stewardship®

transforming generosity

legacy giving:

where there's a will there's a way

updated March 2017

Stewardship Briefing Paper

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Introduction

Legacies are an important although vastly under exploited source of income for the charity sector. It is estimated that around 6.2% of people donate to charities through their Wills, but even at this low participation rate legacies provide around £2.56 billion per annum to charities. In recent years, legacy income has grown by a healthy 5% p.a.[1]

As the 'baby boomer'[2] generation continues to age, it is anticipated that the worth to charities provided through Wills could increase to more than £5 billion by 2040, and that is even without increasing the level of participation! The 'prize' for charities is substantial and failing to tap into this source of funding may mean that opportunities to expand a charity's activities, or even to secure its future, are missed.

According to Christian Legacy[3], most churches do little if anything to promote legacy giving through wills. Indeed, the top 1,000 legacy charities account for 80% of all legacy income. The advancement of religion accounts for a mere 4% of legacy gifts[4]. It is therefore of little surprise that churches are failing to see significant giving in this way; giving that could be transformational to the work that they are involved in. Appendix 1 touches on what churches and charities may do to promote and increase this source of giving.

This paper is broadly split into three parts. The first explores the Biblical and ethical considerations that may shape a decision to leave a legacy to a church or charity. The second looks at practical and legal matters that need to be considered in drawing up a Will while the final section considers the tax issues and the tax planning opportunities afforded by making one or more gifts to charity in a Will.

Appendix 2 looks at the Stewardship Legacy Giving Account, which provides a more flexible solution than a Will alone and, used in conjunction with a Will, can offer some interesting wider options.

[1] Legacy Foresight: Legacy Outlook 2015-2020, published 2016 (www.legacyforesight.co.uk)
[2] The baby-boom generation in the UK refers broadly to the period from after World War II to the late 1960's, when the national birth rate increased significantly. Baby boomers are more likely than their predecessors to own their own home, rather than rent and, are more likely to enjoy a longer period in retirement.
[3] www.christianlegacy.org.uk
[4] Legacy Outlook 2015-2020, ibid.

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Part 1– Biblical and ethical considerations

1.1 Will power

For many, the starting and indeed the ending point when writing a Will is to provide for their surviving family. For Christians, this provision for family is important and is supported by the message from 1 Timothy 5:8 which states that "if anyone does not provide for his relatives, he has denied the faith and is worse than an unbeliever". Also we see towards the end of the story of Job, that he provided for both his sons and daughters and indeed, by implication, when Jesus commended Mary to the care of John there would have been a financial aspect as well as an emotional and spiritual one.

So family is important, but is that where the responsibility for the Christian stops? Perhaps more than most, Christians are aware of their mortality and the very act of making a Will should be considered as an act of spiritual significance in the light of that mortality. Jesus teaching about storing up treasures on earth really hits home at the point of death (Matt 6:19-21) however, in making a Will, what earthly treasures we do have can continue to bless others, perhaps even for generations to come.

A couple of stories from the Church of England's church legacy website[5] bring this to life; projects partially funded by legacies which will impact their communities for many years to come.

- A generous legacy left to a church in Tongham enabled the parish to part fund a full-time children's and families' worker.
- St Luke's Watford used an unexpected legacy to boost its building project to the final step, in constructing a new church and a community centre in the car park.

We are called to exercise Godly stewardship over all our resources, and that includes our estate. Indeed, it is likely that the distribution of the estate will be the largest single financial decision made by any family and it is therefore important that God is honoured in the decisions that are reached. Without making a Will, you cannot be sure that your estate will be distributed in the way in which you would want and there is always the possibility that you may leave some significant problems for your administrator to deal with.

1.2 Will it do?

For the majority of Christians who do make a Will, many will not keep it under review and it is therefore likely that, over time, it may cease to reflect their on-going concerns and priorities. More concerning is the fact that a major future life event, such as marriage, may mean that an earlier Will becomes invalid. We therefore recommend that Wills are looked at and revised, as necessary, at least every 5 years and on the occasion of any of the major life events mentioned in paragraph 3.7.

When children are young, it is understandable that the focus of the Will is likely to centre on providing for their future education and well being (including the appointment of a guardian in the event that there is a family tragedy). However, as children grow up and (hopefully) become financially independent,

[5] http://www.churchlegacy.org.uk/an-amazing-gift/an-amazing-gift (accessed 27 February 2017)

thoughts may turn to alternative or additional provision, with legacies perhaps being considered for other family members and charities, as well as children.

Wills are very useful but they are sensitive to changing times, circumstances and priorities. What may be relevant today can have an unseen consequence later. For example, if a person were to leave all of their estate to a single named individual or charity and at some point between the date of the Will and the date of death that individual died or the charity ceases to exist, the Will may be invalid (as the only bequest has failed) and the deceased may in fact die intestate. Wills can be quite inflexible. It is not possible to say "that is not what I meant" from beyond the grave!

Ideally, both the Will and any subsequent changes should be handled through a solicitor who should consider 'all eventualities' when drafting the clauses of the Will or any codicil. And, once made, these need to be kept under continual review.

One way of retaining simplicity and flexibility is to consider using a Stewardship Legacy Giving Account as an alternative to making specific charitable bequests in your Will. This can be funded during your lifetime as well as on death through your Will. Further, if you have an active giving account with Stewardship, the balance in your account when you die can be aggregated with any legacy, into to your Legacy Giving Account. More details of the Account and how it can be used appear in Appendix 2.

1.3 Will I be in time?

Creating a Will is something that should be considered at an early age. Recognising that the unexpected does happen (whether through illness or accident), it is never too early to make a Will once a person is over 18 years of age. If a person permanently loses their mental capacity, especially if this happens at an early age, it will be too late to make a valid Will.

Where one is at risk of losing one's mental faculties, in addition to making a Will, it will be sensible to ask a solicitor to draw up a 'Lasting Power of Attorney' ('LPA') the effect of which is to pass responsibility for your legal and financial matters to another person in the event that you can no longer manage them yourself.[6] Without an LPA, the only way that your financial affairs can be managed is for someone (usually a close relative) to apply to the Court of Protection to be appointed as a 'deputy'. This is not only expensive in the initial stages, but involves keeping close accounts and reporting regularly to the Court (with attendant ongoing Court fees), potentially for the rest of the life of the person whose affairs are being managed. This can be quite onerous, especially if, for example, the person suffers an incapacitating stroke at a relatively early age.

[6] A Lasting Power of Attorney ('LPA') replaces what was formerly known as an Enduring Powers of Attorney. Further details on the purpose of a LPA and how you can make one, and register it with the Office of the Public Guardian can be found at www.gov.uk/government/collections/lasting-power-of-attorney-forms. An LPA needs to be registered before it can be used.

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1.4 Will it make a difference?

Jesus told the parable of the rich man who built bigger and bigger barns to store his wealth, seemingly oblivious to the fact that one day his own life would be called in and the provisions would be worthless. This parable can be understood on different levels, but one must be that it is our responsibility to live our lives as good stewards of that which is entrusted to us. Had the man either distributed his wealth during his lifetime or made a legacy gift, all would not have been lost.

In the letters to the Corinthians Paul urges us to plan our giving; to put aside early that which we plan to give so that there might be no grudging or ill-prepared response to the call of God. Planned giving does not only apply to our regular income, but extends to the whole of our wealth for the whole of our life.

A legacy speaks not about how we have died, but much more about how we have lived. What were our priorities? What were the things that mattered to us? A legacy might be an expression of thanks to God for an organisation that played a significant role in our lives or in the lives of our family.

This may be the church where you or your children were nurtured; it may be to an evangelistic organisation that first introduced you to Jesus; it may be to an organisation overseas that you have supported during your life and want to see continued after your death. The range of available opportunities is huge and your choices say much about your life.

For many people, legacies may provide the best opportunity to make substantial gifts. With this comes responsibility. With the rising price of property and accommodation rental, and the economic pressures of today, limited cash income may put *exceptional* lifetime giving out of reach for many. However, for the baby boomer generation in particular, considerable non-cash wealth may exist in less realisable assets, such as the value of one's own home. A legacy made from these assets may represent the only realistic opportunity to make a more substantial gift.

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Part 2 – practical and legal considerations

2. Practical considerations

2.1 Will writing

For most people, the completion of a Will is not difficult, but will require a little thought and guidance. There are legal formalities that must be followed in preparing and executing (signing) a Will, if problems and potentially expensive challenges are to be avoided. Indeed, in January 2013, The Independent reported that the number of High Court actions challenging Wills has increased by 700% over the previous 5 years![7]

So even though ready-made Wills can be purchased cheaply, we would strongly recommend that you use a suitably experienced solicitor at the very least, to check over your Will before it is finalised or, better still, to guide you through the whole process and to ensure that your Will properly reflects your wishes and priorities.

To save time and money, before visiting a solicitor you should have:

- An understanding of what your assets consist and also what your liabilities might be (e.g. mortgage, credit cards, bank loans etc.). Remember to include your home, if you own it, as well as your small possessions. For example, there may be objects that only have sentimental value which you would like a specific member of your family to inherit. Equally, you may want to give individual valuables to specific people.
- Decided on who your Executors will be. These are people who will carry out the instructions contained in your Will. Often a close friend or relative from a younger generation is selected to carry out this role, perhaps in association with a more experienced professional.
- Decided on how you want your estate to be distributed. A typical Will sets out specific legacies to named people and charities first, and then leaves what remains (the 'residue') in one or more shares to other named people or charities. The specific legacies will usually be fixed in amount but the amount of the residue will only be ascertained once all the remaining assets in the estate have been realised and the funeral and other costs and debts due by your estate have been deducted.

Armed with the above information, for most people, the construction of a Will is quite straightforward and not too costly. Your solicitor is likely to have a standard template to work from. Once written, the original should be stored securely (possibly with the solicitor that drafted it) with a copy retained for your own records. Remember to tell your Executor where it is!!

[7] www.independent.co.uk/news/uk/home-news/where-theresa-will-family-feuds-lead-to-700-increase-in-high-court-disputes-in-five-years-8475962.html#

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2.2 Making subsequent changes

As noted above, you should keep your Will under regular review. Should you wish to make any subsequent changes, there are specific laws governing how this is done. Therefore, you should, once again, use the services of a solicitor. Changes will take the form of a 'codicil' which in effect attaches to (and legally, becomes part of) your Will. It acts to 'overwrite' or add to those areas of the original Will to which it applies.

You can avoid the need to enter into a codicil in order to make changes to your charitable legacies by opening a Stewardship Legacy Giving Account that can operate alongside your Will. This is explained further in Appendix 2.

3. Some legal considerations

3.1 Beware of pitfalls!

The 700% rise in disputes over Wills illustrates that there are plenty of pitfalls to avoid to make sure that your Will can be administered smoothly and efficiently.

We are aware of a recent case where the assets in the deceased's estate contained several properties and a few investments. Nothing too complicated on the face of it. Except that the deceased had written their own one-page Will. Besides the wording being open to interpretation, there was a dispute between the beneficiaries over whether the deceased's signature of the Will had been witnessed in accordance with the legal requirements. The outcome mattered greatly as it would affect who, ultimately, would benefit from the estate. As a result, the ensuing legal battle lasted for nearly three years and incurred legal fees of over £20,000. That is £20,000 that could have gone to good causes!

In a more celebrated case, Peter Ustinov was declared to have died intestate (that is, without a Will). His 1968 'Will' written in pencil was declared invalid by virtue of him subsequently re-marrying. His son's nine year battle and £114,000 legal bill, which nearly led to his bankruptcy, was unsuccessful.

3.2 Making sure that your Will is valid!

There are a number of reasons why a Will can be declared invalid and many disputes arise for just this reason. For a Will to be legally valid, it must be:

- made by a person aged 18 or over;
- made voluntarily;
- made by a person of sound mind;
- in writing;
- signed by the person making the Will in the presence of two witnesses;

- signed by the two witnesses, in the presence of the person making the Will.

Unpacking some of these a little:

3.3 Witnessing the Will

This is perhaps the most important point from a practical point of view because it is so easy to get this wrong, especially with a home-spun Will. Not only do you need to sign and witness your Will *formally* to make it legal. You must:

- sign it *in the presence* of two witnesses – both need to be present with you at the same time;
- get your two witnesses to sign your Will in your presence, *after* you've signed it;
- make sure your witnesses are aged 18 or over.

The witnesses will normally 'attest' in the text of witness section of the Will itself that they have witnessed the Will in your presence and in the presence of each other.

You cannot leave your witnesses (and their married partners) anything in your Will.

3.4 Made voluntarily

The person making the Will (the 'testator') must make their decisions voluntarily. They should not, for example, be put under undue influence by anyone. Persuasion is legitimate, but overbearing pressure is not. If there is undue influence, the Courts can set aside a Will. This issue is particularly relevant where the testator is elderly and vulnerable, especially if they are revising or rewriting a previous Will.

3.5 Made by a person of sound mind

Again, this issue is particularly relevant with elderly testators, especially where they are revising or rewriting a previous Will. If there is any question over soundness of mind, or any other likelihood of the Will being subsequently disputed, it may pay to adopt what the courts have termed the 'golden but tactless' rule: for the testator to obtain a medical report of their mental capacity at the time of writing their Will.

3.6 Certainty (in interpretation)

If you write your own Will, you will undoubtedly know what you intend. However, it is all too easy for home-spun wording to be found to be ambiguous, or not to have anticipated future events that make interpretation difficult, ambiguous or invalid. To take a simple example, if you were to write "I give all to my children …" and after having signed your Will, you have more children, does your bequest relate solely to the children living at the date the Will was signed, or does it include all of your children?

Lawyers are trained in drafting legal documents that can stand the test of time and that will avoid potential ambiguities. And, by having your Will professionally drafted, you can always discuss anticipated changes in circumstances with your solicitor.

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3.7 Making changes to your will

As noted in the introduction to this paper, it is important to keep your Will under review. In particular, you should review it at least every 5 years, *and* after any major change in your life. For example:

- marriage, separation or divorce;
- having a child;
- moving house;
- if an executor named in the Will dies.

Unless a Will is made in contemplation of marriage, and states this within the Will, it will become invalid following marriage. Separation and divorce can give rise to legal complications.

You cannot simply amend your Will after it's been signed and witnessed. The only way you can change a Will is by making an official alteration called a codicil. The codicil must be signed and witnessed in the same manner as the Will itself.

There's no limit on how many codicils you can add to a Will.

3.8 Making a new will

For major changes you should make a new will.

Your new Will should explain that it revokes (officially cancels) all previous Wills and codicils. You should securely destroy your old Will by burning it or tearing it up.

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Part 3 – tax considerations

4.1 Summary of part 3

The amount of Inheritance Tax payable on an estate can be significant. Tax is charged at 40% on the the value of assets held in your estate, beyond a certain threshold. If those assets include, for example, your home, the liability to tax can soon add up.

This section briefly explains some of the principles of Inheritance Tax but the focus is on tax reliefs for gifts to charity and the tax planning opportunities that these reliefs afford.

When a person is desirous of giving a legacy to their church or to charity, there can be major tax savings. A gift to charity is exempt from Inheritance Tax. In effect, this gives a 40% tax relief to your estate. A second charity tax relief means that there is the opportunity of not only gaining the charity exemption but also reducing the tax payable on the rest of your estate. For the purposes of this paper, we have called this 'the extended charities' relief'. With the aid of step-by-step examples, both reliefs are explained.

When an individual includes charitable legacies in their Will and the value of them is sufficient in total to qualify the estate for the extended charities relief, for each £1,000 of legacy gift made to charity, £760 of Inheritance Tax is saved (that is 76%).

Whilst older Wills may include charitable gifts, their total value may not necessarily be sufficient to qualify for the extended charities relief which was introduced in 2012. Example 2b shows a surprising result: 'topping up' the charitable gifts previously provided for could lead to an effective marginal rate of tax relief in excess of 100%! The message here is that it may be well worth reviewing one's Will to see if there is merit in increasing the previous provision made for charitable gifts. A win-win situation may emerge where the value of both charitable and non charitable legacies can be increased at no cost to the estate. The example illustrates this apparent paradox.

But what if a loved one has already died and not provided for charitable legacies in a way that is tax efficient? Or what if you are in line to receive a legacy and you want to tithe it? All is not lost! We explain how a Will can be amended post death using an Instrument of Variation (or Deed of Variation) entered into by the beneficiaries of the Will. This is deemed effective for tax purposes.

There are two further significant tax breaks that should be taken into consideration:

- **The transferrable nil rate band**
  Where one spouse of civil partner dies having not used all of their Inheritance Tax Nil Rate Band ('NRB') which currently stands at £325,000, the unused part can be carried forward and added to the NRB of the surviving spouse or civil partner.

- **The residence nil rate band ('RNRB')**
  For deaths after 5 April 2017, subject to some limitations, the value of one's home that is inherited by the deceased's children or other direct descendants can escape Inheritance Tax.

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These two reliefs are breifly covered in Appendix 3 but are otherwise not referred to further. In particular, the operation of the RNRB is complex and specific professional advice should be sought in cases of doubt.

Finally, some brief comments are made on how lifetime gifts, made within seven years of death, are taken into account for Inheritance Tax purposes and how Capital Gains Tax interacts with legacy gifts.

4.2 Legacies and Inheritance Tax – introduction

Set out below are some of the main tax provisions which relate to legacies and Inheritance Tax. This is not intended to be a comprehensive technical briefing, but rather providing a framework of understanding to assist you with your planning. Particularly in cases where your estate may be quite large, you may wish to speak to an Inheritance Tax professional to see how the tax rules would apply to your own situation.

Only estates with a value above the 'Inheritance Tax threshold' (or, NRB)[8] will pay Inheritance Tax. If Inheritance Tax is payable, it is payable on the total value of your estate, at death, including any assets held in trust *plus an amount for gifts made by you in the seven years prior to your death* (on this, see 'Lifetime gifts', below). Remember that your Inheritance Tax estate includes all your assets, including land and property owned by you, right down to the smaller items of property that you own.

Property that you have 'given away' but retained a right to benefit from may remain included within your estate at death. The law refers to these as 'gifts with reservation of benefit'.

For the 2016/17 tax year the Inheritance Tax threshold / NRB is £325,000. For married couples and those in a registered civil partnership, this threshold can effectively be doubled on the second death to up to £650,000 (2016/17 rates). In other words, any unused threshold from the first partner's death, can be transferred to the surviving partner.

At the time of writing, the threshold is to be frozen at £325,000 up to and including 2017/18 but, from 6 April 2017, it can effectively be supplemented by the RNRB (for which, see Appendix 3).

Inheritance Tax is payable at a rate of 40% on the amount above the threshold.

4.3 The Inheritance Tax charities' exemption

If you leave a gift or gifts to a charity[9] in your Will, the value of those gifts is exempt from Inheritance Tax. This is achieved by deducting the value of the gift(s) from the value of your estate.

[8] Where we refer to the 'Inheritance Tax threshold', we are referring to the amount of the estate that will be taxed at 0%. This is also known as the 'Nil rate band' or NRB and is currently set at £325,000. Estates valued at, or below, this level will pay no Inheritance Tax.

[9] In this context, 'charity' means a 'charity' for tax purposes. In practice all UK charities should be capable of qualifying as can some EU charities or those established in Norway and Iceland. A testator should check that the charity or charities that they intend to benefit do indeed qualify as 'tax charities' before relying on this exemption.

Example 1a

Your estate for Inheritance Tax purposes comprises you home, worth £600,000, bank and building society savings worth £10,000 plus other assets totalling £15,000. If in your Will, you gave £325,000 to your children be shared amongst them with the remaining £300,000 to charity, your estate would not pay any Inheritance Tax. This is because the charitable gift is exempt. Therefore the chargeable estate is only £325,000 (£600,000 + £10,000 + £15,000 less £300,000) which is within the Inheritance Tax threshold.

Example 1b

In the above example, rather than give £300,000 to charity, you give £20,000. Let us assume that your spouse died before you and all their Inheritance Tax threshold was used up within their estate at death, leaving none available to transfer to you. As you no longer have a spouse, you choose to give the rest of your estate (the 'residue') to other relatives.

The chargeable estate is now £600,000 less the £20,000 exempt gift = £580,000. Of this, £325,000 is within the threshold and is 'charged' tax at 0%. So, the remaining £255,000 is liable to tax at 40%, giving rise to an Inheritance Tax liability of £102,000! This will usually be payable from the residue of the estate assets, prior to distribution to the residuary beneficiaries (in this case, the relatives).

4.4 Tax planning – the extended charities' relief!

The Finance Act 2012 introduced a more generous relief for charities. Introducing the relief in the 2011 Budget Speech, the Chancellor of the Exchequer, George Osborne said:

"And we will introduce … [a]… major change to our inheritance tax system. If you leave 10 per cent or more of your estate to charity, then the Government will take 10 per cent off your inheritance tax rate … I want to make giving 10% of you legacy to charity the new norm in our country."

A laudable aim indeed, and one that resonates with Christians who are familiar with the Biblical principle of tithing!

What is being described is that where at least 10% of the estate is given to charity, that gift will not only be exempt, as shown in **Example 1a** above, but any taxable part of the estate that **remains**, after the exempt amount is deducted, will now be taxed at the lower rate of 36% (a 10% discount to the 'normal' rate of 40%). This applies to all deaths occurring after 6 April 2012.

As is usual with innovative ideas such as this one, the objective of the measure is simply stated. Setting that down in legislation to achieve the objective is altogether rather more complex. The law is embodied in Schedule 1A of the Inheritance Tax Act 1984. This paper outlines the simpler principles of the relief and refers the reader to HMRC Guidance for the more complicated situations.

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4.5 Will your estate qualify for the 36% Inheritance Tax rate?

As noted above, in order to qualify for the reduced (36%) rate of tax, it is necessary to give at least 10% of the estate to charity. But 10% of what figure? Put simply, the test is 10% of the 'Baseline Amount'.

In the examples below, the calculation may appear to be relatively straightforward. However, it is inadvisable to rely on a clause that simply says that 10% of the Baseline Amount is to go to a charity or charities. If a formulaic approach is to be adopted, we recommend that you, or your solicitor refer to **all of**:

the model clauses, notes, drafting notes and alternative clauses published by the Society of Trust and Estate Practitioners at:

http://www.step.org/sites/default/files/Policy/Model_Clause_August_2013_updated_8.8.2013.pdf

The steps below explain how you work out the calculation. Since the calculation can be complicated, HMRC recommend using their online calculator.

In its simplest form, the relief works as follows:

Step 1: Add up the estate assets then deduct any debts, liabilities, reliefs and exemptions (including the charities' exemption) that apply.

Step 2: Deduct the Inheritance Tax threshold (that is, the £325,000 nil rate band) plus, if applicable, any transferable unused nil rate band from a deceased spouse or civil partner.

This is the 'chargeable estate'. If this figure is nil or negative, stop here: there is no inheritance tax to pay!

Step 3: Add back in the value of the donation to charity – this result is the 'baseline amount'.

Step 4: Divide the baseline amount by 10.

Step 5: Work out whether the charitable donation is more than the result in step 4.

However, depending on the property in your estate and how (legally) it is owned, you may need to consider further steps. In particular, if you own property (such as your home) jointly with someone else, you will need to know if this is owned as 'joint tenants' or as 'tenants in common'. The title deeds or transfer document when you bought or acquired the asset will probably tell you the answer to this. If you are in doubt, your solicitor will be able to help.

Example 2

As for **example 1a** above, your estate for Inheritance Tax purposes comprises you home, worth £600,000, bank and building society savings worth £10,000 plus other assets totalling £15,000. The total estate is therefore £625,000. There are debts, funeral and testamentary expenses in the estate totalling £7,500.

Example 2a

In your *draft* Will, you give £325,000 to your four children (i.e. £81,250 each), with the remainder of the estate (the 'residue') being divided equally between 14 other relatives and one charity. What is the Inheritance Tax calculation?

Steps 1 and 2:

The estate assets come to £625,000. Debts, liabilities, etc., come to £7,500. The charity will receive £19,500 calculated as follows:

		£	Estate £	Step 1 & 2 calculation £
Gross estate			625,000	625,000
Less:	children's legacies	325,000		
	estate debts	7,500		7,500
		332,500	332,500	
Residue of estate			292,500	
Gifts to 14 relatives	£292,500 divided by	273,000		
Gift to charity	15 (each)	19,500		19,500
		292,500	292,500	
Inheritance Tax nil rate band ('threshold')[10]				325,000
Step 1-2 result:				**£273,000**

Inheritance tax is due on £273,000, subject to any further reliefs.

Step 3:

Add back the charity donation to the above result.

'Baseline amount' (£273,000 + £19,500) (or, the 'net estate') **£292,500**

Step 4:

Calculate the required amount to meet the 10% test:

Divide the 'baseline amount' by 10 **£29,250**

[10] As for example 1b, it is assumed that there is no amount to be transferred to you from a former spouse.

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Step 5:
Compare charitable gift (£19,500) with Step 4 result (£29,250)

Conclusion:
The amount of the charitable gift does not meet the requirement that at least 10% of the net estate is given to charity.

Inheritance tax is therefore payable at 40% on £273,000. That is, tax of £109,200.

Example 2b

Having consulted the family solicitor, Alec Smart, you are advised to consider changing your draft Will so that the gifts from residue are amended to give £29,510 to the charity with the remaining share of residue being shared equally among your 14 relatives. The calculations now proceed as follows:

Steps 1 and 2:
The estate assets come to £625,000. Debts, liabilities, etc., come to £7,500. The charity will receive £29,510 with the remaining estate calculated as follows:

			Estate	Step 1 & 2 calculation
		£	£	£
Gross estate			625,000	625,000
Less:	children's legacies	325,000		
	estate debts	7,500		7,500
		332,500	332,500	
Residue of estate			292,500	
Gift to charity		29,510		29,510
Gifts to 14 relatives	(£18,785 each)	262,990		
		292,500	292,500	
Inheritance Tax nil rate band ('threshold')				325,000
Step 1-2 result:				**£262,990**

Inheritance tax is due on £262,990 subject to any further reliefs.

Step 3:
Add back the charity donation to the above result.
'Baseline amount' (£262,990 + £29,510) (or, the 'net estate') **£292,500**

Step 4:
Calculate the required amount to meet the 10% test:

Divide the 'baseline amount' by 10 **£29,250**

Step 5:
Compare charitable gift (£29,510) with Step 4 result (£29,250)

Conclusion:
The amount of the charitable gift meets the requirement that at least 10% of the net estate is given to charity.

Inheritance tax is therefore payable at 36% on £262,990. That is, tax of £94,676, **a saving of £14,524**.

So, by giving an additional £10,010 to charity, a tax saving of £14,524 has been achieved. This is equivalent to relief of over 145% of the additional amount given to charity. Depending on the way that the Will is worded, the 14 family beneficiaries wouldn't be too upset either: in most cases, it is their share of the inheritance that would have borne the tax liability. So by spending £10,010 in order to save £14,524, their after tax shares will have increased slightly, whilst the charity will have received (in this example) more than 50% more. Everyone's a winner!

Of course, this result is particularly advantageous if the amount given to charity is just below 10% in the first instance. By giving a small additional amount to charity, the 10% reduction in rate can be achieved. Depending on the value of the remaining 90% of the estate, a healthy tax saving may be achievable.

4.6 HMRC Guidance

More comprehensive guidance on how the extended charities relief works can be found on the HMRC website. From this page, you can also access HMRC's Inheritance Tax Reduced Rate Calculator.

4.7 Tax planning – using a Deed of Variation

It is not uncommon, especially amongst Christian families, for the deceased's Will to be legally varied after their death, using a 'Deed of Variation'. This works to effectively re-write the Will of the deceased for Inheritance Tax purposes as if they themselves had varied their Will prior to their death. A Deed of Variation may be used in order to 'tithe' one of more of the beneficiary's entitlements to charity, to bring the taxable part of the estate down in value to within the £325,000 Inheritance Tax threshold (or, nil rate band), to enable the estate to benefit from the reduced 36% rate of Inheritance Tax outlined above, or for other reasons.

For example, if a person had died with a Will which mirrored the facts in example 2a above and, if all the 14 relatives are in agreeement, they can use a Deed of Variation, post death, to both increase the legacy received by the charity and to increase their 'after tax' legacy receipts. If the Variation reduces their own legacies by £715 each, with a corresponding increase in the legacy to the charity of £10,010 in total (£715 x 14), as per example 2b, the result will be an inheritance tax saving of £14,524 (or £1,037 each which more than covers the amount of the legacy given up)!

Of course, it may be tricky getting 14 people to all agree! This is not a problem if at least some of the non-charity beneficiaries are prepared to give up part of their legacy using a Deed of Variation. For example, even if just two of the 14 relatives wanted to give another £5,005 to the charity out of their legacy share, the charitable gift from the estate still totals £10,010 as before, with the same result in

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terms of a tax saving to the estate. This does however, add a little complication. Subject to the precise wording of the Deed, the total tax saving of £14,525 may well be shared by all 14 of the 'residuary beneficiaries' rather than just the two entering into the Deed of Variation! So some forethought, with the help of a solicitor, would be wise.

But the underlying message is that Deeds of Variation can be used very effectively in family situations to improve both the Inheritance Tax position, and the amount going to charity as a result.

4.8 Using a Deed of Variation alongside a Legacy Giving Account

At the time that the Deed is entered into, some of the people being asked to sign it may be undecided as to which charity or charities they would like to benefit, and in the period immediately following the death of a loved one this is not necessarily a high priority in the minds of the family members left behind. For this reason, the Legacy Giving Account (Appendix 2) and our Gold Account are useful resources to use alongside a Deed of Variation. Each beneficiary can open their own account to receive a part of the charity legacy (as varied). The Inheritance Tax relief is secured immediately, because the gift from the estate is to Stewardship, itself a qualifying charity. But each Stewardship account holder can then take as much time as they need before deciding which charity or charitable causes they would like us to send funds to, from their account.

4.9 Finance Act 2012: Notification to the charity

Finance Act 2012 changed the law in relation to Deeds of Variation. Now, for any Deed of Variation to be tax effective it is necessary to show HMRC that the recipient charity or charities have been notified of the existence of the Deed.

Donors making gifts into a Stewardship account by varying the Will of a deceased person will be automatically advised by our Giving Services and Gold Account staff on this point.

4.10 A note on 'lifetime gifts'

Lifetime gifts that are not within an annual exemption of £3,000, and are not considered to be normal expenditure out of the donor's income will, in most cases, be treated as a 'potentially exempt transfer' (or 'PET') for Inheritance Tax purposes. They are potentially exempt in the sense that if the donor survives for more than seven years after the gift is made, the gift becomes wholly exempt. If they die within three years of the gift, then all of it will be liable to Inheritance Tax, by adding the value of the gift to the deceased's estate held at the date of death.

If the donor lives for between three and seven years following the gift, the value to be added to the estate at death is 'tapered' down to reduce the amount of tax payable, according to the following Table:

Table: Taper Relief reductions

Time between the date the gift was made and the date of death	Taper relief percentage applied to the tax due
3 to 4 years	20%
4 to 5 years	40%
5 to 6 years	60%
6 to 7 years	80%

Example 3

Joe, a single man, made a gift of £350,000 on 15 January 2011. He died on 15 April 2014. The Inheritance Tax threshold for the year he died is £325,000.

The Inheritance Tax due is worked out as follows:

Step 1:

Take away the threshold from the value of the gift: £350,000 − £325,000 = £25,000. So Inheritance Tax is due on £25,000

Step 2:

Work out the Inheritance Tax at 40 per cent: £25,000 × 40 per cent = £10,000

Step 3:

The gift was made within three to four years of death. So Taper Relief at 20 per cent is allowed: £10,000 × 20 per cent = £2,000

Step 4:

Take away the Taper Relief from the full tax charge: £10,000 − £2,000 = £8,000

So, the Taper Relief reduces the amount of tax payable on the lifetime gift from £10,000 to £8,000. In this example, all of the Inheritance Tax threshold has been used up by the lifetime gift(s). So none of it will be available to reduce the value of the estate at death (on which Inheritance Tax will also be charged).

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4.11 Lifetime gifts – gifts with reservation of benefit

Remember, that if you give away an asset during your lifetime, but you continue to benefit from it, it will not be treated as a lifetime gift, but will be taxed in full on your death. The clearest example is giving your home to your children, during your lifetime, but continuing to live in it. However, if you do this, but pay your children a market rent and pay all of the ongoing bills that would usually accrue to a tenant, then the gift should fall within the lifetime gifts rules. However, the rules here are detailed and proper advice from a competent professional is advised.

The same rule would apply if you gifted your house to charity. However, there seems little purpose in doing this and then taking elaborate steps to ensure that a lifetime gift is secured since gifts to charity, whether in lifetime or at death, are exempt from Inheritance Tax.

More importantly, a lifetime gift of a qualifying property, or of qualifying quoted shares, to charity[11] will attract a special income tax relief (in addition to capital gains tax exemption). For income tax purposes, the donor is able to deduct the market value of their gift from their taxable income meaning that their income tax bill will be reduced by their marginal rate of income tax. This is a significant relief!

4.12 A note on Capital Gains Tax

Since the assets in a person's estate at death are taxed under the Inheritance Tax rules, they are not also taxed to Capital Gains Tax. Rather, the people who inherit assets from the deceased do so as if they purchased them at the Probate Value. Therefore, if they subsequently dispose of them, their 'cost' for Capital Gains Tax purposes will be the Probate Value.

[11] In this context, 'charity' means a 'charity' for tax purposes. In practice all UK charities should be capable of qualifying as can some EU charities or those established in Norway and Iceland. A donor should check that the charity or charities that they intend to benefit do indeed qualify as 'tax charities' before relying on this relief.

Further resources

For help with opening a Stewardship Legacy Giving Account, please visit:

www.stewardship.org.uk/giving/legacies, email giving@stewardship.org.uk, or call our Giving Services Team on 020 8502 8560.

Further information about making a Will can be obtained from:

Citizens' Advice Bureau:
www.citizensadvice.org.uk/family/death-and-wills/wills/

Age Concern:
www.ageuk.org.uk/Documents/EN-GB/Factsheets/FS7_Making_a_will_fcs.pdf?epslanguage=en-GB?dtrk=true

Gov.UK website: www.gov.uk/make-will/overview

For general resources on making a Will, from a Christian perspective:

Christian Legacy Consortium: www.christianlegacy.org.uk

For more information on Inheritance Tax:

The HMRC website provides a significant amount of guidance, which can be accessed from the Inheritance Tax landing page:

www.hmrc.gov.uk/inheritancetax/intro/basics.htm

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Appendix 1: promoting legacy giving

The potential for charity giving through legacies is substantial. However, against the backdrop of this large potential, the reality is that most churches and charities do very little to tap into this vein of income.

For some charities the association with death appears to actively put off the idea of pursuing legacy funds. They are not shown prominently on websites, often buried more than a couple of 'clicks' away and are rarely featured in any form whatsoever because the charity's senior managers often consider it inappropriate. Added to that, because the payback is by its nature longer-term, the value of promoting this form of giving is not always seen.

For Christians who believe that this life is a prelude of what is to come, death has different connotations. Although still sad, it does not spell the finality of everything as it does for the non-Christian, and therefore churches and Christian charities should not be fearful of talking about legacy giving.

It is imperative for churches to be providing regular sound teaching on the whole area of giving and this should include legacy giving; often the largest single financial decision that we make. In addition an occasional 'splash' should be made perhaps providing more of an opportunity to explore what it means to leave a legacy gift for others.

Church and charity websites should make it easy to be able to give in this way, displaying prominently stories about legacy giving and including legacy giving as an equal partner with other forms of giving encouraged by the charity.

The church or charity may wish to produce their own leaflet to promote legacy giving, perhaps referring to this during National Wills Week (held in October each year). Rather than speaking in terms of giving to their church/charity; teaching could focus on our Biblical responsibility to steward the resources that God has entrusted to us and, as part of that, we should make a Will. Stewardship extends beyond lifetime giving to what we do with our assets at our death. The opportunity to leave a legacy to your church or charity could be lightly suggested as part of this, perhaps alongside a legacy leaflet. A stock of Stewardship's own Guide to Legacy Giving and our Legacy Giving Account brochures can be provided, if desired, either in place of, or alongside the church or charity's own leaflet.

As always, the important thing is to talk about it.

Appendix 2: Stewardship legacy giving account

A Will is a very useful and important legal document but is quite inflexible when you want to change some of the provisions contained within it. Changes will take the form of a codicil which in effect attaches to your Will and supersedes those areas of the original Will to which it applies. They are normally drawn up by a solicitor in the same way that the original Will has been, and once 'attached' to the Will they take on the same level of inflexibility.

A Stewardship Legacy Giving Account is simple, tax-effective and without legal costs. It overcomes the inflexibility of putting charitable gifts into your Will as you will be able to change whom you want to benefit and by how much, at any time, simply by completing a fresh 'expression of wishes' form.

Funding the account

- You can fund the account by regular, one-off or occasional donations during your lifetime;
- From a single gift in your Will;
- A combination of any, or all, of these.

Options for using the account

You can choose how the account is used after your death:

Option 1: The balance in your Legacy Giving Account is distributed to the charitable causes you desire, immediately, or over a specified time period.

Option 2: Share your passion for giving, by using your account to fund new giving accounts for your children, other family members, friends or other trusted individuals.

Option 3: Entrust your balance to Stewardship. Our trustees will use it, along with other legacy funds to support high impact causes under the headings evangelism & discipleship; mercy & justice; and generosity. You can specify which percentage of your balance you would like to go into each of the three categories.

Opening an account

There are three simple steps involved in setting up an account:

- **Choose how much you want to give**

Choose the amount of your estate that you want to give away. This could be a proportion, a fixed amount or the residue of your estate.

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- **Speak to your solicitor**

Ask your solicitor to add a gift to Stewardship in your Will.[12] Because of the flexibility of the account, this could be the only charitable gift that you need to make from your Will. Our brochure provides a suitable wording for the relevant clause. In making a gift to Stewardship (a UK-registered charity) in your Will, your estate will benefit from a reduction in the Inheritance Tax otherwise payable.

- **Complete an application form**

Once your Will has been written to include a gift to Stewardship, the final step is to compete a Legacy Account application form. The form enables you to select from Options 1 to 3 above, and in the case of Option 1, incorporates an *expression of wishes* section enabling you to list your desired recipients, the proportion of funds that you wish each to benefit by, the frequency of gifts and over what period after your demise.

For more information and to see whether a Stewardship Legacy account is right for you, please contact Stewardship on 020 8418 8896 or go to www.stewardship.org.uk/giving/legacies to obtain more information and a brochure.

Your giving does not have to stop when you die, by using this account those charities that you have supported in life can continue to receive financial assistance via your estate.

Other Stewardship giving accounts

We have a range of accounts to facilitate your giving to charity during your lifetime. Any balance remaining in your account at your death can be added to a legacy from your Will, to your Legacy Giving Account.

For a summary of the giving accounts that we offer, please visit:

www.stewardship.org.uk/giving/givers

[12] It is important that the Will does not contain a reference to an Expression of Wishes or, if it does, it simply refers to a document that you may provide to us at a later date. This then provides you with the legal flexibility to change your wishes at any time. A Will that refers to another existing document risks that other document becoming part of the Will itself under the legal doctrine of incorporation.

Appendix 3: Inheritance Tax nil rate bands

This section outlines how the three Inheritance Tax nil rate bands work. If the value of the estate on death falls wholly or partly into one of these bands, Inheritance Tax is charged at 0% meaning they are, in effect, tax exemptions. All three of the nil rate bands described are not charity specific but apply to all estates, where applicable. The coverage here is necessarily brief. Therefore, readers are advised to take appropriate professional advice to fit their own circumstances.

The Nil Rate Band ('NRB')

The first £325,000[13] of the value of an estate on death is chargeable to Inheritance Tax at 0%. In this Paper, this has also been referred to as 'the Inheritance Tax threshhold'.

However, it is important to note that the **value** of Potentially Exempt lifetime transfers within the period of seven years prior to death (Paragraph 4.10) are **added** to the **actual value** of the estate on death. The **tax** on those lifetime transfers is then calculated at the rate applicable at the date of death and tapered (if applicable) in accordance with the Table in Paragraph 4.10 above. Since the NRB is applied against lifetime transfers before the value of the estate on death, the result of this is that lifetime transfers that fall within the NRB effectively 'use up' the value of the NRB before any taper relief is applied and, in effect, do not benefit from taper relief at all.

Example 4

Fred gave his daughter Freda £250,000 on 28 February 2013. He died on 27 February 2017 leaving an estate on death of £575,000. There are no other chargeable transfers for Inheritance Tax purposes.

Tax is calculated as follows:

Potentally Exempt lifetime transfers	
Gift to Freda (potentially exempt but now chargeable as within 7 years of death)	£ 250,000
Tax thereon – allocated to NRB (0%)	£(250,000)
	NIL
Taper relief (death 3-4 years) 20% of NIL = NIL	
Estate on death	
Value of estate chargeable to tax	£ 575,000
Balance of NRB remaining (£325,000 - £250,000)	£(75,000)
	£ 500,000
Tax at 40% on £500,000	£ 200,000

[13] £325,000 is the upper limit of the NRB at the time of writing but is subject to change by the Government.

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Example 5

Francis gave his daughter Frances £575,000 on 28 February 2013. He died on 27 February 2017 leaving an estate on death of £250,000. There are no other chargeable transfers for Inheritance Tax purposes.

Tax is calculated as follows:

Potentally Exempt lifetime transfers	
Gift to Frances (potentially exempt but now chargeable as within 7 years of death)	£ 575,000
Less: NRB	£(325,000)
Chargeable to tax on death of Francis	£ 250,000
Tax at 40% on £250,000	£ 100,000
Taper relief (death 3-4 years) 20% of £100,000	£(20,000)
Tax payable on the lifetime gift to Frances	£ 80,000
Estate on death	
Value of estate chargeable to tax	£ 250,000
Balance of NRB remaining (£325,000 - £325,000)	£(0)
	£ 250,000
Tax at 40% on £250,000	£ 100,000
Total tax payable (£80,000 + £100,000)	£ 180,000

The Transferable Nil Rate Band ('TNRB')

Each individual is entitled to a NRB in their own right. However, transfers between spouses are exempt for Inheritance Tax. In the past this meant that if the first spouse to die transferred all of their property to the surviving spouse (as often happens) the NRB of the first spouse would effectively be lost (in the sense that it is left unused against the estate of the first spouse to die). Since 9th October 2007, it has been possible for the surviving spouse (or civil partner) to benefit from any unused part of the nil-rate band of the first spouse to die because this is now transferable to the surviving spouse. The value of the Transferable NRB ('TNRB') carried over will be the relevant proportion of the of the unused NRB on the first death, applied to the value of the NRB **current at the time of the second death**. This means that if the Government increase the value of the NRB, the surviving spouse will get the benefit of that increase through the TNRB.

Example 6

Stephanie died in November 2007 leaving an estate of £150,000 which she gave by her Will to her two nephews. No tax was payable as the entire estate was within the NRB which at the time stood at £300,000.

Her husband Stephen died in March 2017. His estate was valued at in excess of £500,000. How much TNRB will his estate benefit from, in addition to his (2017) NRB of £325,000?

The proportion of Stephanie's 2007 NRB that was unused was £150,000 / £300,000 = 50%

The TNRB applicable to Stephen's death in March 2017 is therefore 50% x £325,000 = £162,500

Stephen's estate will therefore only be taxed on the value above £487,500 (£325,000 + £162,500).

The Residence Nil Rate Band ('RNRB')

The Residence Nil Rate Band applies to deaths on or after 6 April 2017 where the deceased:

- Owned a home, or a share in one such that it is included in their estate (this does not need to be the deceased's main residence)
- Passes the home, or a share of it, as an inheritance to their **direct descendants**
- Has an estate the total value of which is not more than £2 million.

Where the estate is greater than £2 million, taper provisions apply to reduce the amount of the RNRB by £1 for every £2 that the estate value exceeds £2 million.

The full provisions governing the RNRB are very complex and are beyond the scope of this Briefing Paper.

For the purposes of the RNRB, a '**direct descendant**' is a child, grandchild or other lineal descendant; a spouse of civil partner of a lineal descendant (including their widow, widower or surviving civil partner), and can (broadly) include step-children, adopted children, children who were fostered at any time by the deceased or those for whom the deceased was a guardian or special guardian when they are under 18.

Direct descendants do not include nephews, neices, siblings and other relatives not included above. If the deceased's home is left to a mixture of beneficiaries that include 'direct decendants' and others, the value of the home must be apportioned accoring to the share of the property that each beneficiary inherits.

The RNRB is used in priority to both the NRB and the TNRB.

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The RNRB is being introduced in phases whereby the maximum relief is as follows:

- £100,000 in 2017/18
- £125,000 in 2018/19
- £150,000 in 2019/20
- £175,000 in 2020/21 and subsequent years.

In each case, the years refered to are the tax years 6 April to 5 April following.

For further information on the operation of the RNRB, please refer to HMRC Guidance

Inheritance Tax: Residence Nil Rate Band:
https://www.gov.uk/guidance/inheritance-tax-residence-nil-rate-band

Inheritance Tax: Residence Nil Rate Band Case Studies
https://www.gov.uk/government/case-studies/inheritance-tax-residence-nil-rate-band-case-studies

Given the complexity of this relief, suitable professional advice is strongly recommended.

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