RadcliffesLeBrasseur

PRIVATE CLIENT NEWSLETTER | Spring/Summer 2013

Welcome to the RadcliffesLeBrasseur Private Client Newsletter – Spring/Summer issue

" If we had no winter, the spring would not be so pleasant; if we did not sometimes taste of adversity, prosperity would not be so welcome." – *Anne Bradstreet*

As Head of RadcliffesLeBrasseur's Tax & Private Client Department, I am very pleased to welcome you to our latest edition of the Private Client Newsletter. Spring has been a long time coming this year and as I write this, it is great to see that the sun is shining and there are definite signs of new growth. I hope that this new growth will also provide a kick-start to our economy. As a firm, we are seeing some positive signs in relation to property and business transactions.

Promotions

It gives me great pleasure to announce that there have been a number of promotions within the team and I would like to wish them every success in their new roles.

Victoria Fairley (Partner)

Victoria joined the firm in 1997. She advises on all aspects of private client work including succession and tax planning, wills, the setting up and administration of trusts, powers of attorney and charity law.

Ruben Sinha (Associate)

Ruben has been a member of the Family Department since 2008. He deals with divorce cases and matrimonial finance, acting for a wide range of professional and high net worth clients in cases often involving international elements.

Hetty Maher (Associate)

Hetty joined the Tax and Private Client Department in 2011. Hetty covers a wide range of private client work from succession planning and trusts to both domestic and international probate.

2013 Budget News

We are now well into the new tax year which is a good time for savers to think about tax planning for the current year. Some of the most significant highlights from the recent Budget are as follows:

- Increase in the Personal Allowance: the first £9,440 of earnings will be free of income tax from April, as planned, and further increased to £10,000 in April 2014.
- Reduction in the Corporation Tax Rate: from 21 percent to 20 percent from April 2015
- Tax-free childcare: working parents will get basic-rate tax relief on the first £6,000 of childcare, per child (i.e. a saving of £1,200 a child) from 2015. Families where one member earns over £150,000 a year will not be eligible.
- Help to Buy (equity loan): this Scheme will offer up to 20% of the price of a new build property (up to £600,000 in value) to help buyers reach a 75% Loan-to-Value mortgage. These loans will only be available on owner-occupied properties with capital repayment mortgages (i.e. not interest-only) and will be interest-free for five years followed by a rate of 1.75% rising in line with inflation, repayable at any time in the life of the mortgage or on sale of the property. The scheme was launched on 1st April 2013.
- Help to Buy (mortgage guarantee): this will apply to lenders to encourage them to offer high Loan-to-Value mortgages by providing a guarantee on the high Loan-to-Value part of the loan. Guarantees will be available on any property (not just new build) also up to a property value of £600,000. The scheme is planned to launch in January 2014.
- SEIS: The government has extended the Capital Gains Tax holiday on investments into Seed Enterprise Investment Schemes ("SEIS") for another year. Any investors making capital gains in 2013-14 will receive 50% CGT relief when they reinvest those gains into seed companies in either 2013/14 or 2014/15.

If you need any legal advice, we look forward to being able to help. You can stay up to date with the latest news by visiting our website www.rlb-law.com

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do you trust the kids?!

The imminent arrival of parenthood often instigates a review of finances and estate planning: do I need a Will, do I need life insurance and how can I make provision for the child's future?

The topic of children and estate planning is vast and all of the above issues require careful consideration. However, in this article I will concentrate on the use of a specific form of trust known as an 18-25 trust and particularly how this form of trust may strike a happy medium between protection, tax efficiency and timely inheritance.

Trusts and Children: Objectives

Invariably when planning for our children's inheritance we are concerned with the following objectives:

- Providing for the children
- Protecting assets from third parties
- Protecting children from themselves
- Tax efficiency/planning

These are key considerations when one looks at how and when children may inherit/benefit from assets. The issue will arise to a greater, or lesser, extent in most estates.

1. The Problem

Following the changes to trust taxation in the Finance Act 2006 it is increasingly difficult to plan prudently for succession through family generations. Although it should not come down to a choice between tax efficiency and asset protection, this is often the reality.

If you die when your child is still a minor (under 18), or relatively young, you would wish to provide for that child but not necessarily for the child to inherit large amounts outright. This is of great relevance should both parents die leaving a minor child.

The fact of the matter is that very few people would want their children to receive all of their inheritance at 18. At that age children are often not mature enough to protect themselves from others, or from their own temptation.

2. A Balanced Solution

With the above in mind legislators saw fit to make a partially tax efficient concession in providing an alternative to outright inheritance at 18.

- 18-25 Trusts

In essence this form of trust does exactly what is says on the tin. The trust allows trust assets to be retained upon trust beyond the age of 18 and with a more lenient tax regime than would otherwise be the case under normal trust taxation rules.

The main downside (tax wise) to retaining assets upon trust for a child beyond 18 is the inheritance tax (IHT) implication. Trusts for minors who have lost a parent, in which trust assets do not pass absolutely to the child at 18, will enter the 'relevant property regime'(RPR). That means that there will be ongoing IHT charges every time funds are paid out of the trust (exit charges) and on every ten-year anniversary of the trust (periodic charges). These charges will be at a maximum of 6% on the amount held in the trust over and above IHT tax-free allowance for the tax year in question (currently £325,000).

However, qualifying as an 18-25 Trust takes the trust partially outside of the RPR in that there will be no periodic charges and/or exit charges whilst the minor beneficiary is under 18. After that age exit charges will apply as will a charge at the end of the trust when the child attains 25. However, these charges are lowered to a maximum of 4.2% as opposed to 6%.

In summary this means that funds can be retained upon trust beyond the age of 18 and with a 0.6% charge to IHT for each year beyond the age of 18 that the asset is retained in that trust (to a maximum of 25, or 7 years).

Although it is not ideal that there is still a charge to IHT at all, this is often felt to be an acceptable cost for the additional protection it provides the child and for parental peace of mind.

This form of planning adds a layer of protection and a certain control for the parents beyond the grave. Even in the situation where there is a surviving parent is it is prudent for couples to consider using their IHT tax free allowance on the first death to provide for an 18-25 trust for a child, thereby ring-fencing assets in between first and second deaths (i.e. should the surviving spouse remarry or simply waste the family savings!).

Eligibility for 18-25 Trusts:

- The trust must be established under the Will of a deceased minor's parent and this will include a step-parent, or a person with parental responsibility (although there are also provisions that can create such a trust under the Criminal Injuries Compensation Scheme);
- The trust must provide for the trust assets to pass to the bereaved child absolutely on, or before, the age of 25;
- If trust income and/or capital is distributed during the trust period then it must be exclusively for the bereaved child's benefit

Tax Treatment

- The trust is subject to an exit and final exit charge at a maximum of 4.2% on amounts over the IHT tax-free allowance;
- To the extent that assets are held below the IHT tax-free allowance there will be no ongoing IHT charges;
- Trust income and Capital Gains will be taxed at the trust rates of 45% (37.5% for dividends) (above the savings income threshold) and 28% respectively;
- The Trustees will be able to claim their Trustees' Annual Allowance for CGT purposes;
- Income Tax attributed to payments out to the child beneficiary can be reclaimed depending upon the child's marginal tax rate utilising, in the process, the child's annual income tax allowance;
- Capital Gains Tax hold-over relief can be claimed for gains transferred to the child beneficiary once they attain the age of 25 (or on earlier distribution).

Downsides

- The trust still has a liability to IHT for every year retained upon trust beyond 18 to be paid on withdrawing funds from the trust or at the end of the trust period although limited to 4.2%.
- The trust cannot extend beyond the age of 25 and therefore has limited longer term planning options and tax efficiency.
- The child must inherit on or before age 25, irrespective of the child's circumstances at that age (e.g. bankrupt or going through a divorce).
- The trust will not allow income or capital to be paid out to any other beneficiaries;
- This form of trust may not be best suited for trust funds below the IHT tax-free allowance (currently £325,000). In such cases a more general, and not age limited, discretionary trust would be far more flexible and would not need the tax efficiency offered by the 18-25 trust, as would a flexible interest in possession trust.

3. Summary

The potential for using an 18-25 trust is a very real option for many testators with young children. It is of course impossible to predict how your children will develop and what position they will be in at a future date. It is however often agreed that 18 may be an inappropriate age to inherit. An 18-25 trust will not be the right option for everyone but certainly can add a much wanted level of protection and tax efficiency especially for families with larger estates.

18-25 trusts are of course only one of the options that add to the collective tapestry of considerations in succession and estate planning. This article will be followed by a review in our next update of Trusts for Bereaved Minors.

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don't pack your suitcases yet...

We live in an increasingly international world and the number of children being born into international families has risen considerably. As a result, the often distressing and complex issues of one parent wishing to move abroad with the children is arising more frequently than ever before. It is, of course, always best if parents are able to agree where their children should live. Agreements can be reached either directly between parents, through their solicitors or with assistance of an independent third party, such as a mediator. However, where parents are unable to agree matters, the parent wishing to move permanently to another jurisdiction with the children will have to apply to the Court for what is known as "leave to remove" the children. This is because it is a criminal offence to take children abroad without either the other parent's consent or the consent of the Court. The purpose of this article is to briefly look at the approach of the Courts when a parent makes such an application.

For many years, the leading case for relocation of children abroad was Payne v Payne [2001] EWCA Civ 166. This case involved a British father, a mother from New Zealand and their four year old child. Following the parties' separation the mother decided that she was unhappy living in the UK and applied to the Courts for leave to move back to her home country of New Zealand with the child. She argued that moving to New Zealand would make her feel happier and that having a happy mother was in the child's best interests. The mother's application was allowed in the first instance, after which the father unsuccessfully appealed. In this case, the Court of Appeal stated that "there is no presumption in favour of the Applicant, but reasonable proposals made by the Applicant parent, the refusal of which would have adverse consequences upon the stability of the new family and therefore an adverse affect upon the welfare of the child, continued to be a factor of great weight."

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In deciding the case, the Court set out guidelines and suggests that relocation issues should be approached as follows:-

- Is the mother's application "genuine" in a sense that it is not motivated by some selfish desire to exclude the other parent from the children's lives? If so, the application must be realistic and founded on practical proposals, as well as being well researched and investigated.
- If the mother's application is genuine, the Court should then consider whether the Respondent father is opposing the application because of a genuine concern for the child's welfare or for selfish reasons.
- The Court then must consider what the effect on the mother would be if her application were rejected.
- Of paramount concern is the child's welfare.

Following the check list above, for many years, it was widely believed and accepted that should the primary carer make a sensible and practical application to relocate the children out of the jurisdiction permanently, their application would most likely succeed. Unsurprisingly, the approach and check lists set out in Payne v Payne was met with some criticism in that these guidelines focus on a dated view of family life assuming one parent has primary care and the other parent has very little contact. Since this case, we have now seen a shift in the way the Courts are approaching these applications.

The recent case of Re. K [2011] EWCA Civ 793 highlights a move away from the approach in Payne v Payne and has made clear that the check list provided in that case and set out above is simply guidance and that in every case the welfare of the child is paramount. The case of Re. K involved a Canadian mother and a Polish father. The father moved to the UK in 1993 and the mother in 2003.

The mother and father married in 2004 and had two daughters, aged 2 and 4 at the time. Divorce proceedings commenced in 2010. Both parents were working in the banking industry and neither were working full-time so they could both be fully involved with their children's lives. A shared residence Order had been made in August 2010. During a two week cycle the girls spend five nights with their father and nine nights with their mother. The mother applied to the Court to relocate to Canada to live with her parents, saying that she felt isolated in England and her parents would be able to support her and the children emotionally and otherwise. The father opposed the application saying the relocation would mean he would no longer be able to share the care of the children and his relationship with them would be affected. The mother's application was initially allowed by the Court, who stated that the mother's proposals were reasonable and driven by a genuine motivation. The father then appealed, saying that the first decision was flawed. He argued the Judge only referred to the mother's case without making any reference to his own case. Furthermore, the father argued the circumstances were different to Payne as, in this case, the parties had a shared parenting arrangement whereas the mother in Payne was the primary carer of the children. The father's appeal was successful. The Courts of Appeal agreed with the points raised by the father and explained the only principle that should be taken from Payne is the overriding review of the child's welfare as being paramount.

The case law has continued to evolve and, most recently, we continue to see the Courts adopt an approach more similar to that in the case of Re. K as opposed to a strict application of the checklist set out in Payne. There have been a couple of interesting examples over the last 12 months. The case of Re. L [2012] EWHC 3069 (Fam) involved an application by a father for a Residence Order and cross applications by the mother for a Residence Order and leave to remove the parties' child permanently from the jurisdiction. In this case, the child had already been the subject of Hague Contention (Abduction) proceedings which resulted in an Order for the mother to return the child to the UK from the USA.

The Judge reviewed the existing case law in relation to relocation cases and summarised the current law. The Court, again, emphasised that the child's welfare is paramount. Regard must be had to the welfare checklist (set out in Section 1 of the Children Act 1989), although different weight will be attached to the checklist and that is dependant on the circumstances of the case. The Court also stated that regard must be had to the impact of refusal on the child's welfare, the genuineness of the Applicant's motive and whether or not the proposals for relocation were realistic. In this case, the Judge refused the mother's application. The Judge did not accept that the mother would sustain contact if allowed to relocate and, in any event, did not find that the parents had sufficient funds to sustain such contact. The Judge found that the mother's response to a refusal of her application would not impact adversely on the child's welfare and he accepted the father's opposition was based on the child's welfare and his concerns had substance. The Judge found that the child's welfare required him to have a relationship with both parents to meet his long term emotional and developmental needs which would not be met if relocation was allowed. The Judge made a Shared Residence Order on the basis that there were welfare factors which positively supported a Shared Residence Order and none to indicate that a Shared Residence Order was not in the child's best interests.

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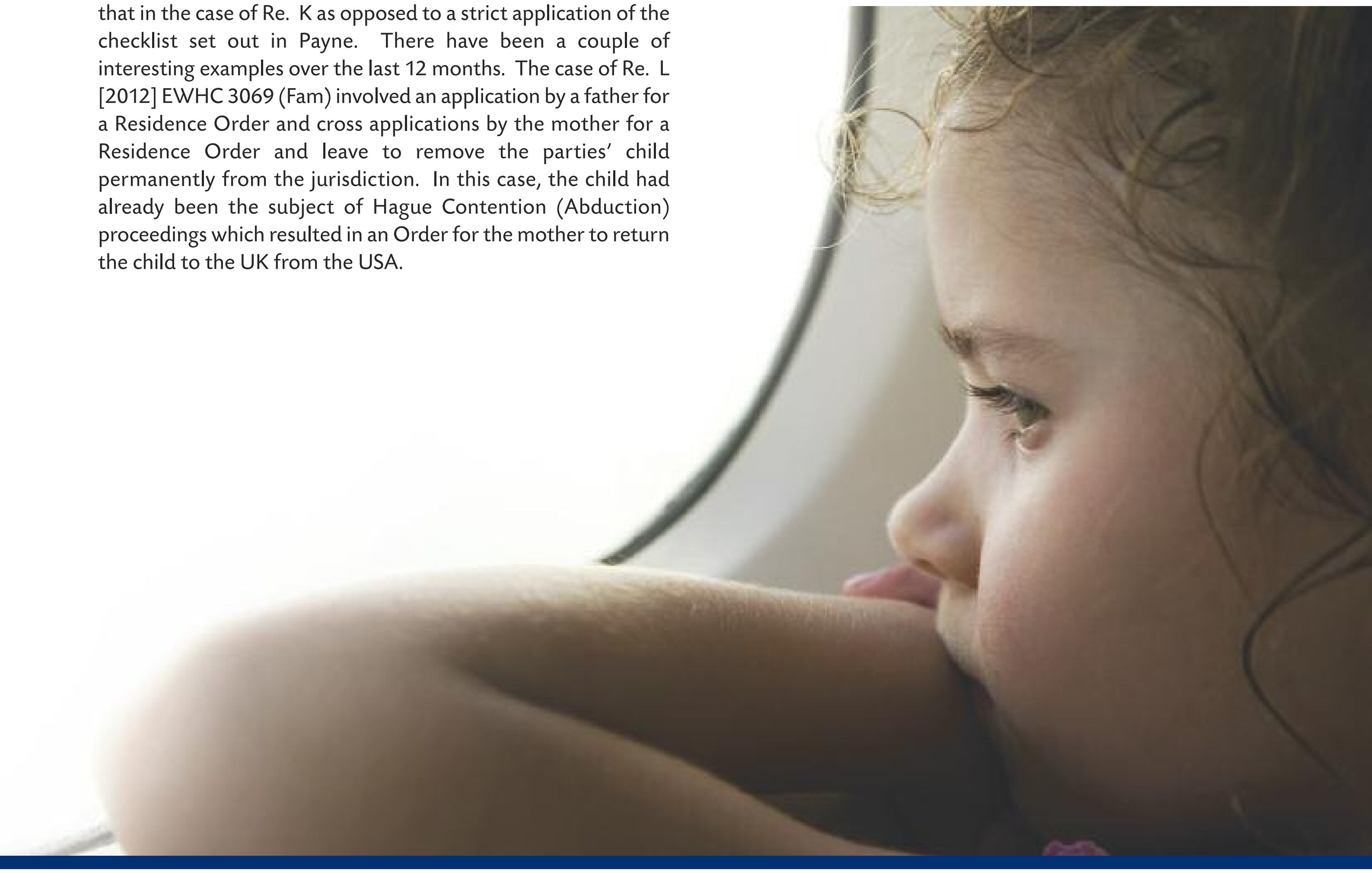

don't pack your suitcases yet... *continued*

In light of the latest case law, is the checklist set out in the case of Payne still applicable? It seems a short answer to this is that the Payne approach may still be considered when a parent who has primary care of the children is seeking to relocate abroad with them. However, it is important to note that the Payne checklist is by no means binding and should only be considered as guidance. It is now clear from the latest case law that the focus of the Court should be on balancing all the factors of the case and assessing what will be in the best interest of the child or children in question. Rather than simply focusing on the suitability of one parent's proposals and a possible effect on the Applicant parent should the application be rejected, the Courts are now refocusing their attention on the child's welfare and giving full consideration to the welfare checklist as set out in Section 1 of the Children Act 1989. What is clear is that there is no longer a presumption of success of such an application, particularly where there are shared care arrangements.

If you are a parent wishing to relocate abroad with your children, it is very important to make full enquires and research where you intend to live with the children and how this is going to work practically. All too often parents focus on how the relocation may benefit them instead of how this will be in the best interests of the children. All of these issues are very important and any parent thinking about relocating should obtain legal advice from a specialist family solicitor before making any application.

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child benefit changes

Are you one of the 1.2 million families that have been informed by H.M. Revenue & Customs that you may lose some or all of your child benefit, if you or your partner has an income of over £50,000? If you did not opt to stop receiving child benefit from 7 January 2013 and avoid the new charge and continue to receive child benefit, you or your partner will need to declare the payments for income tax purposes under self-assessment.

The High Income Child Benefit Charge will be applied against those in a family with the highest income at the rate of 1% for every £100 of income over £50,000, until their income reaches £60,000, when all the child benefit will be charged to that taxpayer. The idea behind the tax charge is that child benefit will be given to the carer, but taken away from the highest earner in the family when the £50,000 limit is reached.

If you think this High Income Child Benefit Charge might affect you, it is important that you contact us as soon as possible. Please speak to Mike Zakiewicz on 020 7227 7375 or any member of the Tax and Private Client Department of this firm.

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shared parental leave: the government's proposals

The Government has announced that from 2015 a flexible system of parental leave will be introduced, the aim of which is to give women more opportunity to return to work.

Introduction

The proposal in a nutshell is that parents will be able share the entitlement to maternity leave and they can do this either by taking time off together, or separately, and they both have the legal right to request flexible working in relation to and following the birth of a child.

Flexible Parental Leave

Since April 2011, fathers and mothers have been able to share some of the 50 weeks' maternity leave in that the father can take up to six months' paternity leave if the mother wants to return to work after the baby is 20 weeks' old.

The Government's proposal will include the following:-

- A mother will take 2 weeks' compulsory maternity leave.
- After the 2 weeks' compulsory maternity leave, it is for the parents to decide who should take the remaining 50 weeks' "flexible parental leave". A total of 39 weeks' paid leave will be available, paid at SMP rates. Mothers will still be able to take the ordinary and/or additional leave or it can be shared by the mother and father taking it in turns, or both parents being able to take the leave together to look after the child. The leave can be taken as long as the total time taken does not exceed what is jointly available to them, i.e. 50 weeks.
- A right to unpaid leave for fathers to attend 2 antenatal appointments.

Request to flexible working

In relation to the right to request flexible working, the current right is as follows:

The employee must

- Have a child 16 and under (disabled child under 18);
- Be the carer of an adult;
- Have worked for their employer for 26 weeks continuously at the date that the application is made; and
- Not have made another application to work flexibly under the right during the past 12 months.

The employee must comply with the following requirements:

- The application must be made in writing and state that it is under the statutory right to apply for flexible working; and
- The application must set out the employee's proposal and explain what effect the employee thinks this will have on the employer's business and how this may be dealt with; and
- The application must set out the start date for the proposed change.

The government has proposed that the right to request flexible leave will not be limited to parents and carers but to any employee who has 26 weeks' service at the time of making the request. In addition the Government has proposed that statutory procedures, which are highlighted above, will be abolished and instead the request for flexible working will be made under the current HR procedure and ACAS will produce a statutory code of practice.

These reforms are good news for working parents as they allow significant flexibility to ensure that both parents can continue their careers whilst ensuring that their loved ones are cared for. If you have any questions in relation to this article then you should contact Sejal Raja at sejal.raja@rlb-law.com

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personal profile – Tim Newsome

How long have you practised law?

I qualified in South Africa in 1978. In 1987 I moved to London and I re-qualified as a solicitor here in 1991.

What is the most interesting case you have ever worked on?

In the 1990s I acted for a family where the assets comprised an estate in South Africa and an estate in Scotland. There were major differences in the family which necessitated a split of assets. South African Exchange Control were involved in sanctioning the family arrangements which were extremely complex as the authorities wished to impose a sale of non-South African assets in order to effect a redistribution. Following many meetings with the Reserve Bank an agreement was reached where no assets were sold and the family ownership of South African and non-south African assets was finally accepted.

What is the most rewarding part of your job?

Working with individual clients to provide solutions to their problems. As a private client solicitor, I enjoy the contact with clients and their families. I consider that my role is to find straightforward and pragmatic answers to questions that concern clients and always to deal with problems rather than postpone them for another day. The answer may not always be a matter of law but a matter of finding a practical way forward.

Snapshot

Favourite Film	The Shawshank Redemption.
Favourite Book	My favourite classic is Great Expectations. More recently I have enjoyed the Sanson books and for absolute escapism Bernard Cornwall. Over the years I have also slowly formed an eclectic collection of books on fly fishing.
Best Holiday	A trip to Antarctica and the Iguassu Falls. The voyage in an explorer vessel was fascinating, the scenery was stunning and the wildlife exceptional.

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We would be delighted to hear from you with any comments or feedback you may have in response to this newsletter. If you have received this newsletter in hard copy and would prefer to receive a copy by e-mail in the future, or vice versa, or you have any other comments or feedback then please contact:

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