positive outlook

meridian
Private Client LLP - Solicitors

June 2021

newsletter

01

by Jon Croxford - managing partner

As we approach the summer, and hopefully a return to some form of normality in the coming months, it feels that changes are afoot and there are reasons to feel positive.

The still recent Budget trod a delicate balancing act between increasing taxes to fund the cost of the pandemic whilst not wanting to strangle a recovering economy. Despite predictions by many, the Budget contained no change to the rates of capital gains tax, but we do know there is an ongoing review of capital gains tax and inheritance tax. In the current economic and political climate, it is hard to believe that changes are not far off and I would be surprised if capital gains tax rates do not rise before long.

This is, therefore, an important time to review personal finances and estate planning whilst still able to benefit from the relatively benign capital tax regime we currently enjoy. The window of opportunity may not be that long.

There is also a mood in the air for people to reassess what is important to them, some taking a step back from business and even advancing retirement plans. We have seen signs of this already with an increase in family and owner managed businesses looking to progress succession plans, allowing key shareholders to exit and realise value whilst tax rates remain attractive.

Meridian has operated at full capacity throughout the pandemic and continued growth has meant that we have been delighted to welcome a number of new faces to the firm. These include partner, Eamonn Daly, tax manager, Elizabeth Bowker, trust manager Peter Brodie and a new addition to the contentious team with solicitor Tom Norris.

I hope the contents of the newsletter are of interest and hope that, before long, we will all be getting back to normal with our day to day lives and meeting up in person!

in this issue

02

don't travel light with property ownership in the EU

by Peter Gate - partner

We have seen a gradual increase in clients purchasing holiday homes in Europe. There can be significant tax and legal issues in owning foreign property, particularly when later selling the property or in the event of death. It is important that these issues are recognised early on and that professional advice is taken.

A key issue is that individuals acquiring properties often assume they can pass the property to whoever they choose on death. This may be so in the UK but is often not the case elsewhere. Some countries, including France and Spain, have forced heirship rules which mean that certain family members must receive at least a set proportion of the estate.

The EU Succession Regulation introduced in 2015 means that most EU countries will now recognise English law when directing where assets should be distributed on death. This potentially overrides the forced heirship rules in countries such as France and Spain if a proper election is made under the Regulations. Brexit does not change this as the UK never signed up to this piece of legislation, but it does bind EU countries who did.

The wishes of the deceased can be set out in a single English Will. Foreign courts often require complex documents to be filed with them before they will recognise an English Will. A simpler approach is to have separate Wills in each jurisdiction, with the foreign Will opting to recognise English law and override local forced heirship rules (at least in most EU countries). EU courts tend to be more comfortable with this approach and it is often a quicker and cheaper solution even if the prospect of having separate Wills in different countries initially seems more costly. It is vital to ensure that having multiple Wills does not accidently cause one or more of them to be revoked or contradicted.

Care should also be taken in relation to local equivalents to inheritance tax on death. In the UK, property passing from one spouse to another on first death would not usually be subject to inheritance tax. Not all EU countries have the same unlimited spouse exemption and there can be foreign tax payable in respect of a foreign property on first death. Although the UK often allows tax paid in another jurisdiction as a credit against the UK inheritance tax liability, there must be a UK inheritance tax liability arising in relation to the same event to claim that credit. As there would be no UK inheritance tax liability on first death, this can result in a tax charge for a married couple on both first and second death.

Similar issues arise on the sale of a foreign property in that the interaction of foreign and UK taxes need to be considered. A capital gain realised on sale will often be charged to tax in the foreign territory. The gain could be taxed in the UK as the sale of a foreign holiday home will not qualify for the exemption from tax that applies on the sale of an individual's main residence. Consideration needs to be given to any relevant double tax treaty and whether unilateral credit relief is available under UK law.

These complex rules mean that care must be taken to ensure that properties not only pass to the intended beneficiaries on death, but also that there are no tax surprises either on sale or on death.

03

impacts of COVID-19 on commercial property

Carl Csukas, partner, provides an overview of the impacts of COVID-19 on commercial property, in particular arrears of rent.

A current concern for commercial landlords is to protect their flow of income. If rent is not paid, landlords want to know how to recover arrears and interest.

The tenant may be heading towards insolvency and the best options may be to regain possession and re-let, sell, re-develop or re-occupy.

For arrears of rent there are usually various remedies. Unfortunately for landlords, most of these have been temporarily clipped by COVID-19 legislation.

County Court claim

This is the only unaffected option. A claim letter is sent to the tenant before proceedings are issued. If proceedings are not defended the landlord can obtain an enforceable money judgment. If a defence is put in, it may be possible to get a judgment before trial. The downside to this is that Court proceedings can be slow if defended.

Forfeiture

Forfeiture is a legal term for termination of a lease for breach of covenant. Properly drawn up commercial leases will have a forfeiture or "re-entry" clause setting out circumstances in which a landlord can take steps to terminate the lease. Arrears of rent should be such a breach.

There are two ways to forfeit for arrears of rent. One is to simply change the locks, although care must be taken as changing the locks on a property with a residential element is a criminal offence. The other is through Court possession proceedings.

COVID-19 legislation, in almost all cases, prevents landlords from forfeiting by either method for arrears of rent. The restrictions are currently in place until 30 June 2021 but have been extended a number of times and may again.

Commercial Rent Arrears Recovery (CRAR)

This means sending in bailiffs to take possession of a tenant's goods as security for the arrears. The goods secured can later be sold in default of payment of the arrears. Again, COVID-19 legislation severely caps the use of this remedy such that in most cases it will not be an option.

04

bite size news

Statutory demands - winding up/bankruptcy

A statutory demand is served on a debtor as a precursor to issuing a winding up petition (for companies) or bankruptcy petition (for individuals). This can work as solvent debtors will pay to avoid liquidation/bankruptcy. If there is bankruptcy/liquidation, it will often mean getting the premises back. COVID-19 legislation has, however, been passed that voids statutory demands/petitions served and issued for arrears of rent.

Summary

Currently a County Court claim is the only unaffected remedy available for arrears of rent. Restrictions on the other remedies are scheduled to ease. There may then be a race between creditors to recover rents from defaulting tenants when all remedies are again available.

Reporting of gains on disposals of residential property

Since 6 April last year there has been a requirement for UK resident individuals and trustees to complete an on-line tax return and pay any tax due within 30 days of disposing of UK situated residential property at a gain. A return is not necessary where the disposal of a property is completely covered by the exemption for main residences but there are many situations where full exemption is not available and this is not always obvious at first sight. Due to the tight timescale involved and the complexity of making the return in some cases, advice should be taken well in advance of any disposals (by sale or gift) of residential property.

Government to simplify Inheritance Tax reporting from 2022

The Government has confirmed that it strongly supports the Office for Tax Simplification's key recommendations following its first report on Inheritance Tax ("IHT"). As a result, the Government has confirmed that, from 1 January 2022, over 90% of non-taxpaying estates will no longer have to complete IHT forms as part of an application for Probate. This is welcome news which, for many, will reduce the amount of paperwork required as part of a Probate application following the death of a loved one. The Government has also indicated that temporary measures removing the need for executors to physically sign IHT papers will be made permanent.

05

should I stay, or should I go?

by Liz Bowker - tax manager

With last year's reduction in the lifetime allowance for business asset disposal relief (formerly entrepreneurs' relief) to £1 million and talk of potentially doubling the rate of capital gains tax (CGT), it is unsurprising that the question of emigration is starting to rear its head again.

In the 1960's and 70's, the top rate of income tax was often in the region of 90%, leading many high earners to leave the UK. As later Governments began to favour "hidden" taxes, income tax rates dropped but CGT remained relatively high and emigration remained popular.

In recent times, the delinking of CGT from income tax rates in 2008, coupled with various forms of relief, largely put a stop to emigration simply to avoid CGT. If the recent recommendations of the Office of Tax Simplification are enacted, it would not be a surprise if we see a reversal in that trend.

Of course, there is no point jumping out of the frying pan into the fire. It is vital to consider the tax regime of any country to which the tax payer moves, for they could have even higher rates of tax or less generous reliefs. This is one of the reasons why the usual list of tax havens remains attractive, such as the Channel Islands or Monaco, but there are other options with various countries, for example Portugal, providing significant tax incentives to individuals who move there.

A key factor in assessing the practicality of moving abroad is the change in lifestyle. Medical care and schooling for children often present practical barriers but it is worth noting that it is necessary to emigrate for at least five tax years to escape UK tax on capital gains and some types of income. Even if emigration proves to be a viable option, UK sources of income and gains on UK situated real estate will broadly remain within the scope of UK tax.

Care also needs to be taken to consider the potential claw-back of various tax reliefs as a result of emigration and, where the individual is a trustee, the potential impact on the residence status of those trusts. An unwanted and potentially disastrous charge to CGT may arise if a UK resident trust is accidentally exported by the emigration of one or more trustees.

Historically, the concept of UK tax residence was based on case law, HMRC practice and concession; meaning that things were often uncertain. This improved somewhat in 2013 with the introduction of the statutory residence test, albeit the rules are complex.

The statutory residence test is split into two parts. Firstly, there are tests which can result in an individual automatically being either UK or non-UK resident. For example, an individual will automatically be non-UK resident where present in the UK for less than 16 days in the tax year. Conversely, an individual will automatically be UK resident where present in the UK for 183 days or more in any tax year. Presence in the UK is tested at midnight for these purposes.

Where someone does not meet any of the automatic tests, it is necessary to look at how many specific ties the individual has with the UK, which then determines how many days can be spent in the UK without being UK tax resident. The answer to this question before 2013 was usually "90 days" but that is no longer the case (although it is still sometimes!).

It is worth stressing that to escape the scope of UK inheritance tax is even harder to manage as that rests on an individual's place of "domicile"; the subject of a different article and, indeed, many books!

Q&A with Mark Abrol

06

the contentious rapper

What is your role with the firm?

I head up the contentious trust, property and probate litigation team. Our primary area of work is to find a way to resolve our clients' issues arising from the death of somebody close to them. This type of work has been the fastest growth area in litigation in recent years.

How did you decide upon a career in the law?

Sport was my life during my teenage years. I loved the way that the psychological balance of a football, rugby or cricket match could change. It was during those formative years that I looked ahead to see where I could find a similar challenge in a working environment and decided that I wanted to be a litigation lawyer.

What is your favourite sporting moment?

I am passionate about most sports and never cease to be amazed at the standards of the real top performers. You wonder how the All Blacks continue to perform with such unbelievable consistency, how Tiger Woods has continued to defy the odds and win 15 majors and how Lewis Hamilton has broken all Formula One records. How on earth did Phil Taylor win 16 world darts championships? However, I have been a Stoke City supporter since the age of 4. Gordon Banks was my hero in the England team, and he moved to Stoke City in 1967. Shortly afterwards Stoke won their only piece of silverware, the League Cup, in March 1972. For me, that takes pride of place.

Do you have a claim to fame?

In or around 1987, I played cricket for David Nicholson's horse racing yard – he used to be a National Hunt trainer. I opened the batting with Richard Dunwoody who had won the Grand National on West Tip in 1985. As we walked out to bat, Richard turned to me and said, "I don't know anything about cricket so you tell me what to do and when to run." Whilst he did not last long at the crease, we managed to win the match off the very last ball.

What do you see as your main challenge at work?

It is crucial to have a team that continues to develop and evolve. Technology has started to change the law a lot, most recently in relation to how Court hearings operate in these times of COVID-19, and we have to adapt to meet these new challenges.

What do you like most about your job?

I am blessed to have worked with some excellent individuals in my team for their whole careers and it has been very pleasing to see how they have developed. More recently, it has been a revelation to work within the niche private client team at Meridian. There is a particular ethos about the firm which is very different to traditional law firms – the supportive and collaborative approach enables the best service to be given to clients, as well as making it an enjoyable place to work.

What is your guilty pleasure?

Other than sport, I have two other (very different) interests. I have been a keen student of personal development for more than two decades and have a huge reference library which I make regular use of. When opportunity allows, I also like to get on stage and do some rapping. When I (foolishly) volunteered on a stag trip at Cheltenham Races to "rap with the band" at next week's wedding, I did not know what a change of direction my life was going to take! In the cold light of day, I realised my folly but gave it a go regardless. Since then, I have been on stage at a whole array of events.

meridian
Private Client LLP Solicitors

For further information, contact Jon Croxford on 01675 442430 or email: jon.croxford@meridianpc.co.uk
www.meridianprivateclient.co.uk

Meridian Private Client LLP, Wood Rydings Court, Packington Lane, Little Packington, Warwickshire CV7 7HN