

**Private Client Law Bulletin****NIL RATE BANDS**

Following the introduction of the transferable nil rate band rules, there seems to have been a growing sentiment of just leaving all of the nil rate band of the first spouse to die to pass to the surviving spouse (or civil partner). With the nil rate band having been frozen for the next few years at least, there is an argument that it would be sensible to crystallise the nil rate band of the first to die (perhaps by using a discretionary trust as was common practice) as the value of that nil rate band, if just left to transfer to the surviving spouse, may decrease with the effect on inflation over the years.

In addition, it is excellent planning to keep or include a nil rate band discretionary trust in Wills to take effect on first death so that:

- It keeps this sum out of the estate of the surviving spouse who may enter means-tested long term care and the whole of the combined estate could then be caught
- It helps protect the fund from future changes to the Inheritance Tax rules
- Deeds of variation may be nearer to being scrapped and then one cannot put trust provisions back into a Will. If they are in to start with, they can always be got rid of by appointing out of the trust
- Indeed, the trust can be wound up within 2 years of death (but not within first 3 months) to get back to the same position as if the Will didn't include a trust.

PERPETUITY & ACCUMULATION PERIODS

It is a principle of English law that property cannot be held within a trust in perpetuity. Since 1964, the statutory perpetuity period (i.e. the maximum term a trust can effectively subsist) has been 80 years. The Perpetuities & Accumulations Act 2009 extends this to 125 years for new trusts arising on or after 6th April 2010.

Where there is a trust in a Will, only if the Will was executed on or after 6th April 2010 will this extended perpetuity period apply. It doesn't matter that the death might have occurred after this date. It is possible to execute a Codicil to republish the Will with the extended perpetuity period.

This new period doesn't apply to charitable trusts or relevant pension schemes.

This Act also abolished the rule (for new trusts) that income arising in the trust could only be accumulated for 21 years. This can now be accumulated within the trust for 125 years or to the end of the trust period, if earlier.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Private Client issues, please contact: Duncan Bailey in Liverpool on 0151 600 3451, Richard Bate in Manchester on 0161 836 8840 or Stephen Marriott in Preston on 01772 229 816.

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