

Spring 2016

Allan Janes

solicitors



LEGAL REVIEW

Your quarterly bulletin on legal news & views from Allan Janes Solicitors

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Inheritance Tax on the family home



One of the biggest announcements in the 2015 summer budget was an effective increase in the Inheritance Tax allowance for the main family residence. The proposals, however, introduce a far more complicated system than would be the case had the Chancellor of the Exchequer simply increased the current Inheritance Tax threshold to £500,000.

If you own a property worth up to £1,000,000 you will be able to leave it to children or grandchildren completely free of Inheritance Tax from April 2020. This means that married couples and civil partners will be able to pass an asset worth up to £1,000,000 including a family home without payment of any Inheritance Tax at all.

Current Rules

Inheritance Tax is currently levied at a rate of 40% on the value of an Estate above the tax free threshold, which has been frozen at £325,000 per person since 2009.

Married couples and civil partners are entitled to double the allowance, passing on assets to their children and other relations worth up to £650,000 before a tax charge is triggered.

How will this change? - New rules

From April 6th 2017, the Government will add a family home allowance eventually worth £175,000 per person to the existing £325,000 tax free allowance. This will be £100,000 in 2017/2018, £125,000 in 2018/2019, £150,000 in 2019/2020 and £175,000 in 2020/2021. This will then allow individuals to pass an asset worth up to £500,000 including the family home without paying any Inheritance Tax at all. For married couples and civil partners the total is £1,000,000.

There will be tapered withdrawal of these additional allowances for estates worth more than £2,000,000 (net).

A word of caution, if your Will contains a nil rate band discretionary trust with loan back provisions to the surviving spouse, then this relief will not be available. The relief is only available where the family home is passed to children. This includes step children, adopted and foster children, plus grandchildren. If you are uncertain if this relief would apply to you, then please contact Kate McNamee to advise.

For advice on all aspects of estate planning, contact Kate McNamee: kate.mcnamee@allanjan.es.com

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Violation of planning law leads to £70,000 loss for landlord

A landlord who let premises that were substandard has been ordered to pay £70,000 under the Proceeds of Crime Act 2002 after being convicted by Blackfriars Crown Court.

The basement flat in question was in reality a storage area beneath a café. It had been ruled to be 'unsatisfactory and substandard', but had been let out for

more than 14 years afterwards, yielding a total rent in excess of £100,000.

The landlord was also ordered to pay £18,000 in fines and legal costs.

For advice on any aspect of property law affecting buildings you own, contact Nick Morrison: nick.morrison@allanjan.es.com

Business valuation on transfer

When the transfer of a business takes place, the question of the value of assets transferred – especially intangible assets – is often the subject of a difference of opinion between HM Revenue and Customs (HMRC) and the taxpayer.

When two brothers transferred their business into a company, the difference of opinion could hardly have been greater, as the value they put on the goodwill exceeded HMRC's valuation by more than £6 million.

The reason for the massive difference was the assumptions on which the respective valuations were based.

HMRC argued that the valuation of the business had to be based on the legal position when the transfer took place. For example, there were no contracts of employment or non-competition agreements to bind the brothers, so HMRC contended that the valuation had to be made on the assumption that they were not bound to the new company. However, their continued involvement had been implicit in the valuation made by the brothers' expert valuer, the brothers having indicated that they would have been willing to sign contracts of employment containing non-compete clauses with any purchaser of the business.

The business also held intellectual property assets, databases and so on which added to the value.



The First-tier Tribunal accepted that the brothers would have sought the best possible price for their business and that signing the necessary agreements would not have caused them 'undue expenditure of time and effort'. It accepted the brothers' valuation.

It seems likely that HMRC will appeal against the decision. However, it does offer a glimmer of hope for businesspeople in similar circumstances.

The salient point is that before such transactions are carried out, it is preferable to ensure that appropriate legal agreements are in place which provide a proper underpinning for the assumptions used by the expert valuer.

If you are considering disposing of your business, contact Iwan Emanuel for advice on email: iwan.emanuel@allanjan.es.com

Safeguarding vulnerable people from abuse by attorneys and deputies

With a steady and increasing trickle of cases involving the misappropriation of assets by attorneys appointed by people who have lost the ability to look after their own



affairs, the Office of the Public Guardian (OPG) has published a 'Safeguarding Policy' document designed to assist the prevention of abuse or neglect of vulnerable people.

The OPG has a public duty to 'supervise deputies appointed by the Court of Protection, and to investigate complaints or concerns about the actions of deputies, registered attorneys and people acting under an order of the Court of Protection'.

The OPG is not likely to become involved in an investigation where the person giving the power of attorney has the ability 'to make informed choices about

the way they want to live and the risks they want to take'.

The document says that the OPG receives complaints about and records more instances of financial abuse than any other form of abuse, and lists a number of warning signs of financial abuse – such as the sale of a vulnerable person's possessions, their being unable to pay bills, sudden changes in the use of their bank accounts and so on.

The document stresses that where abuse is reported, the OPG will investigate ('We'll take all suspicions or allegations of abuse seriously') and, if warranted, even refer the abuse to the police for action. The investigation will normally lead to the OPG demanding that the attorney or deputy provides a full report covering how the finances have been managed. The OPG can also arrange to supervise the future conduct of the attorney or deputy. Where warranted, a restitution order can be made.

If you have a relative whose affairs are managed by someone else and have concerns that any form of abuse may be taking place, please contact Kate McNamee: kate.mcnamee@allanjan.es.com

Incorrect documentation fails to cancel charge

Just because a document is not properly executed does not mean that all rights are necessarily lost, as a recent case in the Supreme Court illustrates.

It involved a bank which had a mortgage over a family home. The family wished to pay off debts and decided to sell the house and move to a smaller property, releasing funds to clear their indebtedness.

The bank agreed to 'transfer the mortgage', but the paperwork to do that was not executed properly.

The situation became an issue when the family decided to give the new home to a daughter, who sought the removal

of the bank's charge from the register at the Land Registry. The bank conceded that the purported documentation was invalidly executed, and was therefore void, but was successful in its argument that it had a right to retain its charge under the law of equity, as to remove it would 'unjustly enrich' the daughter.

Having noted the incorrect documentation, a negotiated approach might well have yielded substantially better results for the claimant. The Supreme Court is an exceedingly expensive place to resolve such issues, especially if you lose.

Please contact Clive Hitchen: clive.hitchen@allanjan.es.com for guidance and advice.

New schemes to provide faster litigation outcomes

Commercial property disputes are well known for being complex and expensive to resolve, and the use of arbitration can sometimes lead to further dispute if the arbitrator is seen as coming down too heavily on one side.

In an effort to provide a way for disputes that are litigated in court to be resolved more quickly, the Royal Court of Justice has set up two new pilot schemes, which began in October 2015.

The schemes apply to disputes in the Chancery Division, the Commercial Court and the Technology and Construction Court, so can be used in almost all property-based disputes that meet the necessary criteria.



The 'Shorter Trials Scheme' is a voluntary scheme which targets smaller disputes. It reduces the volume of paperwork which the Court will need to consider and removes the need for a detailed costs budget to be prepared.

An abbreviated system for the allocation of legal costs is also applied.

The 'Flexible Trials Scheme' is also voluntary. It allows the standard timetables applied to trials to be varied, and limits the oral evidence presented at trial and the number of submissions that are made, the intention being that only evidence that is crucial to the case is heard.

One of the key benefits of the proposals is that by limiting the length of trials, it is easier to list them for hearing in the court timetable.

For advice on any litigation issues, please contact Clive Hitchen: clive.hitchen@allanjan.es.com for advice.

Boundary argument costs teacher £50,000

Boundary disputes can take a long time to resolve and can be ruinously expensive, as a recent case illustrates.

It involved a teacher who put up a fence along what she thought was the boundary of her property. Her neighbours did not agree.

The potential for a dispute was clear because she had to apply for planning permission for the fence and the difference of opinion over where the boundary lay was evident early on when her neighbours marked out a line inside the line she considered marked the edge of her property.

The difference in the positions was a little more than a foot.

Undaunted, the woman constructed a fence along 'her' boundary line, and the matter ended up in court. The judge

decided upon a compromise, holding that the neighbours' view as to the boundary line was correct but denying their application to have the fence removed. Instead, he awarded them damages of £2,866.

However, the damages were small beer compared with the legal costs awarded against the teacher, which amounted to some £50,000.

Boundary disputes are almost always very lengthy and complicated and the costs of resolving them routinely exceed the value of the property concerned by a long way.

In order to have the best chance of obtaining resolution at reasonable cost, without resorting to court proceedings, it is essential to take legal advice at an early stage. Please contact Richard Harriman: richard.harriman@allanjan.es.com for advice.

The Apprenticeship Levy

The apprenticeship levy on employers, first announced by the Chancellor of the Exchequer in the July 2015 Budget, is being introduced in April 2017 with the aim of enabling the Government to increase its spending on post-16 apprenticeships in England to achieve its target of three million apprenticeships by 2020. A consultation exercise followed the announcement and the Government's response has now been published.

How will the levy operate?

The levy will apply to employers across all sectors. It will be set at a rate of 0.5% of an employer's wage bill, excluding other payments such as benefits in kind, and will be collected via the PAYE system. Employers will receive an annual allowance of £15,000 to be offset against the levy payment. The effect of this allowance is that the levy will only be payable by employers with wage bills in excess of £3,000,000 (estimated as fewer than two per cent of employers). Those with a lower wage bill will not pay anything. The levy will be paid into a central fund, which all employers will be



able to access to gain support for apprenticeships via the Digital Apprenticeship Service. Employers who have contributed to the fund will have two years in which to use their funding. Any unspent money will be made available to other employers. Employers who pay the levy will also be able to access funding support above the level of their contribution by way of Government top-ups to their digital accounts.

In order to minimise the burden of implementing these changes, HM Revenue and Customs are to work

closely with employers and providers of payroll services, and the Government intends to provide clear guidance for employers on how the system will work in relation to different types of workers. In addition, a new independent, employer-led body, the Institution for Apprenticeships, will be established to regulate the quality of apprenticeships within the context of achieving three million starts by 2020.

Although the apprenticeship levy will apply to employers across the UK, as skills training is a devolved policy area in Northern Ireland, Scotland and Wales, only employers in England will receive funds in their digital account to spend on apprenticeship training in England.

Further work is needed so that arrangements can be put in place ahead of the levy's implementation to ensure the system works for employers across the UK.

For employment advice, please contact Rebecca Smith:
rebecca.smith@allanjan.es.com

Trade mark scammers lose

Anyone who has applied for or been granted a trade mark will know that even before the official notification is received, bogus invoices for 'registration' are likely to arrive from sundry sources.

A similar scam includes sending invoices for renewals at greatly inflated prices.

In a recent case, a company which issues such invoices and which trades as the 'Intellectual Property Agency



Limited' was ruled to have 'passed itself off' as the Intellectual Property Office and also infringed its trade mark.

The scam yielded estimated profits exceeding £1 million, and the result of the court action was a fine of £500,000.

One of the legal remedies for passing off (where you 'borrow' the trading style of another organisation) is to have the profits made awarded to the true owner of the trade mark.

For advice on any intellectual property issue, contact us.

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