meridian

Private Client LLP - Solicitors

When is your Will too old?

A taxation perspective on when to review your Will

You may know *who* you want to benefit in your Will, so why would you need to change it? A major reason for reviewing your Will is to reduce inheritance tax payable on your estate. This will mean your beneficiaries receive a greater amount overall, which is surely worth considering.

Here are six opportunities to review your Will to create inheritance tax savings:

1. Increases in the value of your assets

The current inheritance tax nil rate band threshold of £325,000 has remained unchanged since 2009. This means the first £325,000 of assets can pass at 0% tax and thereafter assets are charged to Inheritance Tax at 40%. Over the same 10-year period, the ownership and value of your assets may well have changed. For example, house prices have generally increased by around 45% since 2009, depending on region.

REVIEW OPPORTUNITY: It is a good habit to calculate the value of your assets and compare this with the current Inheritance Tax threshold. This will give some indication of whether you need to review your Will.

2. Residence nil rate band

The introduction of the inheritance tax residence nil rate band in 2017 will have increased the amount taxed at 0% by £125,000 to £500,000 per individual by April 2020, albeit with important restrictions. There are several pitfalls to be aware with this additional relief and it only applies if you have a residential property that you are leaving to your direct descendants.

REVIEW OPPORTUNITY: Review your Will to ensure that your residential property is passing to direct descendants (as defined by statute) to save up to £70,000 in inheritance tax.

3. Business Assets

For business owners, business property relief can be a powerful tool to reduce inheritance tax. You should ensure that your Will is properly drafted to allow your estate to benefit from business property relief on your death. If the business assets are not specifically identified in the Will it can lead to a dilution of the relief in some circumstances. It is best practice to include a trust or specific gift of your business assets. If, for example, a trust over your business assets is included in your Will to take advantage to 'bank' the business property relief, it can potentially open significant inheritance tax savings and estate planning opportunities for your family in the long term.

REVIEW OPPORTUNITY: It is important to keep up to date with changes in business property relief so that you can avoid the many pitfalls which can lead to a loss of this important relief. You should seek advice when changes occur in your business to ensure that your estate will benefit from your assets and the maintain the relief on your death. You should ensure that your Will is correctly drafted in the first instance to ensure that it takes full advantage of the relief.

4. International Assets

For those with assets outside of England and Wales, understanding which jurisdiction covers which asset is key. Where there are multiple Wills in different jurisdictions, it is important that these can operate effectively without rendering each other inoperative or causing adverse tax consequences. It is essential to ensure that if you have multiple Wills across several jurisdictions, that they do not clash with each other. It is very easy to accidentally revoke a Will in one jurisdiction if your solicitor or will writer has not been correctly briefed.

REVIEW OPPORTUNITY: Review your Will when new assets are acquired abroad and review your Will when you make a second Will in another jurisdiction. If there are assets in the European Union, a review would be advisable after the Brexit transition period ends.

5. Domicile

There are different rules for calculating inheritance tax for those who are domiciled in England and Wales and those who are not and, these have changed in the last few years. Domicile for inheritance tax purposes is different to residence for income tax which can cause confusion. The domicile of a spouse could also affect the inheritance tax position in your own Will.

REVIEW OPPORTUNITY: Any cross-border changes to where you live, working abroad or on marrying a non-domiciled spouse are appropriate opportunities for a Will review. If there are links with EU countries, further advice is likely to be needed after the Brexit transition period ends.

6. Charity

If you are minded to leave assets or legacies to charity, it is important that your Will is properly drafted to avoid unintended consequences. In some circumstances if you are leaving your estate between charities and non-charitable individuals and the Will is not properly drafted, it can lead to unnecessary inheritance tax being paid. In addition, it is possible to take advantage of a lower 36% inheritance tax rate if you leave a sufficient proportion of your estate to charity.

REVIEW OPPORTUNITY: If you are considering leaving part of your estate to charity it is important to ensure that you are fully advised of the consequences. You should ensure that your Will is professionally drafted to enable your estate to take advantage of all relevant reliefs and that no unnecessary inheritance tax is paid.

Summary

Even if the beneficiaries of your Will remain the same, they could receive a greater inheritance and protection of your assets by you getting the right inheritance tax advice.

From a taxation perspective, the advice behind the structure of your Will can be as important as the document itself. A Will should be reviewed after changes in the law, when there are changes in the nature or value of your assets and circumstances and even those of your intended beneficiaries.

Amy Lloyd and John Padget
6 March 2020