



Hewitsons Private Wealth LEGAL UPDATE

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Trust Registration Deadline



Elaine Morgan
Senior Tax & Trust Manager

The new Trust Registration Service (TRS) requires all new and existing Trusts to be registered with H M Revenue & Customs. The deadline for registering new Trusts was 5 January 2018. HMRC has agreed for this year only to extend the deadline for registering existing Trusts (not new Trusts) from 31 January 2018 to 5 March 2018. Trusts which are registered after those deadlines may be liable to penalties, although HMRC have not as yet detailed what these will be.

There is also a requirement for Executors/Administrators of deceased Estates which are deemed to be complex or that already have a tax reference for the period of administration of the Estate to register on the TRS by the relevant deadlines.

It is Trusts and Complex Estates that have a tax liability in the tax year 2016/17 which are affected by the March deadline. However, all new Trusts or Complex Estates established since 6 April 2017 will need to be registered by 5 October 2018.

If you think you may be affected by any of the above and require assistance or advice please contact Elaine Morgan on 01604 463120 or [click here](#) to email Elaine.

Income Tax Deadline



Eric Wardle
Chartered Accountant

If you are liable to submit a tax return and have missed the 31 January deadline, there will be penalties to pay even if you are not liable to tax. There will also be interest to pay if you are liable to tax. You can reduce the time based penalties and interest by completing your return as soon as possible.

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

Do Not Delay: Out of Time 1975 Act Claim by Spouse is Refused Permission



Tiffany Wiggett
Associate

The Court refused to grant permission to a claimant to apply for provision out of her late husband's estate under the Inheritance (Provision for Family and Dependents) Act 1975 where 10 years had passed since the Grant of Probate, and the delay had been caused by the claimant herself failing to take any steps to explore whether she could disturb the discretionary trust set up by her late husband's Will, the nature and effects of which she had understood.

The case highlights the importance of not delaying in bringing a claim under the Inheritance (Provision for Family & Dependents) Act 1975, even if the claimant is a spouse of the deceased with a meritorious claim. For more information please [click here](#) to read Tiffany Wiggett's article about the case in more detail.

Case Citation: Sargeant v Sargeant & Anor [2018] EWHC 8 (Ch)

Tiffany Wiggett is an Associate Solicitor in our Contentious Trusts & Probate team and can be contacted on 01604 463340, or [click here](#) to email Tiffany.

Non-Residents Failed to File CGT Returns: Penalties Upheld



Eric Wardle
Chartered Accountant

Recent rulings in the First-tier Tax Tribunal reinforce that non-resident property owners who fail to report their UK Capital Gains Tax (CGT) liability cannot escape penalties by pleading ignorance.

Non-residents must file a CGT return within 30 days of disposing a UK residential property, even if no tax is payable. This was introduced in April 2015; however, many non-resident sellers remain unaware and have been penalised. A £100 penalty is imposed in all cases. HMRC can also charge daily penalties of £10 for returns filed 3-6 months late and either 5% or 10% of the tax due for returns filed more than 6 or 12 months late. Unknown penalties can therefore mount up very quickly. After many complaints, HMRC stopped issuing daily penalties for periods before April 2017 (and past daily penalties were also withdrawn).

A case last year saw a First-tier Tax Tribunal decide it was unreasonable to expect a non-resident in Australia to follow obscure UK tax developments in detail. HMRC had not publicised the 30-day deadline widely enough and the judge reduced the penalties to zero.

However, two more recent cases considered this decision and ruled that ignorance of the law is not an excuse. This is a general principle cited in many cases, and also applies to late-filing penalty cases. The penalties were therefore upheld.

Don't get caught out! If you would like tax advice please contact Eric Wardle on 01604 463110 or [click here](#) to e-mail Eric.

Daughter Unable to Prevent Father with Dementia from Re-Marrying



Rachel Hawkins
Senior Solicitor

The Court of Protection recently stopped a daughter's attempt to prevent her elderly father from re-marrying, despite his dementia.

The father, DMM, had 3 daughters from his first marriage, which ended in divorce. He then lived with his long-term girlfriend, SD, for over 20 years. In 2013, he made a Will giving SD £300,000, most of his pension, and the right to live in his home for 2 years but giving his daughters the rest of his £1.7 million estate.

DMM announced his intention to marry SD in 2016, after he had been diagnosed with dementia. Wills are automatically revoked upon marriage and DMM lacked the mental capacity required to make a new Will due to his dementia. Where no Will is in place, the intestacy rules operate; these would give

his new wife almost £1 million and his daughters about £250,000 each (significantly less).

One of his daughters got a temporary injunction preventing the marriage. The case was then referred to the Court of Protection. While the test for capacity to marry is not high, the judge said DMM needed to understand the marriage would revoke his Will and the effect of this on his daughters' finances.

An expert consultant psychiatrist concluded DMM did understand his Will would be revoked and his daughters would be financially affected, that he might not be able to make a new Will and that the intestacy rules would produce a different result to his old Will. He knew his children might receive less and SD more. The judge was satisfied DMM had the capacity to marry and set aside the daughter's claim, even though there was some question as to how the father had understood the effect on his estate, yet did not have capacity to make a new Will. It is not known whether there will be an application for a Statutory Will, made by Court on the father's behalf or, perhaps more likely, a claim against his estate after death under the 1975 Act discussed above.

If you would like advice about mental capacity to make a Will or Statutory Wills please contact Rachel Hawkins on 01604 463165 or [click here](#) to e-mail Rachel.

Charities: Automatic Disqualification of Trustees Expanded



Martyn Robinson
Senior Solicitor

The Charity Commission, which regulates charities in England and Wales, has issued guidance to explain new rules that place more restrictions on who can run a charity.

From 1 August 2018, there will be two key changes to the rules, which are currently slightly limited and only apply to charity trustees. First, there will be an increase in the number of reasons for automatic disqualification, and second the principle of automatic disqualification will also be extended to people holding senior management positions within charities.

Additional reasons for being automatically disqualified include having an unspent conviction for money laundering, bribery, contempt of court, misconduct in public office, perjury or perverting the course of justice; being a designated person under anti-terrorist legislation or having certain convictions under the Terrorist Act; being on the sex offenders register; or being guilty of disobeying a Charity Commission order.

Under the current rules (maintained under these changes), disqualified people can usually apply to the Charity Commission to waive their disqualification. The right to apply however acknowledges that there are limited circumstances in which waiving a person's disqualification will be in the best interests of a charity.

Perhaps the biggest change is the extension of the principle to senior managers of charities, which will include Chief Executives and Chief Finance Officers (though it is the seniority of function that matters rather than their job title). Charities will want to consider whether the new rules will catch anyone within their organisation and consider appropriate steps if so.

The guidance can be found [here](#). If you have any questions or would like advice please contact Martyn Robinson on 01223 532708 or [click here](#) to e-mail Martyn.

Charities: Guidance on Complying with the General Data Protection Regulation



Virginia Henley
Associate

The Information Commissioner's Office (ICO) has published guidance to help charities and other organisations comply with the General Data Protection Regulation (GDPR).

The GDPR is a new, Europe-wide law that replaces the Data Protection Act 1998 in the UK. It comes into effect on 25 May 2018 and places greater obligations on how organisations handle personal data. This includes new rules for obtaining consent to process data relating to individuals such as donors, and for contacting them via e-mail, telephone or text messages.

The guidance can be found [here](#). If you would like advice on how to prepare please contact Virginia Henley on 01604 463345 or [click here](#) to e-mail Virginia.

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