Welcome to the first edition of our newsletter in 2017

After a year of international political change, we expect another equally interesting year ahead. We will be watching the Brexit developments, not least the Supreme Court judgment which is due soon. The new Trump administration in the US will have repercussions for international relations, tax regulations and immigration rights across the globe.

The Autumn Statement outlined changes coming into effect from April, including a reduction to the pensions money purchase annual allowance, an increase to the Junior ISA and Child Trust Fund limit, corporate tax reduction and the usual raft of anti-avoidance and evasion provisions. We have provided a summary of the key points on our website: www.rlb-law.com.

We will see some significant changes for the tax treatment of non-domiciled individuals from April. A summary is available on page 4 and we have created a separate booklet with more detailed information and advice. Please do get in touch if you would like us to send you a copy, or indeed if you would like some advice in advance of the introduction of these changes.

We are delighted to announce that we have two new joiners at the firm: Paul Lindsey, who has launched a dedicated practice for private clients in South Wales, and Jarmila Entezari, who can provide expert UK immigration advice for individuals and organisations. You can read their professional profiles on page 7.

With our new South Wales practice and many of our solicitors living outside of London, please do let us know if you would like us to visit you at home or your office. We are always pleased to discuss home visits so as to make our services as convenient as possible for you.

In this issue, we cover:

- Digital assets in Wills
- Divorce and reasonable needs
- Non-dom reforms from April 2017
- Payments in lieu of notice
- The role of a charity trustee

We hope you find this newsletter interesting and informative. Do let us know if you would like us to feature any topics in the next edition, or of course discuss any concerns you have about legal matters.

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In this issue:
Digital assets in Wills • Divorce and reasonable needs • Non-dom reforms • Payments in lieu of notice • The role of a charity trustee
Digital assets in Wills

The use of digital platforms such as online banking, Paypal, gaming accounts, Bitcoin accounts, cloud accounts to store photographs, and social media accounts such as Facebook and Instagram continues to grow and is creating a new category of personal property – a ‘digital asset’ which is broadly defined as anything that you may own or have rights to that exists online or on a hard storage device. Many of these digital assets have financial or sentimental value and people must ensure that their personal representatives know about the assets and can access them to administer their estates on their deaths.

Currently, English law does not adequately deal with what happens to these assets on the death of the account holder. The duties of the Internet Service Providers (‘ISP’s) post death, as the custodians of the assets, are not clear. Further complicating matters is the fact that many of the content providers’ servers are based outside the UK, so there is nothing to compel the content providers to give personal representatives access to the assets and the area could become entrenched in conflicts of international succession laws.

The main basis for the content providers refusing access to digital assets is that in most cases, the underlying content of the digital asset is not owned by the individual. The view of most ISP’s is that the service that the individual has purchased is merely a personal, non-transferable licence, which is specific to the deceased individual and allows them to use the content during their lifetime. A typical example: music purchased on iTunes cannot be transferred by gift or on death. Each content providers’ terms and conditions will dictate what happens to those assets on the death of the account holder, and how much access the personal representatives will have in order to administer that asset. Most of these terms and conditions forbid the sharing of any online content, such as by way of a bequest in a Will.

However, for those digital assets which are capable of being bequeathed in a Will, the potential for loss to an estate if they are overlooked means that it is crucial for people to consider what will happen to them on their death, and whether their personal representatives will even have knowledge of them.

Typically, individual assets are not be specified in a Will, and personal representatives rely on a paper trail or their knowledge of the deceased’s assets in order to administer the estate. Digital assets, which could have enormous value, are easier to overlook. For example, the Bitcoin, a virtual asset that can have substantial financial value, is saved in a password protected digital ‘wallet’. If the wallet, the password or the device on which the wallet is stored are lost, the asset, and its value, is lost permanently.

It is not advisable to leave passwords or information about your digital assets within a Will. There are a number of services, which will keep a secure record of your assets within a ‘virtual safe’, but the use of these portals is not without risk or cost.

A better alternative would be to leave a detailed log of your digital and non-digital assets to be stored alongside a Will. This should be updated regularly, and will be made available to the executors on death to provide them with the information they need to administer and access these assets, or to contact the content providers where the terms and conditions prohibit a personal representative from accessing someone else’s account. It is also advisable to regularly download any items of sentimental value such as photographs or emails.

The executors will then be able to access the accounts and retrieve photographs or other sentimental items, or to report and collect in assets of financial value, before closing the accounts down, or requesting that the content provider closes them.

It is also interesting to explore going forward what the scenario is when a digital intangible asset is stored on a tangible physical device, such as a hard drive. You may recall the significant loss to one unwitting digital entrepreneur who discarded a digital storage device in clearing out his room in Newport, South Wales. The device contained some of the first bitcoins ever developed and in the sharp rise of this new currency the mishap ultimately caused the poor chap to throw away £4.5m into a land fill site!

Clearly as this area grows, the definition of ‘asset’ will need expanding to reflect an ever digitalised population and the increasing value which these assets hold; content providers will need to address the issue of how these assets can be accessed by the personal representatives and any value preserved for the estate.

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In the event of a dispute between a husband and wife as to the distribution of capital assets upon divorce, the matters to which the Court is required to have regard to the 8 factors set out in Section 25 of Matrimonial Causes Act 1973. These include:

- The financial needs, obligations and responsibilities which each of the parties to the marriage has or is likely to have in the future; and
- The standard of living enjoyed during the course of the marriage.

The High Court was recently presented with an extremely wealthy husband (Sheikh Walid Juffali) and his wife (Christina Estrada, a former supermodel) who had been married for 12 years, during which time the husband had paid for them to live a very lavish lifestyle. The wife sought £62.8 million for a home in London, £4.4 million for a country mansion and capitalised maintenance of £127 million. She presented a budget of £6.5 million per year, which included £1 million for clothes, £335,000 for staff and £600,000 for private jets, which was said to meet her reasonable needs and the life she had become accustomed to. The Court was asked to determine her reasonable needs and the extent to which the excessive standard of living enjoyed throughout the marriage should be reflected in their assessment.

There is no definition of ‘needs’ in statute and case law only refers to ‘needs generously assessed.’ It is, therefore, a very broad concept. Every analysis of a party’s needs will begin with their budget, but the Court will consider all the circumstances of the case, in particular by reference to the standard of living during the marriage and the availability of resources.

In Ms Estrada’s case the Court held that, although a party’s needs had to be assessed by reference to the standard of living enjoyed prior to the breakdown of the marriage, it would be the ‘benchmark’ and not the ‘lodestar’. The longer the period during which those needs have to be met, the more likely they would not be assessed on the basis of the marital standard of living, if this had been extravagant.

The Court granted the wife a housing fund of £18 million, but said that she was not entitled to have the marital standard of living replicated. It was not realistic to include provision for a second home and she could not expect to continue to travel by private jet. The Court also held that the wife could meet her reasonable needs with an annual budget of £2.5 million. The total settlement was about £75 million, which is said to be the largest needs award ever made by an English Court.

Of course, not every married couple will enjoy a standard of living quite this high, nor will parties often have such a wealth of assets to divide. RadcliffesLeBrasseur’s family department, however, is able to advise on all issues regarding claims for financial relief, and the associated budgets upon which these applications are based, in cases involving substantial assets, and those where the parties have recourse to only limited assets. The assessment of needs remain fact specific and highly discretionary, but with a working knowledge of case law and how the Courts have approached the issue, the team is able to advise accordingly.

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Non-dom reforms: full steam ahead April 2017!

The UK Government has proposed wholesale changes to the tax treatment of non-domiciled individuals (non-doms) to take effect as of April 2017. It had been expected, that given the wave of uncertainty following the Brexit vote, that the majority of these changes would be stalled until more thought could be given as to the impact.

However, in its wisdom the UK Government is pushing ahead with the April 2017 timetable. We take a look at what this means following the latest consultation and draft legislation produced as of December 2016 and the 2017 Finance Bill.

This update is relevant for almost all of our clients who have an international aspect to their estate, family or assets.

This is an extremely technical area and the implications are far-reaching. Here, we cover the key points to consider. The full details are published in our full update on our website on the Tax and Private Client briefings page.

We also have the details available in a booklet. Please call 020 7227 7277 or email hayley.dove@rlb-law.com if you would like us to post you copy.

It is worth noting that we are still in the ‘Bill’ stage of the legislative process and there will be ongoing professional commentary on the proposed changes up to February 2017. Nevertheless, the detail is incredibly important and if there are any questions then we are here to help; time will be of the essence for many of our clients if planning needs to be reviewed.

The key points:

- No delay, changes to be enacted as of 6 April 2017

- UK ‘deemed domicile’ status to be extended to include personal taxation: Income Tax (IT) and Capital Gains Tax (CGT). This essentially takes away the ability of deemed domiciled individuals to claim the remittance basis of taxation indefinitely

- Deemed domicile status to apply after 15 out of 20 tax years, as opposed to the current 17-20 tax years

- Inheritance Tax (IHT) to be charged on UK residential property held in offshore structures (enveloped structures including closed companies and certain overseas partnerships)

- Pre-existing trusts, and indeed newly settled trusts, set up by non-domiciled and non-deemed domiciled settlers will retain the protection of Excluded Property Trust (EPT) status

- Amnesty on the segregation of mixed funds offshore for a limited period in 2017-18 and 2018-2019 tax years to allow remittance basis tax payers to align their affairs for the new changes

- UK non-domiciled individuals with a UK domicile of origin will immediately invoke their original UK domicile during any period in which they become UK tax resident, irrespective of how short term (this will also impact any EPTs that were established during a period of non-domiciled status)

- Rebasing and remittance provisions to allow those who are caught by the new deemed domicile rules for IT and CGT on 6 April 2017 to rebase their non-UK assets.

What should I do next?

These changes are significant, to say the least. They will impact traditional planning IHT for non-doms involving UK residential property in a major way. It is also likely to mean that all non-doms, past and present, will have cause to review their planning.

The final period of consultation culminated in the current draft legislation and HMRC commentary as at 5 December 2016. However, there is an additional period of commentary now open that ends in February 2017. We expect to see final legislation that will proceed to parliament in the first few months of the New Year.

It will be vital that all those affected by the new rules take timely advice in preparation for April 2017 and certainly we would suggest that this should be as soon as possible in order to provide ample time for due consideration of the issues and then to effect any necessary changes.

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Can a payment in lieu of notice (PILON) be paid tax-free?

In some circumstances, yes, but this may be about to change.

Contracts of employment will often include a clause, which provides that employers can terminate the employment immediately by making a PILON, rather than having to give the full period of notice. The principle reason for this is to ensure that any restrictive covenants remain enforceable. In addition, a contractual PILON can be used to limit the payment to basic salary only and can be used to exclude any bonus or share options, which would have otherwise vested during the notice period.

A PILON made in these circumstances is taxable and liable to NICs.

Where there is no contractual PILON, then the PILON can be paid without deduction of tax and NICs subject to a cap of £30,000.

The position becomes unclear in the following situations.

- Where there is a contractual PILON clause in the contract but the employee waives the right to notice or there is a mutual agreement to terminate early, HRMC will usually still seek to tax a portion of any severance payment equivalent to the earnings of the notice period.

- If the employee claims constructive dismissal, it is arguable whether the payment is damages for breach of contract or a payment under a PILON clause. In theory, if the employee resigns and the employer is in fundamental breach of contract, it is no longer able to rely on any term of contract including PILON clauses and so HMRC should not be able to successfully argue that the payment is made under the PILON clause.

Many employers have the custom of making PILON payments, in the absence of a contractual PILON clause. In these circumstances, HMRC may seek to tax a PILON on the basis that an implied contractual right has arisen. This will occur where the making of a PILON could be said to be an automatic response to a termination.

This current position regarding the tax treatment of PILON is about to change.

The HRMC has published a response document together with draft legislation confirming that, from April 2018, the distinction between contractual and non-contractual PILONs would be removed so that all PILONs will be treated as earnings subject to income tax and employer NICs.

It is proposed that all payments that an employee receives or would have received during their notice period will be taxable as general earnings.

Whilst this is only draft legislation, it is likely that, from April 2018, the position regarding the tax treatment of PILON will change.

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The role of a charity trustee

The role of a trustee in a charity is an important role carrying significant responsibilities which should not be underestimated. Trustees often act in a voluntary capacity with little or no training on what the job entails. To help trustees understand their duties, the Charity Commission has provided helpful guidance and sets out the six key roles of a charity trustee.

1. Achieve the charity’s purpose
   - Understand the charity’s purpose as set out in the governing document
   - Understand how its activities will support its purposes
   - Understand how this benefits the public

2. Comply with the charity’s governing document and the law
   - Understand the governing document and its provisions
   - Understanding charity law and other laws applicable to the charity
   - Take advice when necessary

3. Act in the charity’s best interests
   - Make decisions in the best interests of the charity
   - Ensure that there is no conflict with any personal interest
   - Do not receive any benefit from the charity unless authorised to do so

4. Manage the charity’s resources responsibly
   - Use the charity’s assets solely for fulfilment of the charity’s purposes
   - Do not take any investment risks
   - Take advice when making decisions on behalf of the charity

5. Act with reasonable care and skill
   - Consider your special knowledge or expertise
   - Are you a professional trustee or paid?
   - Recognise when specialist advice should be taken

6. Ensure the charity is accountable
   - Understand the charity’s purpose as set out in the governing document
   - Understand how its activities will support its purposes
   - Understand how this benefits the public

The Charity Commission has produced a guide for trustees entitled ‘The essential trustee: What you need to know, what you need to do’. It can be found here: www.gov.uk/government/organisations/charity-commission.

Please contact Victoria Fairley at victoria.fairley@rlb-law.com or Hetty Maher at hetty.maher@rlb-law.com for more guidance or advice.
We would like to welcome two new joiners to the firm

We are delighted to welcome Paul Lindsey to the Private Client team as an Associate. Paul is based in our Cardiff office and will lead and build a practice advising wealthy individuals and families in Wales.

He has joined from an established South Wales firm, where he led its trusts and estates team. He brings to the firm considerable expertise in estate planning, IHT planning for individuals, businesses and agricultural clients, Court of Protection matters, advice on care fees and powers of attorney, estate disputes, personal injury and disabled persons trusts, and probate.

Jarmila has joined our Employment and Immigration team as an Assistant Solicitor.

Jarmila is an experienced legal advisor on all aspects of UK immigration law, particularly in relation to corporate employers and investors and entrepreneurs wishing to start business ventures in the UK. She also supports organisations with internal training for managers and HR professionals, and preparing for Home Office visits by conducting audits.

In addition to corporate immigration law, she is experienced in private immigration, including British Nationality law and European Economic Area Regulation. She has extensive and detailed knowledge of Home Office policies.

Jarmila is fluent in Slovak and Czech and speaks conversational Russian.