



# Viewpoint

- Inheritance Tax - What Is the Residence Nil-Rate Band?
- Managing Your Assets Abroad After Brexit
- Should You Wait for 'No Fault' Divorces?

Welcome to the Spring 2021 Edition of Viewpoint



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*"Spring appears in whispers and hushed tones," whilst, "Drowsy flowers come to attention, waking from their sleep..."* wrote John Keats. It certainly feels as though the promise of brighter days is here, as I write.

In his Spring Budget, the Chancellor, Rishi Sunak, gave buyers and sellers reason to be happy, with his announcement that the Stamp Duty holiday, introduced in Summer 2020 on purchases up to £500,000 if no other property was owned, has been extended to 30 June. He also confirmed that personal tax thresholds, capital gains tax and inheritance tax limits are all frozen until 2026.

Tax, and in particular inheritance tax planning, is a topic that many of you requested more information on in our recent Viewpoint questionnaire. Thank you for providing us with this invaluable feedback and for all your suggestions. We have included an article explaining the Residence Nil-rate Band (RNRB) in this edition and do look out for more articles in future editions on this, and other topics, that were most frequently requested.

We are also hosting our free inheritance tax planning and foreign assets workshop this Spring and also a Wills workshop. Details of how to register are on the enclosed invitation.

I hope you enjoy this edition of Viewpoint.



## Inheritance Tax - What Is the Residence Nil-Rate Band?

*"In this world nothing can be said to be certain, except death and taxes"* wrote Benjamin Franklin in 1789.

It is certainly still true that on death, your estate will be taxed at 40% of the value of your assets, exceeding any available tax-free allowances.

The main allowance is the 'nil-rate band', currently £325,000, but which may be reduced by the value of any gifts you made up to seven years before your death.

The Residence Nil-Rate Band (RNRB) was introduced as an additional tax-free allowance from April 2017, and is generally available to be claimed in an estate where an individual leaves their main residence (or the proceeds of its sale) to their direct descendants. The current allowance is £175,000.

### Can a RNRB Be Transferred to the Estate of a Spouse?

Unused RNRB allowances can be transferred to the estate of a surviving spouse, even if the first death was before the introduction of the RNRB. The allowance from the first death is known as the transferable residence nil-rate band, or TRNRB.

### What If I Have Sold My Home and Moved to a Care Home?

If you downsize, or sell your home and move to a care home, your estate will not necessarily lose the RNRB. It may still benefit from 'downsizing relief' in these circumstances.

### What If My Estate Is Valued at More Than £2m?

The RNRB is reduced incrementally for estates valued at more than £2m. The reduction is at the rate of £1 of allowance for every £2 of additional estate value. So, for a single person, the RNRB is lost entirely if the estate is worth £2.35m or more at death. For a married couple, the relevant figure at which both the RNRB and TRNRB are lost is £2.7m.

### What If I Am Leaving My Estate in a Discretionary Trust?

The RNRB is only available if the residence (or a share of the residence) is left directly to children/grandchildren. If your Will includes provisions creating a discretionary trust, additional steps may need to be taken to allow the RNRB and TRNRB to be claimed.

### What If I Own Two Homes?

The RNRB is available in relation to your main home. It must be a home you have lived in, so a buy-to-let property will not count if it has never been your own home.

### What If My Home Is Worth Less Than £350,000?

You can only benefit from the RNRB and TRNRB to the extent that you are passing on property to your direct descendants. For properties valued at less than £350,000 the value of the allowance will be reduced.

### Does It Apply for Step-Children and Foster Children?

Yes it does. However, if you have no qualifying beneficiaries, your estate will not qualify for the extra allowance.

### Get Specialist Advice

It is worth seeking specialist advice if you consider that your estate will exceed £325,000 after debts are paid at your death or that your combined estate with your spouse or civil partner will exceed £650,000.

**So to ensure that you are aware of all the available tax-free allowances, including the RNRB, please contact Rachael Armstrong.**



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## Managing Your Assets Abroad After Brexit

The start of 2021 has marked the end of the Brexit transition period and the start of a new relationship with continental Europe.

Many British families who live at, or own a second home in an EU country need to know how this will affect them.

Whilst there may be limits on how long individuals can spend in their second homes in the EU and there may be increased property taxes, in terms of the law relating to Wills and estate planning there are few immediate implications for private clients as a result of Brexit.

If there is only one Will it may need to be translated and notarised in the foreign jurisdiction.

However, in countries such as Spain, where a Will must be witnessed by a notary, it may be advisable to make a single Will to cover the worldwide estate, if accessing a notary causes practical problems.

The key is to take specialist advice and ensure that your English lawyer works with a lawyer in the other country so that the Will takes effect as desired in the other jurisdiction.

### Tax Advice

It is important to consider what inheritance tax will be due on your death.

to paying UK inheritance tax, unless you specifically want any tax due in a foreign jurisdiction to be paid from your UK estate.

### Possible Changes to Inheritance Tax Allowances

Legislation relating to inheritance tax allowances has not been amended since the UK left the EU. This means that, for the time being, inheritance tax exemptions for gifts to EU charities, and reliefs in relation to EU business property/assets and agricultural property are still available.

So if a UK-domiciled individual makes gifts to EU charities, or has business or agricultural property in an EU state, exemptions/reliefs from inheritance tax may still apply.

**“ If you make two Wills, it is important to consider on which assets you want the burden of tax to fall. ”**

### The EU Succession Regulation

One reason is that the UK was never a signatory to the EU Succession Regulation.

Even though the UK was not a signatory, the EU Succession Regulation was still able to affect UK citizens with second homes in EU Member States, or those habitually resident in an EU country, and the position remains the same after Brexit. UK nationals resident in the UK can still elect for English law to apply to the succession of their home in the EU - for example, to avoid forced heirship.

### Should You Make One Will or Two?

Whilst it is possible to make a single Will that will cover your worldwide estate there can be advantages to making multiple Wills if you have assets abroad. Having a Will in each country where you have assets can speed up the estate administration process.

Your estate's exposure to UK inheritance tax is determined by your domicile. Your domicile is broadly where your permanent home is considered to be and, if you were born in the UK to British parents, you will usually have a UK domicile of origin. If you are domiciled in any of the constituent parts of the UK, then UK inheritance tax will apply to your worldwide estate.

If you are not domiciled in the UK at the date of your death, only your UK assets will be liable for UK inheritance tax. You can live abroad for many years and still retain a UK domicile of origin, so it is worth taking advice when estate planning to work out where tax will be payable.

If you make two Wills, it is important to consider on which assets you want the burden of tax to fall. If you make two Wills you would usually limit your UK Will

It is important to be aware that this may change now that the UK is no longer an EU member state.

**For specialist legal advice on managing your overseas assets, please contact Leila Goodarzi, as well as our online guide, *Managing Your International Assets*.**



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# Should You Wait for 'No Fault' Divorces?

From Autumn 2021, the *Divorce, Dissolution and Separation Act 2020* will introduce 'no fault' divorces.

## The Current Law

Currently, in England and Wales, to get divorced you must demonstrate that the marriage has irretrievably broken down using one of the following reasons:

- Your spouse has committed adultery with someone of the opposite sex
- Unreasonable behaviour
- Separated for at least two years and your spouse consents to the divorce
- Separated for at least five years
- Desertion

The law is changing as this was considered outdated and it makes separation more difficult and acrimonious for couples because they must choose to either separate and wait two years before divorcing (five years if one party does not consent) or one person must blame the other by providing examples of the other's unreasonable behaviour, or adultery.

If blame is cast, this can create more difficulties when the parties are trying to agree how the matrimonial assets should be divided or how childcare should be shared.

## What Is the New Law?

There are three main changes to the new law:

- **Absence of blame** - The parties will no longer have to cast blame or separate to divorce. It will be enough to simply state that the relationship has broken down and some couples will be able to make a joint application for divorce if they wish, helping to reduce animosity.
- **Removing objections** - It will not be possible to contest a decision to divorce simply because one party does not want the divorce to go ahead.
- **Timing** - There will be a minimum time period of 20 weeks from the date the petition is first filed until the Conditional Divorce Order (currently known as Decree Nisi) is obtained and a further period of six weeks before applying for the Final Divorce Order (currently known as Decree Absolute). This will increase the minimum time period

required for a divorce to be finalised. However, in practice, most divorces are not finalised within six months due to ongoing discussions about the division of finances.

## Should Divorcing Couples Wait Until the Autumn to Issue Divorce Proceedings?

Potential benefits of waiting include:

- The divorce may be more amicable as no-one needs to be blamed.
- This may result in reduced legal costs if discussions about a financial settlement and child arrangements are less contentious than they might have been.
- Waiting could work best if one spouse is likely to object to the divorce (and no adultery has taken place).

However, waiting to divorce may cause more problems than it solves in some cases. For example:

- If you agree a financial settlement now but wait to start your divorce petition under the new law you will not be able to obtain a court order recording the financial agreement. This means that any agreement reached relating to the division of finances will not be legally binding and could be altered later at the time of the divorce. We recommend that finances are not divided prior to the divorce.
- In addition, if there is a dispute in relation to your finances, you will not be able to apply to the Family Court to assist with the dispute until you begin the divorce process. An ongoing dispute could increase animosity and stress for both spouses.

**Ultimately, the right thing to do will depend on the individual circumstances of each couple. To discuss your options please contact Samantha Hickman.**



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## Find Out More About Our Services

Please contact Michelle Rose if you would like to receive a copy of the below:

- *Lasting Powers of Attorney* - losing mental capacity could happen to anyone, at any time
- *A Guide for Attorneys* - learn more about your duties as an attorney
- *Family Matters* - guidance on matrimonial and family issues
- *Five Good Reasons to Review Your Will*
- *Ten Good Reasons Why You Should Choose VVW to Prepare Your Will*
- *Private Wealth Planning for You and Your Family*
- *What Happens to Your Digital Assets When You Die?*
- *Managing Your International Assets*

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If so, please contact Laura Loveridge on 0117 314 5371 or [lloveridge@vww.co.uk](mailto:lloveridge@vww.co.uk).



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