



Discretionary Trusts

Prior to the introduction of the transferable nil rate band, the accepted means of mitigating inheritance tax on the death of the surviving spouse was to provide for the first spouse to leave to the Trustees of a Discretionary Trust assets equivalent to the nil rate band. Indeed, if you have received tax planning advice in the past you may already have a 'nil rate band discretionary trust' Will. The purpose of the Trust was to enable the surviving spouse, subject to the Trustees' discretion, to access the assets in the nil rate band Trust but in such a way that they would not form part of their estate for inheritance tax purposes. Other beneficiaries of the trust would be included (commonly the children and grandchildren) but the surviving spouse would be viewed as the primary beneficiary.

With the changes to the inheritance tax regime the justification for nil rate band Discretionary Will Trusts has clearly changed but they still have significant benefits including:

1. To ensure that the assets in the Trust can pass according to the wishes of the first spouse to die rather than being under the total control of the surviving spouse.
2. With wise investment decisions it may be possible to invest the amount of the nil rate band on the first death and exceed the growth in the nil rate band, therefore achieving a greater inheritance tax saving than using the transferable nil rate band. Although in the current economic climate this may seem unlikely the stock market has, over longer periods, consistently performed very well.
3. To enable your children to use the Trust for their own inheritance tax planning. The Trust would be capable of lasting for 80 years and accordingly it is possible for successive generations to utilise the assets within the Trust in such a manner that they are not liable to inheritance tax on their own death.
4. By using a discretionary trust it is still possible to make payments to the beneficiaries (e.g. children). However the capital of the trust would not be seen as an asset of any one beneficiary as they only have a hope of receiving a benefit. This may avoid the problem whereby a person's assets are taken into account in a divorce settlement or bankruptcy proceedings.
5. Likewise, the capital of the trust fund is not assessed as belonging to the surviving spouse for means testing. This can be helpful when considering care home fee assessment.

When we discuss your particular circumstances we will explain to you the benefits of this type of Will and how it could be used to ensure your wishes are protected.

Discretionary trusts are extremely useful as a means of saving inheritance tax in the following cases:-

- (a) Life policies should be transferred to a discretionary trust in order that:- the proceeds of the policies are not liable to inheritance tax on death, and any benefit which the surviving spouse receives under the policies can be sheltered from inheritance tax on their, or other beneficiary's death
- (b) The death benefit under a personal pension policy will normally be payable at the discretion of the insurer who will usually be guided by a Letter of Wishes whereby you nominate the persons who you would wish to benefit. Whilst the death benefit will normally be free of inheritance tax it is recommended that a Discretionary Trust is established to act as a receiving vehicle for the pension death benefit. This will enable the surviving spouse to be able to access (subject to the Trustees' consent) the pension death benefit but in such a way that it will not be liable to inheritance tax on their death.
- (c) Death in service benefits are normally dealt with in the same manner as personal pension policies (see (b) above).

(d) In the case of cohabittees to allow the surviving partner to access your assets in such a way that they will not be liable to inheritance tax on the survivor's death.

Call Julie Jewers, head of Berwins' Life Team and a qualified member of the Society of Trust and Estate Practitioners to find out more, or to make an appointment for a free half hour's advice. Her number is 01423 722565 or email her on JulieJewers@berwin.co.uk.

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