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Meridian expands its tax and contentious expertise

by Drummond Kerr,
partner at Meridian Private Client LLP

Left to right: Jon Croxford, Natasha Smith, Mark Terrar, Mark Abrol, Emma-Louise Green and Drummond Kerr

Drummond Kerr

The year so far has been one of significant change for Meridian. The practice has grown considerably in size (more on that below) and we have refreshed our branding and launched a new website.

At the start of January, Natasha Smith joined us as a tax partner from a large Midlands accountancy practice and has previously spent a considerable period of time with one of the "Big 4" accountancy practices. As well as advising individuals on their personal tax affairs, Natasha has a specialism in shareholder issues and corporate transactions such as exits, mergers and demergers. To support our growing tax offering, a new tax manager, Cathy Moore, has also just joined the firm.

As touched upon above, in April we went through a process to refresh our branding and update our website. We have had very positive feedback and, in particular, hope that our website is easier to use and gives a clearer picture of the services we now offer and how we deliver them.

In recent years we have been conscious of an increase in the amount of litigation in the private client arena. Common areas of dispute include Inheritance Act claims against an estate, eg, where a potential beneficiary feels unfairly treated. This appears to be connected to the rise in value of the average estate and family structures becoming more complex. Challenges relating to a deceased's testamentary capacity are also more prevalent with people living longer and incidents of dementia and related conditions increasing. In addition, disputes do sometimes arise between the trustees and beneficiaries of family trusts.

As a result, Meridian recognised a need to be able to deliver first class advice in contentious situations such as these. At the start of May, Mark Abrol joined us as a partner, together with his team who all worked together previously and specialise in contentious trusts and probate work. Mark is supported by Mark Terrar, senior associate, and Emma-Louise Green, associate. All of the team are members of the Association of Contentious Trusts and Probate Specialists (ACTAPS), the leading professional body bringing together specialists in this field of law.

Meridian's highly experienced solicitors and tax specialists gives us a unique offering and we look forward to continuing to work with our valued clients and contacts.

This Issue...

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Family investment companies – the new estate planning panacea?

by Natasha Smith, partner

Natasha Smith

There is a lot of talk about family investment companies (or FIC's) and you could be forgiven for thinking that this is a new type of investment vehicle and the answer to everyone's tax and estate planning problems!

The reality is that a FIC is no more than a company which holds investments and, to that extent, there is no real magic. Many families have, for example, been holding property portfolios through the medium of a company for many years. The real difference is that it has become attractive to hold quoted investment portfolios through a company and, whilst this has some advantages, it can bring significant technical complexity.

There are perhaps two main reasons why FICs have become popular. Firstly, historically, wealthy families would often hold large investment portfolios in trust so that assets could be passed down the generations. However, the inheritance tax rules around family trusts were changed in 2006 such that this has become difficult to do. Secondly, companies have the attraction that the rate of corporation tax is currently 19% and is set to fall to 17% in 2020. In addition, most dividends received by a company are not taxable. This means that a company can be used to roll up investment income and gains at low rates of tax so that the portfolio value can grow faster than would otherwise be the case.

In structuring a FIC, the family may want to pass value down to younger generations whilst retaining overall control. It may also be desirable for income generated within the FIC to be capable of being distributed in a targeted manner to certain family members.

For example, if a parent funds the FIC, the initial funding could be by way of a loan to the FIC so that future profits of the FIC can be used to repay the loan effectively tax free. The parent may, however, be happy to pass a significant proportion of the shares in the company to children and this could involve giving a separate class of share to each child so that dividends could be targeted at one or more of them. If the parents wish to retain control despite giving a large proportion of the shares to children, this can be achieved. In catering for all of this, however, it is necessary to step around numerous tax traps for the unwary.

The attractions of using a FIC can be significant but there is no one size fits all solution and a real understanding of the family objectives, as well as the complex tax rules, is required in order to be able to structure a FIC appropriately.

Does a diagnosis of dementia mean someone cannot execute a valid Will?

by Emma-Louise Green, associate

Emma-Louise Green

With people living longer, often with deteriorating mental capabilities, and with the average size of an estate increasing, questions around mental capacity are becoming more common.

The recent case of ***James v James*** (2018) revisited what is required to meet the test for testamentary capacity. In 2007, Mr James, a farmer, gave some land to his daughter. In 2009, he transferred some land and his business to his son, Sam. He then made a Will in 2010 leaving his estate to his daughters and his wife, excluding Sam. After Mr James passed away, Sam brought several claims against his father's estate including a claim that he lacked testamentary capacity to execute the Will.

The Court held that, despite the enactment of the Mental Capacity Act 2005 which provides a statutory mental capacity test, the common law case of ***Banks v Goodfellow*** (1870) remains the correct test for testamentary capacity. The tests set out in this old case are as follows:

1. A testator must understand the nature of a Will and its effect;
2. He must know the extent of the property of which he is disposing;
3. He must be aware of who may reasonably be expected to benefit from his estate; and
4. He must not be suffering from any disorder of the mind that poisons his affections towards a potential beneficiary and must be free from insane delusions that affect his decision as to who he benefits.

In ***James vs James***, both experts at the trial agreed that Mr James suffered from a moderate dementia. They agreed that he satisfied some of the ***Banks v Goodfellow*** requirements but differed as to whether he had the capacity to appreciate the differing claims of his children on his estate.

It was clear that Mr James' mental faculties had deteriorated and that he suffered with confusion and memory loss. However, the solicitor who prepared the Will said he showed no signs of confusion or ill health when she took instructions from him albeit that some of his behaviour was unusual. As she met Mr James on more than one occasion, she was able to compare his behaviour in later meetings to earlier ones. She maintained that he retained testamentary capacity. The Court agreed.

Some sufferers of dementia, or other mental conditions, do lack testamentary capacity. It is a progressive disease so varies in its severity and impact.

> ***"At the time of making a Will, it is down to the solicitor to decide whether the testator retains testamentary capacity but a medical opinion may be obtained as guidance."***

Specialist legal advice should be sought by individuals to ensure their affairs are properly managed and testamentary wishes documented.

Cross border estates

by Vicki Bennett, senior associate

Vicki Bennett

It is increasingly common for people to hold assets situated in multiple jurisdictions. This can range from holiday homes, cash or investments held outside the UK, shares in offshore companies and may even extend to interests in foreign trusts. Administering an estate that includes interests outside of the UK can be complex and is often frustrating for personal representatives dealing with assets in other jurisdictions.

A significant issue can be the recognition of personal representatives in other jurisdictions. In England, we have a clear distinction between the role of the personal representatives in administering the estate and the rules of succession that govern who is entitled to the estate. However, many civil law jurisdictions do not recognise this distinction with assets passing directly to the beneficiaries, subject to the deceased's liabilities for which the beneficiaries often become liable.

Where clients have assets in multiple jurisdictions, consideration should be given to the rules that apply to the administration and succession of their foreign estate. In particular, we recommend that clients consider whether they need to put in place a separate Will to cover assets in another jurisdiction as opposed to relying on a UK Will to cover all of their assets.

When determining whether a separate Will is required in another jurisdiction, there will be a number of factors that need to be taken into account, including:-

- The ease with which another jurisdiction will recognise a UK Will;
- The principles applicable to the administration of the estate in that country;
- The need to comply with any forced heirship provisions that apply in the foreign jurisdiction and whether these can be disapplied;
- The tax consequences of dealing with worldwide assets under a UK Will; and
- Ensuring Wills in multiple jurisdictions dovetail.

It is important that thought is given to the above and proper planning undertaken during the lifetime of a person with foreign assets.

> ***"Personal representatives often face a number of complex practical and technical issues that they need to address before they can actively deal with foreign assets following death."***

For instance, there may be some queries over the country in which the assets are situated for tax and succession purposes, the residence and/or domicile status of the deceased, and the interpretation and effect of any double taxation agreement in place with a country in which assets are situated. It is also important to ensure that there is no conflict between the succession rules and any Wills the deceased may have in other jurisdictions.

We have significant experience in advising clients on planning for how their worldwide estate should be dealt with on death and ensuring appropriate measures are taken to facilitate this. We often liaise with existing advisers in other jurisdictions to ensure this is dealt with as efficiently as possible. In addition, we regularly act for personal representatives appointed following the death of a person with assets situated outside the UK and are happy to advise them on their duties in dealing with a worldwide estate.

A view from the top...

Over forthcoming editions of the newsletter we will be including an informal interview with different members of the team. In this edition we talk to one of our partners, Jon Croxford.

Climbing in Provence, France

What is your role with the firm?
I've been a partner in the firm for over four years and specialise in tax planning. I am a Chartered Tax Advisor with almost 30 years of experience in the profession and, prior to joining Meridian, most of my career was spent in the large international accountancy practices. Although I am not a solicitor, the firm has approval from the SRA for non-solicitors to act as partners.

How did you get into tax?
I studied Geology and Geophysics at university, so a career in tax seemed the obvious choice! In reality, a dip in the oil industry meant that interesting job opportunities in geology were limited and, as I didn't see myself staying in academia, decided to find a "proper" job. I've never regretted the choice and would recommend a career in tax to anyone with an enquiring mind.

What has been your most memorable climbing challenge?
When I was considerably younger (and fitter) I did a fair amount of mountaineering in the Himalaya and the Andes. Summit days at high altitude involve getting up at midnight to climb in the cool of the night whilst the snow and ice is still solid. It can be quite surreal and is always hard work but summiting a big peak can be a surprisingly emotional experience.

Slightly closer to home, I also recall being caught out in an electric storm with my climbing partner high up on a rock route in the Alps. To escape off the route, we had to make sixteen consecutive 150 foot abseils in rain, lightning and carrying a lot of metal climbing gear. Keeping a clear head, teamwork and being methodical were vital to staying alive.

What is your most challenging piece of work currently?
For the last couple of years I have been working on a large and complex cross-border estate with difficult tax and legal issues. Apart from being a technical challenge, it has shown me the strengths of our practice in bringing together tax, legal and litigation specialists for the benefit of our clients.

Do you have any claim to fame?
My current claim to fame is that I am on the front cover of the rock climbing guide to Tremadog, a fantastic area for climbing on the edge of Snowdonia. I've had some of my best days climbing there and it feels like a second home to me.

Does climbing teach you anything about wider life?
Contrary to popular belief, not all climbers are daredevils with no concept of their own mortality. Most climbers I know are very conscious of risk and the reason that so relatively few serious accidents occur is probably because the process of learning to climb teaches you how to manage risk. That's a skill which translates directly into many work environments, even the tax and legal profession!

What are your biggest professional challenges?
The biggest change we have seen in our industry in the last few years is the introduction of legislation such as CRS and FATCA to force taxpayers and their advisers to hand over information to governments worldwide. This deliberately places a large administrational burden on professionals and their clients but the real impact of the data collection is yet to be seen.

If you could choose anyone, who would you pick as your mentor?
Neil Armstrong, the first man on the moon. The pioneers of space travel were a breed apart and I'd like to learn how they coped with such extraordinary pressure and risk; getting to the moon and back (half a million miles) in such a basic vehicle with less computing power than a current day washing machine.

What do you like most about your job?
Working with a great team of people. It's a rare day that I don't have a laugh with them and learn something new.

What is your guilty pleasure?
80's rock music. Someone has to keep the spirit alive!

Jon Croxford

In the news

Who is your executor?

There has been recent adverse public comment on the sums being charged by banks for fulfilling their role as executors of an estate. This highlights the need to periodically review Wills to ensure that they remain appropriate. We are happy to carry out independent reviews and to advise on the choice of executor as part of that process.

Office of the Public Guardian – LPA Fees

As the number of people registering Lasting Powers of Attorneys ('LPAs') is now in the region of 3 million, the Ministry of Justice has been compelled to repay its unintended profits made on registration fees charged before 1 April 2017, when fees were reduced. Refunds of between £34 and £54 (plus 0.5% interest) for LPAs that were registered between 1 April 2013 to 31 March 2017 can now be applied for by the donor of the LPA, their attorney or their executors if they have died. Claims can be made by post, telephone or online at https://claim-power-of-attorney-refund.service.gov.uk/when-were-fees-paid.

Budget changes to Entrepreneurs' Relief (ER)

October's Budget brought changes to ER which restrict its availability. Two further tests must now be met for shareholdings to qualify: shareholdings must entitle the holder to 5% of the profits available for distribution and 5% of the assets of the company on a winding up. This change became effective on 29 October and may impact on shareholders in companies with more than one class of share. From 6 April 2019, the period for which qualifying shares must have been held is increased to two years from one year.