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LIFE INSURANCE SPECIALISTS

Frequently asked questions on the transferable nil rate band

Synopsis: The most frequently asked questions on the transferable nil rate band - based on the guidance provided by HMRC.

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What do you mean by a transferable nil rate band?

A transferable nil rate band arises when one party to a marriage or civil partnership dies and the amount of their estate that is chargeable to inheritance tax (IHT) does not use up all of the nil rate band they are entitled to. Where this happens, the unused part can be transferred to the surviving spouse or civil partner when they die.

How does the transferable nil rate band work?

Everyone is entitled to a nil rate band for IHT. Assets that pass from one spouse or civil partner to another are exempt from IHT. So, if on death, someone leaves everything they own to their spouse or civil partner, it is exempt from IHT and they have not used any part of their nil rate band. That unused nil rate band can now be transferred to their surviving spouse or civil partner and used in working out the IHT liability on their estate when they die.

Does it matter when the deaths occurred?

Yes – this only applies where the second spouse or civil partner died on or after 9 October 2007. But it does not matter how long before them their spouse or civil partner died. (Note: please see the last two Q&As about the impact for Capital Transfer Tax and Estate Duty).

What if both deaths occurred before 9 October 2007?

Where both spouses or civil partners have died before 9 October 2007, these provisions do not apply.

How much is the nil rate band?

For 2025/26 the nil rate band is £325,000 and it is expected to remain at this level until the end of the 2029/30 tax year.

So, if I inherited all the assets from my spouse or civil partner, my executors could add their nil rate band to the nil rate band that applies when I die?

Essentially yes – but it works by looking at what proportion of the nil rate band that was unused when your spouse or civil partner died and increasing the nil rate band available when you die by that same proportion.

What do you mean by increasing the nil rate band available by the same proportion?

The amount to be transferred is worked out by taking the proportion of the nil rate band that was unused on the first death and applying that to the nil rate band available when you die. So, if your spouse or civil partner left assets worth £162,500 to your children with everything else to you and the nil rate band on their death was £325,000; one-half of their nil rate band is unused and is available for transfer.

If, when you die, the nil rate band had increased to, say, £350,000, the amount available for transfer would be 50% of £350,000 or £175,000 giving your estate a nil rate band of £350,000 + £175,000, or £525,000 in total.

What if my spouse or civil partner's estate was only worth £100,000, so that they did not need all of their nil rate band. Is the amount that can be transferred tied to the amount that they actually left to me?

No - it does not matter what the size of first estate was, whatever proportion of the nil rate band is unused may be transferred to you. If your spouse or civil partner's estate was worth only £100,000 and they left everything to you, they will not have used any part of their nil rate band. So, 100% of the nil rate band is available for transfer when you die.

What about any gifts my spouse or civil partner may have made in the seven years before they died; or any other assets that were chargeable when they died?

Gifts and any other assets that are chargeable on the first death (say assets in trust or assets owned jointly with a son or daughter) all eat into the nil rate band in the normal way and so reduce the amount that may be available for transfer. (Note: please see the last two Q&As about the impact for Capital Transfer Tax and Estate Duty).

How does the transferable nil rate band affect whether the estate of the surviving spouse or civil partner qualifies as an excepted estate?

An estate which can benefit from a transferable nil rate band in respect of one earlier death only may also qualify as an excepted estate. The following conditions must be satisfied...

- the deceased died on or after 6 April 2010;
- the gross value of the deceased's estate is not more than twice the IHT threshold (currently £650,000, but is otherwise a standard excepted estate OR the net value does not exceed that amount but is otherwise an exempt excepted estate;
- the deceased's spouse/civil partner died before them on or after 13 November 1974 (5 December 2005 for civil partners) domiciled (pre-6 April 2025)/long-term resident (from 6 April 2025) in the UK;

- the predeceasing spouse's/civil partner's estate consisted of assets passing by Will or intestacy, or by survivorship, with the gross value of any foreign assets not exceeding £100,000;
- none of the predeceasing spouse's/civil partner's nil rate band was used by the earlier death; and
- the predeceasing spouse's/civil partner's estate for IHT did not include interests in trust assets, gifts with reservation of benefit and alternatively secured pension funds, or any chargeable lifetime transfers (business and agricultural reliefs being ignored for this purpose, along with the normal expenditure out of income exemption for amounts in excess of £3,000 per annum where the death occurred after 1 March 2011).

I'm going to leave all my estate to my spouse or civil partner; but between us our estates do not exceed one nil rate band; what should I do?

On your death your executors should still work out how much of your nil rate band is available for transfer as the circumstances of your spouse or civil partner may change before they die.

But if, when they die, their estate remains below a single nil rate band and provided they have not remarried or entered into a new civil partnership, there is no need for their personal representatives to make a claim to transfer unused nil rate band.

How is the transfer made?

When the surviving spouse or civil partner dies, their personal representatives will make a claim to transfer the unused nil rate band available from the first death. They will need to fill in a claim form that will help them to work out how much of the nil rate band is available for transfer.

They will also need to provide certain documents to support their claim such as...

- the death certificate for the first person to die,
- the marriage certificate or civil partnership certificate for the couple,
- if the spouse or civil partner left a Will, a copy of it,
- a copy of the grant of probate/ confirmation, and
- if a deed of variation or other similar document was executed to change the people who inherited the estate of the spouse or civil partner, a copy of it.

The personal representatives should send the claim form and the supporting documents to HMRC when they send in the form IHT400/IHT205 on the death of the surviving spouse or civil partner.

How long do the personal representatives have to make a claim?

The claim must be made within 24 months from the end of the month in which the surviving spouse or civil partner dies.

How will the personal representatives of the surviving spouse or civil partner know how much to claim?

When the estate of the first person to die is settled, their personal representatives will need to work out how much of the nil rate band is transferable. They will then need to make sure the surviving spouse or civil partner knows what that amount is.

They will need to let the surviving spouse or civil partner have sufficient documents and information so that when the surviving spouse or civil partner dies, their personal representatives can make a claim to transfer the unused nil rate band. This information should be kept with their Will in a safe place.

What sort of documents and information should the personal representatives of the first spouse or civil partner to die provide to the surviving spouse or civil partner?

So far as the person's own assets are concerned, the personal representatives of the first spouse or civil partner to die should let the surviving spouse or civil partner have...

- a copy of the HMRC return (form IHT205 or IHT400; in Scotland, forms C1 and C5),
- a copy of the deceased's Will (if any),
- a copy of any documents, such as a deed of variation, executed after the death of the first spouse or civil partner, that changes who benefits from their estate,
- any valuation(s) of assets that pass under Will or intestacy other than to the surviving spouse or civil partner,
- any evidence to support the availability of relief (such as agricultural or business relief) where the relievable assets pass to someone other than to the surviving spouse or civil partner.

But there can be other assets that are chargeable when someone dies such as...

- assets owned jointly with another person,
- assets held in trust from which the first to die was entitled to benefit and which are treated as forming part of their estate on death,
- any lifetime gifts made by the first to die in the seven years before their death,
- any gifts made by the first to die where they did not give up possession and use of the assets, or where they retained a right to use the asset through an arrangement (a gift with reservation of benefit), and

- where the first to die was over 75, any alternatively secured pension fund from which they received a pension.

If any of these apply to the estate of the first person to die, the personal representatives will need to pass on information about these assets as well, for example...

- details of the assets concerned and evidence of their values,
- details about any exemptions and/or relief taken into account in arriving at the chargeable values.

What if not all the documents needed for a claim are available? Can a claim still be made?

The personal representatives will be able to obtain copies of some of the documents they need from public records bodies...

- Copies of grants of representation or Confirmation and copies of Wills are available from the Court Service (for England and Wales, www.hmcourts-service.gov.uk, for Scotland www.scotcourts.gov.uk, and for Northern Ireland www.courtsni.gov.uk), and
- Copies of death certificates and marriage certificates are available from the General Register Office.

These will provide the value of the first estate that was declared for Probate/Confirmation and will also provide information about who inherited the assets that passed under the deceased's Will or intestacy. However, it will not provide any information about other assets that are chargeable when someone dies (list above). The personal representatives will need to make enquiries of those who inherited the first estate to see if they can recall whether or not there may have been other assets that were chargeable on the first death.

If values are known, they should be included on the claim form; if values are not known, the personal representatives should complete the claim form to the best of their ability and explain the position to HMRC when they make their claim.

If there is no evidence that any other assets were chargeable, the personal representatives can make their claim based on the information they have from the documents already mentioned.

What happens if the surviving spouse or civil partner loses the documents and information?

The information and documents about the claim could be very valuable to the second estate and it will be important to keep them safe. If the material is lost, the personal representatives will need to obtain copies of the documents required to substantiate the claim.

What if the documents needed to make claim have been stolen or destroyed in a fire?

Where something happens that is beyond the control of the surviving spouse or civil partner or their personal representatives, again the personal representatives will need to obtain copies of the documents required to substantiate the claim.

Is there anything that should be done when the first spouse or civil partner dies?

Yes. It is important to work out what the transferable amount is and make sure that the surviving spouse or civil partner is given sufficient documents and information to support the claim their personal representatives will need to make. However, it is not possible to contact HMRC to establish and agree the transferable amount when the first person dies.

Is it necessary to agree with HMRC the values of assets like houses or household goods; and whether a relief such as agricultural or business relief applies?

It will only be necessary to agree values where such assets pass to chargeable beneficiaries on the first death (i.e. someone other than the surviving spouse or civil partner). This will be done when the surviving spouse or civil partner dies, but only where it is necessary to do so because the amount of the unused nil rate band may affect the amount of IHT to pay on the second death.

Similarly, if a farm is left to, say, a son and the personal representatives of the first death consider that agricultural relief is due against the whole property, the extent to which the relief is due will be established, if it is necessary, on the second death.

How will the surviving spouse or civil partner know the values of the assets left by their spouse or civil partner to other beneficiaries?

The personal representatives of the estate of the first person to die will need to make sure that they take appropriate steps to value assets that pass to chargeable beneficiaries and to make sure that they give sufficient evidence to the surviving spouse or civil partner to support the values used and any relief that is considered due.

Can the amount of the nil rate band that can be transferred to the surviving spouse or civil partner be agreed with HMRC at the time of the first death?

There is no system that allows for this to happen.

What happens if all of the deceased's assets were jointly owned and so pass automatically to the surviving spouse or civil partner without the need to take out a grant of representation or Confirmation (in Scotland) on the first death?

Provided there were no other assets chargeable to IHT or Capital Transfer Tax on the deceased's death, the whole of the nil rate band is unused and can be

transferred to the surviving spouse or civil partner's estate. The personal representatives can make a claim to transfer the unused nil rate band. Any other assets chargeable on death, such as gifts made within seven years of the death, will start to use up the nil rate band.

Where the deceased died before 13th November 1974, personal representatives will need to bear in mind that there was at that time only limited, or no, spouse exemption for transfers from one spouse to the other. (Note: please see paragraphs at the end of this Q&A about the impact for Estate Duty).

What if some of the deceased's assets were jointly owned and so pass to people other than surviving spouse or civil partner without the need to take out a grant of representation or Confirmation (in Scotland) on the first death?

It will be very important for the surviving spouse or civil partner to keep information about any assets (that they know about) that pass to others by survivorship, because the value of those assets will affect the proportion of nil rate band that their personal representatives will be able to claim. The same applies to any other assets that are chargeable to IHT on the deceased's death such as gifts made within seven years that are not covered by one or other of the exemptions.

Without all this information, it will be very difficult for the surviving spouse or civil partner's personal representatives to make a claim to transfer unused nil rate band.

Is there a special procedure if both parties to a marriage or civil partnership have died one shortly after the other?

An application for a grant in the estate of the first person to die should be made in the normal way. This will allow you to establish how much of the nil rate band is unused on the first death. You should then work out the size of the second estate by adding together the value of that person's own assets and any assets they inherited from the estate of the first spouse or civil partner to die. If this does not exceed single nil rate band available to the estate of the second spouse or civil partner to die, there is no need to worry about transferring unused nil rate band from the first death. Provided the other conditions are satisfied, you will be able to apply for a grant as an excepted estate.

If this does exceed the single nil rate band, you will need to fill in form IHT400 for the estate of the second spouse or civil partner to die.

You should also make a provisional claim to transfer the unused nil rate band which should be based on the information available to you at the time you make your claim. You should indicate on the claim form that the value is an estimate and you should tell HMRC what the final figure is once it is known. The estimated amount of the nil rate band that can be transferred can be used to work out the tax payable on the second death.

What is the position when both parties to a marriage or civil partnership die at the same time?

Although the rules that govern what happens when spouses or civil partners die at the same time are complex, the same basic principle applies – if there is any nil rate band unused on death of one spouse or civil partner, it can be transferred to the estate of the other, if required.

My first husband died whilst we were still married; I subsequently remarried but am now divorced, can my personal representatives make a claim to transfer any unused nil rate band from my first husband's estate?

Yes, any unused nil rate band from your first husband's estate can be transferred to your estate as a result of a claim made by your personal representatives.

What happens if my surviving spouse or civil partner remarries or enters into another civil partnership and they die before their new spouse or civil partner?

Where this happens, the nil rate band available to your spouse or civil partner will be increased by any unused amount of your nil rate band that their personal representatives wish to claim.

If your surviving spouse or civil partner dies first and decides to leave all their assets to their new spouse or civil partner, then again, the full amount of the nil rate band on their death is available for transfer to their new spouse or civil partner. But the maximum that can be added to anyone's own nil rate band is 100% of the nil rate band applicable at the date of their death.

My spouse or civil partner has died before me and a nil rate band discretionary trust was set up under their Will. What can we do to make their nil rate band available for transfer now?

If the nil rate band was fully used when your spouse or civil partner died and your estate exceeds the nil rate band when you die, then between you, you will have made full use of the two nil rate bands that are available to you.

There may also be good reasons for leaving the trust in place – for example, there could be asset protection benefits and you will have access to the trust fund as a potential beneficiary without it forming part of your estate for IHT purposes (this latter point could be particularly important if your estate is close to the £2 million taper threshold for the residence nil rate band).

If, however, you would rather "undo" the nil rate band trust, the position depends on how long ago first death occurred...

- if your spouse or civil partner died more than two years ago, unfortunately, there is nothing that can be done. Any changes to the trust may give rise to a separate charge to IHT on the trust itself. You may want to speak to a solicitor or accountant about this.
- if your spouse or civil partner died less than two years ago, an appointment of the trust assets in your favour (before the second anniversary of their death) would normally be treated for IHT purposes as if the assets had

simply been left to you outright. Ending the trust in this way would mean that the nil rate band was not used on the first death, and so the amount available for eventual transfer to your estate would be increased as appropriate.

My spouse or civil partner has died before me and left their entire estate to me. I executed an Instrument of Variation to create a nil rate band discretionary trust and used up the nil rate band on their death. What can I do to make their nil rate band available for transfer now?

The position is the same as in the question immediately above – if your spouse or civil partner died less than two years ago, an appointment of the trust assets in your favour (before the second anniversary of their death) would normally be treated for IHT purposes as if the assets had simply been left to you outright.

Ending the trust in this way would mean that the nil rate band was not used on the first death. An appointment made in this way after the Instrument of Variation which created the trust is valid and will not be barred as a subsequent variation.

I want to change my Will in the light of these new rules, do I have to have the whole Will rewritten?

Not necessarily, it is possible to change parts of a Will by making a Codicil to the Will. This can revoke existing clauses and insert new ones. You may wish to speak to a solicitor about this.

How does the idea of a transferable nil rate band work where there is conditionally exempt property?

It all depends on whether the surviving spouse or civil partner dies before the conditional exemption ceases. Where the conditional exemption ceases before the surviving spouse or civil partner dies, the charge on cessation of the exemption will apply in the usual way – and if this exhausts the nil rate band, there will then be nothing left to transfer to the surviving spouse or civil partner.

If, however, the surviving spouse or civil partner dies first and their personal representatives transfer the unused nil rate band, the amount transferred will not be available for use when the conditional exemption ceases. Nevertheless, if this is some considerable time after the surviving spouse or civil partner dies, the charge on cessation of the exemption will still reflect any increase in the nil rate band that has occurred between death and cessation.

I know that my spouse/civil partner did not use up all their nil rate band when they died and the unused portion is available for transfer to me. I want to make a lifetime gift that will give rise to an immediate liability to IHT, can I transfer the unused nil rate band against this gift?

No, the unused nil rate band can only be transferred to be used against your estate when you die. If you were to die within seven years of making the immediately chargeable lifetime transfer, so that additional tax is payable on the gift as a result

of your death, the transferred nil rate band will be used in the normal way and may reduce any additional tax due as a result of your death – but you cannot transfer the unused nil rate band against the tax due on a lifetime transfer at the time the transfer is made.

I am divorced and my ex-husband has died without remarrying, can my personal representatives claim to transfer his unused nil rate band to my estate when I die?

No, in order for your personal representatives to be able to make a claim to transfer unused nil rate band, you must have still been married to your husband when he died.

Is the residence nil rate band also transferable between spouses or civil partners if this is not used on first death?

Yes, the residence nil rate band is also transferable – in exactly the same way as the standard nil rate band – if it was not used on first death, and second death occurs on or after 6 April 2017. Again, it does not matter how long ago first death occurred.

The amount of residence nil rate band available for transfer will, however, be restricted (or lost altogether) where the estate on first death exceeds £2 million. Transferable residence nil rate band may also be lost if the estate on second death exceeds £2 million.

Are there special rules if the first death occurred before 13 November 1974, i.e. when Capital Transfer Tax or Estate Duty applied?

The same basic principles apply in that if there was no Capital Transfer Tax or Estate Duty payable on the first death because the estate was less than the amount on which tax or duty was charged at 0%, the nil rate band that applies on the surviving spouse's death can be increased by the proportion that was not used.

Personal representatives wishing to make a claim to transfer unused nil rate band where the first spouse died before 13 November 1974 will need to bear in mind that under the Estate Duty rules then in force there was no unlimited exemption for transfers between spouses. For deaths after 21 March 1972 (but before 13 November 1974), the relief was capped at £15,000; and for deaths on or before 21 March 1972 there was no relief at all. Unlimited spouse exemption only applied to Estate Duty for deaths after 12 November 1974 until 12 March 1975.

Example 1

The first spouse died in 1970 (when the nil rate band was £10,000) leaving an estate of £5,000 wholly to the surviving spouse. There was no spouse exemption in place in 1970, so the transfer to the surviving spouse will have used up half of the Estate Duty nil rate band at that time. Consequently, the IHT nil rate band available on the surviving spouse's death can only be increased by 50%.

Example 2

The first spouse died in 1973 (when the nil rate band was £15,000) leaving an estate of £24,000 wholly to the surviving spouse. The first £15,000 of the transfer would have been covered by the limited spouse exemption then in force and the balance of £9,000 would have used up 60% of the Estate Duty nil rate band at that time. Consequently, the IHT nil rate band available on the surviving spouse's death can be increased by 40%.

As a general rule of thumb, if some Estate Duty (or Capital Transfer Tax, or IHT) was paid on the first death, there will have been no unused nil rate band available for transfer for use when the surviving spouse dies.

Were the rules about the assets that were chargeable on death any different for Capital Transfer Tax and Estate Duty?

Again, the basic principles remained the same, but there were some differences...

- for Capital Transfer Tax, initially, all the gifts made during an individual's lifetime were to be taken into account when they died, although this was limited to gifts within seven years of the death during the first seven years of Capital Transfer Tax and this was subsequently cut from an unlimited cumulation to a period of ten years in 1981.
- for Estate Duty, settled property in which the deceased had a life interest was not always agreeable with the estate on death.

If the first spouse died prior to 18 March 1986 and the question of other chargeable assets is relevant, and you are not sure what to include in your claims, you should discuss the position with HMRC first.