RadcliffesLeBrasseur

PRIVATE CLIENT NEWSLETTER | Spring 2015

Welcome to the RadcliffesLeBrasseur Private Client Newsletter – Spring issue

“ I never weary of great churches. It is my favourite kind of mountain scenery. Mankind was never so happily inspired as when it made a cathedral.” – *Robert Louis Stevenson*

We are delighted to announce that RadcliffesLeBrasseur has moved to a new office at 85 Fleet Street, London EC4Y 1AE. The move took place shortly after Christmas and the firm is now based on three floors of this historic building designed by Sir Edwin Lutyens in 1935.

The new location is in the commercial heart of London and close to many of our clients and contacts. The move marks the start of a new era based in the City, the firm having been based in Westminster for nearly 100 years.

The interior of the office is modern, well designed and comfortable whilst retaining many of the interesting architectural features of the original building.

We have exchanged our former view of Big Ben and the Houses of Parliament for spectacular new views over the City towards St Paul’s Cathedral.

We look forward to welcoming you to the new office.

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RadcliffesLeBrasseur
Solicitors

Tax Guide 2015-2016

Settlement Packages – Are they taxable?

If you receive a settlement package when you leave your employment, it is often made up of a number of different elements. The elements that make up the settlement package are treated differently for tax purposes.

When considering the different elements, the starting point is that payments will be subject to tax as earnings unless they come under one of the categories of exempt payments.

Any payments which are made in accordance with the contract of employment will be taxable and will be subject to National Insurance contributions. Examples include accrued but untaken holiday pay, salary, bonuses or commissions.

Any payment outside the contract and which is compensation for loss of office is tax-free up to the sum of £30,000. Any excess of £30,000 is subject to income tax as normal, but is not subject to National Insurance contributions.

Redundancy payments are also tax free up to the sum of £30,000. Any redundancy payments that are in excess of £30,000 will be subject to income tax deductions on the amount that is in excess over £30,000.

Certain payments which completely fall outside the tax regime and are not taken into account in the £30,000 tax-free regime include the following. There is no tax is payable on payments made towards pension contributions and compensation for damages for personal injury, and payment of the employee's legal costs.

Are payments made in lieu of notice taxable?

A common query is whether a payment in lieu of notice (PILON) attracts tax and National Insurance. Employment contracts often provide that instead of allowing an employee to work their notice, an employer can terminate the employment contract immediately and make a payment in lieu of notice instead of requiring the employee to work out the notice. If a payment is made in accordance with such a contractual term, the payment will be fully taxable. If it is custom and practice to provide a PILON, then tax may be payable on the PILON. Therefore, in the event that the contract of employment is terminated, careful consideration should be given to ensure the payment is treated in the most tax-efficient way possible.

If you have any queries, then please contact Sejal Raja on sejal.raja@rlb-law.com.

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Changes to Stamp Duty Land Tax ('SDLT')

From 4 December 2014, the way in which SDLT is calculated on purchases of residential property changed fundamentally.

The new regime calculates SDLT based on 'slices' rather than 'slabs', so that a higher rate is only applied to the proportion of the purchase price that falls within that band rather than on the whole amount. This means SDLT is more progressive and similar to income tax whereas the old rules operated so that one rate would apply to the whole value of the property and £1 difference in the purchase price could change the rate of SDLT on the whole of the price.

Purchase Price of Property	New rates for part of property price in band
£0 - £125,000	0%
Over £125,000 to £250,000	2%
Over £250,000 to £925,000	5%
Over £925,000 to £1,500,000	10%
Over £1,500,000	12%

The new rules apply to all purchases after 4 December 2014 although transitional provisions allow you to choose whether the old rules or new rules will be more beneficial if contracts were exchanged before 4 December 2014.

HM Treasury have stated that the new rules will mean less SDLT for 98% of people who pay it, and mainly for those houses valued at under £925,000. Over that amount many individuals will be paying more SDLT as the rates in those categories are higher than under the old rules.

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Charitable legacies: Wills and Deeds of Variation

Gifts to charities attract favourable tax treatment both in lifetime and on death. In particular, charitable gifts are exempt from inheritance tax. Inheritance tax is payable at a rate of 40% on the full value of an individual's net estate to the extent it exceeds the tax-free threshold of £325,000. However, any gifts to charity will be taken into account and deducted, together with debts and liabilities, when calculating the net estate.

The inheritance tax exemption for gifts to charity is beneficial not only to the charity, which could effectively receive more than they would have received if the legacy was subject to inheritance tax or was passed to another non-exempt beneficiary, but also to the other beneficiaries under the Will because the overall inheritance tax bill is reduced. Essentially, the larger the gift to charity the greater the overall tax saving.

Any type of asset can be gifted to charities without attracting inheritance tax including cash, shares, property, artwork, furniture, books, royalties and collectibles. A legacy to charity in your Will may take the form of a gift of a specific asset or a pecuniary legacy, which is a fixed monetary sum. Alternatively, you may provide for a proportion of your residuary estate to pass to your selected charities.

Charities may also be included as default beneficiaries in disaster scenarios where none of the other beneficiaries you have selected survive. The advantage of charities as default beneficiaries is that they have a greater degree of permanence and therefore make it less likely that all or part of your residuary estate will fail to be fully disposed of under the terms of your Will and thus prevent the need for your estate to pass under the intestacy rules.

A further inheritance tax benefit has recently been introduced which reduces the inheritance tax rate applicable to your net estate to 36% in circumstances where a sufficiently high percentage of your estate is given to charities. In order to qualify for this reduced rate you must leave 10% or more of the net value of your estate to a qualifying charity.

There are various ways to incorporate a testator's intention to leave a charitable legacy of 10% or more when drafting a Will and specialist advice should be sought. However, it is always difficult to predict what the nature and extent of your assets at the date of death will be at the time of drafting as these will invariably change. Likewise, different types of assets receive different treatment when working out the applicability of the reduced rate of inheritance tax and factors such as the size of the estate, whether assets are held as joint tenants, whether there is an interest in possession trust or have been gifts with reservation of benefit and the availability of other reliefs will also need to be considered.

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Gifts of 10% or more of the net estate may also be made by a Deed of Variation. Deeds of Variation allow beneficiaries to redirect their entitlement under a Will to other beneficiaries and the varied provisions are in effect read back into the Will of the deceased. Accordingly, the variation will also have any tax benefits associated with the gift having been made by the testator at the time of the death as opposed to by the beneficiary.

Deeds of Variation must be completed within two years of the date of death and with the consent of all the beneficiaries whose entitlement would be affected by the variation. It is therefore also important that it is possible to ascertain all the potential beneficiaries. If a charity is to benefit and the varied assets will qualify for the charity exemption, then the charity also needs to be notified of the variation. This can be done by making the charity a party to the Deed of Variation.

Deeds of Variation are particularly useful where an individual is already giving a percentage of their estate close to the required 10% to charities and the variation would mean the estate would benefit from the lower rate of inheritance tax, but Deeds of Variation could simply be used to redirect the gift from a non-exempt beneficiary to an exempt beneficiary to maximise the relief, benefit the charity and reduce the estate of the beneficiary.

It is advisable to review your Will to ensure that you fully utilise the inheritance tax savings available from giving to charities, but if your Will does not make adequate provision in this respect, Deeds of Variation provide an opportunity for retrospective tax planning by the beneficiaries, and provide a second chance to evaluate the benefits of charitable giving.

Footnote:

In the most recent Budget, the Chancellor announced that there will be a review of Deeds of Variation. It is expected that the review will be reported by the autumn.

Changes to Capital Gains Tax – Impact on Non-Residents

Currently, only UK resident individuals are liable to Capital Gains Tax ('CGT') on disposals of their UK residential property which means that if you are not tax resident in the UK you do not pay tax on any gain realised on the sale or gift of your property.

However, an extended CGT charge was announced in the 2013 Autumn Statement which is due to come into effect from April 2015. The extended CGT will apply to non-residents who dispose of UK property who will become liable to pay CGT in the UK on any gain on that property.

Unlike the Annual Tax on Enveloped Dwellings, which was introduced in 2013 to address tax avoidance by owning properties within a structure, the extended CGT charge is aimed at addressing the perceived unfairness where non-residents are not subject to CGT on their UK property but UK residents are required to pay CGT on any disposal of property which is not their main home. It is common around the world to tax gains based on where the property is situated, consequently the extended CGT charge brings the UK in line with the principles of taxation in other jurisdictions.

Although the legislation is still in draft form, it is anticipated that from April 2015 the CGT regime will be extended to include all non-residents who own UK property. The new legislation will extend CGT to non-resident individuals, trusts, partnerships and companies which meet certain tests.

The CGT rate will be based on whether the individual is a basic or higher rate taxpayer which is determined by their overall UK income and gains for the tax year.

Basic rate taxpayers will pay CGT at 18% and higher rate taxpayers will be taxed at 28%. Trusts will also be taxed at the higher rate of 28%.

The proposal is that the extended CGT will not be retrospective and will only apply to gains from 6 April 2015. The default position being that the value of the property will be rebased to its market value as at 6 April 2015 so that the extended CGT charge will only apply to any gain on the property after that date. There will also be an option to time apportion the whole gain on the property from 6 April 2015 over the period of ownership or to compute the gain or loss over the whole period of ownership if either of these is more beneficial.

The extended CGT will apply regardless of the value of the property. However, the same annual exemptions will be available to non-resident individuals (half the exemption for trusts). Losses on UK property can be ring fenced and used to offset gains in the same tax year or carried forward to be utilised in future tax years. Any unused losses can also be transferred if an individuals residence status changes from resident to non-resident or non-resident to resident and will not be lost as a result of the change in residency status.

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Changes to Main Residence Relief – Residents and Non-residents

Although there had been proposals to reform Main Residence Relief radically or abolish it, following the latest consultation it has been decided that Main Residence Relief should remain relatively intact with a few restrictions being introduced aimed at preventing a situation where a non-resident is able to claim the relief as their main home in the UK when they do not spend a significant period of time at the property.

An individual will not be eligible for Main Residence Relief unless they are resident in the UK in that tax year or they meet the requirements of the 90-day rule. The same principles will apply equally to UK residents in respect of properties in other jurisdictions.

This means that non-residents will not be able to nominate a property as their main residence unless they have spent more than 90 midnights in that property. If they have been present in the property for fewer than 90 midnights they will be regarded as absent from that property for that tax year. The 90-day rule will apply across all properties in all jurisdictions. It will be important for non-residents to consider the availability of Main Residence Relief in connection with the new Statutory Residence Test as meeting the 90-day rule may impact on their residency status under that test.

UK tax residents will be able to make nominations without reference to the 90-day rule. Non-residents will make nominations at the time of disposal.

It is anticipated that the provisions in relation to final period relief, letting relief and absence relief will remain intact. Therefore if at some point during the period of ownership, the property was their main residence, the final 18 months will qualify for the relief.

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New Notary Public

Sue Carter, a Notary Public, has recently joined our firm and is working in our Tax and Private Client Department.

Notary Publics mainly authenticate the execution of documents for use overseas. They provide Notarial Certificates for a wide range of documents including powers of attorney for the purchase and sale of a property overseas, copy passports and grants of representation, sworn statements and affidavits for overseas court proceedings, oaths and statutory declarations, corporate documents, evidence of change of name and qualifications including verifying and certifying university or other educational certificates.

The Notary Public practices under the authority of the Archbishop of Canterbury and is regulated by the Faculty Office.

They do not simply witness a client's signature. The Notary Public has a duty to verify the client's identity, the client's willingness to execute the document, that the client has legal capacity, that the client has authority to act and execute the document and confirmation that the client understands the provisions of the document.

The Notary Public will arrange for an apostille to be attached to the document and also arrange any legalisation requirements for the overseas jurisdiction.

Apostilles are required for documents for use in countries that are parties to the Hague Convention. The Notary lodges his or her signature at the Foreign and Commonwealth Office. An apostille to the certified document is obtained from the Foreign and Commonwealth Office and it confirms that the signature on the certificate is that of a Notary Public who has been duly admitted to act in England and Wales.

Legalisation may be required for documents to be used in countries that are not a party to the Hague Convention and are generally obtained at the country's Consulate in the UK. The Consular Office examines the document and certifies its validity.

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The duty to provide full and frank financial disclosure on divorce.

When a marriage breaks down resulting in divorce proceedings and related financial proceedings, both parties are required to exchange "full and frank" financial disclosure, so that they can obtain legal advice as to their entitlement in advance of resolving the financial arrangements and so that there can be a fair trial in the event agreement cannot be reached. The Court will also require the parties to complete a detailed financial statement known as Form E, together with substantial supporting financial documentation which covers the previous 12 months and sometimes a longer period. When compiling the information required for the Form E, particular difficulties can arise when seeking to place values on intangible or deferred assets or liabilities. The point of the disclosure is to give an honest and conscientious estimation of the true net worth of each party at the time the disclosure was given. This is extremely important and parties can be heavily criticised if it is not completed accurately. Failure to give thought to the Form E can also result in increased legal costs, because parties are entitled to raise questions and requests for further documents in respect of the disclosure.

If your marriage is breaking down, it can be immensely helpful to have an initial meeting with a specialist family solicitor prior to proceedings being issued in order to consider your finances and so that you are aware of the information that will have to be provided in the event of financial proceedings.

If you would like more information in connection with financial proceedings, please contact our family department.

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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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