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WILLS TAX &  
TRUST GROUP

RESIDENCE NIL-RATE BAND &  
INHERITANCE TAX PLANNING

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# 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, the 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 by exploring how this might **affect** people in different situations, how to make **the most** of the allowance and also some of **the pitfalls** to be aware of.

We will explain all 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. In their web pages [www.gov.uk](http://www.gov.uk) about the new allowance, HMRC state:

***“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) cannot:***

- ***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 up to 2021.

It is clear therefore that more and more people are being dragged into Inheritance Tax. This includes the individuals or couples who leave their assets to beneficiaries and also the beneficiaries themselves. An estate which has IHT imposed on it, can have financial consequences through the generations.

Individuals, couples or families who seek advice and act upon it can save substantial sums in tax. This new legislation offers a potential further tax saving of up to £140,000, 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**.

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 may 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 had it 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 RNRB, meaning the estate would only have the standard NRB 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 share 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

\*NB We can provide solutions to those difficulties



## 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 financial arrangements.

## Estate Planning

The New Residence Nil Rate Band has captured the public's imagination with many people with estates worth under £2M believing that they will benefit from the additional IHT relief and therefore receive a tax advantage of £140,000.

Others with estates worth more than £2m may assume that they will not benefit or benefit to a lesser extent.

Neither of these assumptions may prove correct.

This legislation has been drafted with deliberate complexity so that many are excluded.

Regardless of the size of estate, with advanced financial and tax planning however, it is possible for many to side-step the complexities of this legislation and ensure that their direct descendants DO benefit.

## Take action now

We provide advice centred around the Laws of Succession.

The government's new legislation for Inheritance Tax (the new Residence Nil Rate Band) appears to be deceptively simple but don't be misled, it is quite complex.

The government have also introduced a Death Tax, which they are describing as Probate Fees.

These two changes alone make it worthwhile to review your legal documentation and tax planning arrangements.

This means not only reviewing your Wills & Trusts but also the tenure of any property you own – plus a review of all financial arrangements.

To make sure that you are not disadvantaged by the new legislation we believe that everyone should get their financial affairs reviewed.

To ensure that your family benefits from the tax savings on offer contact us now.

0118 934 7920



James Kessler QC has commented that the New Residence Nil Rate Band legislation has provided the government with the maximum publicity – for the least tax effect.

Many other professionals have also commented on the legislation, hinting that it has been made deliberately complex, so that few will benefit from the additional £140,000 tax advantage on offer.

Like all tax legislation the devil is in the detail.

There are hidden traps within the small print that will catch many people out. Instead of getting an additional tax benefit, they may discover, too late that they have lost out.

We work closely with both tax and trust experts to ensure that any solution put forward will give you the best possibilities of providing your family with the additional IHT savings of £140,000.

Depending on your circumstances, we may be able to provide you with additional savings over and above this – as we have for many clients.

If you want to protect your loved ones and ensure your assets pass to them tax efficiently, do contact us at Wills, Tax & Trusts Ltd.

**0118 934 7920**

Wills Tax and Trusts Ltd 4 Beech Court Wokingham Road Hurst  
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*"We read in the papers that the wishes in your Will can be overturned. Wills Tax & Trusts Ltd facilitated a new will linked to a specially designed trust - fully protecting our assets. We are pleased now to have financially protected the future of our daughter and grandson."*

**Mrs. MS - High Wycombe January, 2016**

*"I was surprised at the number of meetings and the time spent on giving us advice. My family is very pleased to have peace of mind, after many years of uncertainty. We now have properly drafted wills and trusts, Wills Tax & Trusts Ltd also carried out Inheritance Tax Planning -the savings are considerable."*

**Alan W H, Reading February, 2016**

### Please Note

This guide is intended to provide you, the reader, with an **overview** of the new rules, it is not meant to be a technical guide nor is there any aspect of this guide which is meant to be construed as financial or tax advice.

This information is based on our understanding of current tax law and practice (January 2017), which may change in the future. The way in which tax charges, reliefs and allowances are applied depends upon individual circumstances and may also be subject to change in the future.

You should take professional advice before making any tax planning decisions, changing your Wills or making any changes to your overall finances.  
The Financial Conduct Authority (FCA) does not regulate certain tax planning activities and services, will writing or advice on charitable giving. Not all inheritance tax solutions are authorised and regulated by the FCA.



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