

as IHT (provided the same conditions are fulfilled) HMRC has allowed the individual the choice not to. So, an original beneficiary can choose to have the variation effective for IHT purposes, but for CGT purposes, the original beneficiary may wish to elect to keep the legacy so the transfer to the new beneficiary then becomes an inter vivos transfer for this tax.

Task 16

In many situations this will not be an issue you will need to consider, but can you think of any situations where it may be important?

6.2.3 Income Tax

There are no statutory rules that make the variation retrospective for income tax purposes, so that any income paid out will be classed as the income of the recipient.

So, if the variation is made before any monies are paid over to the original beneficiary, the income tax liability will be for the new beneficiary. However, if the original beneficiary has received income, if they do not pass over the income to the new beneficiary they will have to pay tax on the amount received.

6.2.4 Stamp Duty

The **Stamp Duty (Exempt Instrument) Regulations 1987** made variations exempt from stamp duty provided they fall within the appropriate category (Category M). The variations are not caught under the Stamp Duty Land Tax.

Variations of an estate are a very useful tax saving mechanism and it can be very tempting to suggest to a testator when he is making his will that he does not have to think too carefully about the tax implications of his will because the provisions can always be altered by a variation within two years of death. However, this is a dangerous policy for a number of reasons. First, the Government could always remove the ability to make such a variation. This may occur after a will has been made but before the testator has died and by then the testator may be incapable of making a new will or be unaware of the need to do so. Second, a variation may not be possible if there are minors entitled to the gift as no beneficiary can be a party to