



Hewitsons Private Wealth LEGAL UPDATE

February 2018

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Taxation of Cryptocurrencies



Eric Wardle
Chartered Accountant

Cryptocurrencies such as Bitcoin and several other variations are becoming better known, particularly among the 'tech savvy'. To date their values have been volatile with substantial increases and decreases in relative value, but who knows for how long? Certain people will recall hearing about the South Sea Bubble!

In the meantime how are such gains treated for tax purposes? There are three main treatments possible:-

- Trading profits
- Gambling gains
- Capital gains

Capital gains tax (CGT) is the most relevant. The holding of foreign currencies and selling at a later date at a profit is taxed as a capital gain. In the UK cryptocurrencies are not legally currency, but they are still intangible assets that carry certain rights. As such they can be bought and sold and as with other such assets would be subject to CGT.

The full article can be accessed [here](#).

If you would like help with your tax return, or any CGT issue please contact Eric Wardle on 01604 463110 or [click here](#) to email Eric.

Are You Due a Refund for Office of the Public Guardian Fees?



Rachel Hawkins
Senior Solicitor

If you paid fees to the Office of the Public Guardian (OPG) for registering a Lasting, or Enduring, Power of Attorney between 1 April 2013 and 31 March 2017 then you may be entitled to a partial refund of those fees.

During this period the OPG's processing costs per application reduced significantly, but the application fees were not reduced in line with this – by law they should have been.

The fees were reduced from 1 April 2017 and the Ministry of Justice has launched a refund scheme for those who paid a higher fee during the earlier period. The refund will depend on how recently you paid your fee and how much you paid, but is likely to be between £34 - £54 for each Power of Attorney. So it could be £216 where four Powers were involved!

The refund application can be made online or by telephone by either the Donor (the person who created the Power of Attorney) or one of the Attorneys. [Click here](#) for more information on how to claim a refund. Nice to see some money coming back to our clients from the Government!

If you would like advice on how to prepare or register a Power of Attorney, or make a court application where mental capacity has already been lost, please contact Rachel Hawkins on 01604 463165 or [click here](#) to e-mail Rachel.

Pre-Brexit Estate Planning for Clients with EU Assets



Carolyn Bagley
Partner

When the UK leaves the EU on 29 March 2019, interesting tax implications will inevitably follow.

Agricultural property relief and business property relief apply to reduce/cancel the inheritance tax payable on farming or business assets. It's unclear if these reliefs will continue to cover assets outside the UK (something brought in only as a result of EU pressure), so qualifying assets should be reviewed before the critical date.

Similarly, some Member States have favourable tax rules for UK residents which may also come to an end. Spain, for example, has increased exemptions and lower rates of gift and inheritance tax for Spanish and other EU citizens. These will no longer apply to UK citizens after Brexit. Individuals should therefore think about making any gifts of Spanish property (to which these benefits apply) before the 29 March 2019 cut-off.

It is important for anyone with EU assets to revisit their estate planning and take any steps necessary. We have just over a year left to enjoy the benefits before they come to a likely end!

If you have EU assets and would like to review your estate planning please contact Carolyn Bagley on 01908 247015 or [click here](#) to e-mail Carolyn.

Administration of Estates – Personal Representatives' Duties and Digital Assets



Jane Stebbings
Associate

Celebrated English author, Sir Terry Pratchett, died in March 2015 with quite an unusual wish. Anything he was working on at the time of his death was to be taken out, along with his computers, put in the middle of a road and destroyed by a steamroller! He didn't want his unfinished works to be published or completed by someone else.

But what are the issues surrounding a request like this? The Personal Representatives (PRs) are responsible for dealing with the estate. They should think about their duty to maximise the estate's value for the beneficiaries but also their duty to the deceased; the two conflict in this situation.

The copyright in the work stored on Pratchett's hard drive passed to his PRs on death. If they published and sold the works, the estate would make money on those items – but could reduce the reputational value generally for existing works – and for the author's memory. So, the PRs had to be sure this loss to the estate was justified by the author's wish to destroy his work. Deceased people still have some right to

privacy. They may want to keep information confidential, especially if it might affect their reputation and reduce the value of their other works.

It can sometimes be a difficult balancing act. Here, the PRs followed the author's wishes; his hard drive was crushed by a steamroller in August 2017. However, if PRs are unsure which duty should win, and if the beneficiaries are not agreeable, they can consider applying to the court for guidance.

It is worth mentioning that digital assets themselves pose an issue when it comes to estates. UK law doesn't currently include them in the standard meaning of "personal possessions". This means Wills need to be carefully written to specifically include them if that is what you wish. Digital assets may be of monetary value, but could also have sentimental value (such as photographs stored on the Cloud).

If you would like advice about the duties of Personal Representatives or digital assets in estates please contact Jane Stebbings on 01604 233233 or [click here](#) to e-mail Jane.

Council Wrong to Stop Funding Care Fees where Savings reduced by Gifts



Rachel Hawkins
Senior Solicitor

The Local Government and Social Care Ombudsman has criticised a council that stopped funding a woman's care home fees because she made regular cash gifts to her family and continued to do so after claiming local authority assistance.

Mrs Y was 80 when she went into care following a stroke in 2007. Her assets, including her house which was sold, were worth £250,000 and used to pay for care home fees. By 2015, most of this had been used and Mrs Y's assets fell to the £23,250 threshold for partial local authority funding. North Yorkshire County Council began paying the fees.

However, the council later discovered Mrs Y had made annual cash gifts (of almost £75,000) to family members. It saw this as "deliberate deprivation of capital" – giving away money to avoid paying the fees – even though she had been making the gifts since before her stroke. The council stopped covering the fees and demanded repayment for the fees it had already paid. Mrs Y's family repaid, but complained to the Ombudsman.

The Ombudsman found the council did not complete a full financial assessment and just assumed the gifts in themselves automatically proved an intention by Mrs Y to deliberately put herself in a position to claim care fee assistance. Although the amount of the gifts increased after she went into care, the council had not gathered any other evidence. Just because someone lives in a care home doesn't mean they can't spend

money on other things, including family! Mrs Y had paid the full amount of her care for 9 years and more than 70% of her total assets had been spent on care fees.

Mrs Y currently remains in the care home, using all her monthly income towards fees. However, she can't cover the full cost and owes the home £30,000. The Ombudsman ordered the council to apologise, reassess Mrs Y's situation properly, and repay any fee assistance to which she had been entitled. It would be interesting to know whether there will be a repayment – this case turned on the Authority not having done a proper assessment, rather than being a blanket permission for capital to be reduced by gifting (which would overturn the deprivation rules).

If you would like advice about care fees or the Lasting Powers of Attorney which enable someone to help you if you have a stroke (or if you just want some help or are abroad) please contact Rachel Hawkins on 01604 463165 or [click here](#) to e-mail Rachel.

Office of Tax Simplification to Review Complicated Inheritance Tax System



Antonia Cooper
Senior Solicitor

The Treasury's Office of Tax Simplification (OTS) has been asked to carry out a review of Inheritance Tax (IHT) by Chancellor Philip Hammond.

Mr Hammond noted the IHT system is "particularly complex" and the OTS should review and suggest ways to simplify it. Inheritance Tax is charged at a rate of 40% on the value of estates worth over £325,000. The taxpayer can benefit from multiple other reliefs and allowances, but they all have complexities which lead to hidden traps. It is a highly complicated tax.

The review will look at technical and administrative issues, such as the process of submitting returns and paying the tax due. It will also review gift rules, the practical issues around estate planning and the impact of the rules on taxpayer decisions about investments and transfers. The complicated reliefs for businesses and farmers may also be "simplified".

The review comes after it emerged IHT receipts are spiralling. HMRC took £5.3 billion from estates last year and this is expected to rise by around £1.2 billion this year. This shows how important it is to seek advice and plan efficiently to avoid a hefty tax bill.

Don't get caught out by this complicated system! If you would like advice about estate planning and Inheritance Tax please contact Antonia Cooper on 01604 463314 or [click here](#) to e-mail Antonia.



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