

Information for beneficiaries considering making gifts out of their inheritance

It is quite common for people receiving gifts from an estate to want to make their own gifts to family members, friends or even charities. It may be that they feel that someone has been left out of a Will who should not have been; or that the way the estate has been distributed is not fair (where there is no Will); or that they have no need for the cash received and would like to pass it on to children or grandchildren to reduce the value of their own estate; or the Will may simply be out of date.

To make such gifts ordinarily has implications for a beneficiary's own inheritance tax liability as any cash or assets given will be treated as coming from the beneficiary's own estate and not the estate of the deceased. If someone inherits from an estate and includes those assets in their own Will or makes a gift of the assets and then dies within seven years of that gift, the assets may be taxed twice.

A Deed of Variation can be the solution

A Deed of Variation can make cash legacies to friends, family or charity; give certain items to other people or change how the residue of the estate is dealt with (including setting up trusts). It has to be executed within two years of the death and the result is that the variation is not then treated as a gift for inheritance tax purposes or a disposal for capital gains purposes by the beneficiary. The relevant provisions are simply written back into the Will or the intestacy provisions. The destination of jointly-held assets can also be varied. A Deed of Variation allows the assets to pass free of tax to the intended recipient with the only tax, if any, having been paid on the death of the original Testator.

Each adult beneficiary under a Will (or an intestate estate) only has the authority to vary his own share of the estate but it can apply to any property comprised in a deceased's estate as long as the person wishing to vary has an interest in that property. The rights of children cannot be varied except by Court Order.

Tax can be saved on the deceased's estate

A Deed of Variation can be used to make charitable legacies which will be treated as exempt for Inheritance tax in the Deceased's estate and thereby reduce the value of it - and (if tax has been paid) mean a repayment. Additionally, a Deed of Variation can make use of a nil rate band which has only been used in part or not at all by creating legacies or trusts up to the value of the nil rate band as they would in a well drafted Will.

Finally, it can be used as a method of absorbing a capital gain made on an asset between date of death and date of sale. By transferring ownership of the asset from one beneficiary to several, more capital gains tax exemptions can be used and any gain made on sale absorbed by the exemptions meaning that there is no capital gains tax to pay.

Deeds of Variation are technical, tax-saving measures and often involve the input of an experienced lawyer. The cost of preparing them should, however, be weighed against the possible tax savings which can be made. The cost of preparing a Deed of Variation starts from £350 plus VAT depending on what you wish to achieve. Deeds involving trusts start from £750 plus VAT.

For further information please contact Helen Robertson at hrobertson@vwl.co.uk.

© Veale Wasbrough Lawyers

This publication is for guidance only. Reliance should not be placed upon it and nor should action be taken, without obtaining advice in respect of the specific circumstances applicable. We will be pleased to provide such advice or assistance.

For further information please contact us:

0117 925 2020

Orchard Court, Orchard Lane, Bristol BS1 5WS
DX 7831 Bristol

www.vwl.co.uk

--	--	--