

Deeds of Variation

A Deed of Variation allows the beneficiaries of a Will to change its contents after the death of the individual concerned. The Deed of Variation must be effected within two years of the death of the individual.

Although a Deed of Variation is extremely useful, it should not be relied upon as part of an individual's estate planning because its effectiveness may be reduced by future Governments. At present however, they do offer the personal representatives a useful way of changing a Will after death.

All the beneficiaries of the Will must be in agreement. If minors are involved this is complicated because they cannot consent to the changes and an application must be made to the courts for consent to be obtained on their behalf.

The Deed itself must contain a statement that variation has an effect for inheritance tax as if the deceased had made the changes prior to death. The statement must be signed by all parties and where there is an additional tax liability, it must be signed by the Personal Representatives. The only instance where they can refuse is if there are insufficient assets available to pay the tax.

A good example of a Deed of Variation in action is where a Will leaves the entire estate to the surviving spouse. Although this is typical of a straightforward "family will", it is not "tax efficient" for Inheritance Tax. If the surviving spouse inherits all the assets, including those held jointly, they now have a much bigger estate for Inheritance Tax purposes, as outlined in this illustration below.

Mr and Mrs Jones make straightforward "mirror Wills" leaving everything to each other and then to the children.

Mr Jones dies.

Mrs Jones decides she wants to pass some of the assets to their children and to the charity Mr Jones supported when he was alive but is worried about making a gift because she knows that if she dies within 7 years, this may mean she pays more Inheritance Tax.

Mrs Jones goes to see her solicitor who suggests that a Deed of Variation is used to "rewrite" Mr Jones' Will. This allows Mrs Jones to give money to her children and her husband's favourite charity. There is no danger of the "7 year rule" because the Deed contains a statement saying that the variation has the effect of coming from Mr Jones.

A Deed of Variation is not necessarily used to reduce an inheritance tax liability. If the assets are passed to an individual who may have an inheritance tax problem themselves, they could elect to have the assets passed to their children instead, thereby reducing their estate. If this is the case the individual who has given up the legacy is not deemed to have made the gift but instead it is the deceased who is deemed to have made the transfer.

It must be remembered that although the person who disclaims their interest is not the settlor for inheritance tax purposes. In the example above where the Deed passes the assets to the grandchildren any income generated by the money (over £100) will be treated as belonging to their parents and taxed at their highest rate. There may therefore be income tax consequences which should always be considered.