

Rightfocus

Focussing on legal issues important to you

A Free transfer?

The Inheritance Tax Transferable Nil-rate Band Rules have proved to be a very useful tool for married couples and civil partners in the planning of their estates. These rules were announced almost two years ago in the Chancellor's Pre-Budget Report and became effective from that date, with the detail being included in the Finance Act 2008.

Under Inheritance Tax, every individual has a nil-rate band, which is the first part of his estate, currently to an upper limit of £325,000, which is chargeable to IHT on death at the rate of 0%. In recent years, successive governments have raised the threshold every year. In practice, the nil-rate band is reduced by the value of lifetime gifts made within seven years of death after the application of available reliefs and exemptions.

For married couples, or civil partners, the objective has always been to ensure that the nil-rate bands of both spouses/partners are used. Prior to the introduction of the transferable rules, in order to achieve this, spouses had to include legacies in their Wills to take effect in the Will of the first of them to die only, of a size equivalent to the nil-rate band, normally in favour either of Discretionary Trusts written into the wills, or to other persons such as children. If nil-rate band Discretionary Trusts were used then there were often practical difficulties in implementing the trusts effectively following the first spouse's death, but nevertheless the basic objective could be achieved.

Now that nil-rate bands are transferrable between spouses, most couples can now keep their Wills much more straightforward although there are situations where the nil-rate band Discretionary Trust structure is still appropriate – for example where people own assets which qualify for specific IHT exemptions, or in cases where there are reasons other than tax planning why trusts should be used.

Importantly, the transferable rules can also be applied retrospectively. For widow(er)s, it is possible to bring forward part or all of their deceased spouse's nil-rate band, even if the deceased spouse died many years ago. In order to achieve this, past records relating to the administration of the estate of the deceased spouse have to be examined, in order to identify what part of the first spouse's nil-rate band was used by his Will or Intestacy.

If a widow(er) has remarried and is planning his affairs in conjunction with his new spouse, then with care more than two nil-rate bands overall can be utilised depending on the circumstances.

We are recommending to clients that they should take advice on this subject because these new transferable rules can be used with great effect, to greatly reduce or even eliminate an Inheritance Tax exposure. If you would like to look into this issue, please contact Guy Barker who heads our Private Client Department.

Welcome to another edition of our Quarterly Newsletter, which contains current articles on personal as well as business issues. Do feel free to raise with us any comments or queries which you have after reading this newsletter, and we would be pleased to help. Contact information is contained on the back page, or alternatively, for additional information about the firm, then do please visit our website www.mercerslaw.co.uk



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- Tax Planning & Trusts
- Wills & Probate

Online CT filing is on the way

Important changes to Corporation Tax (CT) filing are on the way, affecting all tax returns covering accounting periods that end after 31 March 2010.

HM Revenue & Customs (HMRC) has written to some 500,000 companies and their tax agents, explaining that following 31 March 2011 all returns will need to be filed online, using either commercially available software or HMRC's CT-filing software, designed for companies with comparatively straightforward tax affairs.

The change will not require companies to amend their accounting processes to comply with the changes, as either HMRC's CVT filing system or their commercial software equivalent will do this for them.

According to HMRC Director Mark Holden, "While March 2011 might seem to be a long way off, agents and businesses need to be thinking about these changes now, as they will affect accounting periods ending after 31 March next year.

"HMRC is hoping to release its CT-filing software towards the end of this year. We're also working closely with software developers, and a number of commercial products will become available in the same timescale, with more to follow. This will mean that the majority of companies that wish to familiarise themselves with filing online before it becomes compulsory will have the opportunity to do so."

If you would like a copy of the leaflet that HMRC circulated, please email marketing.online@hmrc.gsi.gov.uk



Flu drives increase in contingency planning

Warnings about the possible impact of the swine flu pandemic this winter are resulting in more small and medium-sized firms drawing up business continuity plans to help them get through the possible crisis with the minimum of damage to their business.

An important benefit of having such a plan in place is its value in the face of a wide range of disruptive events, from the loss of computer facilities to floods, key resignations and much more.

While first developing and embedding a business continuity plan can be a nuisance, its value can pay off immeasurably – even if it is only ever used once. Some insurers are prepared to offer businesses with a workable plan in place reduced premiums.

The key to a workable plan is communication, to ensure that every employee understands their responsibilities in the event of a crisis occurring, so you need to make sure that it is simple, clear and practical.

Specifically in relation to swine flu, businesses are being urged to introduce stricter personal hygiene guidelines and to provide staff with anti-bacterial hand-washes and wipes in a bid to control its spread.

More businesses introduce alcohol policies

If the experience of HR consultancy Jaluch is anything to go by, stricter health and safety laws in the workplace have driven a 50% increase since August 2008 in the number of businesses seeking to introduce an alcohol policy.

This is believed to result from the demands of last year's Corporate Manslaughter and Homicide Act, under which businesses that knowingly allow an employee to come to work under the influence of alcohol can be prosecuted. Jaluch even reports that some companies are using breathalysers to identify those who might have dined too long and well.

According to Director Gina Leccacorvi, "Certain industries, particularly in the rail and manufacturing industries, clamped down on this some time ago to comply with the Health and Safety at Work Act, but now office-based firms are also beginning to take heed."

While the dangers are not as obvious in an office environment, she continues, "Lunchtime drinking brings a reduction in productivity and impairs judgment, which can put colleagues at risk.

"With lunchtime and evening networking a key part of working life for many, imposing a no-alcohol policy has its challenges, but the risk of failing to have a clear policy in place can be high."

Debt write-off claims under scrutiny

Consumers are being advised to treat with great caution statements by claims management companies that they can help to write off their debts.

While it was once possible for them to do so by exploiting loopholes in consumer credit legislation, it has been far more difficult since the Government tightened up the Consumer Credit Act 1974 (CCA) in 2007. Since then, the Ministry of Justice (MoJ) has closed down around 100 companies, many of them for misleading customers as to their expectations of success and the full costs and risks involved.

Three other companies have also been fined by the Advertising Standards Authority (ASA) this year for making untrue or unsubstantiated claims in their publicity. One said that there were no hidden fees, although undisclosed fees did exist, while another claimed an 80% success rate with no evidence to support this.

Claims management companies are licensed under the CCA to give people advice on how to repay or reschedule their debts. These are perfectly valid services, but just to make sure that people do not get themselves into difficulty the MoJ is urging anyone considering them to seek independent legal advice before entering a contract with a claims management company.

Please visit www.claimsregulation.gov.uk/search.aspx for a search listing to find businesses that are, or have been, authorised by the regulated claims management services.

Introducing the education solicitor

The difficulty often involved for parents in ensuring that their children can be enrolled in the state school of their choice is leading many to seek the services of a specialist education solicitor.

In this particular field, the services provided by an education solicitor might include consulting on an appeals process, writing appeal documents and even representing a family at an appeals hearing. The focus of their attention would be on evaluating a range of factors, including the school's admission policy to establish whether or not it is fair and meets legal requirements.

While this is one service that is growing particularly rapidly at the moment, education solicitors also cover areas including exclusions from school, accidents at school, parental complaints and pupil misbehaviour.

Much of this work is extremely important, particularly that which involves safeguarding children and protecting their rights. In addition, some education solicitors specialise in areas including special educational needs (SEN), school closures and reorganisation and disputes over Local Education Authority decisions regarding individual children.

Contact your solicitor to find out if they provide specialist educational services, or if they can recommend a firm or individual that does.

Don't rely on friendship to prevent disagreement

A case that came to court during the summer has illustrated how important it is for friends who agree to enter a business transaction or to work together have a formal, paper-based agreement in place before work starts.

In this particular case, a man who was building a house asked his electrician friend to install some complex devices, and an initial cost of £15,000 was agreed. However, the home-owner added new items to the list as time went by, but neither man amended the agreed budget accordingly. As a result, the final bill totalled over £15,000 and the customer refused to pay.

When it came to court, it emerged that the home-owner regarded it as a fixed-price contract, while the electrician viewed it as a design and build contract with reasonable remuneration for labour and materials. The court found in favour of the electrician, and awarded him an additional payment.

Had the two men not been friends, they would probably have agreed matters formally as they went along. If they had done so, they would still be friends, and would not have had to experience the stress of court. So, if you value your friendships, be sure to prepare the correct paperwork – your solicitor will be delighted to help create an appropriate contract.



Commercial Department

Advice concerning the setting up and running of businesses including IP rights, share agreements, finance, E-commerce
Contact: Nick Godwin
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Commercial Property Department

Advice concerning sales, purchases, and assignments of business premises, both freehold and leasehold, to include lease renewals
Contact: Mike Beadsworth
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mbeadsworth@mercslaw.co.uk

Litigation Department

Advice in connection with commercial and private disputes, including contract, property, employment, personal injury, landlord & tenant, liquor licensing and contentious probate
Contact: Chris Bowler or Adam Marshall
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csbowler@mercslaw.co.uk,
amarshall@mercslaw.co.uk

Residential Property Department

Advice concerning sales, purchases and remortgages of residential property
Contact: Malcolm Brunwin
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Private Client Department

Advice concerning wills, probate, tax planning and estate management
Contact: David Weston, Paul Stott, Guy Barker and Peter Hopkins.
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Matrimonial Department

Advice concerning divorce, division of family assets and related matters
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Employment Department

Advice concerning employment contracts, employment procedures and disputes.
Contact: Adam Marshall
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Angry holidaymaker goes online

Many people might have gained some satisfaction earlier this autumn from the story of an irate holidaymaker who used his blog to take revenge on the tour company that he felt had let him down badly.

Not only did this gain the number 1 spot on Google rankings – beating the company itself on many of its own search terms – but it also played a significant role in enabling him to receive £595 in compensation for his dissatisfaction with the holiday and the company's more traditional complaints procedures.

It is a story that highlights two truths about our connected, transparent world. First, consumers now have a voice that is greatly more powerful than they have ever had before, enabling them to highlight grievances in a way that takes them directly into the public eye.

Second, it means that companies need both to plan for such events and, more importantly, ensure that they live up to their customer care promises. In this case, for example, the company failed to respond to a letter of complaint within the 28 days set out in its own procedures, escalating the customer's displeasure.

Contact your solicitor if you suspect you may be eligible for compensation for a ruined holiday. If you are a business seeking help with your complaints procedures, you may benefit from the help of a commercial lawyer.



Read the insurance small print

Four out of five CEOs of small and medium-sized businesses who were surveyed for an April report by Homeowners hoping to gain some extra income from letting a spare bedroom to a lodger need to read the small print on their household insurance policy.

This is because some insurers, including esure and More Than, apply restrictions to their policies that mean many people may unwittingly be living with invalid cover. According to esure, "If a policyholder takes in a lodger without telling us, their home insurance is potentially null and void because withholding this information counts as non-disclosure."

Other insurers, including Direct Line and Churchill, apply the same restrictions if the lodger is a student because of the particular risks that their lifestyle (including visitors and unlocked doors) poses. In addition, a policy may be invalidated if you fail to check whether a lodger has an unspent criminal conviction.

Any homeowner who is worried that their cover is at risk should let their insurance company know straightaway if they have a lodger to remove any suspicion of non-disclosure. In addition, they should ask a prospective lodger to sign a declaration, possibly as part of the letting agreement, to confirm that they have no unspent convictions. If the insurer declines cover, the National Landlords Association carries a list of specialist companies on its website – www.landlords.org.uk.

If you are still concerned on this matter, consult your solicitor.