

Residence nil-rate band

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1.1 Summary

EN FB 2015 provides:

Clause 9 FB 2015 introduces a new additional residence nil-rate band for inheritance tax when a home is passed on death to direct descendants of the deceased on or after 6 April 2017.

The maximum amount of the band will increase in stages up to £175,000 in 2020-21.

Any unused band will be transferable to a spouse or civil partner.

The clause also provides for a tapered withdrawal of the band for estates valued at more than £2 million.

There is a little background in HMRC “Inheritance Tax: main residence nil-rate band and the existing nil-rate band”(“the HMRC paper”).²

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<https://www.gov.uk/government/publications/inheritance-tax-main-residence-nil-rate-band-and-the-existing-nil-rate-band/inheritance-tax-main-residence-nil-rate->

These notes are based on the summer Finance Bill 2015 allowing for Government amendments proposed 11 September.

The FB clause may be regarded as work in progress; perhaps it will be rewritten substantially before becoming the F(no.2)A 2015.

1.2 The two nil rate bands

We will now have two nil rate bands with different rules:

- (1) The *general* nil-rate band. This is to remain at £325,000 until end 2020/2021; Clause 10 FB 2015.
- (2) The *residence* nil-rate band.

1.3 Commencement and scope

Section 8D IHTA provides:

- (1) Subsections (2) and (3) apply for the purpose of calculating the amount of the charge to tax under section 4 on a person's death if the person dies on or after 6 April 2017.

This links to s.4(1) IHTA which provides:

- On the death of any person tax shall be charged as if, immediately before his death,
- [1] he had made a transfer of value and
 - [2] the value transferred by it had been equal to the value of his estate immediately before his death.

1.3.1 *Failed PETs*

The HMRC paper provides:

The measure will take effect for relevant transfers on death on or after 6

band-and-the-existing-nil-rate-band (8 July 2015)

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April 2017. It will apply to reduce the tax payable by an estate on death; it will not apply to reduce the tax payable on lifetime transfers that are chargeable as a result of death.

Transferrable nil rate band is the same: note planning point

1.4 The relief

Section 8D IHTA provides:

(2) If the person's residence nil-rate amount is greater than nil, the portion of VT that does not exceed the person's residence nil-rate amount is charged at the rate of 0%.

1.4.1 Relationship with general nil rate band

Section 8D IHTA provides:

(3) References in section 7(1) [Rates of IHT] to the value transferred by the chargeable transfer under section 4 on the person's death are to be read as references to the remainder (if any) of VT.

In short, the residence NRB (if available) is used first.

1.5 Definitions

There is the usual cascade of definitions before we reach the final term, residence nil-rate amount ("RNRA").

1.5.1 Residential enhancement

Section 8D IHTA provides:

(5) For the purposes of those sections and this section—

- (a) the “residential enhancement” is—
- (i) £100,000 for the tax year 2017-18,
 - (ii) £125,000 for the tax year 2018-19,
 - (iii) £150,000 for the tax year 2019-20, and
 - (iv) £175,000 for the tax year 2020-21 and subsequent tax years, but this is subject to subsections (6) and (7) [indexation]

For spouses the effective maximum relief is:

	Band	Potential IHT(40%)
2017/18:	£200k	£80k
2018/19:	£250k	£100k
2019/20:	£300k	£120k
2020/21:	£350k	£140k

Figures subject to indexation by reference to CPI: Section 8D(6)-(9) IHTA

1.5.2 Taper threshold (TT)

To start, TT is £2m.

Section 8D(5) IHTA provides:

- (b) the “taper threshold” is £2,000,000 for the tax year 2017-18 and subsequent tax years, but this is subject to subsections (6) and (7) [indexation],
- (c) TT is the taper threshold at the person’s death

1.5.3 Estate (E) and value transferred (VT)

Section 8D(5) IHTA provides:

- (d) E is the value of the person’s estate immediately before the person’s death,

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(e) VT is the value transferred by the chargeable transfer under section 4 on the person's death

VT is *not* the value transferred on death. (If it was, E and VT would actually mean the same thing.) VT is the part of the value transferred (if any) which is a *chargeable* transfer.

1.5.4 Default allowance and adjusted allowance

In short:

Default allowance is the allowance before taper

Adjusted allowance is the allowance after taper (the adjustment only goes down).

Section 8D(5) IHTA provides:

- (f) the person's "default allowance" is the total of—
 - (i) the residential enhancement at the person's death, and
 - (ii) the person's brought-forward allowance [transferrable allowance from spouse]

The HMRC paper provides:

There will be a tapered withdrawal of the additional nil-rate band for estates with a net value of more than £2 million. This will be at a withdrawal rate of £1 for every £2 over this threshold.

Section 8D(5) IHTA provides:

- (g) the person's "adjusted allowance" is—
 - (i) the person's default allowance, less
 - (ii) the amount given by—
$$(E-TT) \div 2$$
but is nil if that amount is greater than the person's default allowance.

Default allowance	Estate	Adjusted allowance
£175,000	£2m	£175k
£175,000	£2.35m	£0
£350,000	£2m	£175k
£350,000	£2.7m	£0

1.5.5 Effect of lifetime gift on taper

Taper depends on value of estate on death.

Gift to non-charity: Will v lifetime gift

	<i>gift by will</i>	<i>Lifetime gift</i>
Original Estate	£2,350,000	£2,350,000
Lifetime gift (failed PET)	£0	-£350,000
Estate on death	<u>£2,350,000</u>	<u>£2,000,000</u>

IHT computation

	<i>gift by will</i>	<i>IHT</i>	<i>Lifetime gift</i>	<i>IHT</i>
General NRB (0% rate)	£325,000	£0	£0	£0
Residence NRB (0% rate)	£0	£0	£175,000	£0
Rest of VT (40% rate)	<u>£2,025,000</u>	£810k	£1,825,000	£730,000
Tax on failed PET	£0			<u>£10,000</u>
Total IHT		<u>£810,000</u>		<u>£740,000</u>

Saving £70k less CGT if any on lifetime gift

1.6 Residence nil-rate amount (RNRA)

Section 8E IHTA provides:

- (1) Subsections (2) to (7) apply if—
 - (a) the person's estate immediately before the person's death includes a qualifying residential interest, and

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- (b) N% of the interest is closely inherited, where N is a number—
(i) greater than 0, and
(ii) less than or equal to 100

1.6.1 “*NV/100*”

Section 8E(1) IHTA provides:

and in those subsections “*NV/100*” means N% of so much (if any) of the value transferred by the transfer of value under section 4 as is attributable to the interest.

The drafting is opaque.

Steps are:

Ascertain N%

Ascertain value transferred

Ascertain value of residential interest

Ascertain amount of value transferred attributable to the interest.

Some examples:

T gives entire estate to spouse S:

$N = 0$;

$NV/100 = 0$;

Residence nil-rate amount is transferred to spouse.

T gives entire estate to children;

$N = 100\%$.

$NV/100 =$ value of house unless estate has debts.

T gives half estate to children, half to others

$N = 50\%$!

May need to give house to children; balance to others (could be expressed as an appropriate fraction of the estate).

Deed of variation may be needed (if they continue to be available).

1.6.2 Debts

If property subject to a mortgage, that reduces the value of the property: s.162(2) IHTA. Planning (including deathbed planning) is needed here if net value (market value less residential enhancement).

Unsecured debt: reduces value of estate: see s.162 IHTA.

Pre-death planning may be needed. Charge on property other than the residence?

What should be done with existing NRB trusts where debt charged on property in estate of surviving spouse?

1.6.3 Residential nil rate amount: table

Section 8E IHTA sets out four possible computations. In short:

Estate <£2m	NV/100 <	default allowance	ss	Carry-forward
	Yes		(2)	Yes
	No		(3)	No
Estate >£2m	NV/100 <	adjusted allowance	ss	Carry-forward
	Yes		(4)	Yes
	No		(5)	No

1.6.4 Estate less than taper threshold (£2m)

Section 8E IHTA provides:

(2) Where—

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- (a) E is less than or equal to TT, and
- (b) NV/100 is less than the person's default allowance,
 - [i] the person's residence nil-rate amount is equal to NV/100 and
 - [ii] an amount, equal to the difference between NV/100 and the person's default allowance, is available for carry-forward.

1.6.5 *Estate less than £2m: RNRA cap at default allowance*

Section 8E IHTA provides:

- (3) Where—
 - (a) E is less than or equal to TT, and
 - (b) NV/100 is greater than or equal to the person's default allowance,
 - [i] the person's residence nil-rate amount is equal to the person's default allowance
 - [ii] (and no amount is available for carry-forward).

1.6.6 *Estate greater than £2m*

Section 8E IHTA provides:

- (4) Where—
 - (a) E is greater than TT, and
 - (b) NV/100 is less than the person's adjusted allowance,
 - [i] the person's residence nil-rate amount is equal to NV/100 and
 - [ii] an amount, equal to the difference between NV/100 and the person's adjusted allowance, is available for carry-forward.

1.6.7 *Estate greater than taper threshold: cap at adjusted allowance*

Section 8E IHTA provides:

- (5) Where—
 - (a) E is greater than TT, and
 - (b) NV/100 is greater than or equal to the person's adjusted allowance,

- [i] the person's residence nil-rate amount is equal to the person's adjusted allowance
- [ii](and no amount is available for carry-forward).

1.6.8 NRNA exceeds VT

Section 8E IHTA provides:

- (6) Subsections (2) to (5) have effect subject to subsection (7).
- (7) Where the person's residence nil-rate amount as calculated under subsections (2) to (5) without applying this subsection is greater than VT—
 - (a) subsections (2) to (5) have effect as if each reference in them to NV/100 were a reference to VT,
 - (b) each of subsections (3) and (5) has effect as if it provided that the person's residence nil-rate amount were equal to VT (rather than the person's default allowance or, as the case may be, the person's adjusted allowance).

Amended as s.8E(7) directs, section 8E provides:

- (2) Where—
 - (a) E is less than or equal to TT, and
 - (b) ~~NV/100~~ VT is less than the person's default allowance, the person's residence nil-rate amount is equal to ~~NV/100~~ VT and an amount, equal to the difference between ~~NV/100~~ VT and the person's default allowance, is available for carry-forward.
- (3) Where—
 - (a) E is less than or equal to TT, and
 - (b) ~~NV/100~~ VT is greater than or equal to the person's default allowance, the person's residence nil-rate amount is equal to ~~the person's default allowance~~ VT (and no amount is available for carry-forward).
- (4) Where—
 - (a) E is greater than TT, and
 - (b) ~~NV/100~~ VT is less than the person's adjusted allowance, the person's

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residence nil-rate amount is equal to $\frac{NV}{100} VT$ and an amount, equal to the difference between $\frac{NV}{100} VT$ and the person's adjusted allowance, is available for carry-forward.

(5) Where—

(a) E is greater than TT, and

(b) $\frac{NV}{100} VT$ is greater than or equal to the person's adjusted allowance, the person's residence nil-rate amount is equal to ~~the person's adjusted allowance~~ VT (and no amount is available for carry-forward).

When will RNRA exceed VT?

1.7 No interest in home inherited by descendants

Section 8F IHTA provides:

(1) Subsections (2) and (3) apply if the person's estate immediately before the person's death—

(a) does not include a qualifying residential interest, or

(b) includes a qualifying residential interest but none of the interest is closely inherited.

(2) The person's residence nil-rate amount is nil.

(3) An amount—

(a) equal to the person's default allowance, or

(b) if E is greater than TT, equal to the person's adjusted allowance, is available for carry-forward.

In this case $NV / 100 = 0$; why is s.8F needed?

1.8 Brought-forward allowance

1.8.1 Related person

In short, the related person is the former spouse.

Section 8G IHTA provides:

- (2) In this section “related person” means a person other than P where—
- (a) the other person dies before P, and
 - (b) immediately before the other person dies, P is the other person’s spouse or civil partner.

1.8.2 *Brought-forward allowance*

The brought-forward allowance would be better called a transferable allowance, but it is easier to follow the statutory terminology.

Section 8G IHTA provides:

- (3) P’s brought-forward allowance is calculated as follows—
- (a) identify each amount available for carry-forward from the death of a related person (see sections 8E and 8F, and subsections (4) and (5)),
 - (b) express each such amount as a percentage of the residential enhancement at the death of the related person concerned,
 - (c) calculate the percentage that is the total of those percentages, and
 - (d) [i] the amount that is that total percentage of the residential enhancement at P’s death is P’s brought-forward allowance or,

Generally better not to use the RNRA on the first death, because it is worth more on the second death. That may change after 2021.

Suppose:

H dies 2017/18

W dies 2020/21

H’s RNRA may be worth £100,000

W’s brought-forward allowance may be worth £175,000

But after 2020/21 a future government may scrap the RNRB scheme.

1.8.3 *Remarriage: Only value of one allowance is transferrable*

Section 8G(3)(c) IHTA continues:

- [ii] if that total percentage is greater than 100%, P's brought-forward allowance is the amount of the residential enhancement at P's death, but P's brought-forward allowance is nil if no claim for it is made under section 8L.

So one cannot get more than one full brought-forward allowance. The same rule applies to the ordinary transferrable NRB. This is like nil rate band trusts: see *Drafting Trusts and Will Trusts* (12th ed, 2015) para 18.8 (Untransferable NRB problems)

1.8.4 Spouse dies before 2017

Section 8G IHTA provides:

- (4) Where the death of a related person occurs before 6 April 2017—
 - (a) an amount equal to £100,000 is treated for the purposes of subsection (3) as being the amount available for carry-forward from the related person's death, but this is subject to subsection (5), and
 - (b) the residential enhancement at the related person's death is treated for those purposes as being £100,000.

Section 8G IHTA provides for taper:

- (5) If the value ("RPE") of the related person's estate immediately before the related person's death is greater than £2,000,000, the amount treated under subsection (4)(a) as available for carry-forward is reduced (but not below nil) by—
 $(\text{RPE} - £2,000,000) \div 2$

Fixed sum of £2m tends to work favourably if spouse died long ago.

1.9 Qualifying residential interest

Section 8H IHTA provides:

- (1) This section applies for the purposes of sections 8E and 8F.
- (2) In this section “residential property interest”, in relation to a person, means an interest in a dwelling-house which has been the person’s residence at a time when the person’s estate included that, or any other, interest in the dwelling-house.

The drafting is based on main private residence relief.

A property which was never a residence of the deceased, such as a buy-to-let property, does not qualify.

1.9.1 *Estate with one residence only*

Section 8H IHTA provides:

- (3) Where a person’s estate immediately before the person’s death includes residential property interests in just one dwelling-house, the person’s interests in that dwelling-house are a qualifying residential interest in relation to the person.

1.9.2 *Power to elect between residences*

Section 8H IHTA provides:

- (4) Where—
 - (a) a person’s estate immediately before the person’s death includes residential property interests in each of two or more dwelling-houses, and
 - (b) the person’s personal representatives nominate one (and only one) of those dwelling-houses, the person’s interests in the nominated dwelling-house are a qualifying residential interest in relation to the person.

1.9.3 Dwelling-house

Section 8H IHTA provides:

- (5) A reference in this section to a dwelling-house—
- (a) includes any land occupied and enjoyed with it as its garden or grounds, but
 - (b) does not include, in the case of any particular person, any trees or underwood in relation to which an election is made under section 125 [woodlands relief] as it applies in relation to that person's death.

1.9.4 Job-related accommodation

Section 8H IHTA provides:

- (6) If at any time when a person's estate includes an interest in a dwelling-house, the person—
- (a) resides in living accommodation which for the person is job-related, and
 - (b) intends in due course to occupy the dwelling-house as the person's residence, this section applies as if the dwelling-house were at that time occupied by the person as a residence.
- (7) Section 222(8A) to (8D) of the 1992 Act (meaning of "job-related"), but not section 222(9) of that Act, apply for the purposes of subsection (6).

1.10 "Inherited"

Section 8J IHTA provides:

- (1) This section explains for the purposes of sections 8E and 8F whether a person ("B") inherits, from a person who has died ("D"), property which forms part of D's estate immediately before D's death.
- (2) B inherits the property if there is a disposition of it (whether effected by will, under the law relating to intestacy or otherwise) to B.

In following examples:

C is child of testator
X is non-child (and not a descendant)

Suppose:

- (1) Gift of estate to C
- (2) PR's sell and use proceeds
 - (a) to make distribution to C
 - (b) to pay debts or IHT.

Disposition to C by will in both cases?

Suppose:

- (1) Legacy to X; residue to C
- (2) (a) PR's assent property to C
 - (b) PR's appropriate property to X in satisfaction of legacy
 - (c) PR's sell and use proceeds to pay legacy.

Disposition to C by will in all cases?

Suppose:

- (1) Legacy to C; residue to X
- (2) (a) PR's assent property to X
 - (b) PR's appropriate property to C in satisfaction of legacy
 - (c) PR's sell and use proceeds to pay legacy.

Disposition to C (otherwise than by will) in case (b)?

1.10.1 Property becomes settled by D's will

Section 8J IHTA (including proposed amendments) provides:

- (3) Subsection (2) does not apply if
 - (a) the property becomes comprised in a settlement on D's death, or
 - (b) immediately before D's death, the property was settled property in which D was beneficially entitled to an interest in possession.
- (3A) Where the property becomes comprised in a settlement on D's death, B inherits the property if—

- (a) B becomes beneficially entitled on D's death to an interest in possession in the property, and that interest in possession is
 - [i] an immediate post-death interest or
 - [ii] a disabled person's interest, or
 - (b) the property becomes, on D's death, settled property—
 - (i) to which section 71A or 71D applies, and
 - (ii) held on trusts for the benefit of B.
- (3B) Where, immediately before D's death, the property was settled property in which D was beneficially entitled to in an interest in possession, B inherits the property if B becomes beneficially entitled to it on D's death.

Section 91 IHTA provides:

- (1) Where a person would have been entitled to an interest in possession in the whole or part of the residue of the estate of a deceased person had the administration of that estate been completed, the same consequences shall follow under this Act as if he had become entitled to an interest in possession in the unadministered estate and in the property (if any) representing ascertained residue, or in a corresponding part of it, on the date as from which the whole or part of the income of the residue would have been attributable to his interest had the residue been ascertained immediately after the death of the deceased person.

1.10.2 Settled property in D's estate

Section 8J IHTA (including proposed amendments) provides:

- (3) Subsection (2) does not apply if ...
 - (b) immediately before D's death, the property was settled property in which D was beneficially entitled to an interest in possession.
- (3B) Where, immediately before D's death, the property was settled property in which D was beneficially entitled to in an interest in possession, B inherits the property if B becomes beneficially entitled to it on D's death.

1.10.3 GWR property

Section 8J IHTA provides:

(4) Where the property forms part of D's estate immediately before D's death as a result of the operation of section 102(3) of the Finance Act 1986 (gifts with reservation) in relation to a disposal of the property made by D by way of gift, B inherits the property if B is the person to whom the disposal was made.

1.11 "Closely" inherited

Section 8K IHTA (including proposed amendments) provides:

(1) In relation to the death of a person ("D") something is "closely inherited" for the purposes of sections 8E and 8F if it is inherited for those purposes (see section 8J) by-

(a) a lineal descendant of D,

(b) a person who, at the time of D's death, is the spouse or civil partner of a lineal descendant of D, or

(c) a person who—

(i) at the time of the death of a lineal descendant of D who died no later than D, was the spouse or civil partner of the lineal descendant, and

(ii) has not, in the period beginning with the lineal descendant's death and ending with D's death, become anyone's spouse or civil partner.

This is a new development in UK inheritance taxation, returning to the policy of s.10 Succession Duty Act 1853:

There shall be levied and paid to Her Majesty in respect of every such Succession as aforesaid, according to the Value thereof, the following Duties; (that is to say,)

Where the Successor shall be the lineal Issue or lineal Ancestor of the Predecessor, a Duty at the Rate of One Pound *per Centum* upon such Value:

Where the Successor shall be a Brother or Sister, or a Descendant of a Brother or Sister of the Predecessor, a Duty at the Rate of Three Pounds *per Centum* upon such Value:

Where the Successor shall be a Brother or Sister of the Father or Mother, or a Descendant of a Brother or Sister of the Father or Mother of the Predecessor, a Duty at the Rate of Five Pounds *per Centum* upon such Value:

Where the Successor shall be a Brother or Sister of the Grandfather or Grandmother, or a Descendant of the Brother or Sister of the Grandfather or Grandmother of the Predecessor, a Duty at the Rate of Six Pounds *per Centum* upon such Value:

Where the Successor shall be in any other Degree of collateral Consanguinity to the Predecessor than is herein-before described, or shall be a Stranger in Blood to him, a Duty at the Rate of Ten Pounds *per Centum* upon such Value.

1.11.1 Stepchildren, adopted children, foster children, guardians

Section 8K IHTA (including proposed amendments) provides:

- (2) The rules in subsections (3) to (8) apply for the interpretation of subsection (1).
- (3) A person who is at any time a step-child of another person is to be treated, at that and all subsequent times, as if the person was that other person's child.
- (4) Any rule of law, so far as it requires an adopted person to be treated as not being the child of a natural parent of the person, is to be disregarded (but this is without prejudice to any rule of law requiring an adopted person to be treated as the child of an adopter of the person).
- (5) A person who is at any time fostered by a foster parent is to be treated, at that and all subsequent times, as if the person was the foster parent's child.
- (6) Where—
 - (a) an individual ("G") is appointed (or is treated by law as having been appointed) under section 5 of the Children Act 1989, or under corresponding law having effect in Scotland or Northern Ireland or any country or territory outside the United Kingdom, as guardian (however styled) of another person, and
 - (b) the appointment takes effect at a time when the other person ("C") is under the age of 18 years, C is to be treated, at all times after the appointment takes effect, as if C was G's child.
- (7) Where—
 - (a) an individual ("SG") is appointed as a special guardian (however styled) of another person ("C") by an order of a court—
 - (i) that is a special guardianship order as defined by section 14A of the Children Act 1989, or
 - (ii) that is a corresponding order under legislation having effect in Scotland or Northern Ireland or any country or territory outside the United Kingdom, and(b)

the appointment takes effect at a time when C is under the age of 18 years, C is to be treated, at all times after the appointment takes effect, as if C was SG's child.

(8) In particular, where under any of subsections (3) to (7) one person is to be treated at any time as the child of another person, that first person's lineal descendants (even if born before that time) are accordingly to be treated at that time (and all subsequent times) as lineal descendants of that other person.

(9) In subsection (4) "adopted person" means—

(a) an adopted person within the meaning of Chapter 4 of Part 1 of the Adoption and Children Act 2002, or

(b) a person who would be an adopted person within the meaning of that Chapter if, in section 66(1)(e) of that Act and section 3038(1)(e) of the Adoption Act 1976, the reference to the law of England and Wales were a reference to the law of any part of the United Kingdom.

(10) In subsection (5) "foster parent" means—

(a) someone who is approved as a local authority foster parent in accordance with regulations made by virtue of paragraph 12F of Schedule 2 to the Children Act 1989,

(b) a foster parent with whom the person is placed by a voluntary organisation under section 59(1)(a) that Act,

(c) someone who looks after the person in circumstances in which the person is a privately fostered child as defined by section 66 of that Act, or

(d) someone who, under legislation having effect in Scotland or Northern Ireland or any country or territory outside the United Kingdom, is a foster parent (however styled) corresponding to a foster parent⁴⁵ within paragraph (a) or (b).

1.12 Claim for brought-forward allowance

In short, the PRs of the surviving spouse make the claim within 2 years of the death of the second to die.

Section 8L IHTA provides:

(1) A claim for brought-forward allowance for a person (see section 8G) may be made—

(a) by the person's personal representatives within the permitted period, or

(b) (if no claim is so made) by any other person liable to the tax chargeable on the person's death within such later period as an officer of Revenue and

Customs may in the particular case allow.

(2) In subsection (1)(a) “the permitted period” means—

(a) the period of 2 years from the end of the month in which the person dies or (if it ends later) the period of 3 months beginning with the date on which the personal representatives first act as such, or

(b) such longer period as an officer of Revenue and Customs may in the particular case allow.

Need to keep records on the first death.

1.12.1 Withdrawing a claim

Section 8L IHTA provides:

(3) A claim under subsection (1) made within either of the periods mentioned in subsection (2)(a) may be withdrawn no later than one month after the end of the period concerned.

Why would you want to withdraw a claim?

1.12.2 Brought-forward allowance claim after series of deaths

Section 8L IHTA provides:

(4) Subsection (5) applies if—

(a) no claim under this section has been made for brought-forward allowance for a person (“P”),

(b) the amount of the charge to tax under section 4 on the death of another person (“A”) would be different if a claim under subsection (1) had been made for brought-forward allowance for P, and

(c) the amount of the charge to tax under section 4 on the death of P, and the amount of the charge to tax under section 4 on the death of any person who is neither P nor A, would not have been different if a claim under subsection (1) had been made for brought-forward allowance for P.

(5) A claim for brought-forward allowance for P may be made—

(a) by A’s personal representatives within the allowed period, or

(b) (if no claim is so made) by any other person liable to the tax chargeable on A's death within such later period as an officer of Revenue and Customs may in the particular case allow.

(6) In subsection (5)(a) "the allowed period" means—

(a) the period of 2 years from the end of the month in which A dies or (if it ends later) the period of 3 months beginning with the date on which the personal representatives first act as such, or

(b) such longer period as an officer of Revenue and Customs may in the particular case allow.

(7) A claim under subsection (5) made within either of the periods mentioned in subsection (6)(a) may be withdrawn no later than one month after the end of the period concerned.

This may apply if:

P's spouse (S1) dies

P marries A

P dies. P has a brought-forward allowance but may not need to claim it at this stage.

A dies. A has the brought-forward allowance from P, but not from S1 which matters if P's brought-forward allowance is less than 100%

How often will that happen?

1.13 Interaction with IHT charity relief

Taper depends on value of estate on death.(not on whether chargeable transfer on death is exempt) so gift to charity by will does not reduce taper.

Gift to charity: Will v lifetime gift

	<i>gift by will</i>	<i>Lifetime gift</i>
Original Estate	£2,350,000	£2,350,000
Lifetime gift	£0	-£350,000
Estate on death	<u>£2,350,000</u>	<u>£2,000,000</u>

<i>IHT computation</i>	<i>IHT</i>		<i>IHT</i>	
General NRB (0% rate)	£325,000	£0	£325,000	£0
Residence NRB (0% rate)	£0	£0	£175,000	£0

24 *Residence Nil-rate Band*

Exempt on death £350,000	£0			
Rest of VT (36%/40% rate) £1,675,000	£603k	£1,500,000		£600,000
Total IHT	<u>£603k</u>			<u>£600,000</u>

Saving: £3k + gift aid/QIDR on lifetime gift

1.14 Foreign domiciled testator

The amount of the unused nil-rate band depends on the amount of the chargeable transfer on the death of the first spouse. If there is no chargeable transfer, the full nil-rate band is unused and is transferrable.³

The IHT Manual provides:

43042 Domicile of first spouse or civil partner to die [October 2009] Every person, UK domiciled or not, is entitled to the full nil rate band that can be set against their estate that is subject to IHT. The availability of TRNB on the estate of the first to die of a non domiciled spouse or civil partner is calculated only by reference to property that is potentially subject to an UK IHT charge. For a non domiciled spouse or civil partner, VT [IHTM43020] will be calculated only by reference to their estate in the UK. Assets held outside the UK, by a person not domiciled, or deemed domiciled in the UK, regardless of the devolution of those assets are not taken into account when calculating the available unused nil rate band.

Thus where the survivor dies in the UK and their spouse or civil partner, who held no UK assets, died abroad leaving all their all overseas assets to their children, none of the nil rate band was used on the first death and the personal representatives of the survivor may claim to transfer 100% of the nil rate band to the estate of the survivor.

3 S.8A(3)(4) IHTA.

*Example*⁴ (Abdul, Soroya and Jamil)

A [died] domiciled abroad.

His only asset situated in the UK was a US dollar account containing US\$250,000.

He left this and the remainder of his estate to his son, J who lives in the UK.⁵

After the death, his wife, S, moved to the UK to live with J and died domiciled in the UK.⁶

The assets situated outside the UK are not liable to IHT.

The US dollar account is left out of account in determining A's estate at death.⁷

So although whole estate passed to J, no property was chargeable to IHT, leaving the nil rate available for transfer in full on S's death..

Same will apply to residence NRB

1.15 Downsizing relief

EN FB 2015 provides:

56. Legislation will be included in Finance Bill 2016 to extend the benefit of the residence nil-rate band where the deceased downsized to a less valuable residence or ceased to own a residence on or after 8 July 2015.

Presumably insufficient time to draft that in this year's finance bill. *Or a matter of political advantage to get further publicity next year?*

The HMRC paper provides:

The additional nil-rate band will also be available when a person downsizes or ceases to own a home on or after 8 July 2015 and assets of an equivalent value, up to the value of the additional nil-rate band, are

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- 4 The HMRC example, as is the current trend, contains several facts which are wholly irrelevant to the tax position which makes it harder to identify the relevant points. The following footnotes identify these.
 - 5 Where the son lives, and where he is domiciled (which may not be the same) are irrelevant to the example.
 - 6 Where the widow lives and where she dies domiciled, are irrelevant to the example.
 - 7 See 62.20 (Non-residents foreign currency bank accounts). It must be assumed that A is non-resident as well as non-domiciled at the time of his death.

passed on death to direct descendants....

The technical details of how the additional nil-rate band will be enhanced to support those who have downsized or ceased to own their home will be the subject of a consultation to be published in September 2015 ahead of the draft Finance Bill 2016.

September seems optimistic, given the problems here.

1.16 Some existing will forms

From DTWT 8th ed (2007) (before transferable nil rate bands)

“I give the maximum amount of cash which I can give on the terms of the Nil-Rate Fund without incurring any liability to IHT on my death...”

From DTWT 12th ed (2015):

“I give the maximum amount of cash which I can give on the terms of the Nil-Rate Fund”:

- (1) without incurring any liability to IHT on my death
- (2) without reducing the amount which the Nil Rate Band applicable on the death of my Spouse would (apart from the fit of the Untransferable Nil Rate Sum made in my Will) be increased under s.8A IHTA 1984.”

1.17 Planning

1.17.1 *Valuation of qualifying residential interest*

Planning: ensure that estate of testator, or of surviving spouse, includes:

- (1) residential property of sufficient value or
- (2) has included residential property of sufficient value for downsizing relief.

On first death of married couple: related property valuation rules will apply: no discount for holding a share in property; see s.161 IHTA.

The HMRC paper provides:

The main behavioural response is the proportion of estates with a residence being left to direct descendants may be expected to increase as people change their wills over time so that their estates can benefit from the main residence nil-rate band to a greater extent.

1.18 Impact

1.18.1 *Effect on IHT yield*

The HMRC Paper provides:

2015/2016	Nil
2016/2017	Nil
2017/2018	-270
2018/2019	-630
2019/2020	-790
2020/2021	-940

These figures have been certified by the Office for Budget Responsibility.

1.18.2 *Economic*

The HMRC paper provides:

This measure could marginally increase demand for housing but it is not expected to have a significant impact on either house prices or rent levels due to the small overall proportion of the housing market affected and the offsetting impact of wider budget measures.

1.18.3 *Equality*

The HMRC paper provides:

The government has no evidence to suggest that the measure will have any significant adverse equalities impacts. Those in same-sex relationships may be less likely to have direct descendants, although children will also include adopted and foster children. HMRC does not hold data on the protected characteristics of all those potentially affected.

The legislation discriminates against the childless (and those who do not want to benefit their children) but these are not protected characteristics under the Equality Act 2010.

1.18.4 Administrative burden

The HMRC paper provides:

This measure ... may lead to a small additional burden for personal representatives to confirm that a residence meets the qualifying criteria. There will be a negligible one-off cost to advisers as they familiarise themselves with the measure and advise on changes that individuals may wish to make to their wills in response to the policy.

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