Inheritance Tax: Residence Nil Rate Band (RNRB)

Penguin

Contents

Introduction	2
The New Allowance - An Overview	3
Transferring unused allowances between spouses	4
The property	4
Direct Descendants	4
Downsizing	5
Estates valued at more than £2 million	6
Wills and Trusts	7
Some of the variable considerations and complexities	8
Reviews and Advice	8
Estate Planning	9
Do you need to take action?	9
About Us	10
Contact Us	11

Introduction

In April 2017 a new home allowance, or residence nil rate band (RNRB), will be introduced as an addition to the existing Inheritance Tax (IHT) rules.

On the surface this may look a simple extension of the existing allowance, however these provisions are, in fact, highly complex.

You will find there is plenty of information on the subject including through the government's web site. However the reality is that the information about the new rules and how they apply is only half the 'picture', the true value to you of this new allowance will come from an exploration of how this might ***affect*** people in different circumstances, how to make ***the most*** of the allowance and also some of ***the pitfalls*** to be aware of.

We will explain all of this fully in the following pages, so you will have a clear idea of how this may impact on you – and, crucially, what steps you may need to take to react to this new allowance. www.gov.uk and HMRC state in their web pages about the new allowance:

"You should get professional advice about how to work out the RNRB in some situations. You may want to get advice about the effect of RNRB on the Inheritance Tax (IHT) liability, or what action you need to take to make sure that an estate qualifies for the RNRB."

And:

"HM Revenue and Customs (HMRC) can't:

- ***Give tax planning advice***
- ***Comment on what someone should do to take advantage of the RNRB***
- ***Explain what someone's entitlement to the RNRB or tax position will be***

These will depend on a number of factors."

(Source: https://www.gov.uk/guidance/inheritance-tax-residence-nil-rate-band)

Our guide will aim to help you and to give you a clear explanation of all the factors, including a pathway to getting further advice as you require it.

This really matters as the percentage of properties in the UK sold for more than £325,000 has doubled since 2009. £325,000 is the amount of the current Nil Rate Band and this has been frozen at this figure since 2009. It will remain at this amount up to 2021.

It is clear therefore that more and more estates are being dragged into the Inheritance Tax 'net'. By implication more people than ever before are impacted. This includes the individuals or couples who leave their assets to beneficiaries and also the beneficiaries themselves. A single estate which has IHT imposed on it, can affect many people within a family.

Individuals, couples or families who organise their estates accordingly can save substantial sums in tax. This new legislation offers a potential further tax saving of up to £140,000, per couple/family at its maximum level.

The New Allowance – An Overview

The new Inheritance Tax (IHT) Residence Nil Rate Band (RNRB), ***introduced in April 2017***, is in addition to an individual's existing IHT nil rate band of £325,000, and conditional on the main residence being passed down to ***direct descendants*** (e.g. children, grandchildren).

The maximum relief starts at £100,000 (2017/18) then rises by £25,000 per year until it reaches a maximum of £175,000 for 2020/21.

Tax Year	Standard NRB	Enhanced RNRB	Total NRB
2017/18	£325,000	£100,000	£425,000
2018/19	£325,000	£125,000	£450,000
2019/20	£325,000	£150,000	£475,000
2020/21	£325,000	£175,000	£500,000

NRB = Nil Rate Band
RNRB = Residence Nil Rate Band

For deaths occurring ***after 5 April 2017***, the new RNRB allowance will be available. This will mean that, together with the nil rate band (**currently frozen at £325,000 until 2021**), by tax year 2020/21 married couples will be able to leave assets with a value of up to £1 million free of inheritance tax.

For a couple this enhanced allowance could represent an IHT saving of £140,000.

Any unused RNRB when someone dies can be transferred to the deceased's spouse or civil partner's estate. This can also be done if the first of the couple died before 6 April 2017, even though the RNRB wasn't available at that time.

The RNRB can't be transferred to a 'partner' who's not the spouse or civil partner of the deceased. **This is still true even if they lived together and jointly owned the home.**

Transferring unused allowances between spouses

It is possible to transfer unused RNRBs between spouses. In fact, even if the first spouse died before 6 April 2017, it may be possible to secure a carried forward RNRB.

Any unused RNRB is passed on ***as a percentage*** rather than a figure. On the second death, the unused RNRB available is calculated according to the current RNRB. For deaths before 6 April 2017, the full RNRB can be transferred to a spouse or civil partner.

The Property

The RNRB is limited to one property and will not be an allowance per property. There will be scope to nominate which residential property will qualify should there be more than one property in the estate. However properties designated as buy to let will not qualify for main residence nil rate.

The residential property must have been occupied by the individual/ couple as a residence at some time but it does not need to have been their main residence (home).

Direct Descendants

The RNRB will only be allowed when you pass on a property directly to a direct descendant.

This includes:

- Children
- Step children
- Adopted children
- Foster children
- Lineal descendants such as grandchildren

If passed onto anyone else, then RNRB won't apply to your estate.

Downsizing

The downsizing condition in the new rules is in place to help people who want to move to a smaller property, possibly to release funds, or who may need to sell a property to go into care. The reason why the downsizing or sale takes place is not relevant to the provisions.

This condition was introduced to make sure there was no incentive to 'keep a property' simply to save IHT.

If, on death, an estate doesn't qualify for the full amount of RNRB, the estate may be entitled to a downsizing addition if ***all*** three of these conditions apply:

1. **The deceased disposed of a former home and either downsized to a less valuable home, or ceased to own a home, on or after 8 July 2015;**
2. **The former home would have qualified for the RNRB if it had been kept until death;**
3. **At least some of the estate is inherited by the deceased's direct descendants.**

The amount of the downsizing addition will generally be equal to the RNRB that's been lost because the former home is no longer in the estate. It will also depend on the value of the other assets in the estate that are left to direct descendants. But the downsizing addition can't exceed the maximum amount of RNRB that would have been available if the disposal or downsizing hadn't happened.

Only one disposal of a former home can be taken into account for the downsizing addition. If the deceased disposed of more than one home between 8 July 2015 and their date of death, the personal representatives can choose which disposal is taken into account to calculate the downsizing addition.

The calculations around this can be complex and there are possible pitfalls to be avoided (or at least managed, if possible).

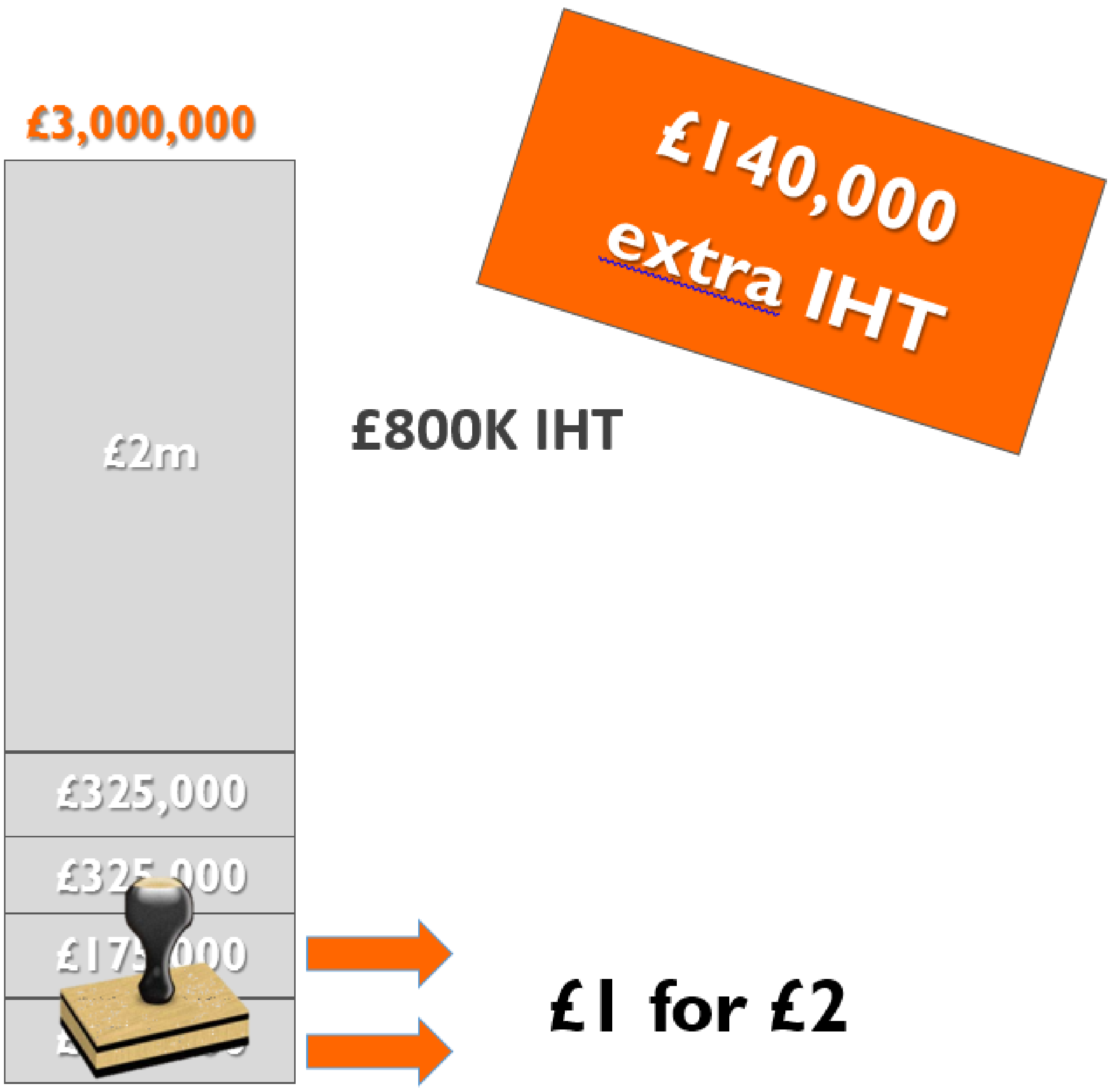
Estates valued at more than £2 million

The new main residence allowance is progressively to be withdrawn once a couple's estate, with the inclusion of their main residence, is worth £2,000,000 or more. The withdrawal is at the rate of £1 for every £2 over the £2,000,000 limit.

This will mean that on its introduction there will be no RNRB available if the deceased holds assets of more than £2.2M. This will rise to assets of £2.35M in 2021/22 when the full £175K allowance kicks in.

When a joint estate is worth £2,700,000 the effect will be a complete removal of the main residence tax allowance meaning the estate would only have the standard nil rate allowance of £325,000 per person.

It is worth noting that some common reliefs, for example Business Property Relief and Agricultural Property Relief, are ignored in calculating the estate value.



Wills and Trusts

Wills definitely need to be revisited. People with the following arrangements will almost certainly need to take action:

- If you own your home as tenants in common and intend to place the shares of the first to die in a discretionary trust;
- If your Wills have left the estate of the first to die on life interest trusts to the survivor and/or include discretionary trusts for the children/grandchildren on the second death;
- If you are widowed and a nil rate band discretionary trust was implemented on the death of your spouse; and/or
- If you leave property to anybody other than your direct descendants.

The residence nil rate band may be lost where, for example, the property is placed into a discretionary will trust for the benefit of the children or grandchildren.

A deed of variation may come to the rescue for some where property is passed to an individual. But it can be near impossible to vary a transfer into a discretionary trust which has a wide class of beneficiaries as agreement will be needed from all possible beneficiaries.

Otherwise family homes placed into a trust will be eligible for the RNRB provided that the beneficiary is a direct descendant. This will include:

- Bare trusts
- Interest in possession trusts
- Bereaved minor trusts
- 18-25 trusts
- Disabled persons' trusts

Some of the variable considerations and complexities

The purpose of our guide is to provide you with the basic detail of the main points applying to this new rule. We believe that ultimately this is an area which requires bespoke review and advice (see section below), as it is only by considering individual circumstances that clarity can be given in specific cases. However as an example of some of the complexities and potential pitfalls, as well as possible planning opportunities, we outline below some typical situations which may highlight areas to consider:

- It could be that there are provisions in existing wills which negate the potential benefits of this new allowance; wills should be reviewed, as should existing estate planning measures;
- Married couples and those in civil partnerships who currently intend to pass all their assets (and nil-rate bands) onto their partner may find that any tax saving is negated if the estate exceeds £2 million at the time of the second death. There may well be ways to reorganise how assets are shared to avoid this loss of the tax benefit.
- If you have an estate which is more than £2 million when you include business assets or other assets which would obtain general IHT relief, you could be in the position where you lose the enhanced allowance even though your overall estate, for IHT purposes, is otherwise below the IHT threshold.
- If you have more than one residential property there could be complications around where this allowance may apply and it is worth exploring this further.
- The relief will not apply where a descendant obtains a contingent interest in a property, for example, where a Will specifies that a beneficiary will not receive their inheritance until reaching a certain age. This is a very common clause, which could cause a claim for the RNRB to fail.
- There will need to be careful consideration around gifts made historically and how these interact with the new rule.

Reviews and Advice

As stated at the outset, what appears, at first sight, as a simple piece of new legislation has remarkable complexity in the way it is applied and how both individuals and couples should deal with this in the context of their financial planning.

Arguably, this is one of the most important changes we have seen in recent times, with almost universal need for those who will or may be affected (because of their estate values) by this change to take forward looking advice to review their positions.

Estate Planning

Ultimately the area we are looking at here is much wider than a simple quest to make sure that you are benefiting from this new allowance, if possible. This area of financial planning is Estate Planning or Succession Planning, whereby we want to help you look at the whole subject of preserving your family wealth. So these new rules have to be considered in the context of this much wider subject.

As the tax legislation shifts there is a clear opportunity for individuals and couples to gain considerable advantage. More and more areas of central taxation policy actually open simple tax planning measures; these include the recent introduction of a new dividend allowances, higher personal allowances against income tax and also improvements to ISA rules and allowances.

The challenge at a personal level is to balance the here and now, with the longer term (especially in a world where average age of death is increasing and care costs are escalating). This leads to regular reviews, not just to cater for new rules, such as the RNRB rules outlined here, being a feature of any successful ongoing plan.

Do you need to take action?

There are many scenarios where the new rule could impact on your wider plans, so it is a virtual universal answer to say that it is worth getting your existing position reviewed.

It is especially prevalent for couples who have discretionary trusts to undertake a fresh review, for any individual or couple who have business or agricultural assets within their estates, for anyone who is unsure if a property will qualify, for anyone whose estate may be close to or over £2 million and for any situations where existing estate planning around trusts/gifts etc. has been previously executed.

One final point to remember – in the vast majority of situations, the actual day of reckoning, when an IHT liability may arise, is likely to be some time in the distant future, when IHT legislation could be very different ***or your asset position could be very different***. There is therefore often good reason to take steps to protect assets and pursue protective measures even when the existing view might suggest there is a currently no obvious concern.

Any individual or couple interested in protecting family wealth through the generations should aim to plan ahead, wary that future tax rates, allowances could be very different, as could their own asset positions.

Trusts are a dynamic solution and – contrary to many people's perception – are available and relevant for family wealth of all levels and amounts. This is commonly the best way to tackle the dual objectives of preserving wealth and minimising taxation.

To obtain further ideas about some of the ways you can tackle long term estate planning using trusts then our guide to trusts can be found here: http://penguintaxplanning.co.uk/download-our-brochure/

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Contact Us

Tel: 02920 450 143

Email: info@penguinwealth.com

www.penguinwealth.com