

Deeds of variation

A deed of variation is a formal legal document under which a deceased person's will or intestacy can be varied after his or her death.

Where the deed of variation is made within two years of the date of death, it is effective for Inheritance Tax and Capital Gains Tax purposes. This enables it to be used in order to reduce the amount of tax which is payable on the estate, increasing the amount payable to a charity beneficiary. This note is intended as a general introduction only – the availability and effect of a deed of variation will depend on the particular circumstances of your charity.

If your charity is a residuary beneficiary, it will automatically benefit from any tax saving. If it is the beneficiary of a specific legacy, it is usual for the residuary beneficiary to agree to the charity receiving some or all of the benefit of the tax saving.

Examples of situations in which a deed of variation can be used for this purpose are:

- Where a life interest has been left to an individual with a reversionary interest to a charity. Without a deed of variation, the estate can bear Inheritance Tax without any charitable relief. Varying the will so that each of the life tenant and the charity receive absolute gifts enables charitable relief to be taken.
- Where a beneficiary wishes to make a donation to charity 'in memory of' the deceased. Doing this by means of a deed of variation reduces the amount of Inheritance Tax payable on a chargeable estate, reducing the cost of the donation to the beneficiary, or increasing the amount of the donation which can be made for the same cost.
- Where the distribution of assets under the will/intestacy is inefficient from the Inheritance Tax point of view. For example where the testator's house (chargeable for IHT purposes) is left to the testator's relatives and shares in the testator's business (potentially eligible for business property relief) are left to charity. Altering the dispositions by deed of variation spreads the available reliefs more evenly, maximising the net amount available for distribution.
- Where the distribution of assets under the will/intestacy is inefficient from the Capital Gains Tax point of view. For example where some assets have increased or are likely to increase in value between the date of death and the date of disposal. As charities are not liable to capital gains tax, assets which will give rise to a chargeable gain can be appropriate to the charity prior to

sale following a suitable deed of variation. Conversely, assets left to the charity but standing at a loss can be exchanged for 'tax neutral' assets, again reducing the overall tax payable.

- Where assets have passed from one estate to another and then to charity, and the deaths are within 2 years of each other. A deed of variation can be used to re-direct the asset from the first estate direct to charity, thereby saving Inheritance Tax.
- A legacy to a non-charity can be re-directed to a charity in the same 'group'. This situation often applies to those organisations which have a campaigning/political non-charitable 'wing' and a charitable educational wing, such as Amnesty International or Greenpeace.

Documentation

We can advise on the potential for a tax saving deed of variation in particular cases, draw up an appropriate deed and correspondence with the executors'/administrators' solicitors.