NEXUS

PROTECTING YOUR WEALTH AND YOUR FUTURE

ISSUE 1

In this edition:

Intergenerational planning

Family trust or family investment company?

Wealth protection

hcr
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WELCOME

There's a popular maxim that says 'The best time to start was yesterday. The next best time is today.'

That has never been more true than when it comes to succession planning.

Yet for so many people, succession planning is a task to be put off.

For some, the current political and fiscal climate means a desire to 'wait and see' before putting plans in place. For others, it may be a lack of clarity around the options that are open to them.

However, planning is vital if you want to be well-prepared for the future.

With that in mind, this inaugural edition of Nexus is here to help. It features in-depth articles from HCR's experts to help guide you through the intricate challenges that often obstruct effective succession planning.

You'll find pieces introducing the concept of intergenerational planning and the pitfalls to avoid. We look at family trusts and family investment companies to help you assess which vehicle could be right for you. There are insights into the importance of prenuptial and postnuptial agreements in wealth protection. We throw a spotlight on the consequences of failed/non-existent estate planning and what might be done to avoid such problems. If you might be called on to be the Bank of Mum and Dad, we look at the factors you need to consider.

In addition, we assess the potential consequences of Labour's commitment to look at levying VAT on independent school fees. Finally, there is information on international estate planning that will be invaluable if you have overseas property and we take a look at post Brexit visa options for those with professional experience and a business idea.

Ultimately, our goal is to provide you with knowledge of some of the strategies that are available to protect your assets and safeguard your family's wellbeing.

I hope you enjoy it and find it a useful read.

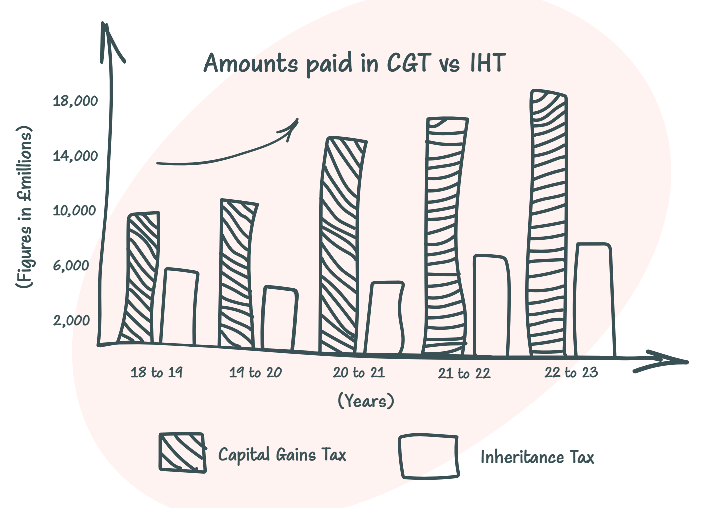
Bernadette O'Reilly
Partner, Private Client

This is intended as market insight and does not constitute legal advice.

INTERGENERATIONAL PLANNING: THE HOW, WHAT, WHY, WHERE AND WHEN

Intergenerational planning acknowledges the connection between family, society and time. It recognises that by strategically and thoughtfully managing, structuring and transitioning assets across generations, the quality of life for both current and future generations can be improved.

The concept is gaining in popularity as a means of protecting and preserving wealth as our society evolves. One in three families is now considered to be blended, which introduces complexities into inheritance. Family businesses constitute 90% of all private firms in the UK, and many may want to thrive over multiple generations. At the same time, HM Treasury collected £1.2 billion in inheritance tax in the first eight weeks of the 2023/2024 financial year, up 13% on the same period in the previous year, indicating that more estates than ever exceed the threshold for payment.



Why consider intergenerational planning?

At the core of intergenerational planning lies the desire to pass down financial assets and also, in some cases control, wisdom, values and traditions. By instilling core values and ensuring a strong moral compass for successive generations through the fostering of a sense of responsibility and connection, it allows families to create an impact that extends far beyond their lifetimes.

When should you start intergenerational planning?

Begin your planning now. We are often approached too late in the day to plan as effectively as possible for clients, typically because the event they seek protection against, such as a marriage, divorce or death, has already happened.

Whether you are a young family looking to set a plan for future generations or an older family seeking to solidify your legacy, early planning provides the advantage of time. Starting early enables you to gradually accumulate wealth, plan and react to change (in whatever form it takes). It also allows you to foster open communication, which can be important where a party may be disappointed or surprised by a decision that has been made.

What can intergenerational planning cover?

- Financial stability

Financial stability is a cornerstone of intergenerational planning. It involves assessing current financial resources, creating strategies for wealth accumulation and preservation and establishing mechanisms for the distribution to loved ones (at the correct time and in the correct manner). This might include setting up trusts, establishing family investment companies and considering how to protect wealth from life events such as divorce or separation.

A business Lasting Power of Attorney allows the donor to appoint an attorney to make decisions concerning their business interests, when they are unavailable or lack mental capacity.

BEGIN YOUR PLANNING NOW. WE ARE OFTEN APPROACHED TOO LATE IN THE DAY TO PLAN AS EFFECTIVELY AS POSSIBLE FOR CLIENTS

- Investment in education and skill development

An integral part of intergenerational planning is investing in education and skill development for younger family members. This might involve funding higher education, vocational training or mentoring opportunities that equip them with the tools to thrive in an evolving world.

- Distribution of physical and sentimental possessions

Estate planning often includes the drafting of legal documents such as, Wills, trusts, pre-nuptial and post-nuptial agreements, to name a few. These legal documents ensure a smooth transfer of assets and wealth, while also minimising potential conflicts and managing the associated tax liabilities.

- Preparation for health-related challenges and long-term care

Lasting Powers of Attorney (LPAs) and Advanced Directives can alleviate potential burdens on future generations and ensure dignity and well-being in later years in accordance with your wishes.

- Environmental stewardship and social responsibility

Families can establish initiatives that contribute positively to the environment and society, leaving a legacy of sustainability and philanthropy, often through the set-up of charitable trusts.

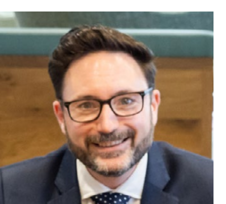
How do you start an intergenerational estate plan?

The first step is to engage in conversation. Whether it is with us, your financial advisor or your accountant, it is important to identify the objectives you have set for yourselves and your family, however big or small, to ensure that you can plan accordingly.

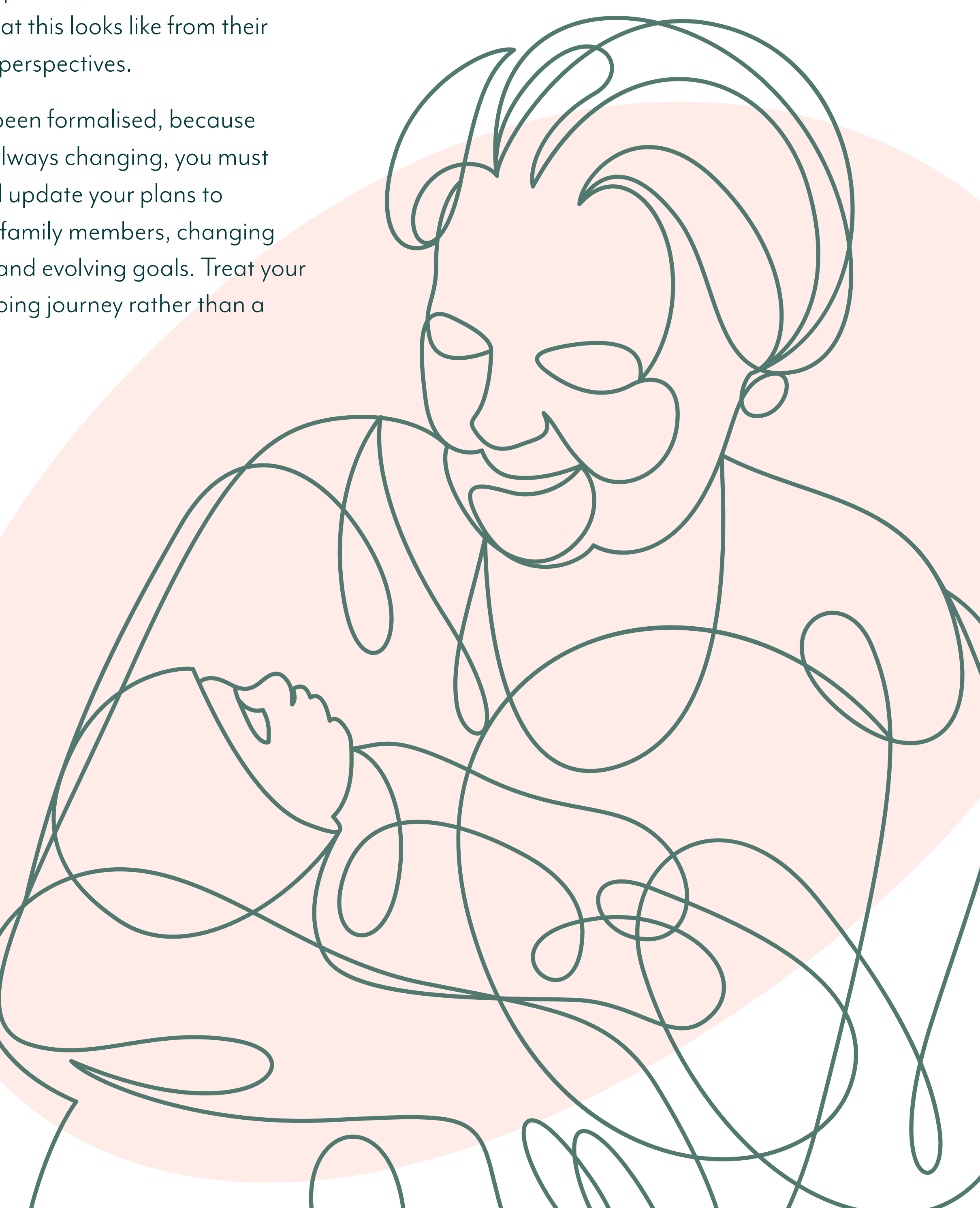
Depending on your circumstances it may be appropriate to involve your loved ones in these discussions. We often find ourselves chairing meetings between family members to help families understand the 'big picture', the interactions across generations and what this looks like from their respective financial perspectives.

Once the plan has been formalised, because circumstances are always changing, you must regularly review and update your plans to accommodate new family members, changing financial situations and evolving goals. Treat your planning as an ongoing journey rather than a destination.

David King
Partner, Private Client



Martyn Davies
Partner, Corporate



Protecting your intergenerational estate plans

Intergenerational planning is not only about passing assets on to the next generation, but about creating a robust framework that safeguards the wellbeing and success of future generations.

Building layers of protection into your intergenerational planning helps to mitigate risks, address uncertainties, and seeks to ensure that your legacy endures.

1. Ensure that documents such as Wills, trusts and LPAs are up to date and drafted correctly. These documents provide a solid foundation for the succession of your estate, as well as financial and healthcare decisions that may need to be made during your lifetime.

2. Consider setting up trusts as part of your estate planning. Trusts can provide added protection by allowing you to control the timing and conditions of asset distribution. This can be particularly useful if you have concerns about beneficiaries' financial maturity or external influences.

3. Ensure that partnership agreements, company articles and shareholder agreements are regularly reviewed and considered in the light of changes to personal circumstances and changes to the operations carried out by your business, if you have one.

4. Anticipate unexpected events by including contingency plans and seek to protect against life events such as divorce or separation. Pre-nuptial and post-nuptial agreements, as well as living together agreements, can be crucial in providing you with protection against the dissemination of assets following such an event. You should consider scenarios such as a sudden loss of income, economic downturns or unexpected healthcare costs. Once an asset has been given away, control passes to the recipient.

5. Empower future generations with financial literacy and education. Teach them how to manage assets, make informed investment decisions and navigate potential pitfalls.

6. Explore insurance options that can provide an additional layer of protection. Life insurance, for example, can offer financial support to your beneficiaries upon your passing.

7. Include mechanisms for resolving disputes or conflicts that may arise among beneficiaries. This could involve appointing independent trustees and executors. By proactively addressing potential conflicts, you can minimise disruptions to your intergenerational plan.

Talk to me about ensuring your legacy endures

FAMILY TRUST OR FAMILY INVESTMENT COMPANY: WHICH IS RIGHT FOR YOU?

Family trusts have long been a feature of estate planning, a well-known means of passing on wealth to the next generation and reducing the taxable value of an estate. However, in recent years, perhaps as a result of negative press coverage and a less sympathetic tax regime for trusts, we've seen the rise in family investment companies (FICs) as an alternative to, or vehicle to be used in conjunction with, family trusts. In this article, we highlight the key advantages and disadvantages of both structures to help you determine whether either (or both) is suitable for you and your family.

Family trusts and family investment companies (FICs) defined

A family trust puts assets in the hands of new legal owners – the trustees – to hold on behalf of and manage for the benefit of a class of beneficiaries. The trust deed sets out the powers and duties of the trustees, essentially the rulebook of the trust. This can be very rigid, but most modern trusts are drafted flexibly, giving the trustees discretion over the management of trust assets and how and when to benefit the beneficiaries.

This article concentrates on the use of trusts in the context of lifetime planning, but trusts can also be created by a Will and provide the same advantages when planning the succession of assets on death.

A FIC is most often a private limited company, with day-to-day management carried out by the board of directors, usually the founders of the company. Family members (and possibly family trusts) become shareholders, with each typically holding different classes of shares, allowing varying degrees of control and entitlements to dividends and capital. Bespoke articles of association and shareholders' agreements set out the operating rules for the company, ensuring they are appropriate in the family context. Capital is introduced by subscribing for shares, making loans to the FIC, or a combination of both.

Very generally, trusts lend themselves to smaller funds or IHT-relieved assets and where flexibility and asset protection are key aims. FICs tend to be recommended for those with a very significant exposure to IHT, large cash deposits and who are more familiar with running companies.

The advantages of a family trust

Inheritance Tax (IHT)

By transferring assets into trust, and provided they do not retain a benefit, the settlor (the person funding the trust) ensures the assets are outside of their estate for IHT purposes. If the settlor survives seven years, the assets pass on free of IHT. However, if the settlor dies within seven years of the gift, the value of the gift (but, importantly, not any subsequent growth in the value of the asset) will be taken into account when calculating the IHT due on death. If any IHT becomes due as a result of the settlor's death within seven years, taper relief can apply to reduce the tax if the settlor survives beyond three years from the gift.

Capital Gains Tax (CGT)

Usually, a gift of (non-cash) assets, which have increased in value over the course of ownership, will trigger a CGT charge. However, on transferring assets to the trustees of a trust, the settlor has the option to claim holdover relief. This ensures the trustees receive the assets at the settlor's acquisition cost and defers any CGT charge until the trustees themselves dispose of the asset.

Control

If retaining control is a key objective, the settlor of the trust can become a trustee. In this role, together with any co-trustees, they retain control over the management of the trust assets. Discretionary decisions regarding how and when each beneficiary receives any benefit must normally be made unanimously by trustees, making the choice of co-trustees particularly important.

Asset protection

With a fully discretionary trust, the trustees are the legal owners and no beneficiary has the right to income or capital from a trust. Accordingly, trust assets are to an extent ringfenced against certain risks associated with outright ownership such as loss of assets on divorce, bankruptcy or the vulnerability (whether age or disability-related) of a beneficiary. A trust is therefore particularly useful for reducing the value of an estate but without putting assets directly in the hands of the intended beneficiaries.

In comparison, shares issued in a FIC to family members are open to some of these risks, although certain protections can be included within the Articles and Shareholders' Agreement.

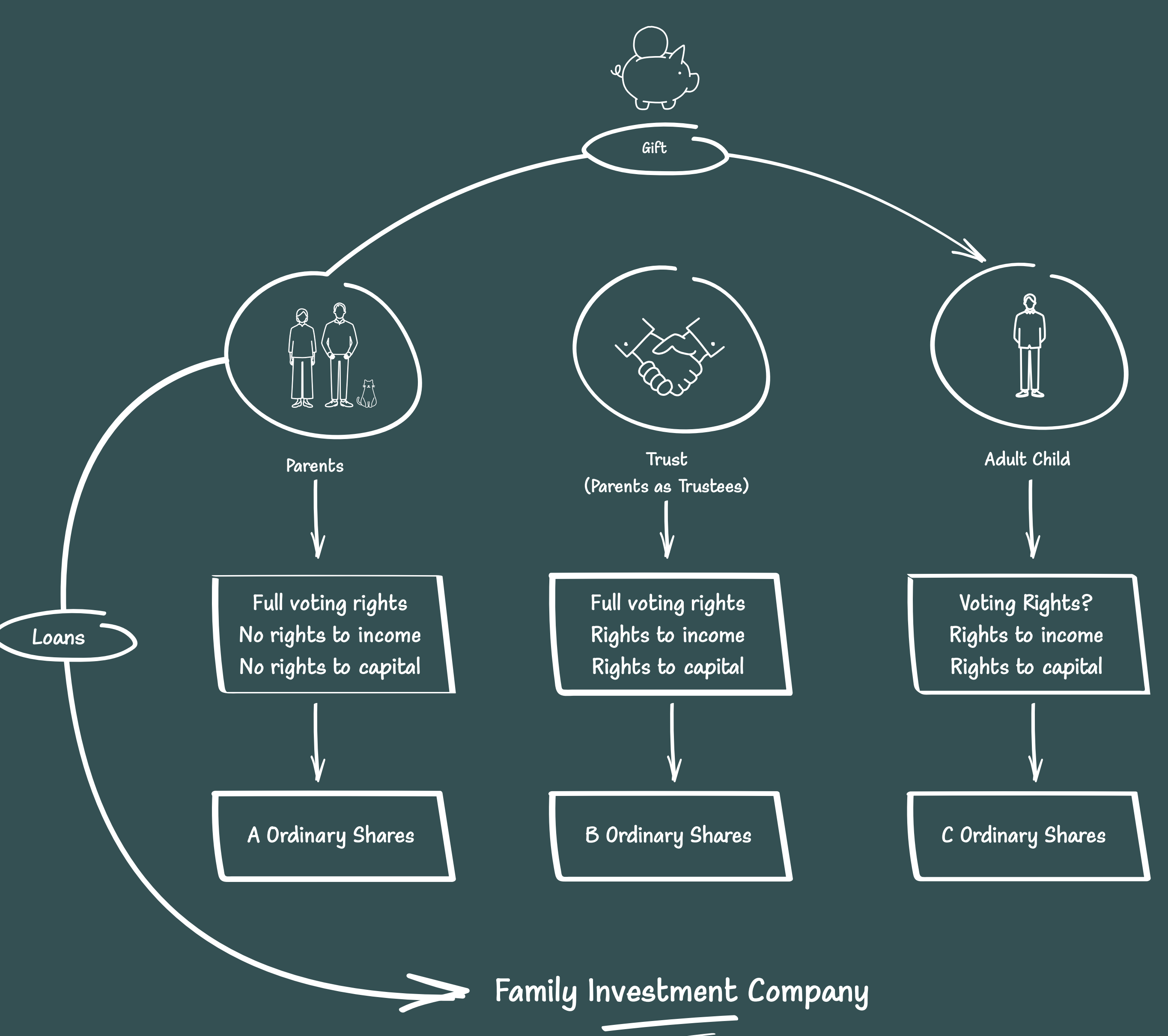
Flexibility

Modern trusts are usually drafted widely to take into account a family's changing circumstances. Often children, grandchildren and future generations are included within the class of beneficiaries, allowing trustees to manage the trust in the longer term and even for beneficiaries who are not yet born at the creation date.

In comparison, unless trusts are included within the corporate structure, future family members cannot be issued with shares in a FIC. In addition, the discretion available to the trustees allows them to be agile, providing for beneficiaries as and when required, taking into account their needs at the time.

MODERN TRUSTS ARE USUALLY DRAFTED WIDELY TO TAKE INTO ACCOUNT A FAMILY'S CHANGING CIRCUMSTANCES

Potential Family Investment Company structure



PROFESSIONAL ADVICE IS KEY: IT ENSURES YOUR FAMILY'S UNIQUE SITUATION IS CONSIDERED AT THE OUTSET AND THE BEST MODEL IS IMPLEMENTED CORRECTLY.

GETTING THE FIC STRUCTURE RIGHT FROM THE START IS ESSENTIAL. ANY CHANGES TO SHARE RIGHTS OR SHARE CLASSES CAN HAVE UNINTENDED TAX CONSEQUENCES FOR THE SHAREHOLDERS.

The disadvantages of a family trust

Limitations on value

A major restriction on the use of trusts is the amount that can be added initially without incurring an immediate IHT charge. If a settlor transfers assets in excess of the Nil Rate Band amount (currently £325,000), taking into account any other gifts to trust made in the seven years prior, a tax charge at a rate of 20% is levied. Further tax may become due if the settlor dies within seven years of the transfer. Transfers into trust are therefore usually kept within the Nil Rate Band allowance. However, assets qualifying for IHT relief (Agricultural or Business Relief) can be transferred without triggering this initial IHT charge. Trusts are therefore often used as part of pre-sale or pre-development of relieved assets tax planning.

Ongoing taxation

Trusts are subject to the highest rates of income tax (45%) and capital gains tax (20/28%) and do not benefit from certain allowances that would otherwise be available to individuals, such as personal or dividend allowances, although steps can be taken to mitigate these charges. In addition, further IHT charges (at a maximum rate of 6%) can arise on every 10-year anniversary of a trust or on the distribution of assets to beneficiaries.

Ongoing administration

Trusts now need to be registered with HMRC's Trust Registration Service, which must be reviewed on an annual basis. Further, annual trust tax returns and accounts must usually be filed. As well as the annual compliance, the trustees must regularly review the management of trust assets and consider the exercise of their powers.

Find out more about how we can help with Family Investment Companies

The advantages of a FIC

IHT

A FIC can help to mitigate a family's IHT exposure in a number of ways.

Firstly, when a FIC is formed, family members can be given shares in the company, or cash to subscribe for shares, of any value without incurring an immediate IHT charge (unlike trusts). Provided the founder survives seven years, the gifts will be outside their estate for IHT purposes. This option should be balanced against the risk of giving sums outright to family members and advice should be sought on the safeguards that can be implemented to mitigate against these risks.

Secondly, the class of shares issued to the founders often have limited rights to capital, ensuring the growth in the value of the FIC is attributable to other family members' shares and outside the founders' estates.

Thirdly, any minority shareholding retained by the founders will receive a discount on the founders' deaths when valuing their interest. These discounts can be substantial. However, any loans made to the FIC on incorporation, will remain an asset of the founders' estates and provide no immediate IHT advantage.

Control

Control can be retained by the founders in a number of ways. These include by owning shares with voting rights in their personal capacities or as the trustees of family trusts, through their roles as directors or through a carefully drafted Shareholders' Agreement that sets out the directors' powers and the shareholders' rights. Founders should be mindful that if they retain shares in their personal capacities with all or the majority of voting rights, the value of the retained shares will be in excess of the nominal share value and will still be included within their taxable estates for IHT purposes.

Accumulation of wealth

A FIC is an efficient vehicle to retain profits and reinvest within the structure, particularly with respect to dividend income, which is exempt from Corporation Tax, making this an ideal entity to hold investments. All other profits are subject to Corporation Tax (currently 25% for companies with profits in excess of £250,000). Whilst Corporation Tax rates have increased in recent years, current rates are still lower than trust rates and high earners' personal tax rates, allowing more income to be reinvested to generate further capital growth.

Return on investment

One of the primary methods of funding a FIC is via loans from the founder. This has an ancillary benefit of the founders being able to retain access to some of the initial capital (unlike trusts), with a tax-free return on capital to the founders (provided the loan is interest-free) on repayment of the loan.

Familiarity

Trusts are often an unfamiliar concept. However, those who are used to running companies in their professional lives have a greater understanding of the terminology surrounding FICs and the requirements for the day-to-day management of such entities, often making them a more attractive proposition.

The disadvantages of a FIC

Introduction of assets

Structuring the initial transfer of assets into a FIC correctly is key. Existing property investment partnerships may qualify for incorporation relief, but any other transfer of property or non-cash assets will be a chargeable disposal for CGT purposes. If consideration is given by the FIC, Stamp Duty Land Tax is payable too (at higher rates) on the transfer. Companies holding UK residential property can also be subject to ongoing Annual Tax on Enveloped Dwellings charges. To avoid such charges, cash is usually the most suitable asset to introduce to a FIC, which requires the founders to have access to significant cash deposits.

Extraction of profits

Whilst a FIC is an efficient vehicle for accumulating profit, when looking to distribute those profits to shareholders by way of dividend, there is an element of double taxation. Corporation Tax is charged on (non-dividend) profits within the FIC and income tax is charged on the dividends paid to the shareholder. At current rates, this can result in an effective rate of tax of 53.6% on the extraction of profits.

Cost

FICs are bespoke structures, requiring professional advice from private wealth and corporate solicitors and specialist accountants to ensure they meet the clients' objectives, whilst navigating a complex tax landscape. Accordingly, the initial start-up costs can be significant, certainly in comparison to trusts.

Lack of flexibility

Getting the FIC structure right from the start (or soon after incorporation) is essential. Once the initial classes of shares have been issued, and the FIC increases in value or generates profit, any changes to share rights or share classes can have unintended tax consequences for the shareholders. Ensuring that the founders are happy with the classes of shares issued to family members at the outset is necessary.

HMRC scrutiny

HMRC has previously engaged a specialist unit to review FICs and whilst it concluded there was no correlation between those establishing FICs and non-compliant behaviour or tax avoidance, HMRC certainly pays close attention to the structure, funding and management of these entities. As such, professional advice is essential to ensure the structuring is compliant.

One size doesn't fit all

Given the advantages and disadvantages of both options, one strategy can be a combination of both vehicles, alleviating some of the recognised downsides of either option. For example, family trusts are often included as shareholders in a FIC. This provides flexibility to benefit future generations of the family, greater protection for younger or more vulnerable family members and allows the founders to retain control without IHT implications for their estates.

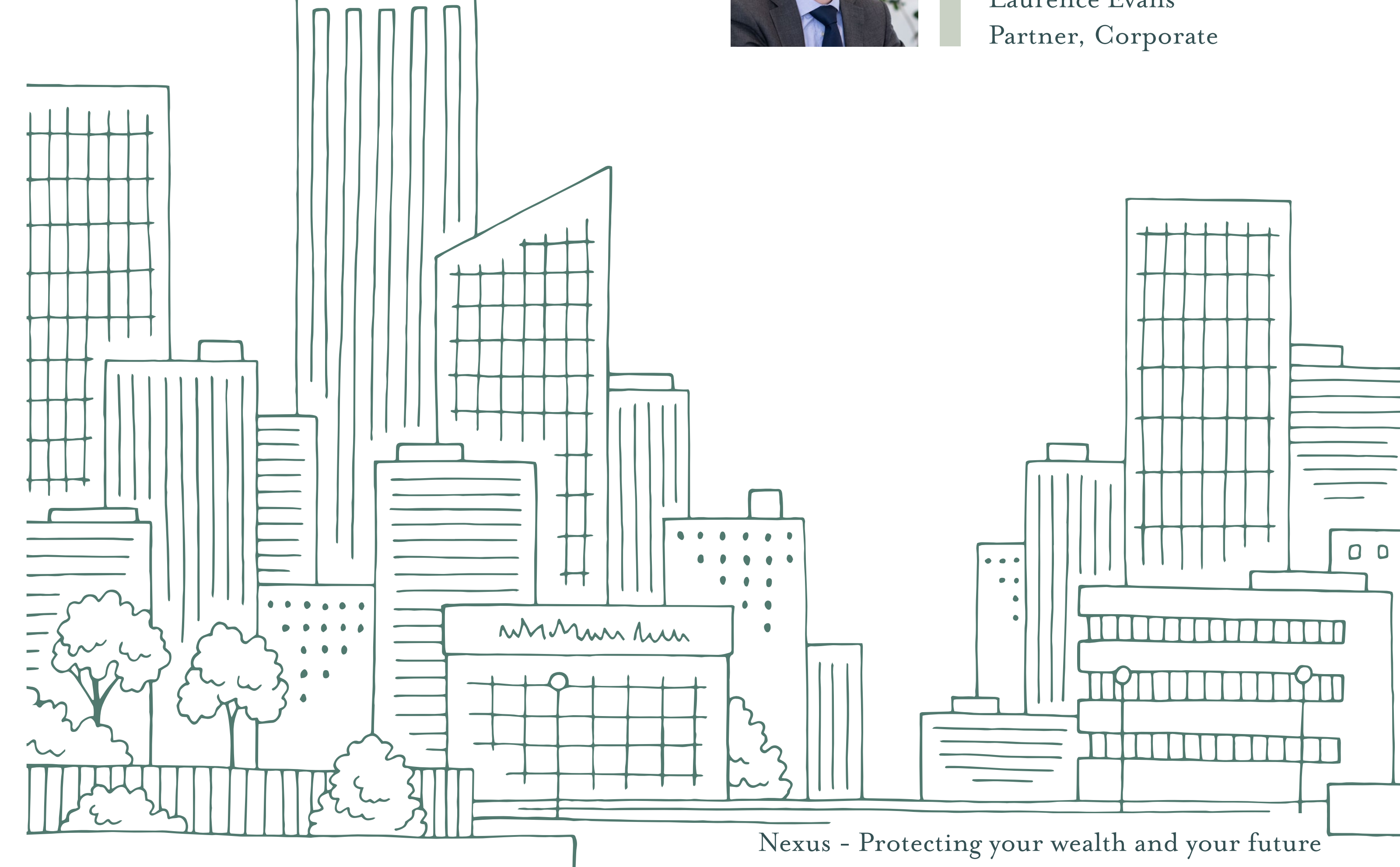
However, every family has its own needs, objectives and particular circumstances to consider. Accordingly, there is no one-size fits all solution to estate planning. Both trusts and FICs can be effective means of managing the succession of assets within a family in a tax efficient manner.

As ever, professional advice is key: it ensures your family's unique situation is considered at the outset and the best model, tailored to your circumstances, is implemented correctly.

FAMILY MEMBERS CAN BE GIVEN SHARES IN THE COMPANY, OF ANY VALUE WITHOUT INCURRING AN IMMEDIATE IHT CHARGE

Katherine Hague
Partner, Private Client

Laurence Evans
Partner, Corporate



A fifth of UK couples who had their first wedding since 2000 have a pre-nup

WEALTH PROTECTION WITH PRENUPTIAL AND POSTNUPTIAL AGREEMENTS

> MARITAL ASSETS DON'T JUST COME IN THE FORM OF MONEY, PROPERTY OR PENSIONS

Most people have heard of prenuptial agreements. However, the lesser known postnuptial agreement is equally useful to couples who may not have considered, or had an opportunity, to enter into a prenuptial agreement prior to the marriage.

Both prenuptial and postnuptial agreements are contractual agreements designed to set out the agreed financial framework for a settlement in the event of a divorce. They give individuals the means to shield themselves, in financial terms, in a future divorce.

When should a prenuptial or postnuptial agreement be a priority?

The most common reason for executing a prenuptial agreement is when one partner brings significantly more wealth or assets into the marriage than the other. The wealthier spouse would stand to be disproportionately affected by a future divorce in which assets are split equally. The execution of a prenuptial agreement enables them to ringfence those "non-matrimonial" assets that had been built up, or acquired, prior to the marriage.

There are other scenarios in which a prenuptial or postnuptial agreement is valuable, too.

♡ When there is an expectation of future wealth

A prenuptial agreement can protect assets that do not exist at the time of the marriage but which are highly likely to be received in the future by one spouse through their career endeavours, their current investments or, most likely, via an accelerated family gift or an inheritance. A prenuptial agreement can be utilised to preserve future assets or future inherited wealth to ensure they are not treated as "matrimonial property" and potentially shareable upon a future separation or divorce.

♡ To protect a business

Marital assets don't just come in the form of money, property or pensions. If one partner entering a marriage is a business owner or has shares in a business (or is likely to receive shares in a business the future) then it is worth remembering that a business is also an asset that could be subjected to marital division in a future separation or divorce. A prenuptial agreement can be pivotal in protecting the interests of a family business and its employees to ensure that the non-business owning spouse cannot make financial claims against the business, which could put it in jeopardy.

♡ Where there is an international element

One party to a marriage may hold dual nationality, have assets overseas or previously have been domiciled or habitually resident outside England and Wales. Sometimes as marriages evolve, the parties can make decisions to invest time and money overseas. A prenuptial agreement can help regulate which legal jurisdiction is to seize control of the divorce proceedings in the event of a future separation and can also assist in the determining of any assets held in another legal jurisdiction.

Are prenuptial and postnuptial agreements legal?

Prenuptial and postnuptial agreements are not enshrined in law in England and Wales as legally binding, but a landmark Supreme Court judgment in the case of Radmacher v Granatino in 2010 changed the way courts view them.

The judgment supported the freedom of the parties in that case to determine their own division of assets and gave prenuptial agreements additional

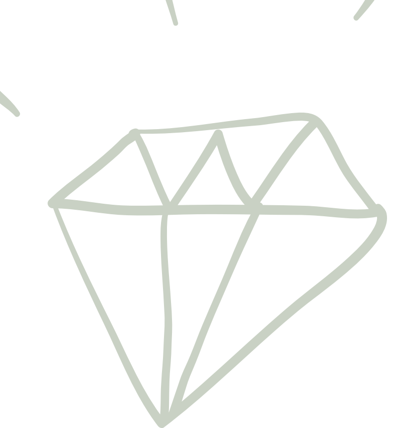
but "decisive weight" when determining financial settlements within a divorce. Furthermore, the case established that where a prenuptial agreement existed, the court was unlikely to depart from the terms set out within it, provided certain conditions were met:

- The agreement must have been executed at least 21 days prior to the marriage (in the case of a prenuptial agreement)
- There must have been full disclosure of both parties' financial circumstances
- There must not have been any coercion or duress of either party in entering into the agreement
- The agreement must be fair and have taken into account both parties' needs, including housing
- Both parties must have taken independent legal advice before entering into the agreement.

Sensible or cynical?

It is a common misconception that prenuptial and postnuptial agreements are designed only for those with significant wealth. This is a myth and, unfortunately, one of the main reasons that so many couples choose not to enquire about one.

In addition, the unromantic nature of these agreements can sometimes be off-putting for couples. Some may believe that entering into such an agreement sets an expectation that the relationship will eventually fail. However, a prenuptial or postnuptial agreement can often cement the trust, reassurance and commitment between couples, demonstrating that the marriage is based on love and not on any expected gain by the financially weaker party.



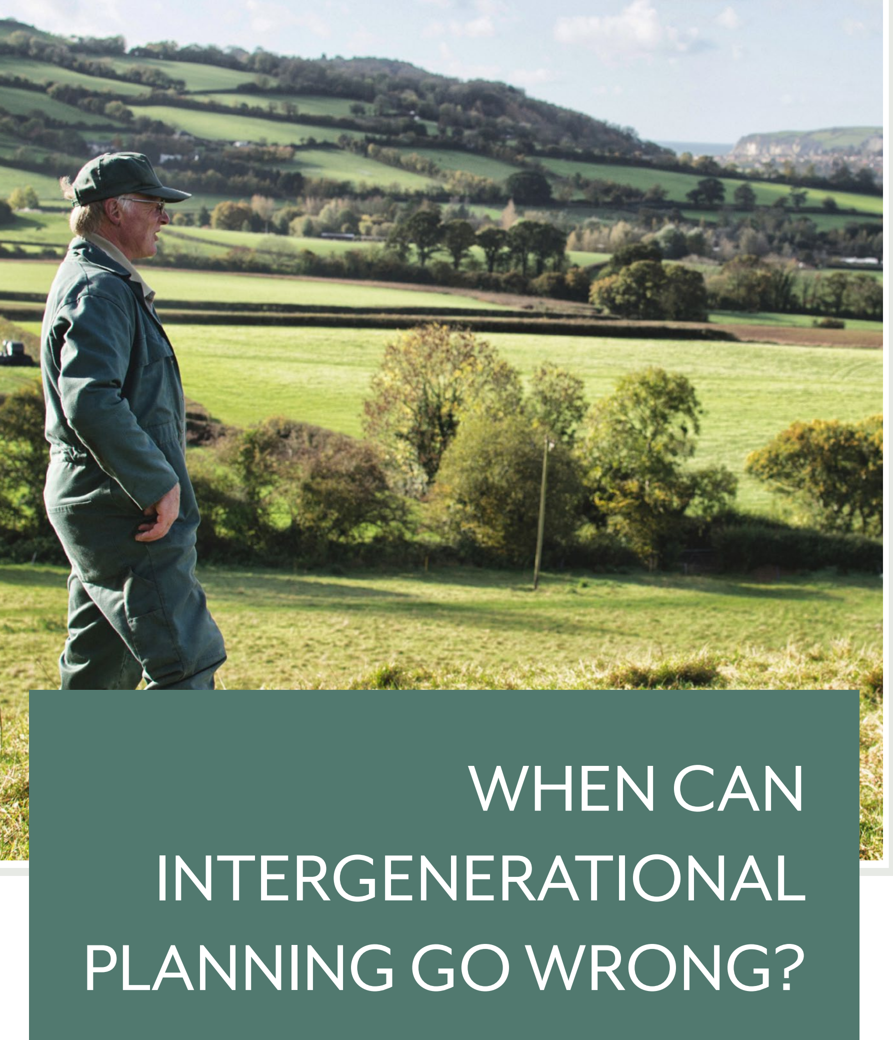
A prenuptial or a postnuptial agreement also enables couples to collaboratively decide their own financial settlement with a level head, providing greater financial certainty and significantly reducing the future risk of costly and acrimonious court proceedings, which are often expensive, regardless of the value of the marital pot.

Individuals who are seeking to protect wealth, rarely regret entering into a prenuptial or a postnuptial agreement, although few can say the same in reverse. If you are reading this article right now, surely the right question to ask yourself is – can I afford not to have one?

The key benefits of prenuptial and postnuptial agreements

- Offers total financial transparency at the outset
- Enables individuals to ringfence pre-existing wealth
- Can protect individuals future wealth such as an inheritance
- Clearly defines what is perceived to be "matrimonial" and "non-matrimonial" property
- Can protect a party from taking on the other's debt
- Can define arrangements for children – such as living arrangements, child maintenance and school fees etc
- Saves considerable legal costs in the event of a future financial dispute upon divorce.

Richard Scott
Partner, Family Law



WHEN CAN INTERGENERATIONAL PLANNING GO WRONG?

Passing family wealth from one generation to the next seems so simple. Nothing could be further from the truth.

We know that, on average, the wealth generated by a first-generation entrepreneur has typically dwindled to less than a third of its value by the time it is passed to the third generation down the line. How does this happen?

I am going to discuss the common issues that arise by looking at three different intergenerational planning settings: the rural farming community, owner-managed family businesses and blended families.

By no means are the issues that face families in each of the scenarios different. Quite the contrary: the themes display across all the settings. In sharing them with you, I hope to help you and your family avoid so many of the pitfalls.

In the rural community

Land is now seen as green gold in England and Wales. It is trendy from a lifestyle point of view and therefore attractive beyond the core value of farming. It can be desirable to hold for tax advantages and Agricultural Property Relief from Inheritance tax on death. It is also seen as a safe haven by investors generally. It means that even farmers with relatively modestly sized holdings are now wealthy individuals.

Intergenerational planning amongst rural land-owning families nearly always boils down to a lack of clear communication between the older land-holding generation and the younger generation.

The lack of clear communication about the plan for the future is often for very good reasons.

Parents or grandparents may be waiting to see which offspring show an interest in farming the land and are hedging their bets. This can, perhaps oddly, fuel more competition between those with an interest. If, for example, there are two sons and both want to farm, what to do?

Parents may wonder how to divide wealth between a farming son and a non-farming daughter – and what are the consequences of not treating children fairly? What legacy will that leave and will the family all still get on after the parents' deaths? Should parents skip a generation and leave assets to the grandchildren? If so, in what proportion?

In these cases, Will disputes often arise between family members based on the law of proprietary estoppel (which transfers land rights if someone is given a clear assurance that they will acquire a right

The value of arable land in England has risen to a record high

over property, they've acted on that assurance and it would be unreasonable to expect them to go back on the assurance).

The difficulty is that parties become extremely entrenched, and the party who is farming the land doesn't want the farm sold. Often, there is very little documentation left by the parents about what the plan was intended to be or why. The living parties are left to fight it out with lawyers. The end result can be a family torn apart, and relationships between the younger generations damaged or destroyed.

In owner-managed businesses

Many of the issues typically faced by family-owned businesses are similar to the issues found in farming families. There can often, thankfully, be more documentation and good structures in place, together with clear shareholding and accounting. Even so, even extremely successful and profitable family businesses can still face challenges.

How does the board or the controlling shareholder deal with those who have married into the family? Does the matriarch or patriarch have too much authority and will there be a power vacuum when they die? Do the leaders have Lasting Powers of Attorneys in place to allow other members of the family to function in the event of an accident or failing health? Can the board successfully transfer assets, typically the shareholding, in the company in accordance with the wishes of the deceased set out in a Will?

In these cases, poor planning can lead to Will disputes that disrupt operations and threaten the survival of the company. These situations can be avoided with clear business strategy planning and communication at regular intervals. Regular stress-testing is valuable and there should be plans in place in case of the unexpected death of key individuals.

> THE KEY TO LEAVING A HARMONIOUS LEGACY AND ENSURING FAMILY WEALTH REMAINS IN THE HANDS OF THOSE WHO YOU INTEND IS CLEAR COMMUNICATION AND FORWARD PLANNING

In blended families

More and more families can accurately be described as "blended", by which we mean a family formed by two people who have a child or children from previous relationships.

The case I see most often in this context is where one party does not plan for or communicate how the family's wealth will be divided between the second spouse or partner and the children from the first relationship. This can be the case even where the second relationship has lasted 20 years or more.

The dynamic between second spouses or partners and the children of the deceased from the first relationship can be very emotionally fuelled. A lack of clarity can therefore lead to considerable anguish and conflict. To avoid this, do not leave surprises, communicate your intentions and stick to them in your lifetime.

Prevention is better than cure

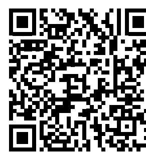
As professionals, we know that very few families think they will run into problems in intergenerational planning. Sadly, we see the same issues come up time and again.

The key to leaving a harmonious legacy and ensuring family wealth remains in the hands of those who you intend is clear communication and forward planning. You can also consider gifting wealth or property in your lifetime so you can be part of the solution and oversee the transition of wealth. This approach can often be a joy, and helps avoid tricky situations after you are gone.

Whichever approach you choose, it can help to ensure you successfully pass wealth, property and opportunity down to future generations.

Beth King-Smith
Partner, Private Client

Find out more about how we can help you if you want to dispute a will



THE BANK OF MUM AND DAD

The 'Bank of Mum and Dad' is set to gift more than £25 billion by 2024, supporting almost half of all first-time buyer transactions. Grandparents are providing support too, with one in four grandparents helping or planning to help grandchildren purchase their first home. As well as helping children to get onto an increasingly expensive housing ladder, such gifts can also be a means to reduce inheritance tax liability.

If gifting your child a deposit to purchase their first home is something you are considering, here are some of the factors you need to bear in mind when making your decision.

Is the money a gift or a loan?

If the money is gifted, you cannot ask for it back. The gift becomes the property of the child to use as they wish. There is always therefore a risk that the monies may not be used for the intended purpose. Important to bear in mind too that a gifted deposit could be subject to Inheritance Tax (IHT) if you die within seven years of the date of making the gift.

A loan would give you more control, and the certainty that the money will be paid back to you. However, if you elected to charge interest on the loan, this would form part of your income and you would pay tax on this. A loan can also make it more challenging for your child to obtain a mortgage as many mortgage lenders will not accept loaned deposits, only gifted ones.

It is important to ensure that whatever form the financial assistance takes, it is recorded in writing between the parties to avoid future family disagreements and possibly litigation.

Is your child buying on their own or with a partner?

If your child is purchasing with their partner, you need to consider how to protect the gift if the relationship were to break down to prevent the partner from claiming any part of the gift.

To protect the money you have gifted to your child, a declaration of trust or trust deed should be prepared. The declaration will specify who is entitled to receive the gifted deposit in circumstances where the property is sold. An alternative option would be a co-habitation or living together agreement which would contain a record of all financial contributions and what would happen if the relationship ended.

The Bank of Mum and Dad gave almost £14 billion a year between 2018 and 2020

A GIFTED DEPOSIT COULD BE SUBJECT TO INHERITANCE TAX (IHT) IF YOU DIE WITHIN SEVEN YEARS OF THE DATE OF MAKING THE GIFT

How would it affect your own financial security?

Before making any gift, you need to assess your own finances carefully and understand whether you can really afford it. Would the gift compromise your current quality of life? Do you have sufficient savings for unforeseen circumstances? Can you afford your current lifestyle in retirement? Taking advice from an experienced financial advisor may help with this.

Other options to help your children get onto the property ladder

You may decide gifting or loaning a large sum of money is not an option. If that is the case, there are other ways to support your child to get onto the property ladder.

Choosing a family offset mortgage

Your savings would be used to form part of the deposit. However, there will be requirements for your monies to remain with the lender for a period of time (usually not less than 3-5 years).

Acting as a guarantor

In this scenario you would guarantee the terms of your child's mortgage. If your child defaults on the terms of their mortgage the lender can pursue them and you to recover any outstanding sums.

Releasing your equity

You might be able to use part of the equity in your home to provide additional security against your child's mortgage.

Taking out the mortgage jointly with your child

This option could certainly help if your child was struggling to meet the affordability criteria of their lender. However, you would need to consider the tax implications before proceeding. If you already own a property, buying a property with your child is likely to mean the transaction will attract the higher stamp duty land tax rate. (On the other hand, if your child was buying on their own, they might be eligible for the first time buyer rate). If you own your own home, then your child's home would be classed as a second property and may be subject to capital gains tax.

As always, careful thinking and sound advice from the experts can give you the insights you need to understand your options and make the right choice for you and your children.

Samantha Houlden
Partner, Residential Property

Lisa Gibbs
Partner, Residential Property

Ways in which funds for BoMaD assistance were raised

Source	%
My cash savings	53%
Money from an ISA	21%
Equity release on my own home	16%
Downsize my home	14%
My general investment portfolio	13%
My pension savings (cashing in lump sum)	9%
My pension income - drawdown	7%
Take out a loan	6%
My pension income - annuity	6%
Remortgage my home	4%

Source: Survey commissioned by Legal and General

> THE PROPOSALS COULD MAKE INDEPENDENT SCHOOLING AN UNAFFORDABLE OPTION FOR SOME FAMILIES

WHAT ARE THE POTENTIAL CONSEQUENCES OF LABOUR'S COMMITMENT TO LEVY VAT ON INDEPENDENT SCHOOL FEES?

The wait for the Labour party to announce its plans in respect of how it will treat private school fees is over. Speculation on the potential consequences for parents and the independent school sector has been growing as the likelihood of a new Labour administration has increased. Now we have clarity.

The proposed introduction of VAT of 20% on school fees is now tangible and it is estimated that such a change would generate an estimated £1.6 billion for the Exchequer.

If there is a political willingness to apply VAT to the supply of education it is relatively simple to do so. The provision of education is currently an exempt supply, but it is not inconceivable that legislation could be drafted to make independent schools fees subject to VAT.

The impact of the proposal could include further rising school fees and the closure of some independent schools that would no longer be sustainable. The proposals could make independent schooling an unaffordable option for some families who would otherwise consider it.

How might schools mitigate the effects of any change?

For many schools, it would represent a significant increase in the fees charged.

A measure that could be possible would be to utilise a 'fees in advance' (FIA) scheme. A number of schools already offer this to parents. Parents pay a lump sum to the school and in return receive a discount on the fees charged by the school, subject to certain terms and conditions.

It is important to note that the school would be unlikely to fix the fees charged for future periods, so the fee inflation risk would remain with the parent.

The physical receipt of fees paid in advance of educational services being provided would crystallise a tax-point for VAT purposes for the school. This means if the VAT rules were to change in the future, the amount received in the fee in advance scheme prior to any announcement of a change would not be subject to VAT. There is a risk that 'anti-forestalling' legislation may be introduced which may affect FIA schemes, if that happens, parents will be informed.

What can parents do?

As of today, the proposal is just that, a proposal. However, for families considering independent schooling for their children, now might be the time to revisit and assess funding plans.

Kristine Scott
Head of Education and Charities

INTERNATIONAL ESTATE PLANNING INSIGHTS

With increased global mobility, the issues that can result from different tax and succession regimes are more relevant than ever.

Understanding and planning for the rules that will apply to the succession of assets in each jurisdiction on death, and how taxes will apply both in your home territory and other regions where you own assets, helps avoid unintended consequences.

In this article, we look at the issues involved with the succession of property on death when you live in one jurisdiction and own property in another.

Succession of assets in UK jurisdictions

There are three jurisdictions in the UK: England and Wales, Scotland, and Northern Ireland.

In England and Wales and Northern Ireland there is testamentary freedom. This gives you the freedom to leave your estate to anyone you choose in your Will. There is no legal obligation to provide for any family member or other individual.

However, some would argue the matter is not quite so clear-cut because legislation exists that could be said to curtail testamentary freedom. In England and Wales, the Inheritance (Provision for Family and Dependants) Act 1975 effectively gives courts the power to alter the provisions of a Will or intestacy if certain types of applicants as set out in the legislation can establish that the deceased failed to make reasonable financial provision for them. Similar legislation to the 1975 Act applies in Northern Ireland.

In Scotland, the law specifies that prescribed rights and shares of a deceased's estate should pass to specified persons. This 'forced heirship' applies to moveable property owned by individuals domiciled in Scotland.

Succession of assets in EU jurisdictions

In the EU, the European Succession Regulation 650/2012 (often referred to as Brussels IV) gives individuals the right for the law of their nationality to apply to the succession of their property in another EU country. This applies to UK nationals too, notwithstanding Brexit.

That said, there are signs that this EU regime, which is designed to enable a deceased person's estate to be governed by a single succession regime, is not entirely secure.

In 2021, France amended its Civil Code. If a deceased, or child of a deceased, is a national of, or habitually resident in, an EU member state, and the applicable law of succession does not include forced heirship, then a child who receives less than their compulsory share can look to be compensated from the deceased person's French assets.

The German Supreme Court has also made a ruling undermining the effectiveness of the EU succession regulations (Case No. IV ZR 110/21).

The EU is investigating the impact of these rule changes and rulings.

Whether or not succession provisions are the same across jurisdictions, the EU regulations do not give uniform tax status. Matrimonial property regimes and tax regimes of the country where the property is situated still apply (subject to any double taxation agreements or unilateral relief that may apply). It is also the case that where an individual owns property in a non-EU state, succession, tax and matrimonial regimes may apply.

Taking control of the future

If you have assets in more than one jurisdiction, liaising with your legal and tax advisors in all relevant jurisdictions is vital to ensure succession happens in the way you want.

> IN ENGLAND AND WALES AND NORTHERN IRELAND THERE IS TESTAMENTARY FREEDOM. THIS GIVES YOU THE FREEDOM TO LEAVE YOUR ESTATE TO ANYONE YOU CHOOSE IN YOUR WILL

It often makes sense to have more than one Will. Typically, this will be a Will prepared under the law of your domicile, which deals with your worldwide estate. Additional Wills are also prepared in jurisdictions where you have assets.

A practical advantage of this approach is that having separate Wills for each jurisdiction can ultimately speed up the administration of your estate.

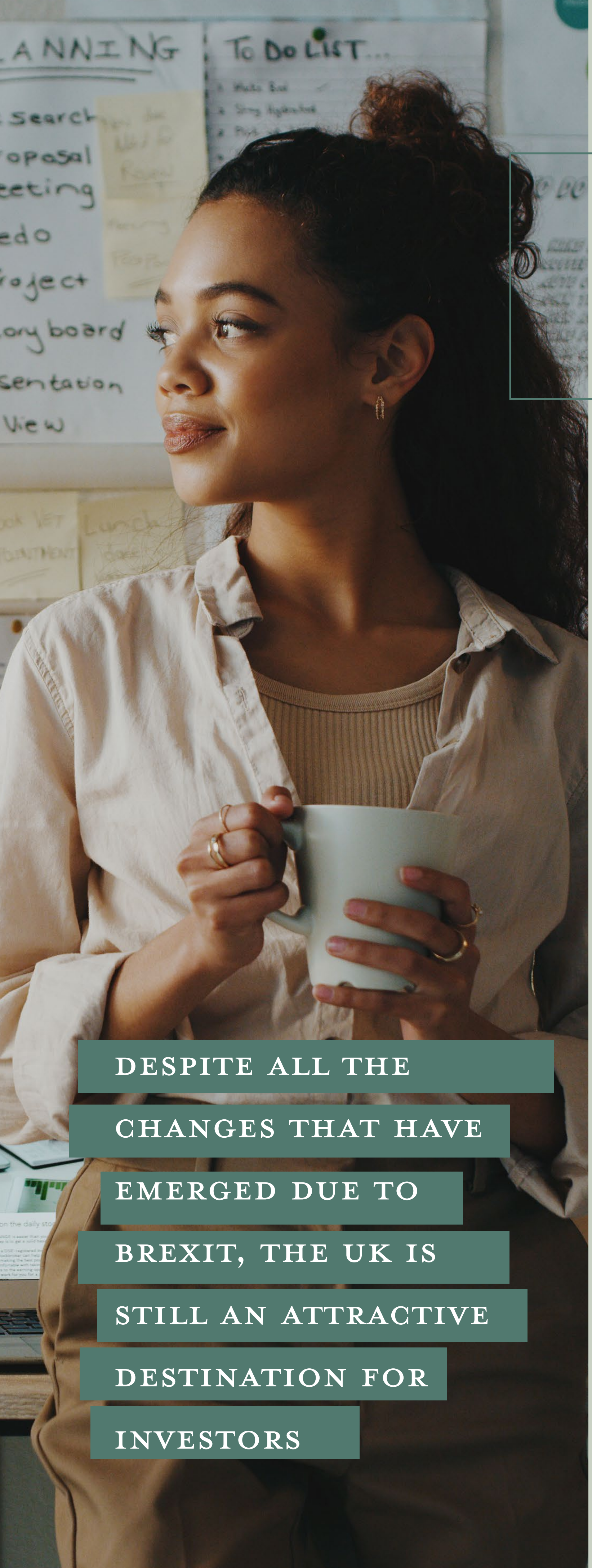
It will be key that these Wills work together so your entire worldwide estate is dealt with, and tax and other relevant local considerations are factored into the beneficial provisions of the Wills.

Without this, there is a risk that provisions of the Wills overlap, or of a Will being inadvertently revoked. This could, after death, lead to confusion and considerable expense in sorting out entitlements. For example, in Sangha v The Estate of Diljit Kuar Sangha & Ors [2023] EWCA 660, the construction and proper interpretation of a revocation clause had to be tested in the courts.

Careful coordination of your estate planning by lawyers and tax advisors in all the relevant jurisdictions gives you the means to ensure a coherent, effective and meticulously executed succession plan.

Nicolas Groffman
Partner, International

Bernadette O'Reilly
Partner, Private Client



DESPITE ALL THE CHANGES THAT HAVE EMERGED DUE TO BREXIT, THE UK IS STILL AN ATTRACTIVE DESTINATION FOR INVESTORS

HAS THE ERA OF THE GOLDEN VISA GONE?

The United Kingdom aspires to be a first-choice destination among high-net-worth individuals who are looking for a country with a stable society and economy to invest in and establish themselves. To that end, the UK offered the Investor visa (Tier 1), as a gateway.

The benefit of this specific visa was that it offered an expedited process, making it possible for investors to gain residence and citizenship after five years. It became recognised as the Golden visa.

From February 2022, individuals could no longer apply for a new Tier 1 (Investor) visa. However, applicants who hold this visa (or had one in the last 12 months and it was their most recent visa) may still be able to extend their stay. Individuals with a Tier 1 (Investor) visa can, subject to eligibility, make applications for settlement by 17 February 2028 at the latest.

As individuals can no longer apply to obtain a Tier 1 visa, this has allowed for the introduction of other visa options, such as the Innovator Founder visa. The Innovator Founder visa is targeted at individuals with professional experience and their own business idea.

Despite all the changes that have emerged due to Brexit, the UK is still an attractive destination for investors. These investors will find that the UK benefits them greatly for fundamental reasons including the language, health system, educational facilities, legal system, and London's financial market.

The UK is one of the freest, richest and one of the most stable countries in the world. It should also be noted that the UK passport is highly ranked and respected. With this in mind, it is no wonder that business entrepreneurs still class the UK as an important country to be associated with.

The specific benefits of the Innovator Founder visa include:

The initial Innovator Founder visa will be valid for 3 years and can lead to an applicant being granted indefinite leave to remain in the UK, after that initial 3-year period; and

Applicants do not need to have any specific level of funds to invest in their proposed business.

The new visa options, as introduced by the Home Office, are more transparent. Applicants need to show that they meet the English language requirement in order to be eligible for this visa, as well as having enough savings to support themselves. There are also still rigid business requirements that must be met.

In order to qualify for this visa, the applicant must be able to satisfy the innovative, viable and scalable business requirements. This means that the applicant's business idea will need to meet the criteria that the Home Office have introduced. Before applying for an Innovator Founder visa, the applicant's business or business idea needs to be assessed by the relevant endorsing body.

The endorsing body will consider whether the applicant is a fit and proper person to receive the endorsement. It will review the source and origin of the applicant's funds. This is to ensure that the funds are not associated with any criminal activities and that their source can be explained.

In conclusion, the Innovator Founder visa will be highly desirable to a candidate who has an innovative business idea, with views to develop it in the UK market. The fact that the applicant has the option to settle in the UK is clearly an added bonus. The UK, by making the process more transparent, is striving to attract applicants who can bring new business ideas to the UK and to make the UK their permanent residence. We are excited to see the positive impacts that this will have on the UK's economy and society.

Joanna Safadi
Associate, Employment and Immigration

Find out about our business and private client immigration service

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