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Inheritance Tax Planning and the Prime Minister

Written by *Mikhala Leak, Senior Associate, Wills & Probate*

When David Cameron's father died, he left an estate worth £2.74million. In accordance with his Will £300,000 passed to the PM, a £1million property passed to his daughters and the remainder of his estate passed to his wife.

Four years before Mr Cameron Senior's death, he also transferred his family home worth £2.3 million to his eldest son as part of a house swap arrangement. A year after Mr Cameron Senior's death, the PM received a further £200,000 from his mother.

The PM has been highly criticised for this £500,000 'tax free' inheritance but it is perfectly legitimate inheritance tax (IHT) planning and highlights the benefits of such planning.

Current IHT rules dictate that a person's estate is subject to IHT to the extent that it exceeds the IHT Nil Rate Band threshold, currently £325,000. Anything in excess of this amount is subject to 40% IHT.

The value of any assets passing to a spouse or civil partner in a Will or on Intestacy (being the rules that apply where there is no Will) is exempt from IHT. This is the case no matter how great the value passing and therefore any assets passing to the PM's mother from his father's estate will not have been subject to IHT.

The gift of his property made by Mr Cameron Senior to his eldest son during his lifetime will have been taken into account when calculating the IHT due on his estate. This is because the gift was made within 4 years of Mr Cameron Senior's death and is therefore a failed Potentially Exempt Transfer (a 'PET'). A PET is a lifetime gift made which only becomes chargeable and will use up all or part of the donor's (i.e. the person making the gift) IHT Nil Rate Band if that donor dies within 7 years of making that gift. If the donor survives the gift by 7 years then its value falls outside of the estate for IHT purposes and the full IHT Nil Rate Band remains intact.

There is a relief available to the amount of tax payable on a failed PET which reduces the amount of tax payable. The relief is called Taper Relief and the reduction in tax is based on a sliding scale of 0% to 100% depending upon the number of years between the gift and the death of the donor. The longer the donor survives after making the gift (subject to surviving at least three years), the lower the IHT. This means that the amount of IHT payable on the gift of Mr Cameron Senior's home to his eldest son is likely to have benefited from a reduction of between 20-40% of the IHT payable, depending upon the exact date upon which the gift was made. Furthermore, the fact that Mr Cameron Senior and his eldest son swapped houses may also have reduced the value of the chargeable gift.

The assets passing to Mrs Cameron Senior from her husband's estate will not have been taxed when passing to her from the estate. However, if she continues to own them at the date of her death they will be subject to IHT to the extent that their value exceeds the available Nil Rate Band. However, it is likely that further IHT planning will help to reduce that tax. Mrs Cameron Senior would appear to already be taking action to reduce the value of her estate for IHT purposes by passing £200,000 to the PM during her lifetime. Again, this gift will be a PET and therefore if Mrs Cameron Senior survives that gift by 7 years it will fall outside of her estate for IHT purposes saving in the region of £80,000 IHT. However, if she dies within 7 years, it will be taken into account when calculating the IHT due on her estate as it will use part of her IHT Nil Rate Band.

There are other IHT exemptions and reliefs available and with some forward planning, the IHT payable on an estate can be drastically mitigated. To find out more about what you can do to reduce your IHT bill, it is worth seeking advice from a member of our Private Client team.

For further information, please contact Mikhala Leak on 01767 680251 or email mleak@woodfines.co.uk

Financial Disclosure – Setting Aside a Consent Order and the need for transparency in Divorce Proceedings

Written by *Jackie Jessiman,*
Fellow Chartered Legal Executive, Family

In the case of AB V CD – High Court of Justice Family Division 2016, the Court once again addressed the need for full and frank financial disclosure in Financial Remedy cases and how the Court should approach non-disclosure.

The case involved an application by a former husband in financial remedy proceedings to set aside a consent order on the basis of an allegation that, at the time of the agreement, his former wife failed to make full and frank disclosure in relation to a company of which she was both a director and shareholder.

The parties separated after a short marriage and financial remedy proceedings ensued. The husband was a successful venture capitalist, whilst the wife was an entrepreneur and CEO of 'B Ltd', a technology company founded and incorporated by her with liquid assets totalling £5.4million. These included the former matrimonial home in South Kensington and a country home in Oxfordshire.

The court's attention was drawn to fraud and non-disclosure. Here, whilst the wife disclosed as much as she felt able to in relation to a valuation of B Ltd, the continuing negotiations with investors was highly relevant. The Court determined that whilst there were no issues of fraud and understood the difficulties the wife had in relation to evidence from B Ltd and confidentiality within the proceedings, the Court found that there was incomplete and misleading information. This was viewed as a material non-disclosure and thus the application to set aside the original Consent Order was granted.

Why is Financial Disclosure so necessary in Divorce Proceedings?

In order to for the Legal Adviser and ultimately the Court to have a true picture of the financial position in a case and to understand the extent of the value of the assets and liabilities, full and frank disclosure is required. Without it, a fair distribution of the assets cannot be made.

In this type of case, it is usual for there to be a complaint that full disclosure of the financial position has not been made and there is no means for the complaining party to obtain such information in support of the case. The question of how sensitive information from third parties can be kept confidential also arises.

In all cases, the Court must pay attention to the extent to which disclosure is needed and/or made and how proportionate this is to the issues to be determined; otherwise there will be a disproportionate amount of costs incurred in the process. A lack of pertinence in the disclosure process can very often result in there being a non-disclosure issue.

The costs involved in obtaining expert evidence is often feared and avoided, but ultimately necessary. Seeking expert evidence at the outset of the case is invaluable.

The Court clarified that in relation to the information produced by way of disclosure within Financial Remedy Proceedings that there is a duty of confidence which exists between the court and the parties. The information remains entirely private, and the party making the disclosure will not be exposed to the risk that any order flowing from an agreement or court order made at the conclusion of contested proceedings may be liable to be set aside in the future. In cases of extreme commercial sensitivity, the information can, if the court considers it necessary, be protected by means of an injunction.

It is important for everyone to be vigilant as to the tactics of hiding assets or misleading as to their value, whether intentional or otherwise, with a view to minimising the available capital to be distributed. In this case, the husband sought disclosure from B Ltd which was rewarded with an insight into the nature of the investment being made. Evidence came to light as a result that this was an equity investment rather than a loan and as such added significant value to the company which affected the overall outcome.

Transparency in Financial Remedy Proceedings – still in the limelight

There is an overriding need for transparency in any financial remedy case and this should not be unduly clouded by the parties' intent to seek agreement. The relevance of any particular line of questioning regarding disclosure should be agreed wherever possible to limit lengthy and drawn out queries of no relevance and thus keep costs proportionate.

It is the job of a lawyer to ensure that the parties are fully aware of the consequences of agreeing to Financial Orders without there being full and frank disclosure by way of a Form E in most cases. The summary statement used with Consent Orders is clearly inappropriate in cases where there are assets which require a degree of scrutiny, particularly where businesses and companies are concerned.

It remains difficult to overturn a Financial Order once made unless there is a specific and relevant event which has taken place in close proximity to the Order being made. With the help of guidelines in cases of this nature, we are better able to determine at the outset of a case what issues are particularly relevant in the disclosure process and should be explored.

For further information or advice, please contact Jackie Jessiman on 01223 411421 or email at jjessiman@woodfines.co.uk

A change of direction for prosecuting motorists for speeding?

Written by
Nathan Taylor-Allkins, Solicitor, Crime & Regulatory

Motorists will be all too familiar with the various speed cameras implemented by the police and local authorities to reduce drivers' speed and improve road safety. Some may have even experienced the dreaded feeling of seeing a flash behind you whilst driving, and waiting nervously for a letter from the police to drop onto your doormat.

We often provide advice to motorists caught by newly installed or mobile speed detection devices. Regrettably, the fact a camera has recently been installed offers little mitigation. It is, therefore, interesting to learn that a police force in Gloucestershire has implemented a unique approach to tackling the ever present issue of speeding. Could this be a sign of things to come for motorists throughout England?

In February 2016, following the installation of an Automatic Number Plate Recognition (ANPR) camera in a 30mph section of the A46 in Gloucestershire, almost 25,000 vehicles were clocked speeding along the road – in just a single week. But rather than fining or prosecuting the drivers (which reportedly would have totalled a whopping £1,996,960), police instead wrote to some of the drivers telling them to slow down and modify their behaviour. The initiative was introduced by Stroud's road safety working group together with the Police and Crime Commissioner for Rodborough and, of the 94,912 vehicles which passed through the trial area in a week, 24,962 were exceeding 31.5mph.

An 'official' speed camera will now be installed in the same position and the police will revert back to the status quo regarding fines, penalty points and prosecutions.

The county's Police and Crime Commissioner has reported that the initial responses to the experiment are positive and a change in driving behaviour from those contacted by the police can be seen. It is, of course, difficult to truly quantify such changes in behaviour given the number of variables involved. It is also not clear whether the ANPR camera was given the same signage and livery as a standard speed camera as this may have affected the results. What is clear, however, is that it is refreshing that police forces and local councils appear willing to make genuine attempts to tackle speeding behaviour and focus on road safety rather than simply relying on speed cameras to fund their budgets and balance the books.

We will have to wait and see whether other police forces or councils will adopt similar schemes in the future. It would be very interesting to know whether any of the 25,000 motorists were on 9 penalty points (i.e. at potential risk of disqualification under the 'totting up' procedure had they received a further 3 penalty points taking them to 12 penalty points within a three year period) and have been given a reprieve. However, as things stand, unless you were one of the lucky few travelling in Stroud given a second chance, it is unlikely that any future letter from the police will be a warning for you to slow down but will instead be a Notice of Intended Prosecution.

So, what should you do if you receive a letter from the police alleging a speeding offence?

As a general rule:

- If you are the registered keeper of the vehicle then you will receive a Notice of Intended Prosecution (also known as a 'Section 172 Notice') within 14 days of the alleged offence
- You then have 28 days to respond to the Section 172 Notice and nominate who was driving at the time
- You may then be offered the chance to undertake a speed awareness course if eligible
- Alternatively, you may receive a Conditional Offer of Fixed Penalty (fine and penalty points)
- In some circumstances, you may receive a summons to attend court.

The key to dealing with an allegation of speeding is to act quickly. Failing to respond to a Section 172 Notice within 28 days is an offence in itself (for which you may receive 6 penalty points and a fine of up to £1,000). You may have questions about the speeding allegation itself; whether you should contest the allegation or if any defences are available to you; how you should deal with difficulties in responding to the Section 172 Notice; what the possible impact on your licence could be if you already have penalty points, etc. The list goes on and the Crime and Regulatory team at Woodfines are experienced with answering these questions and assisting motorists at every stage.

An ability to drive is essential for many people in all walks of life and the issue of speeding can be hugely contentious. Clearly, the best advice is to drive within the speed limits but should a letter from the police come through your letterbox, ensure that you take the right road and speak to us.

For further help or advice, please contact Nathan Taylor-Allkins on 01908 202150 or email ntaylorallkins@woodfines.co.uk

Firm News...

Appointments and New Starters

At the beginning of April, Woodfines saw the appointment of two new Partners, and three new Senior Associate Solicitors:

Charlotte Benjamin, a Commercial Property specialist in the firm's Sandy office, and **Karl Dembicki**, who is an expert in Wills, Trusts and Probate matters in the firm's Cambridge office, both have been appointed following positions as Senior Associates at Woodfines.

Meanwhile, solicitors, **Claire Dunn** and **Suzanna Stephenson**, both were appointed as Senior Associates with the firm from the beginning of April.

Finally, experienced solicitor, **Esther Marchant**, has joined the Wills & Probate team in Bedford. She brings with her over 30 years of experience in writing Wills, Lasting Powers of Attorney, estate planning, probate administration, trusts and other related issues.

Charlotte Benjamin

Karl Dembicki

Claire Dunn

Suzanna Stephenson

Esther Marchant

Upcoming Events...

Saturday 21st May
Bedfordshire Young Farmers' Rally
Join us for lunch at this year's Beds Young Farmers' Rally (pre-booking required)

Thursday 26th May
Road Transport Conference
IWM Duxford, Cambridgeshire

Wednesday 1st June
Bedford Business Lunch
Star Rowing Club, Bedford

Friday 8th July
Woodfines Golf Day
John O'Gaunt Golf Club

Sat 16th – Sun 17th July
Bedford River Festival
The Embankment, Bedford
We will again be present at this year's River Festival, with information and activities for all!

For further information on all of these events, please visit www.woodfines.co.uk/events or email Nicola at noloughlin@woodfines.co.uk