

SAVING INHERITANCE TAX BY THE USE OF THE WILLS OF A MARRIED COUPLE

Inheritance Tax is payable at a nil rate on the first £312,000 passing on death and at 40% thereafter.

By using a Discretionary Trust in your Will your surviving spouse may retain the benefit of your entire estate but, on the second death, your children (or other beneficiaries) will save tax of up to £124,800 (i.e. £312,000 at 40%). Your children could inherit £624,000 free of tax and 60% of any excess.

Gifts to a surviving spouse are usually exempt from tax so married couples do not normally have to concern themselves with the payment of Inheritance Tax on the first death: However your children will have to pay Tax at 40% on any excess over £312,000.

£312,000 could also have been given to the children on the first death free of tax. Most couples are not wealthy enough to do that (or perhaps simply do not wish to do so) but wish to retain the entire estate for the surviving spouse, so losing the benefit of the first nil rate band of tax.

If by your Will you give up to £312,000 to the Trustees of a Family Trust that gift will be tax free as it falls within the nil rate band of tax. The Will should be drawn in such a way that your surviving spouse and your children are the beneficiaries of a Discretionary Trust. The Discretionary Trust is created only on the first death, i.e. by the Will of the first to die. It is intended to last for however long one spouse survives the other. Technically the Trust Fund is taxable when funds are taken out of the Trust and at a reduced rate of tax every ten years in the meantime. However the nil rate on the first £312,000 still applies so no Inheritance Tax will be payable on that sum: you will have saved your family £124,800.

You need not be concerned that you do not have investments worth £312,000. Other assets such as a share in a home will suffice.

Don't be concerned that the Will may refer to periods of 80 years and 21 years: they are there only for technical reasons.

It is not the wealth of the individual that is important so much as the joint wealth of the couple. If a couple is worth more than £312,000 neither spouse should be worth substantially more than that until both are. It may pay you to have roughly equal estates.

If, on the death of the first spouse to die it is found that the survivor is not as wealthy as had been hoped, a decision can then be made whether to use the trust at all, or perhaps only in part.

The Trustees will have the power to benefit the surviving spouse or the children at such time as they, the Trustees, think fit. It is therefore important that you appoint Trustees who you can trust to look after the surviving spouse so that the surviving spouse may get the full benefit of the entire estate.

We here have to add a word of warning: this scheme works because we are dealing with a discretionary trust: the Capital Taxes Office has warned that if the trustees act as if the surviving spouse is entitled

to the income, it too will treat the trust as if it is not discretionary: it follows that when the time comes to put the trust into effect the trustees must regularly consider who they do wish to benefit and keep a record of their decision and reasons.

We suggest that the surviving spouse and a professional trustee should be the Trustees. Trustees must act unanimously: that gives the surviving spouse the power of veto so guaranteeing that if need be she (or he) will have full use of the Trust Fund and particularly the income arising from it. We suggest that you should be wary of appointing your children as Trustees for their potential interest in the Trust Fund is very different from that of the surviving spouse.

In view of the responsibilities and technicalities involved we advise that an experienced professional person, perhaps one who is a member of the Society of Trust and Estate Practitioners, should be one of the Trustees. The appropriate members of Richard Wilson & Co are members of the Society. The Wills we suggest provide that a member of this firm should be one of the Trustees for we know that the intention behind the

Discretionary Trust is to look after the surviving spouse with the real benefit to the children being the saving of Tax.

As professional trustees we are well able to protect the surviving spouse, to properly consider the conflicting claims of the beneficiaries, to ensure that the Trust Fund is properly invested and to deal with Tax Returns.

On the death of the first spouse to die we would expect at that time to review whether the trust should be put into effect in full, in part, or at all. If it is then found that trust is not needed in order to save tax, all or perhaps part of the fund can be given to the surviving spouse outright. The possible desirability of the trustees simply giving the fund to your surviving spouse is perhaps another reason for not appointing your children as trustees.

Our fees for administering the Discretionary Trust during the years that one spouse survives the other will be calculated purely by reference to the amount of time spent. When funds are taken out of the Trust, presumably following the death of the surviving spouse, there is an additional charge of 1% of the value of the funds distributed.

Richard Wilson & Co
Solicitors

GORING ON THAMES OFFICE
Cymbal House
High Street
Goring on Thames
RG8 9AU

Tel: 01491 879100
Fax: 01491 874187
e-mail: goring@richard-wilson.co.uk