



Wills, Tax & Trusts

 Paris Smith



Southampton's premier law firm - providing a full range of legal services to individuals and businesses across the Solent region for over 190 years.

Our aim is simple...

“To recognise and respond to our clients’ needs with prompt, clear and practical advice, based on a thorough knowledge of their situation.”

Planning For The Future

As family structures become more complicated and our rapidly changing tax legislation becomes more complex, it is more important than ever to arrange your affairs:

- to make proper provisions for your family;
- to protect assets for children and the vulnerable;
- to give control of certain assets to trustees;
- to ensure proper succession of a family business or company;
- to preserve flexibility;
- to achieve tax efficiency.

Our Tax & Estate Planning department is experienced in preparing tax effective solutions for individuals and families with wide ranging interests. We can help with the preservation, protection and passing down of family wealth.

The minimum requirement for an estate plan is an effective Will. Often the process of making a Will can identify areas where tax can be saved or assets can be saved for the next generation or beyond.

Against the background of an effective Will, Paris Smith LLP can help realise a whole range of lifetime planning opportunities to protect your family's assets, including:

Gifts;

Trusts;

Re-structuring the family business or company.

When To Review Your Planning Arrangements

Estate planning should be flexible to accommodate changes in circumstances. There are certain key points in life when your planning should be reviewed:

At the start or the end of a relationship;

When you marry;

When you become a parent;

When you inherit money;

If you are planning to emigrate;

When you become a grandparent;

When you retire;

On bereavement;

When legislation changes.

Wills

Making a Will is the only way that you can ensure that your estate will pass to your intended recipients on your death. Contrary to popular belief, if there is no Will, spouses do not necessarily receive everything automatically.

Trustees can be appointed in the Will to protect funds for a selected beneficiary, by investing money for such a person and applying money or property for his or her maintenance, education or other benefit. This may be relevant for a beneficiary who is a child, an irresponsible adult or a disabled or elderly person. We would usually include relevant powers for the trustees to enable them to advance money to such a person if they think that it is appropriate in the circumstances.

There are also tax considerations which need to be considered. A Will can be structured to save a significant amount of inheritance tax, not only on the death of the person making the Will, but also on the death of a beneficiary of the Will.

Our clients have differing needs, each of which require specialist advice to meet the circumstances. For example, our clients have:

Straight-forward or complex family situations;

Privately owned and managed businesses;

Agricultural and farming interests;

Property in the UK or throughout the World.

The Wills team at Paris Smith LLP will be pleased to discuss your requirements to ensure that your estate passes to your intended recipients and to help you to achieve your other objectives, which may be one or more of the following:

to appoint guardians for your children;

to deal with complex family situations where there may be a possible dispute or the need to protect individuals;

to make appropriate provision for your spouse or other person with whom you live;

where you have children from a previous marriage or relationship, to make appropriate provision for those children and ensure that the children's entitlement does not pass to the family of your current spouse or partner;

to include gifts to your chosen charity or charities and;

to facilitate the continuation of your business after your death.

Why Make a Will?

A Will ensures that your estate passes to the people/organisations of your choice.

It will be a traumatic time for those left behind and a properly drawn Will makes your affairs easier to deal with.

Properly drawn Wills avoid ambiguity, arguments and costly litigation.

You can incorporate tax planning into your Will, thereby preserving value needed for children's welfare.

You can appoint guardians to care for your children until they are 18. This avoids arguments within the family and makes your wishes clear. This is important even if there are no assets.

It is important for those with second marriages/relationships to make provision for both families.

It is important to review a Will following a divorce..

You can choose executors.

You can appoint trustees to manage money and assets for your children until they become old enough to manage it themselves.

You can decide at what age children become entitled to capital/income.

You can make legacies to family, friends and charities.

You can give instructions about the treatment of your body or your funeral.

Without a Will, the intestacy rules decide how the estate is distributed and these may not be what you would wish.

For example the intestacy rules include the following drawbacks:

Limited provision for a surviving spouse or registered civil partner.

No provision at all for unmarried partners.

An unmarried partner may have no claims on your estate and may have to leave your home.

Children become absolutely entitled to capital at 18, when they may be too young to use it responsibly.

Wider family may benefit - parents, siblings, or your spouse's siblings if you have died in the wrong order.

Making a Will need not cost a lot of money. The cost of not making a Will is almost always greater.

Powers of Attorney

By making a Power of Attorney, a person (the Donor) can give another person (an Attorney) power to act on his or her behalf. This is helpful if the Donor is unable to look after his or her affairs due to illness, accident, frailty or whilst he or she is abroad.

A General Power of Attorney is a straightforward document and can be useful for short term arrangements, but will cease to have effect if the Donor loses or begins to lose mental capacity.

A Lasting Power of Attorney (LPA) will continue even if the Donor loses mental capacity. There are two types of LPAs:

A Property and Affairs LPA, which allows your Attorney to deal with your property and finances; and

A Welfare LPA, which allows your Attorney to make welfare and healthcare decisions for you, provided that you lack the mental capacity to do so yourself.

Any Enduring Power of Attorney (EPA), validly made before 1 October 2007, will continue to have effect, but only for your property and affairs.

Our experienced team at Paris Smith LLP can sensitively discuss your requirements, provide detailed advice and prepare the relevant documentation.

Registering Powers of Attorney

Once the Donor of an EPA loses or begins to lose the mental capacity to manage his own affairs, the Attorney has a duty to register it at the Office of the Public Guardian.

A LPA can be registered at any time, but cannot be used until it has been registered at the Office of the Public Guardian.

A Welfare LPA can only be used when the Donor has lost mental capacity and it has been registered with the Office of the Public Guardian.

When acting as an Attorney you must follow the principles set out in the Mental Capacity Act and the guidance set out in a Code of Practice published by the Office of the Public Guardian.

We can advise you on the registration process and assist you with the preparation of the necessary forms.

Court of Protection

Without an EPA or an LPA, the Court of Protection may need to appoint a person (known as a Deputy) to act for someone who has lost the ability to manage his own affairs.

We can advise you about applying to the Court to be made a Deputy and about your duties and responsibilities as a Deputy.

Taxation

We provide tax advice to individuals and trusts in order to reduce tax liabilities and also to meet reporting obligations.

Tax Planning

Our experts provide you with clear, comprehensive and commercially practical advice so that you can plan ahead to minimise the tax liability for you and your family. We can advise you on all aspects of inheritance tax planning, including lifetime gifts to individuals and to trusts, and using tax efficient Wills.

In tax planning, it is important to consider how different types of taxes interact with each other. Taking action to save one type of tax liability can often create another tax liability. We have expertise in all relevant tax issues for individuals and trusts to advise you comprehensively.

Individuals will face a number of different taxes on income or on capital transactions, for example sales or gifts. Members of the tax planning team at Paris Smith LLP, who comprise of qualified tax professionals and tax lawyers, can advise on relevant tax issues, including:

inheritance tax on death and steps which can be taken to reduce or eliminate the liability;

the tax implications of gifts;

the tax liabilities which may arise on the creation of a trust and during the trust's "lifetime";

advising on and preparing deeds of variation to enable the recipient of a gift in a Will to redirect it to another person or persons in a tax efficient way;

specific tax issues for owners and managers of private limited companies who wish to transfer shares, either by way of sale or by way of gift.

The actions which we take on behalf of our business or corporate clients often have taxation implications and, therefore, where relevant, we can consider whether a transaction should be structured in a particular way to minimise any tax liability. The issues which usually arise are capital gains tax, stamp duty land tax and inheritance tax.

Tax Returns For Trusts And Individuals

Self Assessment has shifted the burden of assessing income tax and capital gains tax from HM Revenue to the taxpayer. There is a stringent regime of penalties and interest for non-compliance.

We can deal with tax returns and other compliance issues for individuals, for trustees, for attorneys, Deputies and personal representatives so you can be confident about complying with the increasingly complex taxation regime

Trusts

Trusts are an important and useful tool in making provision for members of a family and others in cases where the circumstances require the person making the provision to retain control. Some of the advantages of trusts are that they:

can protect assets;

can protect the interests of infant children and vulnerable adults;

can reduce or defer a tax liability;
allow you to direct the ultimate destination of trust assets.

Trusts can be created by way of a lifetime gift or can be created in a Will, to take effect on death. One common use of a trust in a Will is to make provision for a surviving spouse during his or her life but to protect capital for the children of a previous marriage.

Trusts can in some cases give rise to additional tax liabilities, which are often a cost which is seen as necessary to create the protective structure that is required. Our specialist team can:

advise you on the best trust for your particular circumstances;
advise you on the tax effect of that trust;
advise you on choosing trustees;
provide the experience and reassurance of a professional trustee if required;
create a trust, tailor made for your own particular requirements;
advise you about off-shore trusts;
advise you about your entitlement under an existing trust.

Trust Administration

Once the trust has been created we can:

advise the trustees about its general administration;
advise the trustees about their powers and duties;
advise the trustees about the implementation of the trust;
prepare annual accounts;
prepare trust tax returns;
help the trustees to comply with their obligations and duties imposed by the Trustee Act 2000;
advise about changes to the trust, for example retiring trustees, appointing new trustees, adding beneficiaries, advancing capital or income to beneficiaries or terminating the trust;
provide the experience and reassurance of a professional trustee if required.

Estate Administration

When a person dies there are a number of issues to deal with. We can help to lighten the load.

Administering an estate can be an onerous task and, although it is possible for a named executor to carry out the work personally, there are a number of practical and technical matters on which advice may be needed.

We can assist by advising on:

the validity and operation of any Will;

the intestacy rules, if there is no valid Will;

enquiries as to the assets and liabilities of the estate;

assets outside the UK;

the preparation of all necessary documentation to obtain a grant of probate to give the executors the authority to deal with estate matters;

any inheritance tax payable;

dealing with the income tax and capital gains tax issues, both up to the date of death and during the administration of the estate;

the possibility of a deed of variation to change the distribution of the estate or to save tax;

the distribution of the estate and preparation of estate accounts.

Disputes And Claims

Sadly, sometimes disputes arise within a family following a death. For example, such disputes may relate to:

the circumstances surrounding the making of the Will;

the meaning of a Will (particularly if it was home-made);

whether a Will is the latest Will, where there is more than one;

the way in which an estate is being administered, for example a delay in administering an estate, paying legacies, keeping beneficiaries informed;

a claim against the estate by a person who thinks that he or she should have received a greater benefit under the Will.

We can offer advice to help you settle these disputes. Our Dispute Resolution Department can also offer a mediation service to help you resolve the matter or if no agreement is reached, they can pursue the matter in Court.

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