

Does your Will need review?

Many married couples (or civil partners) who have the bulk of their wealth tied up in the family home have executed Wills leaving an amount equal to the nil rate band for IHT purposes (currently £300,000) into a discretionary trust with the balance of their estate to the survivor.

Coupled with the severance of joint tenancy of the family home so that this is held as tenants in common, such arrangements have operated to allow the nil rate band of the first to die to be used by effectively putting a debt or charge over that person's share of the family home thus saving the family up to £120,000 in tax.

These arrangements have recently been highlighted by the case of *Phizackerley v CIR* and concerns have been expressed as to whether they are still effective.

The case focused on a situation where the husband had provided all the funds for the purchase of the family home. The home had been conveyed into joint names of the husband and wife – effectively a gift by him of half of the value. The husband then died first and the debt/charge scheme was subsequently put into place in a particular way which the Revenue disallowed meaning that the IHT saving was lost.

The problem is not new but the case has highlighted the circumstances where it might apply.

Couples who have such arrangements but where there have ever been gifts of property in the past between them should contact their usual

adviser to review their Wills. Gifts of property in this context may include (among other things) a transfer of a property from sole into joint names, the purchase of a property in joint names using funds solely provided by one party or a gift of cash or other assets to facilitate a joint purchase.

Where both parties have helped to pay for the house, it should not be necessary to change anything but we are more than happy to discuss your individual circumstances should you wish to contact us.



Inheritance Tax Business and Agricultural Property Reliefs

Inheritance tax ("IHT") can be expected to remain high on the political agenda! We regularly hear the outcry from those whose houses are worth more than the nil rate band - at present £300,000.

We do not often hear from those who own assets which qualify for business property relief (BPR) or agricultural property relief (APR) - often at a rate of 100%. Provided various conditions are met, many such assets can be passed from generation to generation free of IHT.

Indeed, BPR and APR are the only remaining significant reliefs from IHT other than the inter spouse exemption.

Whilst it is difficult to foresee any significant change to the inter

spouse exemption, changes in BPR and APR may be on the agenda – not the least because of the view often expressed that they are used in circumstances which do not fall within the original intention of the reliefs.

Those with assets qualifying for relief should bear this in mind when planning for IHT so that advantage can be taken of these reliefs whilst they last. This is especially important since changes to crack down on perceived anomalies catch the innocent as well, as evidenced by introduction of the Pre Owned Assets charge and changes to the IHT position of trusts in recent years.

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Charitable giving – tax benefits

The Gift Aid Scheme

The Gift Aid scheme enables charities to reclaim the basic rate of tax on donations from individuals who have paid an equivalent amount of UK tax to that being reclaimed.

The Gift Aid scheme applies only to gifts of money, but the size of the donation is irrelevant and it can be claimed for one-off donations as well as a series of donations.

Higher rate taxpayers who donate money to charity through the Gift Aid Scheme are eligible to reclaim the difference between the basic and higher rate of tax on their donations. All donors have to do is complete a simple Gift Aid declaration, which must be returned to the charity.



The Gift Aid declaration is quick and simple and gives basic details such as the donor's full name, address and details of the donations covered by the declaration. Donors should request a pro-forma Gift Aid declaration from the charity or request a model Gift Aid declaration from HM Revenue and Customs.

Donors who are higher rate taxpayers can then reclaim tax simply by including details of their Gift Aid donations on their self assessment forms.

Furthermore, donors who give shares to a charity can get substantial income tax relief as well as exemption from capital gains tax on any gains they may have made on the shares. Income and capital gains tax relief is also available for donors who give land or buildings to charity subject to certain conditions being satisfied. The higher rate of income tax and capital gains tax is currently 40% and, therefore, this can amount to substantial tax relief.

Charitable Legacies

Many people when they think of charitable giving automatically think of including a legacy to their favourite charity or charities in their Wills. A legacy is a gift to a charity or a number of charities in a donor's Will and is one of the traditional ways to give to charity.

Charitable legacies actually decrease the overall amount of inheritance tax which may be due from a person's estate.

However, people often overlook other tax effective ways to give to charities during their lifetime. Tax effective charitable giving benefits both the charity and the donor who may be entitled to claim tax relief.

Charitable Trusts

Some donors may wish to set up their own charitable trust. One benefit of a charitable trust is the framework which enables donors to benefit charities and plan their giving in an efficient way.

A charitable trust may be purely grant making. In other words, it may give grants to other charities or for charitable purposes and not necessarily carry out activities or deliver services itself.

As above, subject to certain conditions being satisfied, tax relief is available on gifts of money, shares or property into a charitable trust and the trust itself will not pay tax on its investment income, corporation or inheritance tax.

A substantial sum of money is not required to set up a charitable trust and the initial endowment may take the form of a windfall received from an inheritance, a sale of shares or a bonus.

Charitable trusts must register with the Charity Commission which regulates charities in England and Wales. Charitable trusts are also required to submit formal reports and accounts to the Charity Commission each year. However, any regulatory or administration requirements may be vastly outweighed by the benefits to both the charity and the donor.

Professional Advice

We recommend that anyone considering setting up their own charitable trust obtains professional advice. The processes are not unduly complicated, but certain conditions must be satisfied -

Anyone considering becoming the trustee of a charity must be fully briefed on their legal duties and responsibilities. Furthermore, the Finance Act 2006 introduced law related to transactions between charities and their substantial donors which may cause problems if advice is not obtained at the outset. This is mainly to catch unscrupulous donors who donate to charity to obtain personal tax reliefs, and then enter into transactions with the charity which are not on arm's length terms and are designed for the donor to claw-back the funds put in.

However, provided proper advice is obtained, the correct procedures are followed and the right conditions satisfied, tax effective charitable giving can have huge benefits for both charities and their donors.

We can advise individuals who may be considering setting up a charitable trust and tax effective charitable giving drawing on expertise from solicitors and consultants in our Private Capital Department and Charities Group.

If you require any further advice on any of the issues raised in this article please contact Alan Hart or Gerry Morrison.

Enduring Powers of Attorney – Act Now

The long heralded replacement of Enduring Powers of Attorney (EPAs) by Lasting Powers of Attorney (LPAs) has been put back until October 2007. The new LPAs are likely to be more costly to implement and more difficult to operate than the current EPAs and on that basis any clients who do not currently have an EPA in place are encouraged to execute one while there is still time.

Charities' Trading Subsidiaries Avoiding the Pitfalls

Many charities either already have, or are looking into the possibility of setting up a trading subsidiary company to carry out taxable trading activities on behalf of the charity that are not deemed charitable at law.

This is a common structure used by many charities and, if set up correctly from the outset, the structure should work well. However there are a number of potential pitfalls which charity trustees must look out for and be aware of -

1. If charity trustees are considering setting up a trading subsidiary, they must be satisfied that their powers of investment permit them to invest the charity's funds in the trading subsidiary. If the governing document is silent, there may be an appropriate power at law which the trustees could rely upon, but the trustees must seek legal advice if unsure.
2. The charity trustees should carefully consider a sound business plan for investment in a trading subsidiary and undertake a risk analysis and financial projections. Professional assistance with this should be obtained if necessary.
3. It is essential that the financial structures of the charity and its trading subsidiaries are kept completely separate. The charity must not provide funding "on drip" to its trading subsidiary, for example any loans must be secured, properly documented and at a market rate of interest. Proper arm's length arrangements must be put in place in relation to the secondment of any staff, support services etc.
4. Conflicts of interest should also be considered and procedures must be put in place for managing these. A majority of trustees of the charity should not sit on the board of the trading subsidiary and vice versa. In practice, charities may experience problems attracting independent directors to sit on the board of the charity's trading subsidiary, but the need for independence must still be carefully considered. Any trustees of the charity who sit on the board of the trading subsidiary

should not receive payment for acting as directors of the trading subsidiary because this is regarded by the Charity Commission as "payment by the back door".

5. Trading subsidiary companies are able to tax efficiently gift any surplus profits to the parent charity, but proper arrangements should be in place in relation to this. The 0% starting rate in relation to corporation tax was abolished last year and any profits now left in the trading subsidiary company are potentially taxable. However, on the other hand, the trading subsidiary must retain sufficient profits that will enable it to be financially viable and self sufficient.
6. If the trading subsidiary company continues to make losses over a prolonged period, the trustees must not be pressurised or tempted to sink further funds from the charity into supporting it as this could be considered a breach of trust. Alternatively, the trustees should carefully consider the future viability of the trading subsidiary company and seek professional advice from an accountant or insolvency practitioner if necessary.

Rollits can advise in relation to putting in place a structure that will enable a charity to set up a trading subsidiary company to carry out activities on the charity's behalf which are non-charitable or to raise funds on behalf of the charity. Setting up a trading subsidiary can have enormous benefits in that any risks associated from these activities is hived-off from the charity. However, the pitfalls above are real issues and trustees must carefully consider these matters at the outset. We can provide further advice if necessary.

IHT Planning with Income

Much has been written about the changes to the taxation of trusts brought in unexpectedly by Finance Act 2006. Generally speaking, it will now be more difficult to transfer property into trust during a donor's lifetime, as transfers into any type of trust of assets whose value exceeds the nil rate band (currently £300,000) will carry an IHT charge of 20% on the excess unless the assets qualify for business or agricultural property relief.

However, this only applies to gifts of capital. Gifts from income, provided the donor is left with sufficient income to cover his usual living expenses and the gifts are made on a regular basis, are free of inheritance tax without any requirement to survive the gift by seven years. This is an often overlooked exemption which can be very valuable for those with a substantial income.

A trust can be created for the donor's children or grandchildren into which can be paid sums from the donor's "excess" income year on year, thus enabling substantial amounts over time to be removed from the donor's estate for IHT

purposes. The donor (and spouse) can never personally benefit from the assets settled but they can be trustees and in that sense "control" the trust fund.

Coupled with the ability to remove capital of £300,000 every seven years from an estate (remembering that this exemption is doubled for married couples) and with even greater scope for planning where business and agricultural assets are involved, there are still opportunities for IHT mitigation. The important thing is to begin the planning process early.



Rollits appoints new Senior Partner

Rollits has appointed Steve Trynka as their new Senior Partner with effect from 1 May 2007.



Steve joined Rollits as an Articled Clerk in 1976 having studied law at Birmingham University and the College of Law in Guilford. He qualified in 1978 and became a partner in the firm in 1982.

Steve became the firm's Managing Partner in 1996, a position which he held for 10 years until stepping down last year.

Specialising in corporate law, for the last 20 years Steve has advised many major clients on flotations, acquisitions and disposals and MBOs including many high-value transactions. He will continue to be actively involved in client work and, in his new role as Senior Partner, he will work closely with the firm's Managing Partner Richard Field in the development of Rollits' business.

Steve says: "I am very pleased to have been appointed as the Senior Partner of one of the leading firms in the region which is known for the quality of its work and the depth of its experience.

"I am extremely confident that Rollits will continue to build upon its reputation for expertise, reliability, accessibility and quality in order to sustain our competitive advantage and entrench our role as a major player in the region."

Steve's appointment sees him taking over from James Brennand, who is retiring after 48 years with the firm. James was head of Rollits' Company and Commercial Department for many years before becoming Senior Partner on 1 May 2000.

Rollits announce Ten Promotions

Rollits continue to develop their specialist teams with the promotion of a number of solicitors. From 1 May 2007, ten solicitors at the Yorkshire firm will be promoted to senior positions including seven promotions to senior solicitor, one to Associate, and two to be made Partners.

Mark Dixon and Nasim Sharf have been appointed Partners. Planning lawyer Mark, who joined the firm at the end of his training contract in 1999, specialises in all forms of planning and development work. Nasim joined Rollits in 2001. He specialises in corporate law and is also a Chartered Tax Adviser.

Hull based Chris Crystal, Chris Drinkall, Ed Jenneson and Peter Mason are to be made Senior Solicitors, with Shona Unwin being promoted to Associate. Their individual specialist fields of expertise include property, litigation, employment and corporate.

Elsewhere Alison Barr, Sue Brad and Gerry Morrison - all based in York - have been appointed Senior Solicitors with combined expertise in property, private capital and charity law. They will be joined by newly qualified solicitor, Lisa Granger, who specialises in commercial property and RSL work.

A number of the newly promoted solicitors have been with Rollits since 2002, when they began their careers as trainees. Chris Drinkall, Ed Jenneson and Gerry Morrison, all qualified together in September 2004.

Managing Partner Richard Field said: "We aim to encourage continual development and training throughout Rollits staff, so it is very pleasing to see so many talented individuals progressing. Their commitment to the firm and the depth of knowledge in each of their particular areas of expertise is a great asset to Rollits and our clients."



INFORMATION

If you have any queries on any articles in this newsletter please contact:

John Lane or Caroline Hedges on (01904) 625790

This newsletter is for the use of clients and will be supplied to others on request. It is for general guidance only.

It provides useful information in a concise form.

Action should not be taken without obtaining specific advice.

We hope you have found this newsletter useful.

If, however, you do not wish to receive further mailings from us, please write to

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We are regulated by the Solicitors Regulation Authority

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