

Transfer of tax allowance after death

(Lecture P1076 – 9.59 minutes)

In FA 2014, legislation was passed which allows individuals who are married (or in a civil partnership) to transfer 10% of the standard personal allowance (£11,850 for 2018/19) to their other half. The relevant details can be found in Ss55A – 55E ITA 2007.

A wife, for example, who has little or no income can transfer £1,185 in 2018/19 to her husband, subject to the requirement that he must not be liable to income tax at the higher or additional rate (or the dividend equivalent). In other words, the maximum tax benefit for 2018/19 of what is known as the 'marriage allowance' is 20% x £1,185 = £237.

Hitherto, the legislation has been drafted in such a way that the individual giving up part of their personal allowance and the other party who is entitled to the tax reduction must be married to (or in a civil partnership with) one another at the time when the election is made. Therefore, if the spouse who would otherwise have been able to make the election under S55C ITA 2007 to effect the marriage allowance transfer is no longer alive, this facility has not been available and the surviving spouse cannot benefit from the tax reduction under S55B ITA 2007. It is known that this situation has caused particular resentment among bereaved spouses (and civil partners) who were unaware of the election until after the other party's death when someone – probably a professional person who was assisting with the administration of the estate and providing advice – drew their attention to it.

When the Low Income Tax Reform Group first highlighted this anomaly, the Government were immediately sympathetic. Accordingly, Cl 6 F(No2)B 2017 allows an election to be made under S55C ITA 2007 by the personal representatives of a deceased individual and for that election to have effect for the tax year of death and for any earlier year, up to the statutory limit of four years previously.

Elections can be made by personal representatives on this basis on or after 29 November 2017.

Thus, if a wife were to die in February 2018 without having made the requisite election, her personal representatives could elect under S55C ITA 2007 both for the year of death (2017/18) and for any of the previous years during which the transferable marriage allowance rules were in force (2016/17 and 2015/16) and the surviving husband could benefit from a tax reduction for those years.

It should be noted that Cl 6 F(No2)B 2017 will enable those who have previously tried to make an election on behalf of a deceased individual, where that claim has been rejected, to make a fresh election.

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