Marriage allowance claims by bereaved spouses or civil partners

Personal tax

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In response to representations by LITRG, the government announced in the Autumn Budget that bereaved people would be able to benefit from the transferable marriage allowance after the death of their spouse or civil partner, for a tax year in which that partner was alive. This article examines the Finance Bill 2017-18 clause to enact this measure.

Clause 6 of the Finance Bill 2017-18, entitled Transfer of tax allowance after death of spouse or civil partner, amends the provisions in the Income Tax Act 2007 which govern the transferable marriage allowance introduced for tax years from 2015/16. Under these provisions (sections 55A to 55E), provided certain conditions are met, a spouse or civil partner can elect under section 55C to transfer a percentage (10%) of their personal allowance to their partner, in which case their personal allowance will be reduced by that amount and their partner will benefit from a commensurate tax reduction under section 55B. The conditions are that the spouse or civil partner entitled to the tax reduction must not be liable to tax at a rate other than the basic rate, the dividend ordinary rate or the starting rate for savings, must be UK-resident, and neither that individual nor his/her spouse or civil partner has claimed the married couple's allowance, a different tax break available to couples one of whom was born before 6 April 1935.

So in 2018/19, for which the personal allowance is set at £11,850, 'A' can elect to transfer £1,185 of their personal allowance to their spouse/civil partner, 'B'. That will leave 'A' with a reduced personal allowance of £11,850 - £1,185 = £10,665 and give 'B' a tax reduction equal to £1,185 at the basic rate (20%) – therefore, £237.

Hitherto, the legislation has been drafted in such a way that the partner giving up part of their personal allowance and the partner entitled to the tax reduction must

be married to, or in a civil partnership with, one another at the time the election is made. So if the partner who would otherwise have been able to make the election under section 55C to transfer part of their personal allowance is no longer alive, the marriage allowance is not available and the surviving partner cannot benefit from the tax reduction under section 55B. This has caused resentment among those bereaved spouses/civil partners who were unaware of the allowance until after their partner's death, when something – probably advice received from a professional adviser assisting with the administration of the estate – drew their attention to it.

When LITRG first drew attention to this anomaly, which many members both of the CIOT and the general public had written to us about, the government was sympathetic. Accordingly this clause allows an election to be made under section 55C by the personal representatives of a deceased person, and for that election to have effect for the tax year of death and any earlier year, up to the statutory limit of four years previously. Elections can be made by personal representatives on this basis on and after 29 November 2017.

Thus, if spouse/civil partner A were to die in 2018/19 without having made any election, his/her personal representatives could make that election both for the year of death (2018/19) and for any of the previous years during which the transferable marriage allowance was in force (2017/18, 2016/17 and 2015/16) and the surviving spouse/civil partner 'B' could claim a tax reduction for any of those years.

The clause will enable anyone who has previously tried to make an election on behalf of a deceased individual, but whose claim has been rejected, to make a fresh election.