

Wills and Probate Special

Now that our super-busy month of January is over, we wish to remind you of the importance of making a Will. We hope that you find this informative; please contact our probate partner, Derek Redwood, if you wish to discuss any matters in more detail.

TIME TO REVIEW, OR MAKE A WILL?

At the top of the New Year to do list for many individuals is to make or update their Will. Many think this is something to leave until later in life, but it is important to get things in place once property is acquired or when children come along.

In the absence of a will there are statutory rules which dictate how your assets are distributed on death. Those statutory intestacy rules may not be tax efficient, and you might want to make specific provision in your Will for your unmarried partner or for the guardianship of your children.

People often think that if they die without making a Will, their spouse (or civil partner) will automatically inherit everything, but this is not necessarily the case. According to the laws of intestacy in England and Wales, for deaths occurring on or after 26 July 2023, the surviving spouse would inherit a statutory legacy of £322,000, all of the personal effects, and half of the remaining estate. The deceased's surviving children (or their descendants) would split the remaining half of the estate equally. If those descendants are under the age of 18, their inheritance is kept back for them until they turn 18. Note that intestacy rules are different in Scotland and Northern Ireland.

PASSING ON THE FAMILY HOME

When considering the wording of your Will, you should note that the Inheritance Tax (IHT) nil rate band continues to be frozen at £325,000, subject to any announcements in the Spring Budget. There is currently an additional nil rate band of up to £175,000 for passing on the family home to direct descendants on death. We can work with your solicitor to make sure your Will is tax-efficient.

Where some of the nil bands are unused on the death of the first spouse, the balance is available on the death of the surviving spouse, potentially allowing a married couple (or civil partners) to pass on assets of up to £1 million at today's rates without paying IHT.

The residence nil band is even available when you downsize to a cheaper property. For example, if a married couple currently live in a large house worth £500,000 and downsize to a flat worth £300,000, they could give away some of the proceeds during their lifetime and yet still benefit from Inheritance Tax relief based on the higher valued property. They could even sell the house and move into a rental property or a care home and still benefit from this nil band.

LEAVING MONEY IN YOUR WILL TO CHARITY

If you leave at least 10% of your estate to charity, the rate of Inheritance Tax on the amount chargeable is reduced from 40% over the nil rate bands to just 36%. This would reduce the amount passing to other beneficiaries and needs to be carefully considered.

YEAR END INHERITANCE TAX PLANNING

Many were expecting an announcement from the Chancellor in the Autumn Statement about cuts to, or the possible abolition of, Inheritance Tax (IHT). Maybe he is saving that for his Spring Budget, but in the meantime, it may be worth utilising the £3,000 gifts annual exemption for 2023/24 and, if available, the unused amount from 2022/23. Note that £3,000 is the overall exemption for the tax year, not the amount for each donee. More generous amounts could be given away if you are able to take advantage of the exemption for regular gifts out of income.

REGULAR GIFTS OUT OF YOUR INCOME CAN SAVE IHT

One tax planning opportunity that many thought the chancellor might restrict was the exemption from Inheritance Tax for regular gifts out of an individual's surplus income. Inheritance Tax is designed to tax transfers of capital, so if the donor can demonstrate that the gifts are made out of surplus income then the transfers are not taken into consideration for IHT. The exemption applies where there is a regularity to the payments, such as a standing order to pay school fees or pension contributions on behalf of children or grandchildren. HMRC will also require proof that the payments are paid out of post-tax income and do not limit the donor's normal lifestyle. Detailed records are required, and we can help you with a suitable spreadsheet.

PENSION CONTRIBUTIONS ON BEHALF OF OTHERS

Normally an individual's payments into a pension scheme are limited to their relevant earnings in a given tax year. This restriction does not apply where the contributions are less than £3,600 gross, allowing parents and grandparents to make payments on behalf of children and grandchildren with limited income. Payments of £2,880 a year would attract a 25% uplift from the government which could grow to a substantial amount by the time the child reaches retirement age (currently age 55, but increasing to 57 in 2028). The parent or grandparent may be able to justify that the payments qualify for the regular gifts out of income exemption from Inheritance Tax mentioned above if a standing order was set up for no more than £240 a month.

POWER OF ATTORNEY (POA)

Described by financial guru Martin Lewis as more important than a Will, this separate legal document allows a trusted person (or persons) to act on your behalf whilst you are alive, should you become unable to manage your affairs. It is estimated that 60% of people aged over 75 do not have a Power of Attorney. Although typically associated with managing the affairs of the elderly it can be vitally important at any age in the event of illness, accident or unforeseen circumstances.

A PoA is a vital safety net to ensure that your finances and/or medical care are handled in line with your wishes and it is generally acknowledged that trying to manage someone's affairs without a PoA is an administrative nightmare so can you afford not to have a PoA in place? Speak to us if you wish to discuss this issue in more detail.