



Will planning – key considerations

Guardianship clause

While your children are under the age of 18, you should consider who you would wish to be guardians in the event of both parents passing away prematurely.

Discretionary will trust

In addition, given the size of your estate, leaving your estate into a discretionary will trust whilst you have relatively young children should be considered. In the event of death without a valid will then a statutory trust would be put in place in any case where minor children are involved. However, having a discretionary will trust in place with appropriate letter of wishes could provide better control over your estate.

Chattels

Personal chattels can be left to your trustees to distribute in accordance with any notes or memorandum left with your will. This is quite standard practice for chattels in wills.

Residue

This is everything left in the estate after the payment of inheritance tax (IHT), debts, specific gifts and legacies.

Joint tenancy

Subject to the ongoing income tax and capital gains tax implications being assessed, the ownership structure of assets you wish to leave to one another should be held in joint names. This could include the family home so it is worth checking if it is held as joint tenants or tenants in common.

In summary, assets held between spouses as joint tenants will bypass the wills so do not specifically need to be addressed by your new wills.

Specific legacies

Any assets which are not possible to be held in joint names, such as your respective ISAs, or not appropriate to be held in joint names such as business shareholdings, could be left as specific legacies in your wills for the surviving spouse (or in a trust if it is likely to benefit from business relief at time of death).

Immediate post death interest in possession (IPDI) trust

Assets that you deem to be family wealth for the second generation and beyond could be settled into the IPDI trust. This provides the benefit of the spousal exemption on first death to the surviving spouse with the ability to utilise the income from the trust for the benefit of the surviving spouse. On second death, the assets of the IPDI trust will form part of their estate for IHT purposes. The trustees of the IPDI trust could also be given the power to advance capital to the surviving spouses if appropriate.

Executors, trustees and beneficiaries

You should take some time to consider who you wish to be the executors of your estates and trustees of any lifetime settlements or will trust.

The family home

A gift of a share of a home can only be made by a will if the property is beneficially owned as tenants in common. In the case of a joint tenancy, the share of the property will automatically pass by survivorship.

Spousal exemption

There is no IHT liability between husband and wife who are both long-term UK resident individuals. As a result, you are able to transfer assets in lifetime between one another and the gift would immediately be exempt from IHT.

Likewise, on death any gifts left to the surviving spouse would be exempt from IHT. The surviving spouse may have some of the deceased spouse's IHT nil rate band available which can be claimed by the surviving spouse's personal representatives on second death. In other words, the second spouse to die may not be liable to any IHT on the first GBP 650 000 of your joint estate.

In addition, where the main residence is left to linear descendants such as children and grandchildren, an additional residence nil rate band (RNRB) could be available of GBP 175 000. The RNRB can also be claimed by the personal representatives of the surviving spouse where the RNRB was not utilised by the deceased spouse. In some instances, this could result in GBP 1 million of the estate being exempt from IHT. The RNRB is tapered down at a rate of GBP 1 for every GBP 2 of the estate in excess of GBP 2 million.

Charitable gifts

Gifts to charities are exempt from IHT. In addition, a lower rate of IHT of 36% will apply on your estate if the value of charitable legacies equates to 10% of your net estate. Where you intend to leave c. 4% of your net estate to charity then you could increase the value of the intended gift to 10% without the value of chargeable benefits received by your other beneficiaries being reduced.

Funding the inheritance tax payable on death

The personal representatives are accountable for the tax on the free estate passing on death and must pay tax on application for grant of probate.

Insurance policies held in trust can represent an effective way to have funds available.

Codicil

Once your new wills have been drafted, you could consider a codicil in future years. A codicil adds to, modifies or provides supplementary information to your existing wills to reflect changes in your circumstances or objectives.

Survivorship clauses

It is common practice to make gifts to individuals in wills contingent on them surviving the testator for a given period, usually three months.

Power of attorney

You should also look to put in place power of attorney. There are two types: (i) property and financial affairs and, (ii) health and welfare.

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