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recent developments

by Jon Croxford - partner

In these extraordinary times, it is clear that many people are reassessing their priorities in life.

The safety and well-being of those nearest and dearest to us have always been of the utmost importance but, for many, the coronavirus has put this into greater perspective than ever before. It is natural, therefore, that we have seen an increase in clients wanting to review their estate planning to ensure that their affairs are in good order for the benefit of their family should the unexpected happen. We understand the need, now more than ever, for estate planning and succession arrangements to be reviewed and proper documentation put in place, including Wills, to give effect to such wishes. We are continuing to work very much as normal and can assist with the signing of legal documentation and Wills where required. This is expanded upon later in this newsletter.

I am also delighted to announce that Meridian has been shortlisted as a finalist for the prestigious Tolley's Taxation Awards 2020 in the category of Best Private Client Tax Practice. As a private client practice which specialises in tax planning, this covers our advice for clients on inheritance tax as part of their estate planning, capital gains tax advice for shareholders on reorganising or selling businesses, complex residence and domicile planning, onshore and offshore trust advice, as well as dealing with the annual tax compliance process for individuals and trusts.



Being shortlisted for this award is a recognition of the exceptional team that Meridian has built up over the years and our growing reputation in the region and nationally. It also reflects the multi-disciplinary approach that we adopt in being able to bring the right tax and legal specialisms to bear on whatever issue we are assisting our clients with, drawing from our team of talented solicitors and tax specialists. The virtual awards ceremony is due to take place on 14 May.

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executing a will during social distancing

by Peter Gate - partner

As the coronavirus inevitably brings into sharper focus the need to make appropriate arrangements to pass assets on to one's chosen beneficiaries on death, many people are reviewing their Wills and related documents.


Whilst social distancing presents practical challenges to executing a Will, these may be overcome. For a Will to be legally valid, there are specific requirements that must be met at the time of execution, namely:

- ▶ The Will needs to be in writing.
- ▶ The Will needs to be signed by the person making the Will (the testator) in the presence of two independent witnesses (who must be present at the same time).
- ▶ The witnesses must each sign the Will in the presence of the testator.

There is talk of the process being modernised, potentially allowing electronic signatures for example, but this has yet to be introduced and rapid change is perhaps unlikely even in the current situation. While the existing requirements are relatively simple to follow for a professional supervising a testator signing their Will, things can go wrong when the signing is unsupervised. If a Will is not properly executed, it is not valid and does not determine the succession of the testator's estate. This can have serious repercussions, such as the testator's intended beneficiaries not inheriting. There is also an increased risk of Wills being challenged after death.

One of the biggest challenges in the current environment is that two independent witnesses are required for a Will signing. As the law disqualifies a witness (or their spouse or civil partner) from benefitting under the Will, often those we live with cannot act as witnesses.

Solicitors are, however, "key workers" for this purpose and may still make visits to execute Wills. This ensures a Will is properly signed and is particularly useful where concerns may later be raised about the capacity of the testator as the courts place



considerable weight upon the opinion of an attending solicitor. To cater for appropriate social distancing, Wills are now being witnessed through a window, from the opposite side of the same room or by neighbours witnessing from the safety of their own driveway or garden. Maintaining line of sight is crucial to help rebut any suggestion that the Will was not signed in the presence of the witnesses.

Once signed by the testator, the Will needs to be passed to the witnesses, or left in a place that they can easily access, so that they can add their signatures in the presence of the testator. Additional record-keeping of the circumstances of the execution of the Will would also be advisable.

The witnessing requirements become more difficult when someone is confined to bed or self-isolating. However, with practical experience and by liaising with medical staff, it is often possible to make appropriate arrangements. For example, Wills can even be signed by someone else at the testator's direction but great care is required.

The current restrictions highlight some of the practical difficulties that can be encountered in making a valid Will but should not be a reason for not doing so at this time. Once the current restrictions on social interaction are lifted, the importance of writing a Will before ill health or other complications intervene will, no doubt, be better appreciated.

silver linings

by Natasha Smith - partner

One of the side effects of the coronavirus pandemic is that the value of many shares and securities quoted on stock markets worldwide have taken a sharp downward turn. Connected to this, share values in many unquoted companies will also be low, as are likely to be some property values.

However, there is a silver lining in every cloud and low asset values do create tax planning opportunities.

Where assets are standing at a loss as compared to the tax base cost, a disposal could be made to trigger the loss which can then be set against capital gains of the same or future years.

A note of caution is that attempts to artificially trigger losses by disposals of assets direct to connected parties (eg relatives) will create losses which are restricted in use. However, one possible strategy with quoted investments is for one spouse to sell them on the market and trigger the loss whilst the other spouse immediately repurchases them so as to benefit from any upturn in value.

Now might also be an ideal time to consider making gifts to the younger generations or to family trusts for their benefit. This avoids the sale of an asset at the wrong time but may have some distinct tax advantages. Firstly, there may be little or no capital gain on the asset which may be helpful. Secondly, in the unfortunate event of the donor dying within seven years of making the gift, it would only be the current - low value - of the gift which would be brought back into the charge to inheritance tax.

Finally, now would be a good time for companies to consider issuing share options to key employees under, for example, HMRC's approved EMI share scheme. Current low share values could prove very beneficial to the participants.

Whilst the fall in value of assets is rarely a good thing, now might be the time to consider some of these planning options. It would also be vital for anyone considering the disposal of investments to take independent investment advice.



Lord Templeman: an ironic legacy

by Mark Terrar - partner

Lord Templeman, a retired law lord, died in 2014 leaving behind two sons and two stepdaughters. In the world of Will writing, he is perhaps most famous for introducing the notion of a 'golden rule'.

In a contentious probate case in 1975, Lord Templeman said that in the case of an aged or infirm testator, the will writer should have the making of the Will approved by a medical practitioner who has satisfied himself that the testator has testamentary capacity. How ironic then that the will writer who prepared Lord Templeman's final Will in 2008 did not follow his client's own guidance.

Lord Templeman had two sons from his first marriage. His second wife, Sheila, had two stepdaughters from a previous marriage. Lord Templeman sold his house, gave some of the proceeds to his sons and moved in to Sheila's house, known as 'Mellowstone'. On Sheila's death in 2008, Lord Templeman inherited Mellowstone. A couple of months later, he prepared a Will leaving Mellowstone to his stepdaughters and his residuary estate to his sons. One of his sons challenged the validity of this Will on the basis that Lord Templeman lacked testamentary capacity.

Michael Templeman argued that his father did not remember the terms of a 2004 Will when he prepared his 2008 Will. The son claimed that his father had mistakenly believed that he had left insufficient provision for his stepdaughters. Michael further argued that his father had forgotten that his stepdaughters had already benefitted from a different property in Sheila's lifetime. He argued that his father's memory and general mental capabilities had decreased to such an extent by 2008 that he lacked testamentary capacity.

It was accepted at trial that Lord Templeman probably had the beginnings of Alzheimer's disease by 2008 when the Will was made and that he struggled with his episodic memory in particular.



The claimants and defendants differed in their views as to the effect of this on Lord Templeman's testamentary capacity. The judge held that Lord Templeman had testamentary capacity in 2008. He found that there was evidence that Lord Templeman did recall the terms of his 2004 Will, but that he felt that Mellowstone should stay on Sheila's side of the family. The judge felt that Michael had overlooked the love and affection that his father felt for his stepdaughters.

Importantly, the judge acknowledged that a testator does not need to know the detail of a previous Will and be able to justify why he is changing the provisions, nor does he need to understand the financial positions of beneficiaries when making his Will. He said that the testator must have the capacity to appreciate those persons who have a claim and to decide fairly between competing beneficiaries. Here, the judge found that Lord Templeman did have this ability.

A medical professional gave evidence at the trial. Professor Howard, having reviewed Lord Templeman's medical records, concluded that there was a high likelihood that he retained testamentary capacity at the relevant time. Whilst this evidence was extremely helpful, it was unfortunate that the golden rule was not followed by the will writer when the Will was prepared as that could have given some protection against a claim.

For anyone who has been disinherited and feels that their loved one may not have met the test for testamentary capacity, please contact us as we would be more than happy to discuss your situation in detail.



in the news by
Vicki Bennett
partner

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£1 million inheritance tax allowance for couples

The Residence Nil Rate Band (“RNRB”) was introduced in April 2017 as an additional inheritance tax allowance for an individual leaving their residence to their children or direct descendants.

The RNRB was initially an allowance of £100,000 and has increased by £25,000 each year to the full £175,000 from 6 April 2020. The RNRB is available in addition to the traditional nil rate band allowance (currently £325,000), potentially giving a total individual allowance of £500,000 or combined £1 million of relief for a couple who qualify.

The RNRB is a complicated relief and does not apply to high value estates as the relief is reduced by £1 for every £2 that the value of the net estate exceeds £2 million. Care should be taken to fully maximise the relief, where it is available.

capital gains tax reporting

From 6 April 2020, new reporting requirements came into effect for anyone disposing of UK residential property.

Under the new rules, a CGT return must be made within 30 days of the disposal and any tax liability arising must also be settled in this time. No return will be required where there is a no gain/no loss disposal or where no tax is due.

The new rules are a significant change in reporting requirements for UK residents who would ordinarily report such disposals on their annual self-assessment tax return. It is therefore expected that these new requirements will come as a surprise to many individuals or family trusts who might not have appreciated that they were required to submit a CGT return in this new, much shorter, timeframe.





Q&A with Natasha Smith

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the international tax traveller

What is your role with the firm and how did you come to join Meridian?

I'm a tax partner. My role involves providing our clients with practical tax advice, tailored to meet their commercial aims whilst minimising their tax exposure and protecting their family wealth. I wanted to return to a smaller firm where everyone knows and communicates well with each other and I was excited by Meridian's unique proposition of providing legal and tax private client advice.

What are your biggest professional challenges right now?

Working in a lockdown. It is a challenge having almost the entire firm working remotely. You have to think differently about how to get things done on a practical level. Technology is invaluable!

You're a keen traveller. What has been your most memorable trip and what do you look for most when travelling?

Most recently, my trip to Tokyo for England's Rugby World Cup final. I was fascinated by Japanese behaviours, at least in Tokyo; it's very different, for example, waiting on the kerb for the green man when there is no traffic coming, but it was lovely that no one was in a rush to be anywhere – not what I was expecting. What I look for are a different language, to make communication interesting; and local eateries. In the Seoul food market pictured above, I bought the same food that the South Koreans were buying for lunch. It was served in a paper cup to collect any excess oil. I later established it was probably a mung bean pancake – delicious!

Have you ever got completely lost?

I was trying to travel 265 miles from Yangshuo to Macau. After 14 hours on a bus, I still wasn't at the border, where I thought the bus had been headed. After showing a map of China to many taxi drivers and pointing to Macau, only to be met with confused looks, one nodded and gestured to get in his cab. He stopped on a 6 lane underpass and pointed at a door which led to a stairwell. It was very bizarre and I wondered if it was a portal into the mind of John Malkovich! I arrived at a dimly lit, deserted shopping centre.

It was 6.30am and I just sat, wondering what to do next. At 7am, people started streaming into the shopping centre and up a further staircase.

I followed everyone to the next level to find a border post. My passport was checked, my temperature was taken (SARS, February 2004) and I walked into Macau. Had I been lost? Possibly, as I didn't know that I was almost at my destination but I didn't feel lost, just bewildered!

What are your favourite local dishes and where is the one place in the world that you want to visit the most?

Steamed dumplings in Beijing, steak in Argentina and, of course, Champagne in Epernay! My next booked trip is to Uzbekistan in October, where I plan to travel around the country by train. I first fell in love with train travel when I spent 7 days on the Trans-Siberian – it's such a fantastic way to see a country. As for many people at the moment though, the one place I want to visit most in the world is much closer to home - my mum's house.

What has given you the greatest satisfaction in your working life?

I can't pick one thing. My work is incredibly interesting; tax law is always changing and no two client scenarios are the same so there is always something new to research and learn, which makes for a very satisfying career.

If you could choose anyone, who would you pick as your mentor?

Sir David Attenborough. His perseverance in bringing so much of the natural world to our screens and his enthusiasm and knowledge for his subject is inspiring.

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