

private client news

HBJ Gateley Wareing

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Welcome to the summer 2010 edition of the private client newsletter.

We certainly live in interesting times. Those of our readers who are of a pessimistic disposition may be feeling that if they can avoid the worst of recession, spending cuts and tax rises they will not necessarily be immune to the effects of Icelandic volcanoes, oil spills or other manifestations of the physical environment. On the other hand, summer is here. Why not put your feet up, light the barbecue and put a bottle of your favourite beverage in the fridge to cool. Whatever the weather, life goes on, and with it the need to plan for both likely and less likely events.

For the very latest in legal advice for you, your family and your estate, please contact **Adrian Mabe** on **0121 234 0138** or email **AMabe@hbj-gw.com**

2010 emergency budget

The Government had done an effective job of softening up public opinion so that many people were pleasantly surprised that the tax rises announced in the emergency budget on 22 June were not higher. There were no hugely unexpected tax increases for private clients and the impact on estate planning is very limited. A couple of points are, however, worthy of note:

Capital gains tax

As widely predicted, CGT has increased. The rate has gone up from 18% to 28%, but this will only apply to higher rate tax payers and basic rate tax payers where the amount of the gain takes them into the higher rate tax bracket which starts at £37,400. The CGT annual exemption remains at £10,100.

As trustees and personal representatives don't have a basic rate band for income tax purposes, all their gains in excess of the annual exemption will be liable to CGT at 28%. In some cases, executors who are selling estate assets may be able to save tax by appropriating or transferring assets to the beneficiaries prior to sale.



Gains that qualify for entrepreneurs' relief continue to be liable to CGT at 10%. Generally speaking, entrepreneurs' relief is restricted to gains on disposal of an interest in a trading business or shares in a trading company. The level of relief which any one individual can claim in a lifetime has been increased by the Budget from £2 million to £5 million. Various restrictions apply. In particular, entrepreneurs' relief is only available to someone selling shares in a trading company if the vendor is an officer or employee of the company and holds at least 5% of the ordinary share capital.

Pensions

Until now any member of a pension scheme has had to start drawing their pension by age 75 at the latest. This could either be in the form of purchasing an annuity or taking what is called an alternatively secured pension. Each of these options has their disadvantages. The Government is going to consult on abolishing the compulsory purchase of an annuity at age 75 and anyone reaching the age of 75 after Budget Day will not be forced to buy an annuity immediately pending the consultation exercise and possible changes in the law.

From the courts

Yet more problems with jointly owned property

We make no apology for reminding readers of the need to take care if any form of asset is held in joint names. Joint assets offer almost unlimited scope for argument over the precise beneficial ownership of the property. In almost every case it will make sense to have something in writing which precisely defines the extent of the beneficial interest of the joint owners. We saw a case recently where land owned by various family members was transferred into the name of just one family member. Because this was done "for tax reasons" it seems that the original owners of the land decided that they wouldn't have anything in writing to state who actually were the beneficial owners of the land. This is a very dangerous state of affairs.

Two recent cases highlight the problems:

Northall v Northall

The High Court was asked to rule on the disputed ownership of a joint bank account. Mrs Northall was an elderly lady. She had never had a bank account and when her house was sold a joint bank account was

opened with one of her sons, Christopher, to hold the net proceeds. Where a bank account is held in joint names then almost invariably the terms of the bank mandate provide that if one of the account holders dies then the surviving account holder can operate the account alone. Accordingly, the day after Mrs Northall died, Christopher was able to transfer £26,250 out of the account and he paid the money into a joint account in the names of himself and his wife.

However, the fact that the bank rules permitted Christopher to move the money out of the account didn't mean that he was entitled to keep the money. A claim was brought against him by Mrs Northall's estate on the basis that the money in the joint account belonged to Mrs Northall and had to be repaid by Christopher into her estate.

The law in such a case is absolutely clear. Where a sum of money belonging to one person is paid into a joint bank account there is a presumption that the owner of the money does not intend to make a gift of it to the other account holder. Accordingly, after his mother's death, Christopher as the surviving account holder held the balance in the account on a resulting trust for his mother's estate.

The Judge was satisfied that the joint account was opened by Mrs Northall for reasons of convenience and that no thought was ever given to the question of what would happen to the money in the account after Mrs Northall's death. Christopher was required to repay to the estate a total of £32,076.07, including some monies that he had withdrawn from the joint account in his mother's lifetime.

Our advice is that wherever a parent opens a joint account with a child, the two of them should set out in writing their intentions as to what happens to the balance in the account when the parent dies. If the child is an only child then there may be no problem, but in all other cases a joint account could be a recipe for family arguments.

Kernott v Jones

Any couple (whether married or unmarried) buying a home together will normally purchase the property in their joint names. Particularly if the couple are unmarried, failure to give any thought to the precise nature of the joint ownership can have disastrous consequences as Miss Jones learned to her cost. In May 1985 Mr Kernott and Miss Jones bought a house together in Essex for £30,000. Miss Jones contributed £6,000 from the sale of a caravan in which they had

previously lived and the balance of the purchase price was raised through an endowment mortgage. The property was in poor condition and over the years Mr Kernott undertook various repairs and improvements as well as building an extension. The parties contributed to the mortgage repayments jointly. They had two children together before separating in 1993, when Mr Kernott left the property. Mr Kernott did not ask for his half share in the property to be paid out to him until 2006. The response from Miss Jones was to ask the court to declare that she now owned 100% of the entire beneficial interest in the property. By this time the house was worth approximately £245,000.

Miss Jones claimed that as she had assumed sole responsibility for paying all outgoings on the family home as well as sole responsibility for bringing up the children in the absence of their father, she was entitled to sole ownership of the property.

The Judge in the Southend County Court concluded that Miss Jones was entitled to a 90% share in the property. The High Court agreed. Mr Kernott then appealed to the Court of Appeal. By this stage the total legal costs involved will have exceeded the value of the house.

If the parties had been married the divorce court would have had very wide ranging powers to make property adjustment orders. Currently the court has no such powers in respect of unmarried couples. Therefore the decision had to be based purely on the court's analysis of the law relating to trusts.

A majority of the Judges in the Court of Appeal decided that they could not properly infer from the parties' conduct since separation a joint intention that over time the 50/50 split would be varied so that the property came to be held 90% for Miss Jones and 10% for Mr Kernott. One of the Appeal Judges made the point that it is simply impossible for a court to analyse personal transactions carried on over many years between cohabitants. It is therefore perhaps unsurprising that when asked to play the part of Solomon the Judges

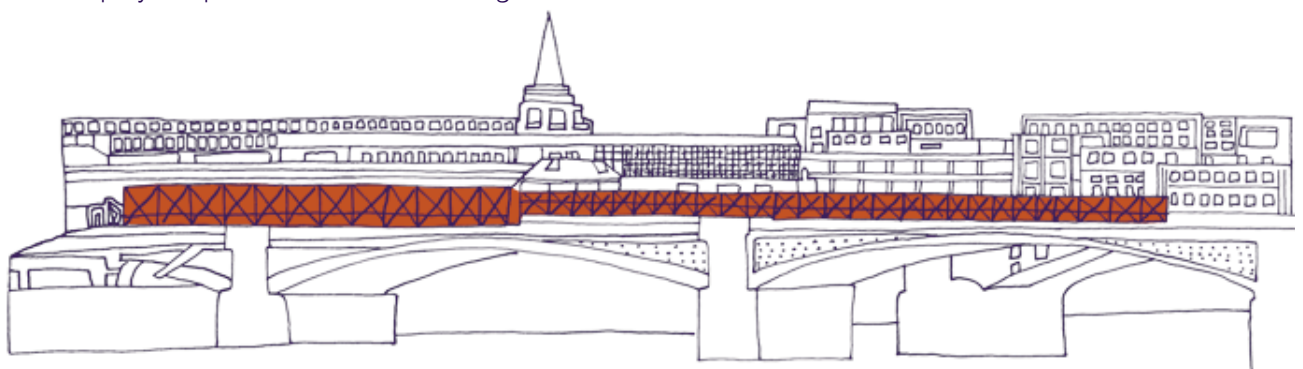
declined and chose to maintain the status quo of the original 50/50 ownership of Mr Kernott and Miss Jones.

Whenever property is being bought in joint names the parties must be absolutely clear as to the extent of their individual ownership. If circumstances change so that the ownership proportions are to be varied this should be agreed and documented in writing.

Inheritance tax – where are we now?

The emergency budget on 22 June announced no substantive measures in relation to inheritance tax (IHT). The freezing of the nil rate band announced by Alistair Darling in March 2010 is to remain in place until 2014/15. The IHT nil rate band is therefore expected to remain at £325,000 throughout the life of the present Parliament.

Perhaps IHT is currently in the new Government's pile of papers marked "too difficult". The Liberal Democrats don't favour any significant reduction in IHT and, given the current state of the public finances, the Conservatives will be happy to hide behind this. The reality is that the introduction of the transferable nil rate band in October 2007 wrong-footed the Conservatives. An increase of the nil rate band to £1 million would mean that a married couple would only pay IHT if their combined assets exceeded £2 million. When the tax threshold for IHT is £2 million then IHT truly becomes a voluntary tax. The only people who would thereafter be liable to IHT would be the wealthy who could undoubtedly afford to give assets away in their lifetime and/or undertake more sophisticated IHT avoidance measures. If married couples did enjoy a £2 million IHT exemption this really does penalise unmarried couples and others who set up home together such as siblings. In the future radical reform could not be ruled out. This might include a donee based tax, a wealth tax, or the replacement of IHT by a form of capital gains tax on death.



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Estate planning – take action now

Anybody who has put off their estate planning in the expectation of significant IHT changes by the new Government should accept that this will not now happen. If you make a gift or set up a trust today, then at the end of the present Parliament nearly five years might have passed out of the seven that is required for a gift to qualify as a fully exempt transfer. Clients are therefore encouraged to think about taking inheritance tax planning action sooner rather than later.

One item to come out of the Budget is that the government is going to consult on bringing IHT on trusts within the disclosure of tax avoidance schemes regime. This is unlikely to impact on mainstream planning, but nevertheless anyone considering undertaking serious IHT planning would be well advised to consider taking action sooner rather than later. This would particularly be the case if you are interested in our Buy to Let Trust. This is a trust which enables you to make an effective gift of let property while continuing to have the benefit of the rental income for the rest of your lifetime.

meet the team



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