



# Private Client Law Bulletin

## THE 2007 PRE-BUDGET REPORT

Following the Pre-budget report is there any point in having Wills with nil rate band trusts?

This obviously depends on circumstances but I would generally advise yes for the following reasons:

- the nil rate band is a political instrument and therefore subject to change. It should not be assumed that in the years to come the nil rate band cannot be frozen, reduced or even abolished.
- the changes will only be finalised in the budget next year and the proposed changes as presently drawn may not actually become law?
- the capital appreciation of the assets in the nil rate band trust may be predicted to outstrip future increases in the nil rate band (we only need to look at house prices to see this). This would mean the growth in value of the assets is taken out the equation at the 2<sup>nd</sup> death.
- a nil rate band trust ensures that the full benefit of Agricultural & Business property reliefs are not wasted by giving such assets to the surviving spouse. It also crystallises the benefit of the relief on the 1<sup>st</sup> death in case those reliefs disappear before the 2<sup>nd</sup> death. Additionally it gives the opportunity to get 'two bites at the cherry' namely getting business/agricultural property relief in relation to the same asset in the estate of both spouses.
- it is thought that advantage can now be taken of the jointly owned property discount. Couples often jointly own their home. On the 1<sup>st</sup> death if a share in the home is given to the discretionary trust the survivor and the trustees then jointly own it and on the survivor's death the value of the survivor's share in the home would be reduced by the jointly owned property discount of up to 15%.
- it could be difficult to ascertain the exact nil rate band that was available on the death of the first spouse, especially if some time ago – how often are precise records kept. This may lead to issues with getting claims past the Revenue.
- a trust protects the money for the ultimate intended beneficiaries.
- a trust protects the assets from creditors of the surviving spouse or their remarriage.
- the surviving spouse might enter means-tested long term care and the whole of the combined estate could then be caught.
- the survivor might lose mental or physical capacity to manage the money.
- deeds of variation may be nearer to being scrapped and then one cannot put trust provisions back into the Will if desired. If the trust is in already, one can always get rid of it if needed.
- at the end of the day, the trust can be wound up within 2 years of death and one can get back to same position as if there had not been a trust – this requires the consent of all trustees though.

**If you would like an informal chat or require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact the Liverpool office on 0151 600 3451 or the Manchester office on 0161 836 8800.**

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