

Inheritance Tax (IHT) avoidance

Deeds of Variation should be considered in all cases by the beneficiaries of an estate, even those who may need the money in the future.

Brian and his wife Jennifer each had assets in excess of the IHT threshold when Brian inherited £300,000 from his widowed mother. Even though both had Wills leaving everything to each other (to take advantage of the transferable nil rate allowance), this inheritance was in danger of being taxed at 40% in the survivor's estate.

Brian did not want his mother's legacy to add to their IHT 'problem'. He envisaged using the money to help his grandchildren, but wished to ensure that he and Jennifer could spend it if they needed it.

After taking advice at Thomson Snell & Passmore, Brian signed a Deed of Variation redirecting his legacy into a Discretionary Trust. Brian and Jennifer were named as trustees and they, their children and grandchildren were all included within the class of persons able to benefit, as the trustees determine.

The money in the Trust does not now form part of Brian and Jennifer's estates even though they are potential beneficiaries. While Brian and Jennifer can use their wide powers to assist the grandchildren if they choose, the trust fund provides them with a financial cushion going forwards. This will enable them to give to the grandchildren from their taxable estates instead. If they survive these gifts by seven years, they will reduce still further the survivor's IHT exposure.

After the survivor's death, the Discretionary Trust can either be continued as an IHT shelter for the children and grandchildren or wound up in their favour.

If at some stage Brian and Jennifer are minded to spend the trust money, they have the option of taking it as an interest-free loan, so that the obligation to repay the Trust will continue as a personal liability deductible against their chargeable estates before IHT is calculated.

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This case was handled by Stuart Goodbody, Partner in Private Client.

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