HM Revenue & Customs

Instrument of Variation checklist

You can use this form to help you see whether a variation will meet the requirements of the Inheritance Tax Act and the Taxation of Chargeable Gains Act. We suggest you go through the form before the variation is signed. You should read the notes over the page as you answer each question.

Name of deceased

Date of death | Date of variation

1	Is the variation dated within two years of the date of death?	No	Yes
2	Is the variation signed by all the people whose entitlement is adversely affected?	No	Yes
3	Does the variation clearly indicate the inheritances that are being varied and how they are being altered?	No	Yes
4	If the variation alters the destination of stocks, shares or marketable securities does the variation contain a stamp duty exemption certificate?	No	Yes
5	Does the variation contain a statement that the signatories intend the variation to have effect for		
	• inheritance tax, and/or	No	Yes
	• capital gains tax?	No	Yes

If the answer to any of questions 1-4 or to both parts of question 5 is ***'No'*** *the variation may not be effective for tax purposes.*

6	Does the variation seek to vary an interest in assets held in trust or assets that the deceased had given away but had reserved a benefit in?	No	Yes
7	Is the variation seeking to vary assets or entitlements that have already been varied?	No	Yes
8	Have any assets been brought in from outside the estate and paid to the original beneficiary to compensate for their loss?	No	Yes

If the answer to any of questions 6-8 is ***'Yes'*** *the variation may not be effective for tax purposes.*

9	Does the variation affect the inheritance tax payable in this estate?	No	Yes
10	Does the variation affect the inheritance tax or valuation requirements of any other estate?	No	Yes

If the answer to either question 9 or 10 is ***'Yes'*** *you should send a copy of the variation and this checklist to the Capital Taxes office dealing with the estate.*

If the variation means that there is more inheritance tax to pay, you must send the variation in within 6 months of making the variation.

The executors or administrators must also sign the variation if there is more inheritance tax to pay.

If the variation does not affect the inheritance tax payable, you do not need to send a copy of the variation to us. Please keep a copy of the variation and this checklist.

Notes

It is possible to change an inheritance after a death by a 'variation'. There are many reasons why a variation may be desirable, for example, to take account of the differences in the personal finances of the beneficiaries, or to pass the inheritance on to the next generation. Normally, a variation takes effect from the date of the document varying the inheritance. But provided those making the variation comply with certain requirements, the variation can be treated for inheritance tax (IHT) and certain capital gains tax (CGT) purposes as if it had been made by the deceased. This means that the variation is backdated to the date of death. IHT is worked out taking account of the variation being made. For CGT purposes the variation is not a disposal and in computing future gains the new beneficiaries are treated as if they acquired the assets from the deceased at the date of death and at the value agreed on death.

A variation can change the destination of either the assets that the deceased owned, or their share of assets owned jointly. The notes below help you with the questions over the page.

1 A variation must be made within two years after the death. It does not have to be by formal Deed; you can use a letter or other document. But it must meet all the other conditions below.

2 The variation must be signed by all the people whose would lose out because of it. A variation may affect the interests of children or other unborn beneficiaries. If this is the case, you will probably need to get the approval of the Court. A parent's signature on behalf of a child is not sufficient.

If the amount of IHT payable is being increased, all the executors or administrators must also sign the variation.

3 The variation must clearly identify the part(s) of the estate that are being varied, and say who is to benefit from the variation.

4 The variation must contain a Stamp Duty certificate if the instrument of variation alters the destination of stocks, shares or marketable securities. The words for an exemption certificate are "I/We certify that this instrument falls within category M in the schedule to the Stamp Duty (Exempt Instruments) Regulations 1987,"

5 For a variation to take effect for IHT and/or CGT purposes, it must contain a statement that those signing the variation intend to take effect for tax purposes. The statement may apply to either IHT or CGT alone or for both taxes. The statement must include the appropriate statutory references. For example, a statement such as "The parties to this variation intend that the provisions of section 142(1) Inheritance Tax Act 1984 and section 62(6) Taxation of Chargeable Gains Act 1992 shall apply" would mean that the variation is to take effect for both IHT and CGT.

If the variation does not contain a statement of intent it cannot be backdated for tax purposes.

6 For inheritance tax, a person's estate includes assets held in trust in which they had a right to get some personal benefit and gifts from which they keep back some benefit. A variation that seeks to change who is to receive assets in either category cannot be treated for tax purposes as if the deceased had made it.

7 The destination of the same assets or entitlement passing under a Will or by intestacy may not be varied more than once. Any variation that does so will not be treated as if the deceased had made it.
So, a legacy of, say, £10,000 cannot be redirected from the original beneficiary to someone else and then on to a third person. But if a beneficiary receives a legacy of £100,000 and redirects £10,000 to someone else, he or she can subsequently (out of the £90,000 left), give another £10,000 to that same person, or completly different person. And, if one beneficiary has already varied their share of residue by one variation, another beneficiary may vary their share by a subsequent instrument because it is not the same entitlement that is being varied.

8 Where a variation is made and assets from outside the estate are used to compensate the original beneficiary for their loss, the variation will not be treated as if the deceased had made it. For example, A dies leaving an estate of £300,000 to his sons. They sign a variation to give the assets to their mother. To compensate them, their mother pays them £300,000 from her own assets. Even if the variation contains a statement of intent, it will be ignored in working out the inheritance tax that is payable on A's death.

9 If the variation changes the inheritance tax that is payable, you should follow the instructions on the front of the form.

10 The beneficiaries of a person who has died may make a variation that changes that person's entitlement from an earlier death. The variation must meet all the conditions above and be made within two years of the date of the **earlier** death. Again, you should follow the instructions on the front of the form if the variation changes the inheritance tax that is payable.