Deeds of variation

Indirect Tax

04 December 2015

CIOT and ATT set out their opposition to the proposed changes

The CIOT and ATT responded to HMRC's 'Call for evidence into the use of Deeds of Variation for tax purposes'.

Both responses provided various scenarios in which deeds of variation (DoVs) were used for reasons not driven by a tax advantage, for example:

- to sever a joint tenancy to facilitate the distribution as provided by the will rather than to the surviving joint tenant/s;
- to reflect changes in family circumstances if the will fails to properly provide for the residuary beneficiary pre-deceasing; and
- to distribute an intestate's estate as the family agree he/she would have preferred – perhaps to an unmarried partner not provided for under intestacy rules.

The CIOT and ATT agreed that the experience of members was that DoVs were simply practical devices that brought a sensible measure of compassion into the tax system at a difficult time.

The ATT pointed out that, if DoVs were abolished, the wealthiest families would simply use discretionary will trusts and IHTA 1984 s 144 in order to appoint the estate within two years of death and obtain the same 'reading back' advantages. However, other less well-off families would be disadvantaged. There could also be the risk of increased litigation if the simple and less costly solution of a DoV cannot be used to resolve any conflict over a will.

The CIOT pointed out that the Finance Bill 1989 contained proposals to withdraw the 'reading back' facility of DoVs, but these were withdrawn when the government accepted the arguments that were put forward opposing this; arguments that

remain the same today.

Neither body is aware of any abusive use of DoVs that would alter the position as it was debated back then. However, if HMRC does have evidence of abuse, the CIOT has suggested that a targeted anti-avoidance rule, rather than altering the current system and use of DoVs, would seem the best solution.