



COLLYER BRISTOW

CB PROBATE **DEEDS OF VARIATION**

A CASE STUDY

IN 2015, A FORMER LABOUR LEADER HIT THE HEADLINES AFTER IT EMERGED THAT HIS FAMILY HAD USED A DEED OF VARIATION FOLLOWING THE DEATH OF HIS FATHER.

A deed of variation, if completed within two years of the date of death, can "change the narrative" of a will and/or the distribution of an estate generally to put the beneficiaries in a better position. For inheritance tax ("IHT") and capital gains tax purposes, the deed of variation creates a tax fiction and treats the transfer as having being made by the deceased's will.

As for this preeminent member of parliament, it was alleged (although denied) that part of his father's property was redirected to him and his brother so as to mitigate the potential IHT liability on his mother's subsequent death (i.e. by reducing the value of her estate).

Of course, IHT mitigation is one of the designs of the deed of variation, and is perfectly legitimate and within the spirit of the legislation. However, quite simply a will (or indeed the intestacy rules) may not be fit for purpose and they may fail to take into account changes in personal circumstances, wishes and/or legislation. We set out below some examples of tax-efficient deed of variation solutions:

(1) GENERATION SKIPPING

Where adult children are financially secure and possibly approaching retirement, the prospect of inheriting additional assets may not be desirable. The deed of variation allows a beneficiary to redirect their entitlement to the next generation where the legacy may be better used, and it also serves to mitigate against a future IHT planning headache for the adult children.

(2) TAX FREE ALLOWANCES AND RELIEFS

If a will predates April 2017, this form of planning may include revising the terms of a will to utilise the additional IHT allowance of £175,000 per person known as the residence nil rate band.

(3) THE REDUCED RATE OF IHT

It is also possible to use a deed of variation to reduce the rate of IHT from 40% to 36% by ensuring that at least 10% of the net estate is left to charity.

(4) TAX EFFICIENT TRUSTS

There may be many reasons where it is beneficial to leave all or part of a deceased person's estate on trust, for example for asset protection or control purposes. However, when the deceased has a non-UK domicile for tax purposes, it is possible to create a highly advantageous 'excluded property trust' (provided that strict conditions are met) which can be used to keep the trust assets outside of the UK IHT regime indefinitely.

(5) CORRECTING WILLS

A deed of variation may be used to change the terms of a will where the deceased's wishes have not been accurately interpreted.



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