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MERIDIAN PRIVATE CLIENT LLP

A specialist law firm focused on clients' specific needs:

- Estate planning and long-term tax planning for entrepreneurs and high net worth individuals
- Trusts and wills
- Contentious probate and trust disputes
- Tax planning for internationally mobile individuals.

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Special Tenth Anniversary Edition

We are celebrating the tenth anniversary of Meridian Private Client LLP. We thank our clients and friends for their support over the last decade.

Meridian Private Client LLP partners Drummond Kerr, Jon Croxford and Philip Harrison.

A DECADE OF CHANGE MAKES PLANNING EVEN MORE IMPORTANT

By Philip Harrison, partner at Meridian Private Client LLP

Since Meridian was formed just ten years ago, the climate for estate and long-term tax planning has changed beyond recognition.

In 2005, the inheritance tax (IHT) threshold ('nil rate band') was £275,000. This figure was to increase to £325,000 by 2009 and there it has remained with no further review scheduled until 2020/21. Some surveys suggest that this threshold is now lower than the average house price in the South East. To give further context, many houses in the UK have doubled in value in the last decade despite the financial crisis of 2008.

Some see the failure to increase the IHT threshold sufficiently as a cynical form of stealth tax as it has led to more and more being brought into the IHT net. However, at least 2007 saw the introduction of the transferable nil rate band between husbands and wives and civil partners. In consequence it is no longer essential to utilise the nil rate band of the first to die at that time (although it is sometimes still desirable to do so).

The additional 'residence nil rate band' for family homes, announced in the July Budget, will provide some relief but this will be limited. It will only benefit those with children or grandchildren to whom they wish to leave their property and it will be phased out for estates where the total assets exceed £2m. This relief is considered on page 4.

In any event, the increasing burden of IHT has persuaded many more people to take an interest in minimising the tax burden.

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But there is another reason to plan carefully and with appropriate specialist advice. The last ten years have probably seen more fragmented families, with divorce and second and subsequent marriages becoming even more of a norm while challenges to Wills have also become more common. Asset protection has become more important, for example, in the face of children's divorce settlements. No parent wants to see wealth being lost to the immediate family.

So, trusts have received more attention, unsurprising given that they are often the most effective way of ensuring that family wealth is protected in the long-term.

Nine years ago, a major change in the taxation of trusts made it much harder to create new lifetime trusts without incurring an immediate IHT liability.

The move also meant that most trusts set up after March 2006 were subject to periodic IHT charges every ten years (albeit at a maximum rate of only 6 per cent) and pro rata exit charges when assets are distributed between ten year charges.

Despite this, trusts have a major role to play in managing and protecting the wealth of families and they are not just beneficial for wealthy people or where disabled children or dependants are concerned.

Generally, the pace of change has increased once again more recently and there has been some good news. For example, individuals are now allowed to pass on substantial pension funds without an undue tax burden arising. Also, the key income and capital gains tax advantages of individual savings accounts ('ISAs') can now be inherited by a husband or wife following the death of one of them though IHT is still potentially payable.

We can also take comfort from the fact that some key IHT reliefs including business property relief for private business owners and agricultural property relief have survived.

Also in the area of long-term tax planning, entrepreneurs' relief, which was first introduced in 2008 and reduces capital gains tax on private business sales to ten per cent, has also remained in place. Although still not as generous as taper relief, which it replaced, entrepreneurs' relief has been extended substantially over the years.

At Meridian, we still find that those potentially eligible for these reliefs do not always do enough on an ongoing basis to make sure that eligibility is maintained so that the benefits are ultimately secured.

In another key area of interest for Meridian, from 2008 on, the rules affecting internationally mobile individuals living in the UK with non-domiciled status have been inexorably tightened. Recent changes are discussed on page 3.

Looking ahead to the next decade, given the state of government finances, it seems unlikely that IHT and related tax burdens will be reduced overall. Wills and other areas of overall planning should be reviewed regularly as changes occur in circumstances or the taxation and legal backdrop.

We expect the next decade to be just as busy as the last!

Peter Gate

SURPRISE RULING APPEARS TO INCREASE THE CHANCE OF A WILL BEING OVERTURNED

By Peter Gate (associate) and Vicki Bennett (solicitor) from Meridian Private Client LLP

It is not often that Wills and legacies hit the headlines, as they recently did when the Court of Appeal appeared to undermine the fundamental principle that people can leave whatever they want in their Will to whoever they like.

In what appears to be a landmark case, though an appeal is possible, the court awarded £164,000 to the estranged adult daughter of one Melita Jackson, who died in 2004.

This was in spite of the fact that Mrs Jackson had stated that she did not wish to benefit her daughter, instead leaving everything to charities, with which, the court concluded, she did not have a close connection.

The ruling that one third of Mrs Jackson's estate should go to her daughter was a surprise given that mother and daughter had been estranged for many years and the latter was not financially dependent upon her mother. However, the court heard that the daughter had no wealth of her own and was in receipt of state benefits, a fact that would have influenced the judgement.

The case will cause concern to any parents who choose to disinherit their children for any reason. It is possible that this will happen more often in families in the future, especially as families become more fragmented. It is also not unknown for some parents to leave children out of their Will on the basis that they feel they have provided enough financial support to their children during their lifetimes.

Before this latest ruling, adult children who were not financially dependent on their parents found it difficult to claim that 'reasonable provision' should have been made for them in a Will.

If you choose to disinherit children, you will now need to explain why and demonstrate some connection with the persons or organisations you have otherwise chosen to benefit. It is essential that anyone wishing to disinherit children, or leave only a modest amount to them, should take specialist legal advice at the time of making the Will.

A specialist solicitor will be able to discuss and reduce the risk that a claim might be made so that an individual's wishes are carried out. A claim can be damaging in terms of legal costs as well as the amounts involved. Appropriate wording will make the Will more robust and reduce the chances of a successful claim by aggrieved sons and daughters that reasonable provision should be made for them whatever the Will says.

THE CHANGING FACE OF NON-DOMICILE TAXATION

By Jon Croxford, partner at Meridian Private Client LLP

Jon Croxford

The first Budget of the new Conservative Government included proposals which, if enacted, will see all non-UK domiciled individuals ("non-doms") taxed as though they are UK domiciled once they have been resident in the UK for 15 out of the last 20 years. This is set to take effect from 6 April 2017.

The Government is currently consulting on a number of implementation issues. Unfortunately, the points on which the Government is inviting comment address relatively minor issues; suggesting that the main thrust of the proposed changes is very much a done deal.

Whilst a lot of the detail remains unclear and may do so for some time, what we do know is that the new 15 year rule will apply for income tax, capital gains tax and inheritance tax purposes. For inheritance tax purposes, this will replace the current rule whereby an individual becomes deemed domiciled in the UK after 17 years of residence.

Importantly, this will remove the ability to claim the remittance basis of taxation in respect of foreign source income and gains after 15 years of residence. However, up until that point, it will be possible to claim the remittance basis of taxation, subject to paying the existing £30,000 remittance basis charge after 7 years of residence and £60,000 after 12 years. The £90,000 charge which currently applies after 17 years of residence will become obsolete.

The 15 year rule will also mean that anyone who lives in the UK from birth will automatically be treated as UK domiciled before they become an adult. Up to now, it has been relatively common for second generation migrants to the UK to be able to claim non-dom status.

The proposed new "boomerang" rule will also mean that someone with a UK domicile of origin who leaves the UK and, unusually, manages to lose their UK domicile status will automatically reacquire it if they return to the UK. Given that old case law on domicile was widely interpreted as giving the same result, it isn't obvious that this was a loophole which needed closing.

The Government has also announced their intention to allow offshore trusts established by non-doms to retain their tax favoured status provided they are set up before the individual becomes UK domiciled under the 15 year rule. This window of opportunity will allow non-doms to review their affairs and even establish new trusts as appropriate.

New rules will determine the level of tax charge on benefits received from offshore trusts once the non-dom settlor has been UK resident for 15 years. The proposal is that that the full value of the benefit will be taxable rather than only he amount which can be matched with previously untaxed income and gains within the trust. Whilst this could simplify the tax compliance process, it will in many cases also increase the tax liability.

Finally, it remains to be seen how the new and old offshore trust rules will interact. In theory, the old rules would continue to apply until the 15 year mark is reached and also to some offshore trusts not within the scope of the new rules e.g. where the settlor is non-UK resident or dead. It is, however, possible that the Government will decide to effectively abolish the old rules and apply the new rules to most or all offshore trusts.

NEW FAMILY HOME RELIEF UNNECESSARILY COMPLEX

The additional inheritance tax (IHT) threshold for family homes (or 'residence nil rate band') is not all good news for hard working families.

IHT is currently charged at 40% on assets over £325,000 for an individual and £650,000 for a married couple. Over the next five years, this threshold will in some circumstances increase to £500,000 for an individual and £1m for a married couple. So, what is there not to applaud in this change?

- The new rules only cover the situation where a property was at some stage occupied by the individual concerned, so cannot be used to reduce IHT on rental properties
- The property must be left to direct descendants including children, stepchildren and grandchildren. It does not, for example, apply in a situation where an individual leaves his or her home to brothers or sisters, nieces or nephews. If you do not have children then the relief will not be available.
- The relief, which is withdrawn gradually where the value of the estate exceeds £2m, only comes into operation for deaths after April 2017 at a level of £100,000, hitting £175,000 only by 2020/21.
- The planned review of the 'normal' £325,000 nil rate band has been postponed from the planned date of 2019 to 2020/21, 12 years after it was last increased.

It will be possible to preserve the relief even if a family home is sold when a couple 'downsizes' as they get older. However the rules here are complex and advice will need to be taken to ensure that the relief can be claimed on death.

Peter Gate, an associate at specialist private client lawyers Meridian Private Client LLP, said: "The new rules are complex, discriminating against childless couples and in favour of those with direct descendants to whom they want to leave the property.

"In addition, the enhanced allowance does nothing for people with substantial assets but little or no property, a situation which we often encounter.

"It would have been simpler and fairer to raise the £325,000 nil rate band threshold to £500,000 each".

Vicki Bennett, a solicitor at Meridian Private Client LLP, said: "This additional relief comes in the wake of other recent (and largely helpful) tax changes associated with the passing on of pension funds and individual savings accounts.

"On the face of it, the extra IHT allowance could be said to simplify matters but the reverse is true – as a result it is more important than ever that advice is taken and that existing arrangements are reviewed to avoid missing out on the relief".

The content of this newsletter is not a detailed statement of all the law on the matters referred to. Specialist advice should be taken from ourselves in all cases.