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Private Client LLP - **Solicitors**

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newsletter

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by Jon Croxford - managing partner

Welcome to our last newsletter of 2022. What a year it has been; starting with the most significant war in Europe since 1945, a fuel crisis and a turbulent global economy, the sudden passing of HM Queen Elizabeth II after 70 years as our monarch, topped off by political and financial upheaval at home in the UK.

At the time of writing, the financial markets have stabilised somewhat, and the political landscape appears calmer despite our third Prime Minister of the year. Following the Chancellor's Autumn Statement, it is now clear that we have quickly transitioned from a low tax, high growth vision of the economy to higher taxes and cost cutting to plug the funding gap in our economy. It is only to be hoped that this period will not be too severe or prolonged.

In people news, our team continues to expand and, in the coming months, we are set to welcome two senior solicitors to further increase our breadth and depth of expertise.

We were delighted to be listed again in the Times Best Law Firms of 2022 as one of the top 200 law practices in England and Wales.

For the second year, we also feature in the Legal 500 rankings with a number of partners and colleagues identified as key individuals.

As we move towards the end of the year, our team wishes clients, contacts and friends a happy Christmas and - let's hope - a slightly less turbulent 2023!

in this issue

navigating US revocable trusts and UK tax rules

by Amy Griffiths - associate

A Revocable Trust is where a person making a trust (known as the Grantor in the US) retains the power to revoke the trust at any point, provided that the Grantor has the mental capacity to do so.

For various reasons, Revocable Trusts are not often used in the UK. The use of Revocable Trusts is, however, common place in the US and is often recommend by US Attorneys to negate the need for obtaining probate in the US. This eases the burden on death with regards to time, expense and estate administration.

Although Revocable Trusts have substantial attractions in the US, the tax implications can be severe for a person domiciled in the UK if they transfer US assets into the Revocable Trust.

To decide if the Revocable Trust falls foul of UK inheritance tax implications, it is imperative to obtain advice to check if the Revocable Trust is either a bare trust/nominee arrangement or a discretionary trust under UK law.

This will depend on how the Revocable Trust is worded and each case will depend on its facts. In short, the Revocable Trust would be viewed as a bare trust/nominee arrangement if the Grantor has full control over the trust and can wind it up at any point. On this basis, the trust would avoid the creation of any UK inheritance tax charge.

However, if the Revocable Trust is deemed to be a discretionary trust, then it will be caught by the relevant property rules for UK inheritance tax purposes. An immediate 20% charge to inheritance tax (from the date that the Revocable Trust was created) is likely to apply. This can be substantial depending on the value of the assets transferred into the US trust.

Furthermore, the assets of a Revocable Trust which is deemed to be a discretionary trust, would be subject to an inheritance tax charge on every ten-year anniversary of the trust (up to a maximum rate of 6%) taking into account the availability of any inheritance tax nil rate bands. Exit charges also exist when assets leave the trust.

Even if it is decided that the Revocable Trust is a bare trust/nominee arrangement, there is still the risk that the Grantor could lose capacity and the ability to wind up the trust.

At that stage, a UK inheritance tax liability is likely to be triggered as the nature of the trust changes. Where one of the spouses is not a US citizen, it will often be better to have US Wills which qualify for marital tax relief via a Qualifying Domestic Trust (QDOT).

The nuances of Revocable Trusts and the implications they have in the UK means US trusts cannot be looked at separately. The individual's tax residence and domicile status will have a bearing on the UK tax position and this must be understood, together with a review of worldwide assets, prior to any transfer into trust.

demystifying demergers

By Natasha Smith - partner

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Demergers are the process of separating differing activities of a company, or group, into separately owned entities.

Why might a demerger be useful?

Companies which start off carrying out one type of business activity may diversify into different types of activity or, as has been common over recent years, invest surplus cash into property or other investments. It may then become desirable to separate those activities. Common commercial reasons to want to split the activities into different entities might be as follows:

- For commercial protection between business streams e.g. where one carries more risk
- To split out the premises from the trade to both protect the value of the premises and allow the sale of the trade whilst retaining the premises
- To be able to incentivise separate management teams through share ownership of the business in which they are involved
- Shareholders may have different ideas about the strategy for the different businesses
- To make the sale of one activity easier to manage.

In addition, where surplus cash has been invested in property or other investment assets, the shareholders' entitlement to relief from capital gains tax (through Business Asset Disposal Relief) and inheritance tax (through Business Relief) can be restricted or entirely lost.

A demerger can result in a company or group being split out into two or more separate entities, each with identical shareholders and percentage shareholdings. Alternatively, what is termed a "partition demerger" can be carried out where the separate business activities are split between different groups of shareholders.

At its simplest, a partition demerger could involve a company which carries on two equal value business activities and has two 50:50 shareholders being split into two new companies with each shareholder owning their own company which carries on one of the two activities.

Tax efficient demergers

Separating existing business activities into new companies can prove very costly in tax terms without specific demerger reliefs. Taxes which may be triggered include:

- **Corporation Tax** – assets will be disposed of by the company which may realise a gain

- **Income Tax –** shares in a new company are often received by individual shareholders
- **Capital Gains Tax** - shareholders will often be disposing of shares in the old company
- **Stamp Duty** - as shares are often acquired as part of the demerger
- **Stamp Duty Land Tax** - where properties need to be moved around.

There are various ways to structure a demerger and the best route will depend upon the surrounding facts. In the right circumstances, it may be possible to demerge a company completely tax free.

A partition demerger, where the separate companies post demerger are owned by different shareholders and/or in different proportions, will however result in a stamp duty charge.

It is normal to obtain advance tax clearance from HMRC in relation to various aspects of a demerger. The background facts will be important and it is often easier to obtain clearance if the demerger occurs before any concrete plans are made to sell a part of the business.

It is vital to ensure appropriate tax advice is taken prior to a demerger as this is a particularly complex area of taxation and there is no 'one size fits all' solution.

Key Date Announced for the Register of Overseas Entities

Earlier this year, a new Register of Overseas Entities was announced. This was partly to counter the perceived abuse of Russian oligarchs, and others, hiding assets in offshore companies and potentially divesting themselves of UK land to avoid sanctions. Any overseas company, and many other legal entities owning UK land, must now register by 31 January 2023 or before then if the land is to be transferred or sold. The register is to be kept at Companies House, which has been sending letters to offshore companies owning UK land notifying them of this requirement.

The process is not straightforward and an early start should be made. Failure to register, the provision of incorrect details and failure to update the register can result in criminal offences leading to severe financial penalties and even prison sentences.

Taxpayers Win Trust Case at Court of Appeal

A recent win for the taxpayer at the Court of Appeal in a case involving The Quentin Skinner 2015 Settlement means that HMRC has had to accept that a trust can qualify for a 10% rate of tax on a gain arising in respect of a sale of shares which qualifies for Business Asset Disposal Relief (formerly Entrepreneurs' Relief) provided a beneficiary qualifies in their own right for the relief and has what is termed a life interest in the shares held in trust.

Importantly, there is no requirement for the beneficiary to have had the life interest for a specified period of time. This is now reflected in HMRC's manuals, and we are aware of HMRC closing enquiries into similar cases.

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genuine assistance or ulterior motive?

by Emma-Louise Green - senior associate

An interesting contentious probate case hit the headlines this year in Devon, when a woman allegedly attempted to write herself into her dying neighbour's Will. A scenario more typical of a blockbuster novel, we do see instances where vulnerable people are preyed upon, manipulated by those seeking to advance their own fortunes.

The case in Devon involved Ms Claire Symons allegedly being asked to prepare a Will for her terminally ill neighbour, Dr Paul Davis, despite only knowing him for a few months. She took notes at his home before typing up what she claimed were his wishes.

When prompted by him several weeks later, she presented the document to him for his signature. Dr Davis claimed, however, that she did not follow his instructions and, suspicious of her actions, contacted the police. He wanted to leave his estate to several family members in Australia and to some friends in the village where he lived.

The Will, prepared by Ms Symons, named her as a significant beneficiary, and also included her boyfriend as a beneficiary.

This situation is most unusual as the testator himself discovered the alleged fraud, subsequently reporting the perpetrator to the police.

However, it is not unusual for vulnerable individuals to be taken advantage of by another person who becomes so involved with a testator, they end up being named as a beneficiary in their Will.

Sometimes nothing untoward has gone on, but typical examples of where individuals manipulate a testator include poisoning a testator's mind against family members who hitherto have been included as beneficiaries or taking control of their bank accounts and helping themselves.

Often, they are appointed as attorney, meaning that they have complete access to bank accounts and private financial information and are in a position of trust.

We have seen cases where someone becomes a dominant force in a testator's life, gradually isolating the testator from previously close family members.

Commonly, the family members are not geographically local. The "influencer" - on the other hand - is, meaning they can exert a great deal of control discreetly.

In many cases, a manipulative situation is undetected during the testator's lifetime as the Will is only read on death. There can, however, be warning signs that could be acted upon to protect the testator from undue influence or manipulation.

If you are aware that a power of attorney is in place and you have suspicions about what the attorney is doing, you can make a report to the Office of the Public Guardian.

If there is no power of attorney in place, but you strongly suspect financial abuse, you can make a report to the police or seek advice from a solicitor specialising in contentious or litigious matters.

Q&A with Eamonn Daly

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Eamonn Daly is a Chartered Tax Adviser who joined Meridian in 2020.

What's your technical area of specialism?

I specialise in helping wealthy individuals and families achieve their objectives by providing advice on tax planning, wealth succession between generations and asset protection. My clients are typically entrepreneurs, family business owners, land owners and senior professionals.

I have been working in the private client area for over 30 years and continue to be interested in understanding the technical detail of how things work – be that interpreting legislation and case law or working out the tax implications of personal and business decisions.

What are the biggest changes you've seen in the sector in recent years?

There has been a polarisation in strategy with many private client teams concentrating on either uncomplicated volume or more detailed, but still relatively standard, estate and tax planning work. There are only a small handful of law firms able to deal with the most complex, tax-driven or high value work.

Generally, law firms have grown larger with each separate team providing a small proportion of total turnover. As a result, the importance of private client work can often be lost amongst the variety of commercial and other work. As a dedicated private client firm, we do not have this issue nor the constraints that may arise in multi-discipline firms in which different teams compete for priority and resources.

What key challenges do you see on the horizon?

Recruitment of good quality staff is currently a problem for many industries and law and tax is no exception. Our team has considerable strength in depth, but we are always on the lookout for talented people. It can be difficult to find senior staff to slot in easily at the levels at which we operate.

The courts and Government agencies we deal with – for example HMRC, the Land Registry, the Probate Court, the Office of Public Guardian and the Court of Protection – seem to have been chronically underfunded for many years and problems and delays have become more acute since the pandemic. With public spending cuts on the agenda, it is difficult to see how matters might improve in the future.

How do you 'switch off' from the day job?

I enjoy exploring the variety of experiences and cultures that world-wide travel can bring. Curtailed in recent years, I have previously travelled to South East Asia, Central and South America, small parts of Africa and Eastern Europe.

On breaks between pandemic lockdowns, I got to know parts of the UK like the Lake District, the West Country and the Cotswolds better!

Home or away, I enjoy eating out; from street food to fine dining, as long as it is something different and good quality.

What's the most memorable piece of advice you've had in your career?

An early boss of mine was fond of profound sayings such as a client's assets should be thought of as a jigsaw, or as a cake!

Whilst his maxims were a source of much amusement at the time, these do demonstrate the complexity and intricacies of estate and tax planning and the need to consider the range of variables and interdependent factors.

Doing anything in relation to one aspect of someone's affairs will often have impacts and practical consequences on other areas.

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