

Clause X: Transfer of tax allowance after death of spouse or civil partner

Summary

1. Marriage Allowance allows individuals to transfer 10% of their personal allowance to their spouse or civil partner where the recipient is not a higher rate or additional rate taxpayer. This clause enables Marriage Allowance claims to be made after one or both of the parties to a marriage or civil partnership has died, either by a surviving spouse/civil partner or by the personal representatives of a deceased party. In line with existing Marriage Allowance rules, backdating of these claims will be allowed by up to four years.
2. This measure will come into force on 29 November 2017.

Details of the clause

3. Subsection (1) provides for amendments to Chapter 3A of Part 3 of the Income Tax Act 2007 (ITA) (Transferable tax allowance for married couples and civil partners) (Marriage Allowance).
4. Subsection (2) provides for amendments to section 55B (tax reduction: entitlement) in accordance with subsections (3) to (5).
5. Subsection (3) amends section 55B(2) which contains conditions for an individual's entitlement to Marriage Allowance as a result of the creation of two new defined terms in section 55B(5A) and 55C(1).
6. Subsection (4) inserts new section 55B(5A). It creates a new defined term to describe an individual who makes an election under section 55C or whose personal representatives make this after their death ('the relinquishing spouse or civil partner'). 'Personal representatives' is defined in section 989 ITA.
7. Subsection (5) consequentially amends section 55B(6) to provide that the tax reduction to which this section refers is one that is available by reference to an election under section 55C.
8. Subsection (6) provides for amendments to section 55C (elections to reduce personal allowance) in accordance with subsections (7) and (8).
9. Subsection (7) amends section 55C(1) which contains conditions for making an election. It amends paragraph (a)(i) to create a new defined term to describe the individual that an elector must be in a marriage or civil partnership with to make a valid election ('the gaining party'). It also amends paragraph (a)(ii) so that this

condition is satisfied where an election is made after the death of one or both parties to a marriage or civil partnership, provided that the marriage or civil partnership was continuing when the parties were last both living.

10. Subsection (8) inserts a new section 55C(5) to allow personal representatives to make an election on behalf of a deceased party to a marriage or civil partnership in relation to the tax year in which that party died or for an earlier tax year.
11. Subsection (9) provides for amendments to section 55D (procedure for elections under section 55C) in accordance with subsections (10) and (11).
12. Subsection (10) sets out that where an election is made after the death of a spouse or civil partner, it has effect only for the tax year to which it relates and does not continue for subsequent tax years.
13. Subsection (11) provides that an election made by personal representatives may not be withdrawn.
14. Subsection (12) provides for the commencement of this clause on 29 November 2017 and for the amendments to have effect for elections made on or after this date. Paragraph (c) clarifies that elections can be made in reliance on the amendments in this clause even where a relevant death occurred on or before 29 November 2017.

Background note

15. The government introduced Marriage Allowance in 2015, which allows individuals to transfer 10% of their personal allowance to their spouse or civil partner where the recipient is not a higher rate or additional rate taxpayer
16. To make Marriage Allowance more widely available and to support bereaved spouses and civil partners, the government announced at Autumn Budget 2017 that it would allow claims for Marriage Allowance after the death of one or both parties to a marriage or civil partnership, provided they were married or in a civil partnership when the parties were last both living. Claims can be backdated by up to four years.