



Hewitsons' Private Wealth LEGAL UPDATE

August 2017

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Furnished holiday lets - BPR denied by the court



Carolyn Bagley
Partner

Business Property Relief is an Inheritance Tax relief given to enable family businesses to continue after death without needing to be sold to fund Inheritance Tax. The key requirement is that trading is involved, not just investment. This requirement is particularly contentious in the area of land ownership. Business Property Relief is not available on ordinary long term letting, but is available on a bed and breakfast. The test has always been the level of work involved.

A recent decision of the First Tier Tax Tribunal concerned whether a furnished holiday let could apply for 100% Business Property Relief. HMRC claimed that the level and standard of services provided by the taxpayer were insufficient to allow the relief. The judge agreed with this, and held that the business was concerned with the letting of the land, rather than the provision of holiday services.

Those who provide holiday lets may now find that more Inheritance Tax is due on their estates than they previously expected. However, careful Inheritance Tax planning may help to reduce the tax payable on their

death. If you would like advice, please contact Carolyn Bagley on 01908 247015 or [click here](#) to email Carolyn.

Rare Case of Mutual Wills – Loss of Testamentary Freedom



Jane Stebbings
Associate

The High Court has recently found in favour of claimant daughters who were seeking to uphold an earlier Will of their mother. Mrs Clark made a Will in December 2014. Her two daughters sought to establish that Mrs Clark's earlier Will made in 2000 in conjunction with and at the same time as their father's Will, was a (binding) mutual will, not a mirror will (which she would have been free to change at a later date, as with most Wills).

The court held that Mrs Clark's 2000 Will was indeed binding and that she was not free to alter her later Will to be inconsistent with it. Mr and Mrs Clark's Wills fell under the equitable doctrine of mutual Wills.

The case highlights the importance of exercising caution when making wills and giving careful consideration as to the benefit of achieving certainty that can extend beyond a spouse's death (mutual wills), versus testamentary freedom that allows a testator to adapt their will in accordance with changing circumstances. For more information [click here](#) or for advice please contact Jane Stebbings on 01604 233233 or [click here](#) to email Jane.

Difficulties with self-assessment this year



Elaine Morgan
Senior Tax & Trust
Manager

Due to a problem with HMRC'S online filing system, some individuals may find that they cannot submit their tax return online this year.

It appears that there is a problem (that HMRC are aware of) with the online filing parameters for two specific groups of taxpayers.

- those with income (incl. interest) of more than £32,000 where non savings income is between £11,000 and £16,000 and
- those with non-dividend income of between £27,000 to £32,000 where total income (incl. dividends) is more than £145,000.

Those people impacted by this will need to fill out a paper return. The deadline for filing a paper return is 31 October 2017, but the online deadline is 31 January 2018. Whilst HMRC have confirmed that those individuals who notify them that they are affected by the problem can submit a paper return by 31 January 2018, many may assume that they can submit an online return and leave it too late.

If you would like advice, please contact Elaine Morgan on 01604 463120 or [click here](#) to email Elaine.

Cohabitants property dispute



Hauke Harrack
Solicitor

A recent Privy Council decision concerned a property dispute between cohabitants. If cohabitants split up, any disputes over their joint property is governed by property law, which may result in different results to disputes between married couples or civil partners.

Mr Marr and Mr Collie were a couple for 17 years and jointly owned many assets, including their home. Mr Marr contributed most of the money for their joint assets, but Mr Collie was a builder and undertook repairs, maintenance and improvements to their home and several investment properties they also owned. Where property is owned legally in joint names, it is presumed to also be beneficially owned jointly. This gives rise to a resulting trust. The presumption is that the trust share owned by each cohabitant reflects the amount they invest into the property. Mr Marr and Mr Collie had not made any express declarations as to the proportions under the trust.

When their relationship ended, Mr Marr claimed full beneficial ownership of the property as he had paid nearly all of the purchase costs. Mr Collie claimed that their intention was that the property would be owned in equal shares.

The court held that the starting point of a 50/50 split between the two cohabitants should also apply to the investment property. They also held that the intention of the parties is an important consideration in deciding upon the issue of beneficial ownership, and that this intention could change over the years. Cohabitants should record their intentions to avoid issues if they separate (or die) and keep this record up to date.

If you would like advice, please contact Hauke Harrack on 01604 463131 or [click here](#) to email Hauke.

LPA Registered 2013 to March 2017? You Could Get a Small Refund



Alex Turtle
Solicitor

The Office of the Public Guardian for England and Wales (OPG) has admitted to charging too much for registering Powers of Attorney for the past four years. The fee of £110 per LPA was higher than the actual processing cost and this is not permitted. The mistake happened because their charges didn't take into account economies of scale when the number of LPAs surged.

Thousands of people who registered LPAs during that period will be refunded during the current financial year. Each LPA registered may involve a refund of up to £28 per LPA (the old fee of £110 less the current fee of £82), but may be less, given that the economies will have come in gradually. Full details of the refund scheme have not yet been announced, nor is that likely in the near future, but we will report on here once they are known.

Warning over power of attorney risks

A recent Radio 4 programme discussed the risks that can be involved in Lasting Powers of Attorney. The programme highlighted cases where attorneys have abused their powers and not acted in the donor's best interests.

A Lasting Power of Attorney enables you to appoint somebody to act on your behalf if you either become unable to make your own decisions or if you ask that person to help you. There are two types of Lasting Powers of Attorney, one that deals with property and financial affairs and the other deals with health and welfare.

Making a Lasting Power of Attorney allows you to choose somebody you trust to deal with your affairs, and they will be bound to make decisions in your best interests. We would suggest that the best way to prevent abuse is not to refuse to make a Lasting Power of Attorney, but to take advice from a STEP (Society for Trust and Estate Practitioners) qualified solicitor.

For more information [click here](#) or for advice on either of these articles please contact Alex Turtle on 01604 463376 or [click here](#) to email Alex.

Employment Tribunal Refunds



Clare Waller
Partner

Following on hard from the OPG announcement, there is to be a similar court fee refund for people who have made an employment tribunal claim since 2013 as well as an immediate halt to all fees being charged in cases which are currently in the Tribunal system. Again there are no details, at the time of writing, on how/when this refund will be achieved.

For more information [click here](#) or for advice please contact Clare Waller on 01604 463350 or [click here](#) to email Clare.

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