

Inheritance Tax Residence Nil-Rate Band



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in Cornwall

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Overview

On death, Inheritance Tax (IHT) is charged on estates where the net taxable value (after deducting various reliefs and exemptions) is more than the available nil-rate band. The available nil rate band currently is £325,000 per taxpayer. The available nil-rate band is the nil band at death less any chargeable transfers (namely gifts) made by the deceased in the 7 years before death.

On death, IHT is currently charged at a single rate of 40% on the net taxable value of the estate that exceeds the available nil-rate band.

The purpose of this briefing is to provide an overview of the availability and operation of the 'residence nil rate band' (RNRB), which was introduced from 6 April 2017.



Residence Nil Rate Band summary

The residence nil-rate band (RNRB) represents an additional nil-rate band (NRB) for an estate that includes an interest in a residential property used by the deceased as their residence at some point during their ownership, and left to “lineal descendants” (defined as including children, step-children, adopted children, foster children and also additionally spouses of the lineal descendants).

In order to benefit from the RNRB, a person’s lineal descendants must inherit a home left to them:

- on death in the deceased’s Will; or
- under the rules of intestacy; or
- by other legal means as a result of the owner’s death.

The value of RNRB is the lower of:

- the net value of the interest in the property (after deducting any liabilities attributable thereto, e.g. mortgage); and
- the maximum amount available of the RNRB, currently £175,000.

Since 6 April 2017, the RNRB has been phased in, the maximum amounts being as follows:

£100,000	2017/18
£125,000	2018/19
£150,000	2019/20
£175,000	2020/21

Following the Budget 2021 announcements, the RNRB will be frozen at £175,000 until 6 April 2026 at the earliest.

The RNRB will apply to an interest in one residential property only. Where there is more than one such interest in the estate, Personal Representatives will have the ability to elect the property to which the RNRB is to be applied. The normal rules as to use as a residence by the deceased, will still apply.

Any unused RNRB on the first spouse/Civil Partner's death can be transferred to the surviving spouse/Civil Partner's estate. This is not an automatic transfer and must be made by application of the Personal Representatives of the second spouse/Civil Partner to die. This is similar to the way the unused standard nil rate band can be transferred between estates.

It may be preferable on the first partner's death to ensure that the residence passes to the surviving spouse/partner. This will ensure that the benefit of the transferable RNRB will be maximised on the second death.

For estates valued at more than £2 million (before the application of any IHT reliefs), the RNRB (and any transferred RNRB) will be gradually withdrawn or tapered away. The RNRB is tapered away by £1 for every £2 that the net value (after allowable liabilities are deducted, but before reliefs and exemptions are applied) of an estate exceeds £2m.

The RNRB only applies to the estate of a person who has died. It does not apply to gifts or other transfers made during a person's lifetime. This includes gifts that become taxable because they have been made within 7 years of a donor's death.

When the value of the deceased's interest in the residential property is greater than the available RNRB, the RNRB will be applied first. Thereafter, any balance of the standard nil rate band can be applied.

The legislation addresses scenarios where the deceased has 'downsized' or sold their residential property prior to their death. If the property is sold on or after 8 July 2015, provided assets of an equivalent value to the property interest disposed of pass to lineal descendants, the RNRB is still available.



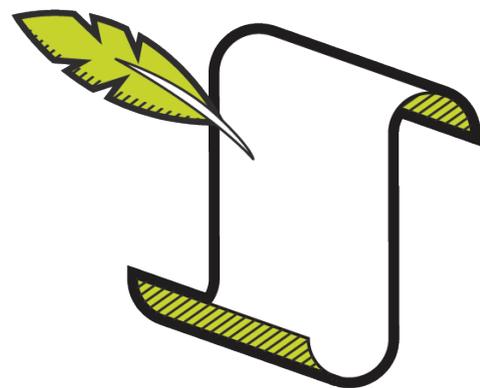
Practical points of interest

Wills

Property which qualifies for RNRB but is transferred to a non-discretionary trust, should still benefit provided that the beneficiaries of the trust are lineal descendants.

Interests in residential property left to a discretionary trust (under Will) do not qualify for RNRB. Depending on personal circumstances, wills should be reviewed in light of the RNRB to make sure the NRB and RNRB claims can be maximised, particularly given that it used to be common practise to include discretionary trusts in wills.

In the case of remarriages, no more than one RNRB is transferable (as is also the case with the transferability of the standard NRB).



Downsizing

If an estate does not qualify for full RNRB, it may still be entitled to a further relief know as a "downsizing addition". It is important to note the significance of recording full details of transactions involving the property e.g. the date of the exchange of contracts, gross sale and purchase prices of all transactions involving any property used as a residence.

A claim will need to be made by the executors for any additional RNRB as a result of downsizing or disposal of the home made by the deceased.

Joint tenants/Tenants-in-common

Depending on whether the property is owned as joint tenants or as tenants in common, the IHT treatment on death differs significantly.

When a property is owned as joint tenants (i.e. owned jointly by the deceased person and their spouse/Civil Partner or other individual), this form of ownership means that, on the first death, the property automatically transfers to the surviving joint tenant. This is the "survivorship" rule and will apply irrespective of the terms of the will (or intestacy) of the first co-owner to die.



If the joint owner of a property held under a joint tenancy is not a 'lineal descendent', this will prevent the availability of the RNRB against the property value in the deceased's estate.

Where a property is owned jointly as tenants in common, the survivorship rule does not apply. This means that, on the death of a co-owner of the property, his/her share will not pass to the surviving co-owner. Instead, his share will pass to his beneficiaries under the terms of his/her Will or intestacy.

Property ownership should be reviewed to ensure that the above rules do not result in an unintended distribution of assets and that all available reliefs and nil rate bands are accessible.

Summary

In summary, the rules are complex and it should not be assumed that the full RNRB will be available.

You should seek professional advice about how to work out the available RNRB and the effect of the RNRB on the Inheritance Tax (IHT) liability. We can assist in both redrafting your Will and advising on inheritance tax planning.



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If you would like to find out more about these proposed changes and how we at RRL can assist, please contact our Tax Partner, Steve Maggs:



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Updated April 2021

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