**Existing Estate Planning**

Your current Wills effectively direct your estate to each other upon your death.

On the death of the first spouse your executors are responsible for;

* The distribution of your estate
* The distributions of chattels
* They must transfer all the residue of the first to dies’ estate to the surviving spouse absolutely

On the death of the second spouse all assets pass absolutely to the children.

**Legislation Change since your Planning was established**

During 2016 legislation was introduced to provide a new additional IHT allowance for selected estates and is known as the Residence Nil Rate Band (RNRB) allowance.

The RNRB rules are regarded as complex but do provide an important opportunity for additional tax benefits to be realised. In order to ensure that any available allowance is maximised each estate requires a study of both the financial assets and the estate planning (Wills and Trusts).

The legislation came into effect in April 2017 and the allowance increased each year until 2020. On the surface the new tax allowance sounds like a simple idea in that there is an additional Nil Rate Band that applies to the family home specifically. It started at £100,000 per person in 2017 and now £175,000. Like the standard Nil Rate Band, it is transferable between married couples or civil partners.

A married couple now has the potential to leave assets worth £1million without paying any inheritance tax. But the new RNRB only applies if the asset is left to your direct descendants. This is your children (including step-children, adopted children or foster children) or grandchildren.

Some care is needed to ensure that there are no drafting issues in Wills that may conflict or prevent the new RNRB allowance to be claimed. For example, when a home is left to a mixture of qualifying direct descendants and others, then the RNRB may be impacted. The good news is that your children do not have to move back in to the family home to benefit. The only person who needs to have lived in the property to claim the allowance is you.

Any Will arrangements of larger estates need to be reviewed and if a discretionary trust is used the impact will depend on the asset ownership of each client. Similarly if a Will granted a right for the surviving spouse to live in the home before it passing to the children on their death, this would qualify for RNRB.

If a Will said that the property would pass to your direct descendants, but only after attaining a minimum age, this may not qualify for the RNRB.

The new RNRB applies to any residential property you have ever lived in although you cannot use the allowance against a buy-to-let property. However, there is no minimum residency period. It seems possible to move into a buy-to-let property shortly before death to ensure it qualifies. You can only use the allowance against one property though – if you have more than one property at the date of your death, your executors would need to nominate the most suitable property.

The home doesn’t need to be owned at death to qualify. If in the future you downsize or sell your property the proceeds will still qualify, provided the assets still pass to direct descendants and the property would have qualified, had you not sold it. The important point here is to ensure you keep records (and you let your executors know where the records are kept). You can use the standard Nil Rate Band against any type of asset, but the RNRB can only be used against a residential property.

If the value of an estate is over £2million (after deducting liabilities but before reliefs and exemptions) the RNRB is reduced by £1 for every £2 over £2million. Clients with business assets need to take specific advice to minimise the risk of losing part or all of the available RNRB allowance.

As previously mentioned, like the Nil Rate Band, the RNRB is transferable between spouses. This applies when the second death occurs after 5 April 2017, regardless of when the first death occurred. The taper for larger estates mentioned previously applies at first and second death.

For larger estates, in some cases clients may face a dilemma of choosing between claiming the allowance on first death by leaving part of the residence to the children or forgoing the available tax allowance. Such an action would require careful thought and legal guidance should be sought. Whilst tax planning is always welcome, it should not sway you into an action you would not be comfortable with in later years.

**Practical Impact on Estate Planning**

**Married Couple’s Estates of over £2 million**

As your joint estate is already over £2 million and likely to increase, with the appreciation in your business and main residence value, your ability to claim the full Residence Nil Rate Band is highly likely to be impacted by the tapering cap under the legislation.

If the estate appreciates to £2.7 million and above, the RNRB allowance may be eliminated completely.

**Specific Considerations for your planning**

The new RNRB planning is a welcome addition but you need to consider changes to your planning in order that you at least partially benefit from the available allowance and save several thousand pounds in tax potentially. In order to achieve this you will need to consider changes to your existing estate planning.

1. Nil Rate Band Planning

You should both consider adding Nil Rate Band Planning to your estate planning. This will potentially deliver two benefits;

* it will reduce the estate of the surviving spouse and will increase the likelihood of your estate qualifying for the RNRB tax allowance
* if the main residence is used to partially fund the NRB the growth in the value of the share of the property will be IHT free. There may also be an available value discount in the value of the property held by the surviving spouse under HMRC guidelines. It is essential however that on the death of the first of you that your executors take advice regarding the funding of the NRB Trust Fund.

1. Business/Agricultural Property Relief Planning

You currently have no Business Planning for your estates. Advanced planning would ensure that any exempt assets at the date of your death (BPR/APR qualifying) are dealt with in an efficient manner. This could deliver two key benefits;

* firstly it would reduce the estate of the surviving spouse and this will increase the likelihood that the available RNRB allowance may be maximised (£350,000 of additional joint tax allowance)
* by removing BPR assets from the residual estate of the first to die, if any of these assets are subsequently sold they should not add to the estate of the surviving spouse for IHT purposes

1. RNRB on first death

The major flaw with your current estate planning is that there is a real danger that if either of you inherit assets from each other the estate of the surviving spouse will exceed £2 million and part or all of the available RNRB allowance could be impacted.

If tax planning is your priority each of you should consider gifting part of their share in the main residence to the children via their Will if they are the first to die. This would potentially save up to £70,000 if a full RNRB allowance was impacted in future years assuming asset appreciation and could lead to benefits of up to £140,000 being realised as a best case.

1. Residual Estate to Children

On second death, the children will inherit the residual estate absolutely. This means your children's inheritances will not be protected and additionally further IHT may be paid by future generations (your grandchildren).

**Specific Actions to take**

After reflecting on the information provided you need to decide if you want to leave your planning as it is or whether it is important to you to upgrade your estate planning in order to maximise the available tax allowances and provide protection of your children's inheritances.

If you were to adopt new planning with Solidus it will require the preparation of a Beneficiary Protection Plan. This consists of:

* bespoke advice
* two new integrated Wills
* RNRB planning on first death
* business planning if required
* nil rate band planning
* two lifetime Trusts, one for each of your children, providing protection and generational tax benefits

The work should be completed within 8-12 weeks and simply requires an application form and payment for the required advice and services.

In addition to the essential upgrading of your current estate planning you could also consider the tax benefits of lifetime transfers to your children via one or more protective lifetime gifting trusts.