The Personal Tax Planning Review

TAX-EFFICIENT BEQUESTS TO CHARITY[1]

Robert Venables QC[2]

1 What is the Problem?

"Tax-efficient bequests to charity? It's simple, isn't it? All bequests to charity are tax-free." Not so. The position is much more complicated than generally realised. Firstly, not all testamentary gifts to charity qualify for relief from inheritance tax. Secondly, in some cases it may be better for the testator to make a life time gift to charity, even on his death-bead. Thirdly, where part of the estate will pass to charity and part will pass to non-exempt beneficiaries, there is very considerable scope for tax planning to minimise the overall tax burden. Finally, cunning testators may procure not only inheritance tax but also income tax advantages.

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1 This article is based on part of a seminar, *Wills and their Alternatives in the AIDS Era*, organised by CRUSAID, the national AIDS fundraiser, of which I am Treasurer. An article based on the full text (although not so detailed as this article on the taxation issues) is appearing in *The Charity Law & Practice Review*, published by Key Haven Publications PLC. In the seminar, I discussed the interrelated problems of (a) the making of a will by the terminally ill, such as an AIDS patient, (b) the drafting of a will where the beneficiaries include a charity, say CRUSAID, (c) the special problems which arise on the death of one of two cohabiting partners who are not lawfully married to each other, and (d) related legal problems which may result from a terminal illness and particularly from lack of legal capacity. While this article will be of general interest to testators and charities intended to benefit under their wills, I have retained the precise examples used in the seminar.

2 Robert Venables QC, 24 Old Buildings, Lincoln's Inn, London WC2A 3UJ
Tel: (0171) 242 2744 Fax: (0171) 831 8095
Consulting Editor of this *Review*.

2 Inheritance Tax

Unless property passes to charity, or enjoys a 100% relief from inheritance tax[3], inheritance tax will be exigible on the estate at a flat rate of 40% once the nil rate band, currently[4] £154,000, has been used up, whether on the death of the deceased or during the last seven years of his life. Gifts made less than three years before death will be taxable on death at the full rate[5]. The only advantage which will have been obtained by a lifetime gift is that in that case the value of the gift will have been fixed at the time it was made. Between three and seven years, the rate of tax is progressively reduced, by 20% per annum. Only where the deceased survives the gift by seven years will tax be avoided altogether.

The complicating factor is the gift with the reservation of benefit rules.[6] If a person gives away an asset, its value at the time of his death can be brought into charge as if it were part of his estate if the gift has not been enjoyed by the donee and to the exclusion of any benefit to the donor by way of contract or otherwise. The rule does not apply to lifetime gifts which are exempt transfers of value on account of the charitable exemption.[7] The difficulty is that a reservation of benefit may cause a gift to charity to lose the charitable exemption.[8]

3 Capital Gains Tax

Another very important consideration is capital gains tax. On the death of a person his personal representatives and thus, normally, in turn his legatees, are deemed to acquire the assets of which he was competent to dispose at the time of his death for a consideration equal to their market value at that time.[9] No capital gains tax, however, is exigible. This means that if assets have increased in value during the lifetime of the deceased, the capital gain will be "washed" on his death. By contrast, a lifetime gift *prima facie* gives rise to a charge to capital gains tax on any increase in value after allowing for costs of acquisition and disposal and

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[3] Notably, in the case of agricultural and business property.

[4] The article is based on rates in force as from 6th April 1995.

[5] I am here concerned principally with outright gifts to other individuals. There are special rules for gifts to discretionary trusts.

[6] Contained in Finance Act 1986 section 102 and Schedule 20. The provisions are discussed in *Ingram v Commissioners of Inland Revenue* [1995] STC 564.

[7] Finance Act 1986 section 102(5)(d).

[8] See 5.2.

[9] See *Marshall v Kerr* [1994] STC 638.

indexation relief. Where the gift is made to another individual resident in the United Kingdom, it may be possible to "hold over" the gain on the gift, depending upon the type of property. Yet when the donee ultimately comes to sell, he will have a reduced base cost.

In the case of a lifetime gift to charity, however, no capital gains tax will normally be exigible.[10] While the charity will inherit the base cost of the donor, this is normally of no relevance as the charity will normally be exempt from capital gains tax or corporation tax on any chargeable gain it realises on a disposal by it of the asset gifted.[11]

4 Income Tax Advantage of Lifetime Gift

So a gift to charity will normally be exempt from inheritance tax whether it is made during one's life or on death. Likewise, it will not give rise to a charge to capital gains tax, either on the donor or on the charity, on the subsequent sale of the asset gifted. A lifetime gift, even a death-bed gift, can, however, have a substantial advantage over a testamentary gift. Provided it is an outright gift of cash, it would normally qualify under the Gift Aid rules for a deduction in computing the donor's income for income tax purposes. The result is that the charity will receive a larger amount at a lesser cost to the donor. How the benefit of this tax advantage is apportioned is entirely a matter for the donor. Thus, if a prospective donor who has left to charity £20,000 by his will decides that he has not long left to live and therefore makes a cash donation instead, revoking the legacy by a codicil, the tax position is much improved. If he is a basic-rate taxpayer, he can pay £20,000 to the charity. The charity can then reclaim £6,667 by way of income tax notionally deducted. Thus, the benefit of income tax saving accrues to the charity, the beneficiaries under the will being no worse off.

Alternatively, the beneficiary could pay £15,000 to the charity, the charity then being able to recover £5,000 of income tax. The charity would be in the same position as if it had received a legacy of £20,000 by the will but the other beneficiaries of the client under his will would have £5,000 more available for distribution between them[12].

Where the client pays tax at the higher rate, the saving is even more substantial. The charity could then receive £33,333 at the same net cost to the beneficiary as £20,000. The mechanics in this case are slightly more complicated. Firstly, one

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10 Taxation of Chargeable Gains Act 1992 section 257.

11 Taxation of Chargeable Gains Act 1992 section 256.

12 Subject to any inheritance tax which might be exigible.

must gross up the net gift of £20,000 by 100/(100-40), to give £33,333. The donor must then make this payment under the deduction of basic rate tax at 25%, so that he must actually pay over £25,000. The charity recovers £8,333 from the Revenue. The liability to income tax at the difference between the higher and basic rates, currently 15%, in this case £5,000, then falls to be deducted from the donor's income tax bill so that, once again, the net cost to him is only £20,000.

There is no objection to the donor borrowing in order to make the donation. The only real limitation is that he should have sufficient taxable income out of which to make the Gift Aid payment. It is not necessary to decide at the time of the gift whether the gift will be subject to the Gift Aid rules. It is sufficient if he afterwards completes the form and hands it to the charity. It is perfectly possible for the donor - or his personal representative - to wait and see whether he had sufficient taxable income to cover the payment. If he did not, and still gave a Gift Aid certificate, the result would be that the charity would still receive an income tax refund from the Revenue but the donor or his personal representatives would then be obliged to pay that amount to the Revenue, so that the donor would unwittingly have increased the size of his gift.

Care must be taken if the client has to sell an asset pregnant with capital gain in order to realise the funds necessary to make the donation. To that extent, capital gains tax may well be payable which would not have been exigible had he retained the asset until death. A calculation will be needed of the net fiscal advantage in such a case. It should be remembered that a Gift Aid payment cannot be offset against a liability to capital gains tax.

5 Will Drafting: Inheritance Tax Considerations

5.1 Overview

Gifts made to charity are normally entirely exempt from inheritance tax. It does not matter whether they are lifetime gifts or gifts made only on death. Nor will they involve any charge to capital gains tax, whether they are made during one's life or on death. From an income tax view, it may be preferable to make a gift during one's life.[13]

Where the whole of one's estate is given to charity absolutely, no complication will arise. Where, however, there is only a conditional gift to charity or where only part of one's estate is given to charity, it is necessary to have regard to technical requirements in order to minimise the amount of duty payable on the estate as a whole. It is also very important to ensure that the incidence of the duty as between

[13] See 4 above.

the various beneficiaries is that desired by the client. Here, considerable knowledge and attention is required.

5.2 Conditions of Relief

The general exemption from inheritance tax for gifts to charities is contained in Inheritance Tax Act 1984 section 23. It is subject to conditions which are not generally appreciated.

A deferred gift to charity does not rank for exemption: section 23(2)(a).

A conditional gift ranks for exemption only if the condition is satisfied, so that the charity becomes absolutely entitled to the property, within twelve months of the testator's death: section 23(2)(b).

A defeasible gift to charity does not rank for exemption unless by the end of the period of twelve months beginning with the testator's death the gift has become indefeasible, i.e., the charity has become absolutely entitled: section 23(2)(c).

The exemption is not available in relation to a gift of property which is an interest in other property if (a) that interest is less than the donor's or (b) the property is given for a limited period: section 23(3).

The exemption is not available where the property gifted is land or a building and is given subject to an interest reserved or created by the donor which entitles him, his spouse or a person connected with him to possession of, or to occupy, the whole or any part of the land or building rent-free or at a rent less than might be expected to be obtained in a transactions at arm's length between persons not connected with each other: section 23(4)(a).

Similarly, the exemption is denied where the property gifted is not land or a building and is given subject to an interest reserved or created by the donor other than (i) an interest created by him for full consideration in money or money's worth, or (ii) an interest which does not substantially affect the enjoyment of the property by the person or body to whom it is given: section 23(4)(b).

In applying the tests in section 23(3) and (4) one has regard to the position at a time twelve months after the gift by the donor.

5.3 A Strategy

In my view, a defeasible gift to charity A which remains defeasible after the expiry of the twelve month period still benefits from the charitable exemption if on the defeat of that gift the property will pass to another charity absolutely. Thus, if the client were to leave property upon trust to pay an annuity to X during his life and subject thereto upon trust for a named charity absolutely, then the charitable exemption would not be available on his death as regards the amount of property needed to produce the income to pay the annuity. If, however, the testator were to bequeath the fund to charity A for its own use and benefit absolutely but were to provide that should charity A not in fact pay an annuity out of its own resources (which would be defined to exclude the gifted property or property from time to time representing it or the income therefrom) to X, then the gift to charity A should be defeated and the property should pass to charity B, the fund would qualify for the charitable exemption. A whole series of defeasible gifts could be created in this way. The trustees of charity A would normally be acting within their powers if they were voluntarily to pay an annuity to X in order to secure the greater advantage of the bequest of the fund. They would merely be concerned to ensure that their charity were a net gainer. In my view, they are neither entitled nor obliged to consider the interests of charity as a whole.

Section 29A of the Inheritance Tax Act, inserted by Finance Act 1989, counteracts a similar strategy where, for example, the testator appoints one charity his sole residuary legatee but a claim is made against his estate by a dependant under the Inheritance (Provision for Family and Dependants) Act 1975. In that case, it would formerly have been advantageous for the charity to settle the claim out of its own funds so that it still remained entitled to the whole of the residue of the deceased's estate, which would thus continue to be free of inheritance tax. Section 29A, however, applies only where the charity makes a contribution out of its other funds "in settlement of the whole or part of any claim against the deceased's estate". As the annuitant will have no claim or, if he does, the annuity will not be paid in or towards satisfaction of it, then section 29A cannot apply.

5.4 Advantages of Residuary Gifts to Charity

Part of the residue of a testator's estate will be consumed in defraying expenses of administration. As the inheritance tax charge on death is levied on the value of the estate of the deceased immediately before his death, and as it is not permissible to deduct the expenses of administration in calculating the value of the estate, such expenses must normally be paid out of funds which have borne inheritance tax. Where, however, a gift of residue enjoys an exemption, such as a charitable exemption, the CTO accept in practice[14] that the whole of the residue is exempt, including that part of the residue consumed in defraying the expenses of administration. Thus, suppose a client to have an estate of £350,000 and to have made no chargeable or potentially exempt transfers of value in the preceding seven years. He wishes to leave half of his estate to CRUSAID and the other half to his partner. It is estimated that the expenses of administration will be £10,000. Thus, he expects that each of CRUSAID and the partner should receive £170,000 before tax.

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14 I make no comment on whether this is justified in law.

If the partner is given a legacy of £170,000 which bears its own duty, and the residue is left to CRUSAID, this will be the optimum solution. The £170,000 legacy to the partner will benefit from the nil rate band of £154,000 for 1994/95, and only the excess of £16,000 will be taxed at 40%, making a tax charge of £6,400. The remaining £180,000 will fall into residue and will be exempt notwithstanding that CRUSAID will receive only £170,000 of this, the difference being attributable to the expense of administration. If CRUSAID had been left a legacy of £170,000 and the partner had been entitled to the residue, then the £180,000 of residue would have been taxable at the rate of 40% on the excess over £154,000, making a charge of £10,400. If the residue had been left to CRUSAID and the partner in equal shares, then inheritance tax would have been exigible on half the total value of the estate, namely £175,000, resulting in a tax bill of £8,400.

Unless the client is literally on his death bed, there is always the risk of changes in the value of the estate between the making of a will and its taking effect. If the estate goes up in value, then the residuary legatee, namely the charity, will benefit and if it goes down the charity will suffer. One method of dealing with this is to make the value of the pecuniary legacy to the partner depend on a formula. In a simple case, the executors could be directed to calculate the value of the estate at the date of death for inheritance tax purposes, deduct the estimated cost of administration and then divide the result by two in order to arrive at the amount of the pecuniary legacy.[15]

I have spoken hitherto in terms of a pecuniary legacy. It may, of course, be that the client would like the partner to receive a gift in *specie*. While this might be rather more complicated, the principle remains the same.

5.5 Income Tax Savings Through Precatory Trusts

Consider the following scenario. The client bequeaths to his partner,[16] provided he has a sufficient taxable income, a pecuniary legacy of, say, £10,000. He earnestly requests and entreats the legatee, as a matter of moral obligation binding in honour only, to gift the £10,000 to CRUSAID. He makes it very clear, however, that the legatee is under no legal or equitable obligation to do so. Within two years of the death of the client, the partner receives the legacy and pays it to CRUSAID. He completes a Gift Aid certificate.

15 The formula would have to be rather more complex where part of the estate qualified for a relief, such as agricultural property relief or business property relief.

16 Or some other beneficiary whom he may wish to benefit.

The result is that for inheritance tax purposes £10,000 of the estate qualifies for the charitable exemption: see Inheritance Tax Act 1984 section 143 (compliance with the testator's request). For inheritance tax purposes one deems the legacy to have been bequeathed by the will to CRUSAID. This deeming provision does not operate for income tax purposes. There is therefore nothing to prevent the gift qualifying for Gift Aid. The result is that, if the partner is a basic rate tax payer, there will be an income tax saving of £3,333 and, if he is a higher rate tax payer, there will be an income tax saving of £6,667, assuming, in both cases, that he has sufficient income taxable at the basic or higher rate respectively.

Whom will this strategy benefit? While the amount of tax saving is determined by (a) the amount which is paid to the charity and (b) whether the partner is taxable at simply the basic rate or also the basic and additional rates, the testator can within those limits choose on whom to confer the advantage of the income tax saving. If he intends CRUSAID to receive £10,000 in any event and bequeaths a legacy of £10,000 on a precatory trust to his partner, then, because of the technical rules of income tax, the benefit of the basic rate tax saving will enure for the benefit of the charity and that of the higher rate tax, if any, for the partner. If the client wishes the charity to benefit from the entire income tax saving, then he must adjust the amount of the legacy accordingly. One first grosses up the nominal amount at the basic and additional rates. With combined basic and additional rates of 40%, £10,000 grossed up is £16,667. One then subtracts from this income tax at the basic rate. As the basic rate is currently 25%, one subtracts £4,167 to leave £12,500. This will then be the amount of the legacy. A benefit of £16,667 will be conferred on the charity, as it will be able to reclaim £4,167 income tax. The partner will have paid over the legacy of £12,500 but will have received a higher-rate tax saving of 15% of £16,667, namely £2,500. If the estate is not liable to inheritance tax, the client will deduct £2,500 from the amount of another testamentary gift[17] to the partner,[18] so that the partner finishes up in the same position as if he had not been bequeathed the legacy of £12,500. As far as the estate is concerned, although the legacy to the charity will have been increased by £2,500, this will be compensated for by the reduction in the testamentary gift to the partner which is not subject to a precatory trust. Thus, no other beneficiary will be worse off.

If the estate is subject to inheritance tax, there is a further saving, which results from the fact that the charitable exemption from inheritance tax will be available as regards £12,500 of the estate, rather than £10,000. Assuming that the partner would have suffered 40% inheritance tax on the extra £2,500 of the legacy for his

[17] It does not matter in principle whether the gift is a legacy, a devise or a bequest and whether specific or residuary.

[18] This is the only way in which the income tax benefit conferred on the partner can be "reclaimed" from him.

own benefit which has in fact been reduced by that amount,[19] he will have made an income tax saving of £2,500 but lost only the net amount of the £2,500 legacy, after inheritance tax, namely £1,500. He is thus £1,000 better off. In principle, the testator could ensure that this benefit too passes to CRUSAID by increasing the amount of the legacy left to the partner on precatory trusts and decreasing further the amount of the legacy left to the partner for his own benefit. Because this results in further inheritance tax and income tax savings, which compound each other, the additional amount which CRUSAID will receive at the end of the day will be greater than £1,000 and will in fact, in the illustration, be £3,333. For the nominal amount of the precatory legacy will be £15,000 and the charity will recover £5,000 income tax, making a total benefit of £20,000, as compared with £16,667. The legatee will obtain a higher rate tax saving of £3,000. The precatory legacy will be £5,000 higher than a straight legacy to CRUSAID. The legacy to the partner for his own benefit will thus be reduced by £5,000. As he would have suffered £2,000 inheritance tax on the amount of the reduction, he has lost only £3,000 net, which is equal to his higher rate tax saving.

If, by contrast, the client wishes the whole of the tax saving to pass to his partner and/or some other beneficiary, then the calculation would be different. The charity will finish up with £10,000. The nominal amount of the legacy must therefore be £7,500, which is the amount the partner will pay over to the charity. The charity will recover £2,500 basic rate income tax notionally deducted while the partner will obtain a tax deduction of 15% (being the difference between higher rate and basic rate tax of 40% and 25% respectively) of £10,000, namely £1,500. The overall income tax saving of £4,000 is smaller simply because the payment made to the charity is smaller.

What is the position of the partner? So far, he has obtained a tax saving of £1,500. The estate will have a further £2,500 which can be given to him (or some other beneficiary). If the inheritance tax nil rate band of the deceased has not been otherwise utilised, he will keep the whole of this amount, so that, by this strategy, the testator will still have given £10,000 to CRUSAID but he will have conferred an additional extra benefit on his partner of £4,000. If, however, the £2,500 is itself taxable in its entirety, at 40%, then the partner will receive only £1,500 extra directly from the estate and will thus obtain an additional benefit of only £3,000.

How exactly the testator decides to allocate the benefit of the income tax saving depends on his outlook. If he wishes to benefit CRUSAID as much as possible, then he will clearly allocate the benefit to CRUSAID. If he wishes as much tax to be avoided as possible, then he will likewise allocate all the benefit to CRUSAID. If he is content for CRUSAID to receive the same sum as if the strategy had not been adopted, and which is primarily to benefit his partner or some other non-

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19 I assume that the legacy bears its own tax. If it does not, the tax position is in principle the same, but in practice more complex.

charitable beneficiary, he can do so, but he should realise that the overall tax saving cannot be as great as if he had allocated the benefit to CRUSAID. He can, of course, share the tax saving in whatever proportions he thinks fit. He should realise, however, that the greater the amount of benefit which passes to the partner (or other non-charitable beneficiary), the less the amount of the overall tax saving.

5.6 Anonymous Donations to Charity

A will is a public document. Even in 1995, there are those who would not wish the world to know that they have made a legacy in favour of CRUSAID. The HIV virus is in most cases sexually transmitted. Some people understandably regard their sexual activities as a private rather than a public affair. Then again, they may not wish to expose their aged parents living in some hierocratic offshore island to un-Christian opprobrium. One solution is to employ a fully secret trust. Under the terms of the will, one would read "I bequeath the sum of £100,000 to Grosvenor Trustees Limited." Before the will has been executed, the directors of Grosvenor Trustees Limited will have written a letter to this testator, which will be kept on file with the will, to the following effect: "In consideration of your bequeathing £100,000 to Grosvenor Trustees Limited, we hereby undertake to hold such legacy upon trust for CRUSAID, registered charity number 1011718 absolutely."

This is all that is needed to create a secret trust of the legacy for CRUSAID. The trust is secret because it does not appear on the face of the will. It is nevertheless a fully valid trust. As, in equity, the legacy belongs to CRUSAID at all material times, it will enjoy the charitable exemption notwithstanding that the nominal legatee is not itself a charity.

One disadvantage of a fully secret trust is that if the nominal legatee does not survive the testator then the gift will normally lapse.[20] If the legacy is to an individual, there is always the danger of the premature death of that individual. A gift to a corporation is safer, although it must be remembered that a corporation can go into liquidation. Corporations cannot normally, however, be liquidated as speedily as individuals. Another possibility is to make the legacy a joint one to up to four individuals, the likelihood of none of whom surviving the testator is remote in the extreme.

5.7 Property Qualifying for Agricultural Property, Business Property or Foreign Taxation Relief

Agricultural property and business property comprised in a deceased's estate may qualify for agricultural property or business property relief at the rate, in each case, of either 50% or 100%. The rules are extremely complex. The basic

[20] There are arguments to the contrary.

principle is that if a will includes gifts which are exempt, such as gifts to charity, and gifts which are not exempt and also includes property qualifying for relief at a given rate and other property either not qualifying for relief at all or qualifying for relief at a lower rate, then one must ensure that as far as possible the exempt gift is of property which would otherwise be taxable at the highest rate and the taxable gifts are, so far as possible, of property which qualifies for the highest rate of relief. While the principle is a readily intelligible one, its application in a given case can be surprisingly complex.

Similar, if not identical, considerations apply where part of a deceased's estate is subject to death duties in another jurisdiction with a corresponding tax credit against United Kingdom inheritance tax. Few foreign jurisdictions would allow an exemption from death duties on the grounds that a gift was made to a UK charity.[21] In such a case, it will be necessary to consider the rate of UK inheritance tax borne by the gift. There is no point, for example in my bequeathing one of my French homes to a UK charity as it will bear French death duties at the rate of 60%. As this is greater than the maximum rate of UK inheritance tax - 40% - the gift is effectively exonerated from UK inheritance tax. It will therefore make more sense to devise it[22] by way of a gift which is in principle chargeable under UK law.[23] I ought rather to devise to the UK charity, say, UK residential accommodation which is leased to tenants, for that would otherwise bear inheritance tax at my full estate rate.

It might happen that the client does not wish to give property qualifying for agricultural property or business property relief to legatees who are not exempt from inheritance tax. He may, however, be perfectly content to give cash. Then again, the client's major asset may consist of substantial holding in a private trading company, qualifying for 100% business relief, yet he may wish to make a large number of legacies. The last thing he would want is for the holding to be split up among several beneficiaries, thereby reducing its overall value or depriving his personal representatives of control. What can be done in these cases?

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21 The safer view is that the exemption from UK inheritance tax will apply only where a gift is made to a UK charity. In practice the CTO appear not always to take the point, especially where the recipient charity is established under the laws of one of the states of the European Union.

22 Insofar as French law allows me the testamentary freedom to do so.

23 The position is complicated further by the curious French rules which make the rate of succession duty depend on the relationship of the beneficiary to the deceased. It would therefore pay, so far as possible, to devise one's French realty to those who would pay the least French tax, reducing their share of UK assets accordingly.

One device I have employed is to bequeath the relevant property qualifying for relief upon trust for sale, with the direction to pay pecuniary legacies out of the proceeds of sale and with the further direction that the surplus, if any, is to fall into residue. In fact, there can be a whole series of such gifts, the first being that of property which would suffer the lowest effective rate of inheritance tax, including a nil rate, and then each successive gift comprising a property which would suffer the next lowest rate and so on. It should be specifically provided that the legacies are to bear their own duty. Otherwise, duty would fall to be paid out of residue and the relief is to some extent wasted.

While the trust for sale overcomes the problem of loss of value by fragmentation, it does not meet the objection that the testator may in fact wish an entire estate or a controlling or other substantial holding in an unquoted company to pass in its entirety to the residuary legatee, which could be CRUSAID or could, alternatively, be the trustee of a charitable trust already created by the testator during his lifetime. I overcome this objection by including a provision in the will enabling the executors, if they think fit, to use funds comprised in residue to "purchase" the whole or part of the property qualifying for relief which has been devised or bequeathed upon trust for sale. The purchase is not, of course, a real purchase as the executors are, during the administration period, the sole owners of the entire estate. Thus, the purchase should have no stamp duty or capital gains tax consequences nor, provided it is made at a proper value, inheritance tax consequences. The inheritance tax charge is fixed at the date of death. What the personal representatives may or may not do thereafter in the course of administration cannot retrospectively affect it.[24]

6 Deeds of Variation

I may be that a testator has died leaving a bequest to charity but has not had his will drafted in the most tax-efficient way. It will usually be possible for the beneficiaries to enter into a tax-efficient variation of the dispositions of his estate. The variation must be effected within two years of the death and appropriate elections[25] communicated to the Revenue within six months after the deed has been executed. Specialist advice will be required on a case-by-case basis.

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[24] I am, of course, assuming that the exercise by the executors of their power to purchase is not predestined, but is simply one option. If it were, then one would have to consider whether the strategy would fall foul of the doctrine in *Furniss v Dawson* [1984] STC 153 and whether the series of transactions could be "collapsed" so as to tax the gifts to the non-exempt beneficiaries as though they were gifts of cash rather than gifts of relieved property.

[25] For either inheritance tax or capital gains tax or both.

7 Conclusion

Making bequests to charity as tax-efficient as possible is no simple task. An investment in advice from a specialist in tax and charity law, either before or after the will takes effect, can often benefit a legatee which is a charity and, possibly, in addition other beneficiaries.[26]

[26] For further reading, see *Tax Planning and Fundraising for Charities*, by James Kessler and myself, second edition published by Key Haven Publications PLC summer 1994.