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LEGAL REVIEW

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Additional Stamp Duty Land Tax for residential property - does it affect you?

Since 1st April 2016, a 3% surcharge has been payable on the purchase of a freehold or leasehold interest in a residential dwelling (not non-residential or mixed-use properties).

INDIVIDUALS

The surcharge applies if you're buying a property worth over £40,000, you (or your spouse) already own a property in the UK (or abroad) and you do not intend the new property to replace your main residence. The surcharge still applies if you intend to replace your main residence and your existing main residence is sold after you buy the new property, but the surcharge can be reclaimed from HMRC if you sell your existing main residence within 3 years from the purchase of the new property.

INHERITING PROPERTY

If you inherit a 'major interest' in a property in the three years before buying another property, that interest can be ignored for SDLT purposes, provided that you and your spouse's combined interest does not exceed half of the major interest in the inherited property.

COMPANIES

The surcharge applies if a company buys a property worth over £40,000 regardless of whether the company owns a property already.

A company is also subject to the higher 15% SDLT rate for acquisitions worth over £500,000, unless the property will be used for a qualifying purpose (e.g. a property rental business).

TRUSTEES

In a trust, whether the beneficiary has the absolute right to the capital/assets/income within the trust, or is entitled to occupy the trust property for life, it is the beneficiary who is treated as the purchaser of a property, not the trustees.

LINKED TRANSACTIONS AND MULTIPLE DWELLINGS RELIEF

Transactions that form part of a single arrangement, or series of transactions between the same seller and buyer (or persons connected with them) are treated as being 'linked transactions', meaning that SDLT will be payable on the total amount of the transactions.

Multiple Dwellings Relief ('MDR') may be available in these circumstances. This allows the SDLT rates to be applied to the mean value of the properties being purchased. Where six or more properties are bought in a single transaction, the buyer can choose whether to apply the non-residential (lower) rates of SDLT, or pay the surcharge and claim MDR.

SUBSIDIARY DWELLINGS

Where a principal dwelling is purchased and any other dwellings purchased are subsidiary dwellings, the surcharge is payable if there is only one dwelling purchased. Subsidiary dwellings are those within the same building, or in the grounds of another purchased in the same transaction (the principal dwelling). The principal dwelling, and the garden and grounds attributable to the principal dwelling, must be at least two-thirds of the value of the land purchased in the transaction.

SDLT IS A COMPLEX AREA AND THE APPLICABILITY OF THE HIGHER RATES AND RELIEFS WILL BE DEPENDENT ON THE FACTS OF A PURCHASE. FOR MORE INFORMATION, PLEASE CONTACT PETER COLLIER OR NICK MORRISON.

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HMRC slammed for unreasonable behaviour

The increasing aggressiveness of HM Revenue and Customs (HMRC) in dealing with taxpayers was recently given short shrift by the First-tier Tribunal (FTT), which criticised HMRC's high-handedness and ordered them to make a payment to the taxpayer concerned.

The tax battle involved a builder who made a number of errors in completing his VAT returns. The errors led to three VAT penalties totalling less than £800 and a VAT assessment of £69 being issued. However, the penalty notices were found to be invalid because the original notices were issued and then withdrawn. HMRC failed to reissue them.

The FTT found that the builder's errors were careless and not deliberate, but more significantly, HMRC's change in approach to the severity of the errors led it to describe their way of handling the matter as 'hopelessly muddled' and containing a 'spurious justification' for their change of strategy. In all, the FTT found that there were 'a number of disturbing features about the way the case has been conducted by the respondent (HMRC)'.

Commentary on the case has focused on the poor quality of HMRC's performance and arguments in making

penalty assessments and on the decreasing quality of HMRC's case management generally, with their emphasis being on trying to browbeat taxpayers into submission even when their case is lacking merit.

The FTT can only make a costs award in specific circumstances, one of which is where either party has acted unreasonably.

Strong legal representation is essential if you get enmeshed in an argument with HMRC. Please contact Clive Hitchen at clive.hitchen@allanjanes.com for assistance if you are in dispute with a government agency.

Banter doesn't create a contract

The trouble with light-hearted discussions of important business matters in a social context is that none of those present can really be sure whether any agreements apparently reached are serious or merely a joke. Exactly that happened in one case in which a £15 million deal was alleged to have been struck over drinks in a pub.

A financier who worked as a consultant for a publicly listed company claimed that the company's chief executive had agreed to pay him a £15 million bonus if its share price doubled within three years. That target was reached and the financier launched proceedings to hold the chief executive to what he claimed was a binding deal.

The High Court accepted that the bonus offer had been made and that the financier had expressed his agreement to the proposal. In dismissing the financier's claim, however, the Court found that the conversation had been a jocular one and that there had been no intention by either man to enter into legal relations.

The bonus offer had been greeted with laughter by those present and no reasonable person would have thought that it was serious and that there was an intention to create a contract. They all thought it was a joke and the fact that the financier had convinced himself that the offer was a serious one revealed only that the human capacity for wishful thinking knows few bounds.

It is always best for contracts to be clearly evidenced. Contact Iwan Emanuel at iwan.emanuel@allanjanes.com for assistance in negotiating any business arrangement.

Mutual will voids thirteen later wills

Although a worryingly high proportion of the population never make a will, a fairly large number of those who do make more than one. It is sensible to make a new will or add codicils to an existing will if your circumstances change significantly. However, some people do take the process to extremes, as is evidenced by a case involving the estate of a woman who made 13 different wills between 2004 and 2014.

A legal challenge was made on the basis that the deceased woman and her late husband had created 'mutual wills' in 2000. Mutual wills create a binding agreement between two or more people which prevents the surviving party/parties from disposing of the estate in a

different way. As the promise made is binding, a subsequent will cannot revoke it. In the case in point, the judge found that mutual wills had been made and all of the woman's subsequent wills were therefore void.

Contact Alex Stanier at alexstanier@allanjanes.com for advice on any will or probate matter.

Insolvency service pursues directors who transgress

The Government's Insolvency Service has been prosecuting and banning increasing numbers of directors. Such bans include persons acting as a director 'in fact', even if they are not listed as a director in a company's official records.

In the first week of July alone, the offences listed below all led to bans on acting as a director of any company in the UK:

- Failing to maintain, preserve and deliver records following liquidation of a company and failing to deal with tax affairs – nine-year ban;
- Failing to maintain adequate company books and records – eight- and seven-year bans;
- Trading in a manner that breached consumer protection law causing loss to customers – seven-year ban; and
- Continuing to trade while disqualified – ten-year ban.

It is accepted that companies can fail, and a director who takes prompt action to protect the interests of creditors and who makes sure the company complies with its legal requirements will not face retribution from the authorities. However, a company director who flouts the law and/or fails to take action when it is necessary can face a substantial ban and in some circumstances become personally liable for the debts of the company.

If your company is in financial difficulty, ask Clive Hitchen at clive.hitchen@allanjanes.com for advice immediately.

'Gig economy' – Pimlico Plumbers given leave to appeal

There have been a number of recent cases looking at the precise nature of the employment status of those working for employers who like their operatives to appear to clients as their representatives but who operate a model of self-employment.

In February this year, the Court of Appeal dismissed an appeal by Pimlico Plumbers Limited against a finding that the claimant's relationship with the company was that of a worker rather than that between an independent contractor and his client *(Pimlico Plumbers Limited and Another v Smith)*.

It has now been reported that the Supreme Court has granted Pimlico Plumbers leave to appeal against that decision.

The duties of an executor – tax compliance

Executors of estates are personally responsible for their actions, so the role can involve significant risks. One example would be where the executor completes the estate administration and distributes the assets only to find that there was an unknown liability of the deceased. Another would be where an estranged relative brings a claim for financial provision to be made for them from the estate under the Inheritance (Provision for Family and Dependants) Act 1975.

One of the principal duties of the executor is to ensure that the tax affairs of the deceased person are properly wound up. The executor will also be responsible for submitting an estate tax return or returns for the period of the administration of the estate.

The tax rules applicable to estates are not identical to those that apply to individuals, so if there is significant income or capital gain, or the estate administration period is extended, it is essential to obtain professional advice.

It should also be noted that where a beneficiary inherits an income-producing asset, the income produced by that asset is attributable to the beneficiary from the date of death, not from the date that the asset is formally transferred to them from the estate. The executor of the estate is responsible for paying tax on the income for the period prior to the asset transfer and will withhold basic rate tax on it.

The person or persons entitled to the balance of the estate are taxed on any estate income passed to them in the relevant financial year. In the year the administration of the estate ends, they will be taxed on the income they have received and the accrued undistributed income.

Please contact Alex Stanier at alex.stanier@allanjanes.com who can assist you in dealing with the extensive paperwork, legal and tax issues involved to give you peace of mind.

Landlord faces six-figure bill for Notice to Quit error

Correct service of legal documents may seem like a technicality to non-lawyers, but it is of crucial importance and should only be entrusted to professionals. In one case that resoundingly proves the point, a landlord who served a notice to quit on the wrong address was left facing a six-figure damages and legal costs bill.

The case concerned an agricultural tenancy of land. The lease provided that either party could serve any notice on the other at a particular address or such other address as had previously been notified in writing. The notice to quit was served on the tenant at the address specified in the lease, although he had given notice in writing that he had moved nearly six years previously to a new home.

The tenant was dispossessed of the land after the landlord let it to another tenant. Having not received the notice to quit, he was taken by surprise and

launched proceedings. His claim was initially dismissed, the judge finding that, on a literal reading of the lease, the notice had been validly served on him at the specified address and the lease had thus been validly terminated.

In upholding the tenant's challenge to that decision, the Court of Appeal found that the judge had erred in his interpretation of the lease. His reading of the document would lead to a surprising conclusion that would leave the door open to less than scrupulous landlords serving documents at tenants' original addresses in the knowledge that they had moved out.

As a matter of commercial common sense, the landlord and tenant must have intended that the new address, once duly notified in writing, would supersede the original address given in the lease. In the circumstances, the lease had not been validly terminated and the landlord was ordered to pay the tenant £31,500 in damages and meet the six-figure legal costs of the action.

In this case, the Court took a commercial view, as is commonplace with such decisions.

If you feel that you have been unfairly dealt with or are facing a dispute that turns on a minor technicality, contact Richard Harriman at richard.harriman@allanjanes.com for advice.

BT engineer settles hearing loss claim

Hearing loss and tinnitus, being invisible and usually progressive, are often not noticed until well advanced, by which time the probability of there being any effective treatment is exceedingly low.

However, the link between high noise levels and hearing loss has been known of for decades, so employers who fail to take adequate steps to protect those who work in a noisy environment whose hearing is damaged as a result can be liable to pay damages.

Recently, a BT engineer whose work history had for many years involved the use of amplifiers and oscillators received a settlement for the resultant hearing loss and tinnitus that now blight his life.

The Control of Noise at Work Regulations 2005 require employers to take specific action at certain noise levels, yet there are many industries in which poor hearing protection practices continue. As well as environments traditionally thought of as noisy, such as factories, the noise levels outdoors when workers are using vibrating or drilling machinery can easily exceed the legal limits.

If you are suffering from an occupational disease, such as hearing loss, as a result of a failure on the part of your employer to put in place the safety measures required by law, you could be entitled to compensation.

Contact Richard Harriman at richard.harriman@allanjanes.com to discuss your claim.

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