

November 2021

## newsletter

01

by Jon Croxford - [managing partner](#)

Welcome to our latest newsletter following the recent Autumn Budget.

The much-anticipated rise in capital gains tax rates did not materialise and, as a result, you could be forgiven for thinking that there were no tax rises. Of course, that isn't the full picture, and the reality is that as a nation we are now taxed more heavily than we have been for years.

The increased tax burden comes from many sources and reflects frozen tax allowances and exemptions across a range of taxes for individuals and businesses and sits against a backdrop of rising inflation.

In September, we also saw a 1.25% increase in National Insurance for all employees from April 2022, together with a matching 1.25% increase in the dividend rate of tax from April 2022.

There is debate about whether these increases are really to pay for the impact of Covid or a change in Government policy and the growth of the State. In any event, we have entered a period of higher taxation that may continue for some time, although the Chancellor's supposed aim is to reduce the tax burden by the end of this parliament in December 2024.

In other news, we were delighted to be named in The Times newspaper's Best Law Firms 2022 list; commended by our peers in the Inheritance & Succession category. To be recognised as one of the best legal practices in England and Wales is a testament to the quality and service delivery of the team at Meridian.

We continue to see HMRC and probate offices responding slowly. In reverse, however, there seem to be an increasing number of HMRC enquiries, in particular relating to undeclared overseas income and gains.



The world is becoming a much smaller place and tax authorities now talk to each other to cross check information and obtain information from banks and investment managers. When HMRC match up the information they obtain from various sources against tax returns and find omissions, this may prompt an enquiry. Whilst there is often an innocent explanation, an unexpected letter from HMRC can be unsettling and should not be ignored!

### in this issue

- 01 welcome
- 02 the end of the story?
- 03 family investment companies
- 04 bite size news
- 05 controversial success fees
- 06 q&a with Drummond Kerr



# The end of the story?

by Vicki Bennett - partner



A Will is often thought to be 'the end of the story' in determining how an estate should be distributed following death, but that need not always be the case.

It is common for the last Will of a loved one to be outdated, inefficient for inheritance tax (IHT) purposes or for beneficiaries' circumstances to have changed since the Will was made. Furthermore, a family member might pass away without leaving a Will and the intestacy provisions are unlikely to accord with what the beneficiaries collectively want to happen.

In such situations, beneficiaries who are happy to alter their inheritance can enter into a Deed of Variation to change the effects of the Will or intestacy and redistribute the estate in accordance with what they would like to happen.

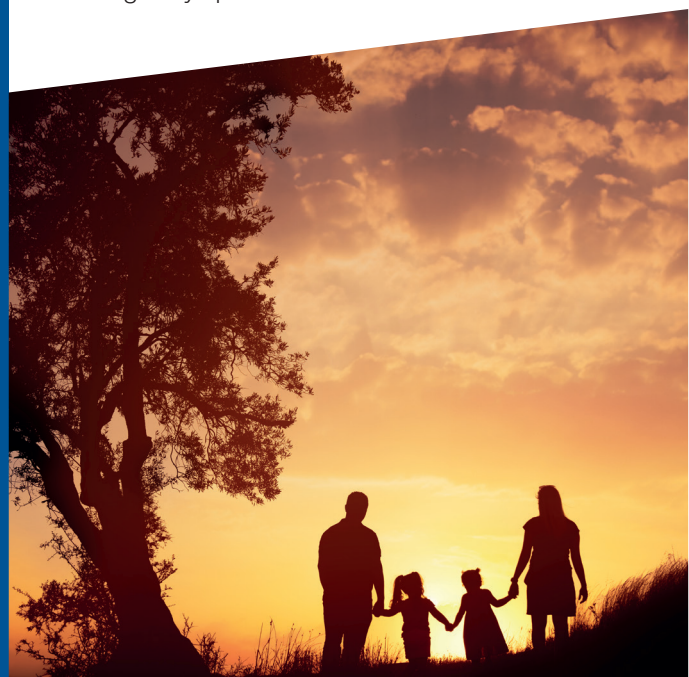
One of the reasons for doing so is often to achieve a better IHT position for the estate than would be the case if the Will or intestacy were to stand. As long as certain formalities are met and appropriate tax elections are made within two years of the date of death, the redistribution of the estate is instead read back for both IHT and capital gains tax purposes as if it were the deceased who had made the gifts on death. This avoids

the recipient of an inheritance having to make a gift to which the normal seven year rule would apply for IHT purposes.

As a result, Deeds of Variation are commonly used to skip a generation where parents do not need the money (already being financially secure) and wish to pass the funds direct to their children or even grandchildren without any IHT implications for the parents.

**A potentially attractive variation on this theme is to redirect the inheritance to a family trust. This trust can benefit the beneficiary who redirects their inheritance as well as their wider family.**

A word of caution is that many take the view that Wills do not need to be kept up to date in the belief that a Deed of Variation can always be used to solve a problem after death. It should, however, be borne in mind that there are certain situations, particularly involving minors, where a Deed of Variation cannot be used. In addition, it is quite possible that the beneficial IHT treatment of Deeds of Variation will be removed at some point. Therefore, whilst sometimes very useful, they should not be relied upon as a general panacea and Wills should continue to be regularly updated.





# Keeping it in the family

By Eamonn Daly - partner



Following concerns over lack of knowledge on how Family Investment Companies (FICs) are used, HMRC created the Family Investment Unit in April 2019 to conduct risk reviews of them.

HMRC reportedly told the Financial Times that it was doing a "quantitative and qualitative review into any tax risks associated with them [FICs] with a focus on inheritance tax implications....".

But what is a FIC and why was it deemed necessary to investigate the concept in the first place?

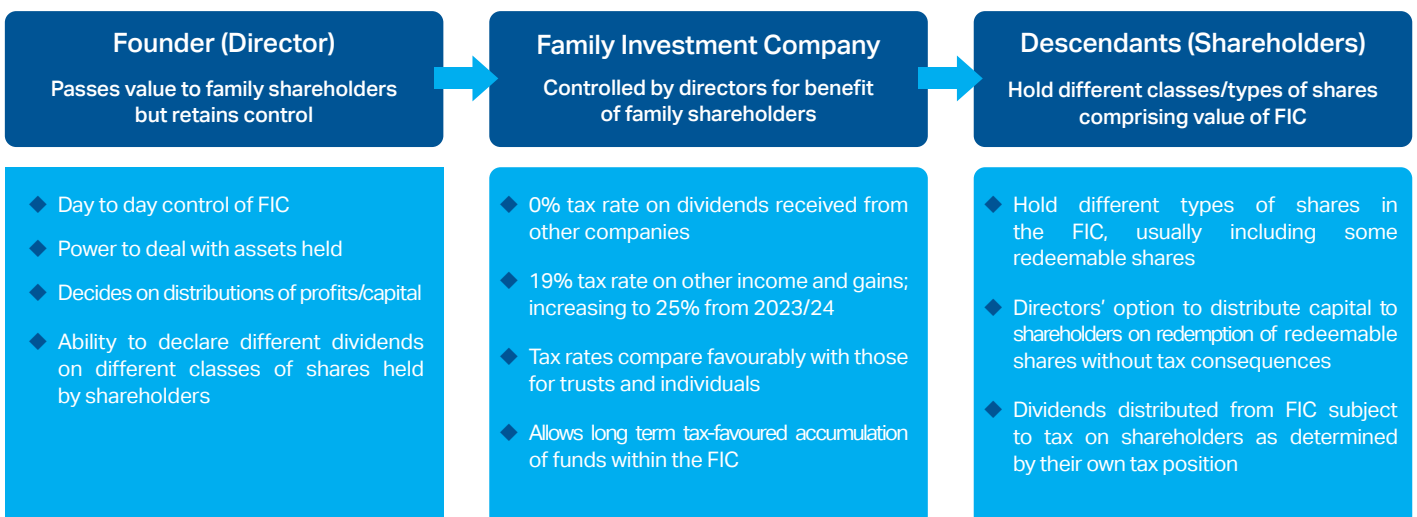
## FICs at a glance

A FIC is a well-known and legitimate company structure that has become increasingly popular with high-net worth individuals. In one sense it is simply a family-owned company holding investments, but the term "FIC" has become synonymous

with a particular form of company structure which allows individuals to pass substantial value out of their estate whilst maintaining control over the assets transferred which are then held for the benefit of their family. The use of a FIC avoids the initial inheritance tax charge which would otherwise be suffered on a transfer of large sums to a trust. As such, a FIC can be seen as an alternative to a trust, albeit with various pros and cons.

A company structure bespoke to the family's circumstances is created. This is primarily achieved through the company's articles of association and a shareholders' agreement. Like any other company, it has filing obligations and is registered at Companies House.

The image below illustrates the interdependencies within a typical FIC:



# bite size news



In some FIC structures, the founder will retain a financial interest and may even lend funds to the company allowing the tax-free extraction of profits via repayment of the loan.

## Compliance with UK tax laws

A FIC follows a standard company structure and the normal corporate tax rules apply. With this structure comes the same tax advantages and benefits, as well as disadvantages, that apply to all companies. Concerns that a FIC has the potential to be a model for tax avoidance caused HMRC to quietly create its Family Investment Unit with the main aim of exploring whether this is the case and the risks of tax loss through avoidance using FICs.

In reality, FICs are primarily used as a means to protect family wealth rather than for any unacceptable tax avoidance purpose. As with a family trust, the use of a FIC provides a measure of asset protection to safeguard wealth from, for example, future generations using it unwisely or losing it through divorce or insolvency.

## Outcome of review

Following a two-year investigation, in May 2021 HMRC's Wealthy and Mid-Sized Business Compliance Directorate confirmed that the review found no evidence to suggest that there was a correlation between those who establish a FIC structure and non-compliant behaviours.

Furthermore, it concluded that those using FICs were no more inclined towards taking steps for tax avoidance.

It was recognised that a FIC was a planning strategy, the primary purpose of which was to transfer wealth between generations and the mitigation of inheritance tax.

The outcome appears to be that FICs will be assessed by HMRC using normal principles and not specifically targeted for future investigations.

## Consultation for proposed probate fee increase closed

A consultation by the Ministry of Justice into a proposed increase and standardisation of probate fees closed in October. At time of writing, the Consultation was proposing an increased, single rate probate fee of £273 for all estates, regardless of value.

Professional industry bodies have published responses questioning the timing of the proposed fee increase, following criticism of the quality of HMCTS's service. STEP and the Law Society are two examples of organisations suggesting that fees should only be reviewed once service levels show signs of improvement.

Subject to the official response to the Consultation, any new fee is anticipated to come into force in early 2022.

## Autumn Budget brings change to CGT reporting

Since April 2020 it has been necessary to report capital gains realised by individuals and trustees on the disposal of UK residential property within 30 days of completion of the disposal. This does not apply to fully exempt disposals but that is often difficult to determine, for example, where large amounts of land are involved. Any tax due had to be paid within the same timeframe.

The 30-day time limit was proving to be a logistical problem for many taxpayers and their advisors and, after some lobbying, the Chancellor announced in the recent Budget that the 30 day time limit was to be extended to 60 days with immediate effect.



# Success fees cause controversy

05

by Mark Terrar - partner



Last month the Court of Appeal in *Hirachand v Hirachand* EWCA Civ 1498 made the decision that a claimant may be allowed to recover a success fee paid under a conditional fee arrangement (CFA) from an opponent in an

Inheritance (Provision for Family and Dependants) Act 1975 claim. This controversial decision undermines the 2013 Government reforms preventing claimants from recovering success fees in most forms of litigation.

## The claim

*Hirachand* was a claim by an adult child for reasonable financial provision from her late father's estate. The claimant, Sheila, was aged 50 at the time, had two young children, suffered mental health problems and had not worked since 2014. Her elderly mother, Nalini, inherited her late husband's entire estate. Sheila's solicitors agreed to fund her claim by way of a CFA (commonly known as a 'no win, no fee' agreement).

Initially Sheila was awarded just under £139,000. The controversial element of the decision was that Cohen J also awarded her 25% of the CFA success fee, amounting to £16,750.

This decision was made on the basis that it was a liability Sheila owed to her solicitors, which would otherwise have been unrecoverable. Whilst Cohen J accepted that parties strictly could not be ordered to pay an opponent's success fee, this was weighed against the fact that the purpose of an award

under the Inheritance Act was to fulfil the claimant's financial needs. Any reduction in the award would affect the claimant.

## The appeal

Nalini was debarred from the trial due to her failure to acknowledge service and comply with other Court orders. She was not legally represented. Nalini appealed on numerous grounds, including that Cohen J's decision did not follow legislative policy.

The Court of Appeal dismissed the appeal stating that a success fee could be treated as a debt of the Claimant and therefore the Court could make provision for it, although it was stated that it will not always be appropriate to make such an order. The Court should be satisfied that the only way in which the Claimant could have been able to litigate was via a CFA.

## Correct decision?

Given that Section 3(1) of the 1975 Act requires the court to have regard to an applicant's current and likely future financial needs, it is in many ways a logical and fair decision.

Claimants will welcome this decision. By their very nature, claimants in Inheritance Act claims are often in difficult financial positions and the difficulty in funding litigation will have prevented many meritorious claims being advanced or left claimants with large liabilities to their solicitors for a success fee.

This is, however, a troublesome decision for defendants, who now face the estate's value being reduced even more if a success fee is included in the award. This brings into sharper focus the need to engage in some form of alternative dispute resolution e.g. mediation. It should also give defendants food for thought as to what tactics they can deploy to engage with claimants about success fees at an early stage i.e. to avoid this additional liability.

CFAs historically have allowed certain claimants to advance weak claims. This ruling makes it likely that CFAs will become more commonly used in Inheritance Act claims and bring a return to difficulties of the past where the process is abused by unscrupulous claimants.





## Q&A with Drummond Kerr

06

Drummond is a Partner at Meridian Private Client and is founder of the firm.

### What was the inspiration for establishing Meridian in 2005?

The legal marketplace changed considerably in the 1980s and 1990s and it was clear to me that there was a need to rethink the traditional approach to private client work. By 2000, the general practitioner had all but disappeared. Larger legal practices became global in scale and, within ten years, the firm I joined in 1989 had grown from a headcount of 500 to over 5,000 through mergers and acquisitions.

By 2005, larger commercial firms were investing in other areas of law and the smaller general practices could not offer the depth of technical expertise needed. The answer seemed to be a specialist practice, dedicated to offering private client advice only – and so Meridian was born.

### How has the firm changed over the last 16 years?

Meridian Private Client LLP was formed on my dining room table and the initial registered office was my home address. We did, of course, have office premises when we opened for business and we began with four specialist private client lawyers and an office manager. We quickly learned that there was more to running a small office than just advising on legal matters (and it does indeed take four lawyers to change a lightbulb). Fast forward 16 years and we have a team of 35 with a mixture of lawyers and other pure tax specialists from a range of different backgrounds.

### What has been your career highlight so far?

There are two highlights for me. The first was simply qualifying as a solicitor (which was far from simple). From a young age I had wanted to be a solicitor – something to do with the fact that they seemed ‘important’ – and to achieve that goal, coming from a humble ‘Brummie’ background, was quite an achievement for me.

The second is to see the development of Meridian and to have been part of that growth. We have a fantastic team, of which I am immensely proud, and I am pleased to have played my part in creating that.

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

My wife’s response to this was: “you don’t”. I do find it difficult to switch off, but I also have many interests outside of the day job.

I am fortunate to have a very close and supportive family and that has been a real anchor for me over the years and I enjoy spending time with my wife and family.

I love watching rugby, supporting my local club and following the internationals. My wife is also a keen supporter and we combine holidays with Rugby World Cup tournaments – which have taken us to places such as New Zealand and Japan. We have already purchased tickets for the next World Cup in 2023 to be held in France.

Scouting gave me an interest in outdoor activities, and I was a venture scout leader until my late 20s. I still enjoy camping, cycling and canoeing and a few years ago my wife and I did a five-day canoe trip in Canada where we did not see a house or road for the entire journey, camping and cooking on open fires. It was great!

### If you could choose anyone, who would be your mentor?

I have two quite different individuals. Ranulph Fiennes, for his indomitable spirit and sheer will power to get through the most difficult of challenges, and Nelson Mandela (another lawyer). I still marvel at his ability to bring together a nation that was completely divided and to bring an end to apartheid peaceably. I also think that he was the inspiration behind South Africa winning the Rugby World Cup in 1995!

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