and transferee is not UK domiciled

Annual Exemption £3,000

Small gifts per individual £250

Regular gifts out of income Exempt
Provided Donor can maintain usual standard of living without using capital

Gifts to Charity Exempt

Agricultural Property 100% or 50% of agricultural value exempt subject to conditions

Business Property 100% or 50% exemption subject to conditions

Capital Gains Tax 2009/10:

Individual exemption £10,100

Trusts exemption generally £5,050

Rate of tax 18%

Entrepreneurs' relief 10% subject to a cumulative lifetime allowance of £1m and qualifying conditions

Discretionary Trusts – Action needed before 5 April 2010

From 5 April 2010 the income tax rate applicable to discretionary trusts will rise to 50% and the dividend trust rate will rise from 32.5% to 42.5%. Trustees need to be aware of the implications of this and plan for the increase before the end of the current tax year. Consider:

- Distributing income to beneficiaries not liable for income tax at the 'additional (higher) rate' as the tax suffered by the trustees may be recoverable by the beneficiary
- Changing the trust to an interest in possession trust giving the beneficiary or beneficiaries a right to income. This change can be revocable.
- Review the investment policy and balance between income and capital growth (capital gains).

Lasting Powers of Attorney

Lasting Powers of Attorney enable you to delegate decision making to someone, for example, a relative, a friend or business advisor in the event you are unable to act or manage yourself. This could be as the result of either mental or physical incapacity.

Lasting Powers of Attorney come in two separate versions: one for financial affairs (replacing Enduring Powers of Attorney from 1 October 2007) and another for decisions about health and welfare issues, such as long term care.

Do you have a Will?

We would recommend all our clients make a Will to ensure their belongings and assets go to those people they want to benefit and to ensure that a surviving spouse, civil partner,

or partner to whom you are not married receives all that you would like them to rather than rely on the limited provisions which apply on intestacy or, in the case of unmarried couples, a claim through the courts for reasonable financial provision.

Married couples and civil partners – Wills and Inheritance Tax

As confirmed in the Finance Act 2008, up to 100% of the unused proportion of a deceased spouse's or civil partner's Inheritance Tax free allowance (regardless of when that death occurred) can be claimed on the death of the surviving spouse or civil partner on or after 9 October 2007.

The new rules mean Wills incorporating nil-rate band discretionary trusts are no longer necessary purely as a means of reducing Inheritance Tax (IHT) for spouses or civil partners. The following alternative options for Wills could be considered depending upon individual circumstances:

- Each spouse can make new wills leaving everything to the survivor and thereafter to children, thus simplifying the wills and leaving the survivor with control and access to the entire estate and in a position to take advantage of the availability of the additional nil rate band on the survivor's death to reduce IHT payable
- Each spouse can leave some or all of their estate to the other for life and then what remains to children. The same IHT position applies but the first spouse to die can retain control over the eventual destination of his or her assets and there is some protection against future care fees.
- Each spouse can retain or create a nil rate band discretionary trust in their wills for the benefit of the surviving spouse, children and grandchildren. The use of the trust utilises the nil rate band of the first to die but it allows the survivor to enjoy the income from the assets in trust and protects the assets against future care fees. The assets in trust can grow in value outside the estate

of the survivor and all appointments/transfers from the trust fund within the first 10 years will be charged to IHT at 0% no matter how much they have increased in value.

There are disadvantages in each case some more obvious than others and these need to be discussed and balanced against the advantages taking into account individual wishes and circumstances.

It is still the case that an appointment of trust assets from a nil rate band discretionary trust in favour of a surviving spouse or civil partner within 2 years of the first death will be treated as if the assets had been left to the survivor outright. Ending a nil rate band trust in this way would under the current proposals allow the then unused nil rate band to be transferred to the survivor so there is no necessity to rush to change existing Wills for this reason alone. However, we would still recommend clients review existing wills every 3 - 5 years or sooner where there have been changes in your own personal circumstances.

This newsletter is only intended as a general overview of recent developments. For further advice and information please contact:-

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This publication is not a substitute for detailed advice on specific transactions and should not be taken as providing legal advice on any of the topics discussed.