



Inheritance Tax (IHT)

1. IHT is a form of death duty which is payable at the rate of 40% on the amount by which a deceased person's estate exceeds the 'Nil-Rate Allowance'.

More information about IHT is given in our guide to 'Inheritance Tax Explained'.

Nil-Rate Allowance

2. Each individual has their own Nil-Rate Allowance and can dispose of assets up to that value, by Will or by lifetime gifts, free of IHT. The Nil-Rate Allowance is £325,000 for the tax year 2009/10.
3. A person's Nil-Rate Allowance may be reduced by the value of life policies and pension funds, and certain trusts in which they have an interest.

Transferable Nil-Rate Allowance

4. Often, when one of a married couple or registered civil partnership dies, they will not use all of their available Nil-Rate Allowance. The most common reason for this is that their estate, or the majority of it, passes to their surviving spouse (or civil partner) and is not subject to IHT because of the spouse exemption – i.e. in general terms there is no IHT on gifts to spouses.
5. With effect from 9th October 2007, where the whole Nil-Rate Allowance has not been used, the unused portion can be added to the survivor's own Nil-Rate Allowance on their subsequent death. This will be added as a proportion of the Nil-Rate Allowance in force when the survivor dies.
6. If the first to die did not use any of their Nil-Rate Allowance, this will mean that the survivor's estate will benefit from an allowance of double the Nil-Rate Allowance in force at the time of their death (i.e. £650,000 at 2009/10 rates). In addition, even if the value of the estate of the first to die was considerably below the Nil-Rate Allowance, the full amount can still be claimed by the survivor's executors.
7. As long as the second death occurred after 9th October 2007, it does not matter how long ago the first death took place.

Claiming the Transferable Nil-Rate Allowance

8. The transferable Nil-Rate Allowance is not automatically added to the survivor's own allowance, and instead has to be claimed by their executors.
9. In order to do this, the survivor's executors will need to produce information and documentation to HM Revenue and Customs showing how much of the first to die's Nil-Rate Allowance is available to be transferred. This could be a difficult task for the executors to undertake, as they may not be able to gather all the necessary information, particularly if the second death occurs a long time after the first. This could result in HM Revenue and Customs refusing the claim in part or in full and unnecessary IHT being paid.
10. We therefore advise that the survivor takes legal advice as soon as possible after the first death, to secure the unused Nil-Rate Allowance.

Steeles Law can put together a pack, containing all of the information that the survivor's executors will need on their eventual death. This will then be readily available to the survivor's executors and should enable them to make the maximum claim without difficulty.

Please contact us for further information.

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This guide is intended for general guidance only and should not be relied upon without detailed legal advice on your specific circumstances, which we will be pleased to provide.

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