Hewitsons Private Wealth

LEGAL UPDATE

Absolute Client Focus

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Trustees Forget to Pay 10 Year Anniversary Inheritance Tax Charges

Eric Wardle
Chartered Accountant

Recent figures from HMRC show that up to 75% of trustees of certain trusts are failing to report and pay 10 year Inheritance Tax charges.

The Finance Act 2006 introduced "relevant property" reforms, which extended the 10 year anniversary Inheritance Tax charge to many previously exempt trusts. Most trusts created after the change, including those created by a person during their lifetime and many of those created by Will, are relevant property trusts. In addition life interest trusts which were created before 2006 but had a significant change after 2006 became relevant property trusts. Pre 2006 discretionary trusts were already subject to 10 year charges.

Trustees of relevant property trusts must submit a form IHT100 to HMRC and pay any Inheritance Tax due within 6 months of the 10 year anniversary. The form may need to be filed even if there is no tax to pay. HMRC can impose interest and penalties for late payment and filing – including on the trustees personally and many years later.

Trustees of relevant property trusts must also report any assets that are distributed from the trust and may need to pay Inheritance Tax, known as an "exit charge".

It is now more than 10 years since the reforms were introduced and so many new or converted relevant property trusts will now have passed their first 10 year anniversary. Some trustees choose to manage their own trusts with no, or only ad hoc, advice from solicitors or accountants. Those trustees may be unaware or may have forgotten the reporting and tax requirements due on the 10 year anniversary of the trust.

For advice, please contact Eric Wardle on 01604 4633110 or click here to email Eric.

Holiday Lets and Grouse Shooting – Inheritance Tax Relief in Sight?

Catherine Ball
Partner

The issue of whether Business Property Relief, to reduce Inheritance Tax, is available for land based businesses (in particular for holiday lets) has always been a hotly contested field.

HMRC consistently try to deny BPR to furnished holiday lets on the grounds that, unlike hotels or bed and breakfasts, holiday lets are an investment in the underlying land, rather than income generating trading businesses. However, a recent case has offered some hope for taxpayers.

The recent case of *Personal Representatives of Grace Joyce Graham deceased v HMRC* successfully challenged HMRC, arguing that there is a spectrum of holiday accommodation with a difference between basic letting or leasing at one end and hotel-keeping, or letting combined with the provision of other service and activities, at the other end. Mrs Graham provided other services with her lettings, including a pool, sauna and bikes. It was held that the land was not mainly held for investment purposes, because there was sufficient provision of services for it to be an active business, and therefore BPR was given to her estate.

For more info see our website.

For advice, please contact Catherine Ball on 01604 463337 or click here to email Catherine.

Aretha Franklin Died Intestate

Ciara Wanstall
Solicitor

Recent reports have stated that Aretha Franklin, who died earlier this month, did not make a Will before her death.

If you die without a Will in place, this is called Intestacy. The laws of Intestacy decide who will inherit your assets after your death if you die intestate. Aretha Franklin's estate will be governed by the US intestacy rules.

If you do not make a Will before your death, your estate may not pass to those you would wish to benefit. For instance, unmarried partners and stepchildren do not inherit under an English intestacy. Also, children from a previous marriage may or may not not inherit, depending on the circumstances.

There is also a risk that people you have never met (or people you do not like!) will inherit if you die intestate. If you prepare a Will, you can ensure that the people (or charities or clubs) you care about are the ones who inherit after your death.

For advice, please contact Ciara Wanstall on 01604 463101 or click here to email Ciara.

Careful Will Planning Turned a Family Tragedy into a £41 Charity Legacy

Ciara Wanstall
Solicitor

Richard Cousins and his two sons died in a plane crash on New Year's Eve 2017. Mr Cousins' fiancée and her 11-year-old daughter also died in the crash.

Mr Cousins sought legal advice in 2016 for preparing a new Will. Fortunately, under Mr Cousins' new Will, he had made provision for what would happen to his estate if those closest to him died with him. He included what is known as a "common tragedy" clause, specifying that, in this situation, his entire estate should pass to Oxfam.

If Mr Cousins had not included this common tragedy provision in his Will, his £41 million would have passed under the intestacy rules, which is clearly not what he would have wanted. In spite of the tragedy, his thoughtfulness, and the professional advice he obtained, meant his wishes were carried through.

For more info see our website.

For advice, please contact Ciara Wanstall on 01604 463101 or click here to email Ciara.

Will Challenged on the Basis of Foreign Domicile

Carolyn Bagley
Partner

Owen Davies made a Will in 1996, leaving his entire estate in England and Wales to his uncle. At the time that was fine, but circumstances changed and Mr Davies did not take updated advice. The issue was where Mr Davies' home (not house) was. A person's "domicile" can affect the validity of his Will. Domicile is a technical term with no statutory definition for these purposes. In brief it refers to the concept of a "permanent home country".

Mr Davies died in 2008 and, at the time of his death, was living and working in Belgium and France.

Mr Davies' mother, brother and sister are challenging the validity of his Will, on the basis that Mr Davies was no longer domiciled in England, but in Belgium and, if so, his Will would be void under Belgian law. His family are claiming that Mr Davies' English immoveables (basically land and houses) would then be governed by the intestacy rules, and that, by reason of his Belgian domicile, succession to his moveables (basically savings), wherever situated would be governed by Belgian law. Under Belgian law, Mr Davies' mother would then be entitled to one-quarter of his moveable estate.

A Grant of Probate was issued following Mr Davies' death on the basis that, despite living and working abroad, Mr Davies had kept his English domicile. His family are now claiming that false statements were made at the time the Grant was issued, stating that Mr Davies had few Belgian assets and that on the contrary many assets kept in Belgium have been discovered. The location of a person's assets is one of the many factors which determine domicile.

Sadly one of the other factors is the person's intention: a statement in an updated Will, after taking advice as to whether facts supported that statement, would have made all the difference in what is expensive and distressing litigation. This applies even more so since the relatively recent changes in EU Succession Law which allow greater freedom for English nationals in how their EU assets can be given in their Wills.

Where a person lives, works or owns assets abroad, or indeed if they or their parents were born abroad, extra care must be taken, when writing a Will, to use a specialised solicitor Our solicitors are all STEP (Society of Trust and Estate Practitioners) accredited and have experience in the preparation of Wills where there is a foreign element. Indeed Francesca Rossi is Italian and has many Italian clients, while Carolyn Bagley is not only one of the few to obtain the Advanced Certificate in Cross Border Estates, but achieved a Distinction.

If you would like advice on your current Will or on the preparation of a new Will where foreign aspects are involved, please contact Carolyn Bagley on 01908 247015, or click here to email Carolyn, or contact Francesca Rossi on 020 7400 5037 or click here to email Francesca.

Do I Need Lasting Powers Of Attorney If All My Assets Are Held Jointly?

Alexandra Howard
Senior Solicitor

Many people wrongly believe that they do not need a Lasting Power of Attorney for Property and Financial Affairs if all their assets are held jointly with another person.

Lasting Powers of Attorney (LPAs) give you the power to decide who will make decisions if you are no longer capable of making your own decisions. A Property and Financial Affairs LPA allows your attorney to deal with financial decisions, for instance managing your bank account or paying your bills. A Property and Financial Affairs LPA can be used before you lose mental capacity (if you wish) or only once you have lost mental capacity. A Health and Welfare LPA can be used by your attorney to make decisions about your healthcare, including where you live and your medical treatment. This can only be used once you lack mental capacity.

When considering assets in your estate, you have control of those assets whilst you still have capacity to make decisions on them. This is true for sole assets and assets held jointly with another person. If you stop having that capacity, you no longer have the ability to make these decisions and it is not always the case that someone holding assets jointly with you would have the ability to make decisions on those jointly held assets.

For example, if you hold a bank account jointly with your spouse or civil partner, and you lose the ability to make decisions regarding that account, the other person would often not be able to take control of the account. Banks and Building Societies are likely to freeze the entire account until they have a legal document confirming who has the legal authority to act for the incapacitated person. That legal authority is a pre-existing LPA (or the older style Enduring Power of Attorney), but if one isn't in place then it's necessary to go to court for a Deputyship Order from the Court of Protection. Another example is that if you own your home jointly and you lose mental capacity, your spouse/civil partner would not be able to sell the property (for example to move into a bungalow so you could be more easily cared for at home) or secure a mortgage on the property, without there being a Lasting Power of Attorney in place.

For more information see our website.

If you would like advice on acting under a Lasting Power of Attorney or preparing a Lasting Power of Attorney please contact Alexandra Howard on 01223 447422 or Ciara Wanstall on 01604 463101 or click here to email Ciara.

Clare Colacicchi Inducted into the Legal 500 Hall of Fame

Clare Colacicchi has recently been inducted into the Legal 500 Hall of Fame. Legal 500 is a directory rating solicitors according to research and comments from clients and other professionals. The Hall of Fame highlights individuals who have received constant praise from their clients for continued excellence.

We are delighted that Clare has been included, alongside Dominic Hopkins, a partner in our Dispute Resolution & Litigation team, and Deborah Sharples, a partner in our Property team.

Congratulations Clare, Dominic and Deborah!

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