

Claim for pre-deceased spouse's unused NRB (Lecture P1353 – 17.12 minutes)

The transferable nil rate band rules for IHT involving pre-deceased spouses (or civil partners) came into force for deaths occurring on or after 9 October 2007. The main details are set out in S8A IHTA 1984.

Although the date of the first (i.e., pre-deceased) spouse's death is irrelevant, it is necessary to calculate the amount of their nil rate band which was unused when they died. The date of 9 October 2007 above refers to the earliest date of the second (i.e., later) spouse's death.

The statutory calculation of the available nil rate band claimable on the second death can be summarised as requiring the following steps:

1. Establish the quantum of the unused nil rate band on the first death. This is expressed in s.8A(2) IHTA 1984 as:

$$M - VT$$

where:

M = the maximum nil rate band available to the pre-deceased's estate; and

VT = value actually transferred on the first death (or nil if no chargeable transfer was so made).

2. Work out the % specified in s.8A(4) IHTA 1984 which uses the formula:

$$E / \text{NRBMD} \times 100$$

where:

E = M - VT (i.e., the unused nil rate band on the first death); and

NRBMD = the maximum nil rate band available on the first death.

3. The pre-deceased spouse's nil rate band, which is claimable by the survivor's personal representatives, is determined as:

$$\text{Prevailing nil rate band at time of survivor's death} \times \text{specified \% above}$$

The transferred nil rate band of a pre-deceased spouse, which must be claimed via Form IHT402, can only be used against the IHT payable on the surviving spouse's death.

Illustration

Gail died on 1 December 2022, leaving an estate valued at £1,350,000 (which did not include any residential property, given that she had lived in rented accommodation for many years). Her late husband, Noel, had died several years earlier in November 2006 – at that time, the nil rate band stood at £285,000.

In his will, Noel left chargeable legacies totalling £57,000 to their two sons, with the residue of his estate passing to Gail.

Gail's personal representatives can therefore make a claim under S8B IHTA 1984 to utilise Noel's unused nil rate band as follows:

The unused nil rate band on Noel's death was $£285,000 - £57,000 = £228,000$.

The specified percentage is $228,000/285,000 \times 100 = 80\%$.

Given that the nil rate band at the time of Gail's death in December 2022 is £325,000, the claimable unused nil rate band from Noel's death is £260,000 ($80\% \times £325,000$).

Thus, in addition to her own nil rate band of £325,000, Gail has a further £260,000 which can be set against the assets in her estate.

Contributed by Robert Jamieson