

THIS ISSUE:

TAX

WILLS

ASSET OWNERSHIP



Briefings

January 2012

Welcome to our latest edition of Briefings with a focus on issues arising in the arena of individuals affairs, such as wills, tax and asset ownership.



BE AWARE!

NEW HMRC PENALTIES

Since 6 April 2011, new self assessment late filing penalties came into force. If you are required to file a tax return, this should be submitted in paper form to HM Revenue & Customs by 31 October following the end of the tax year, or by 31 January if you are submitting it online.

If your tax return is submitted after the relevant filing deadline you will now be issued with an automatic £100 penalty. In the past these penalties had been mitigated by the tax outstanding at 31 January. This is no longer an option and a tax return where no tax is due for the year will attract a £100 penalty if filed even one day late.

In addition, the penalties have increased for continuing failure to submit a tax return. If the return is three months late an automatic penalty of £10 per day, up to a maximum of £900 will be applied. Further penalties of the greater of 5% of the tax due or £300 will be charged for returns over six months late and for returns over twelve months late a further penalty of the greater of 5% of the tax due or £300 will be charged. Trustees should also be aware that

they are not able to file a trust tax return online without paying to use third party software. At Tees Solicitors we are able to submit your trust tax return online using our software whilst providing you with our expert advice and experience.

If you require any assistance with completion of your personal or trust tax return, please contact a member of our trust accounts team who will be pleased to assist you.

Don't hand over additional funds to H M Revenue & Customs if you don't have to!

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A VENDRE? BEWARE NEW RULES ON FRENCH ASSETS

Recent legal reform in France has resulted in major changes to the Capital Gains tax regime.

Capital gains tax in France (namely impôt sur les plus values) is a tax payable on the sale of fixed assets (land or buildings) as well as on other movable assets (such as shares).

The tax is paid on the gain resulting from the sale of the property, i.e. the difference between the purchase price and the selling price. It is calculated at the time of the sale by the French Notaire and deducted from the proceeds of the sale.

The applicable tax rate depends on your country of residence:-

- If you are a French resident, the applicable tax rate is 32.5%.
- If you are a UK Resident, then the applicable tax rate is only 19%.



However, you may be liable to capital gains in the UK, but you can offset the amount of any French capital gain tax paid in France against the capital gains bill in the UK;

- Those who are neither resident in France nor the EU will be taxed at the rate of 33.3%.

However, there are a number of significant exemptions and allowances from French capital gains tax on the sale of immovable assets.

By far, the most important exemption concerns the principal residence. For the property to qualify as your principal residence, you need to have occupied it on a habitual basis (although you do not need to occupy it at the time of sale). The law does not state how long you need to have occupied the property but the tax authorities will require evidence to determine whether it was in fact used as your main residence.

The other exemption, which has been recently amended, concerns the duration of ownership. A tax rebate of 10% on the capital gains is applied every year following the fifth year of ownership, resulting in a total exemption of capital gains tax after 30 years. A summary of the new allowance is detailed as follows:

- No allowance for the first five years of ownership;
- Between 6 and 16 years of ownership: 2% allowance per year;
- Between 17 and 24 years of ownership: 4% allowance per year;
- Between 25 and 30 years of ownership: 8% allowance per year;
- Then, at the end of 30 years, there is a complete exemption.

In addition, there used to be a 1000 Euros allowance which was applied automatically but this is no longer available under the new Law.

In order to qualify for the previously more generous allowances the deed of sale (acte authentique) and not the first contract eg compromise de vente must be signed by 31 January 2012. However, with regard to transfers of properties to an SCI (Société Civile Immobilière), the law is retrospective and is applied from 25 August 2011.

Some expenses can be taken into

account in order to reduce the amount of capital gain and this has not been amended with the new regulation.

Those expenses include:-

- Costs of sale incurred by the seller, such as estate agent fees and other mandatory fees;
- Expenses related to the purchase price and incurred at the time of purchase such as Notaire's fees and stamp duties;
- All costs incurred by the owner associated with construction, extension or improvement to the property during his ownership.

As regards the latter, only building works carried out by a building professional properly registered in France are eligible. You will be required to produce invoices in support of any building costs. In the event these are not available, then provided you have owned the property for at least five years, the notaire is able to apply an allowance of 15% on the acquisition price against improvements to the property (but not to land).

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LEGAL AND FINANCIAL ADVICE FOR LATER YEARS

At last there is **one** place to go to for legal and financial advice in later years, thanks to a recent joint venture between Tees Solicitors and Tee Financial Plc.

Planning for later life, whether for you or for a loved one, can be a complex legal, financial and emotional process. To help you with this we have introduced the concept of 'One' which offers a unique combination of legal and financial services.

Needs constantly change as you go through life and priorities change too. We offer a path through later years, providing holistic advice on a wide range of legal and financial issues.

'One' specialises in the financial and legal needs of older clients; advice not simply from a well-qualified adviser but somebody who you feel you can rely upon to understand the plans you need to make for your retirement years and the complexities of any decisions you may need to face. Financial and legal advice should take you to the stage where you can make clear and informed decisions, happy in the knowledge that you had all the information and choices you needed to reach those decisions.



Advice can be provided on a wide range of areas, such as savings and investments, Inheritance Tax planning, trusts, wills, powers of attorney, retirement planning, equity release and provision for care fees. You can be assured that the advice given will produce a solution which is tailored to your individual circumstances and fully reflects your priorities both legal and economic.

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one: Legal & Financial Advice for Later Years

HOW TAX EFFICIENT ARE YOU?

Did you know, where you and your spouse or civil partner receive income on property held jointly between you, and you have not made any election to HM Revenue & Customs to the contrary, the income is deemed to be received by you in 50:50 proportions?

If you actually hold an asset in unequal proportions, it may be more tax efficient to declare the income in the actual proportions you are entitled to, but you and your spouse must jointly make a declaration to HM Revenue & Customs (HMRC) to that effect. Provided HMRC receive a completed Form 17 declaration, together with evidence of the proportions of beneficial ownership within 60 days of the date of the declaration, they will review the declaration and confirm the change in treatment, if agreed. The change will take effect from the date of the declaration.

Any HMRC declaration made will remain in force until either you or your spouse or civil partner dies, you separate permanently, divorce or your civil partnership is dissolved. Alternatively, the declaration will also cease if the beneficial interest of either you or your spouse/civil partner in either the property or the income it produces should change, at which point the 50:50 rule would apply until such time as a further HMRC declaration is made.

The HMRC declaration only applies to the assets stated in the declaration. However, a new declaration may be submitted at any time for any new jointly owned assets or assets which had previously been subject to the 50:50 provisions.



With the ever increasing burden on an individual's income and the large leap in tax rates is between the lower rate tax payer or an individual whose income falls within their personal allowance and the 50% additional rate tax payer, it is important that tax efficient planning is carefully reviewed.

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HOMEMADE WILLS – ARE THEY WORTH THE RISK?

Homemade/DIY Wills have become popular over recent years with many people believing that these Wills will be as effective as a professionally written Will and save them money. Unfortunately the reality is often very different and we often witness first hand the problems that can arise.

Here's a recent example of a problem we have had to resolve:

Mr X passed away leaving a homemade Will. His Will appointed his two children as Executors and left everything to his wife. Mr X had put different dates on the cover and inside of the Will and it appeared that two different types of pen had been used. Unfortunately matters became worse when trying to obtain confirmation from witness 1 of the date the Will was signed, as he stated that he did not know who witness 2 was and that they had never met. For a Will to be valid, both witnesses must be present together when the Will is signed. The Will of Mr X was therefore invalid, resulting in him dying intestate (i.e. legislation states where the assets should pass).



Unfortunately it is often not until someone passes away and the homemade Will of

the deceased is examined by a solicitor that problems come to light. If the Will is deemed to be invalid the rules of intestacy apply, which may not follow the wishes of the deceased. There are also often additional costs involved in dealing with the consequences of an invalid Will.

Common Problems

- The Will is not signed properly and/or has not been witnessed correctly. Strict rules apply which are governed by the Wills Act 1837.
- A witness also being a beneficiary – this will disinherit the beneficiary.
- Dependents left out of a Will could lead to a claim on the estate of the deceased.
- Amending a Will once it has been completed – this could be seen as tampering and could invalidate the Will.

It is important to ensure that your Will is valid and therefore you have the peace of mind in knowing your wishes will be followed. When you instruct a solicitor to prepare your Will, you are paying for professional advice and the expertise.

Contact

Any of the Wills, Trusts & Probate team detailed on the back page.

Wills, Tax, Trusts and Probate Contacts

Our Wills, Tax, Trusts and Probate department has extensive experience in advising individuals on all aspects of tax and estate planning, including Wills, Powers of Attorney, Trusts and Court of Protection matters. Following the firm's merger with Chelmsford firm Wortley Redmayne & Kershaw on 1 October 2011 we are delighted to have strengthened the team with the experience of Sarah Lockyer and Ian Johnston who are based at the Chelmsford office.

We are also pleased to congratulate Clare Threlfall who, following successful completion of her training contract, has qualified as a solicitor and stayed with the team in Cambridge where Clare Andrews has also been promoted into a paralegal role. We have also welcomed back to the firm Trust & Estates Accountant Nicola Lewis who is also now based in the Cambridge office.

Heather Fuff who has over 20 years of experience in the field also joined us last year from a local firm. She has now returned to her working roots in Saffron Walden working with Stephen Hynard to augment the services we provide.



Sarah Lockyer



Ian Johnston



Clare Threlfall



Clare Andrews



Nicola Lewis



Heather Fuff

If you have any queries or would like further advice on any aspect of our work please don't hesitate to contact your nearest office.



The information contained in this newsletter represents our understanding of current legislation and HMRC practice, which may be subject to change in the future. Taxation levels, bases and reliefs are all subject to change, and clients should not take action based on any article in this newsletter without taking further, appropriate advice.

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