

A GUIDE TO DEEDS OF VARIATION

Hindsight is a wonderful thing. It is very rare though that we ever get the chance to benefit from it. Deeds of Variations are one of those very rare occasions. They allow the beneficiary of a deceased's estate to re-write the distribution of the estate so that part or all of the original gifts to the beneficiary pass to another person in the most Inheritance Tax and Capital Gains Tax efficient way. This can only be done in the **two years** after the date of death.



Here are examples where Deeds of Variation can be used to reduce the Inheritance Tax (IHT) burden.

Skipping a Generation

Maureen dies, aged 85, leaving the whole of her estate to her only child, John. Maureen's estate is within the nil rate band of £325,000 (2009/10) so there will be no IHT on her death. John has been successful in business and potentially has a large liability to IHT on his death. Rather than receive his inheritance and add to his own IHT problem, he could make a Deed of Variation passing it on to his children. It will be treated for IHT purposes as though Maureen had left a gift in her Will directly in favour of her grandchildren. The inheritance will not increase John's estate and the amount passing under the Deed of Variation will not be liable to IHT on his death.

Creation of a Discretionary Trust

Alternatively, if John didn't want to give up all access to his inheritance, he could enter into a Deed of Variation passing on his inheritance to a discretionary trust and he could be one of the beneficiaries as well as his children. John can choose the trustees. The trustees can then use the income and capital for John's benefit, or that of his children during the remainder of his lifetime, but on his death the discretionary trust funds will not form part of his estate. Even though he is a beneficiary of the trust, he will not have reserved a benefit on creating it because, for IHT purposes, the trust will be written back to the date of Maureen's death and treated as being made by her under her Will

Some Points to Note

Although a Deed of Variation is treated as a re-writing of the Will for all IHT purposes, for other purposes, including other taxes in certain situations, it is treated simply as a gift of an inheritance. For example, if an elderly person enters into a Deed of Variation, the local authority is entitled to regard that as a gift in deciding whether the individual is entitled to state support to pay rest or nursing home fees. Each situation will be different and will require careful consideration if the beneficiaries' wishes are to be put into effect in the most tax efficient way.

How Can Martineau Help?

- We can draw up Deeds of Variation.
- We can ensure that the Deed of Variation ties in with your own Estate Planning and that it is complementary to your Will.
- We can advise on all effects of Deeds of Variation including Income and Capital Gains Tax consequences in order to maximise tax savings.

This guide is based upon the law as at October 2009. For advice in relation to your specific circumstances, please contact any of the Lawyers in the Private Capital Group or either of the contacts below..

Key Contacts

Keith Dudley

Partner & Head of Private Client
Direct Dial: 44(0)870 763 1474
Email: keith.dudley@martineau-uk.com

Ian Flavell

Partner
Direct Dial: 44(0)870 763 1485
Email: ian.flavell@martineau-uk.com

© Copyright Martineau 2009