

* Terminal illness: some legal and tax issues

The diagnosis of a terminal illness is obviously a devastating blow, and anyone who finds themselves in this position will need time to try to come to terms with the situation. This information sheet sets out some of the legal and tax issues that someone diagnosed with a terminal illness might wish to consider, if and when they feel able to do so.

- **A Will:** a properly drafted Will is essential so that your assets are dealt with in the way that you would like and to ensure that your loved ones are taken care of. If you already have a Will it may be outdated and may not reflect current tax law and should be reviewed. If there is no Will, then the intestacy rules are unlikely to make the best provision, may incur unnecessary tax liabilities and can prevent choice being exercised over such matters as the appointment of executors, and so a Will should be drawn up as soon as possible.
- **Lasting Powers of Attorney:** in case of future incapacity, a Finance Lasting Power of Attorney (LPA) should be considered, giving a trusted person power to deal with your financial affairs in case you are not able to do so in the future. You might wish also to put a Health and Care LPA in place giving someone trusted power to make personal decisions (for example, as to your medical treatment) if you are unable to make these decisions due to mental incapacity.
- **Advance decisions:** You may not wish to appoint an attorney to act for you in connection with your health and welfare but you may wish to express your wishes about whether or not you receive life sustaining medical treatment in certain circumstances. If this is the case you might like to consider drawing up an Advance Decision which sets out your wishes with regard to the refusal of specified medical treatment in certain defined circumstances.
- **Finance generally:** there are a number of financial points that should be considered. For example, it is helpful to your family if you are clear about which accounts or investments you hold. You may need to record passwords to digital assets or your computer in a safe place and a memorandum placed with your Will in safe storage would be one way of dealing with this.

An employee who is entitled to Death in Service benefit might like to consider nominating this in favour of a specified person, or indeed to a trust, rather than leaving this decision wholly to the trustees of the scheme. The use of a trust can ensure protection for this asset and reduce the potential tax liability on the death of any surviving partner.

Where finances are managed jointly with a spouse, partner or civil partner, thought could be given to making sure there are sufficient funds in joint names, or in the spouse's or partner's name alone, so that he or she can support themselves until a Grant of Probate is made and access to estate funds is allowed, as this process can take some months.

The terms of life policies should be checked as the sum assured may be payable in the event of the diagnosis of a terminal illness. The terms of critical illness cover should also be checked to confirm that the illness is covered and a claim made.

- **Business owners:** an LPA is essential for sole traders so that someone can take over the running of the business. Bank mandates should be considered, perhaps to add additional signatories to ensure that there is always someone available with authority to sign business cheques. If you are in partnership, the terms of any Partnership Agreement should be reviewed, or an agreement put in place, to ensure that the partnership is not automatically wound up when a partner dies. Similarly, a shareholder in a family company should review the succession terms comprised in any Shareholders' Agreement.
- **Gifts and tax:** With the exception of continuing with any regular gifts out of income which may have already been made, or using the inheritance tax annual exemption (presently £3,000 per annum) for gifts of cash, now would generally not be an advisable time to make gifts.

Gifts of assets, other than cash, would incur a potential capital gains tax (CGT) liability and, unless the gifts are survived by seven years, they would nevertheless be subject to inheritance tax. By comparison, if an asset is retained until death, a CGT uplift will apply to the value of the asset wiping out any gain. For this reason, in the case of spouses and registered civil partners, it may be advisable to put assets with large capital gains into the ownership of the partner with declining health. This should, however, be qualified by the caveat that everyone's situation is different and advice should be taken in each particular case.

- **Benefits:** Welfare benefits may be available for someone who has been diagnosed as terminally ill, as well as their carers. Those with a disability may also qualify for practical assistance, for example with transport or a parking permit. Useful information about benefits and mobility assistance is available from many charitable organisations. For example, Macmillan Cancer Support has useful information about benefits and grants on their [website](#).
- **Claims against third parties:** sadly occasionally a terminal illness arises as a result of an external event such as exposure to asbestos, a catastrophic injury or an illness which is made worse due, for example, to medical delay or oversight. In those sorts of circumstances you may wish to consider taking action against the third party in question. You have three years to bring any claim running from the later of when the act took place or when you became aware of the harm caused by it. Your executors would be able to continue pursuing the claim on your behalf if necessary.

For further information on this or on any other Private Capital matter you may have, please contact:



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