

RadcliffesLeBrasseur

PRIVATE CLIENT NEWSLETTER | Winter 2013/2014

Welcome to the RadcliffesLeBrasseur Private Client Newsletter – Winter issue

“What good is the warmth of summer, without the cold of winter to give it sweetness.” – *John Steinbeck*

As Head of RadcliffesLeBrasseur's Tax & Private Client Department, I am very pleased to welcome you to the Winter edition of our Private Client Newsletter.

It has been an interesting few months of tax updates and charges coming into force. With the introduction of the annual tax on enveloped dwellings (ATED) charge, tax planning continues to make the headlines. By way of summary, the new “three pronged attack” on property envelopes has introduced the following charges:

- A new 15% rate of stamp duty land tax on the purchase by a company or other “non-natural person” (NNP) of a property for more than £2m;
- An annual charge of between £15,000 and £140,000 (the ‘ATED’ charge), on properties worth more than £2 million which are owned by NNPs; and
- The extension of capital gains tax to gains realised by NNPs on the disposal of properties for more than £2 million from 6 April 2013.

We are now seeing new structures being put in place as a result of the changes and we will be reporting on the planning opportunities through our Briefing Notes in the coming months.

In addition, in the recent Autumn Statement, the Chancellor announced changes to capital gains tax for both resident and non-resident individuals, a welcome increase in personal allowances in line with the Coalition commitment, provisions relating to pensions and trusts all of which we will cover in more detail in future Briefing Notes.

Promotions and New Joiners

It gives me great pleasure to announce a promotion within the team and a new joiner.

Jonathan Shankland (Associate)

Jonathan joined the Tax and Private Client Department in June 2012 as an Assistant Solicitor and was promoted to Associate in October this year. He advises on a wide range of private client areas, acting for high net worth clients, often with an offshore element.

David Price (Probate Manager)

David joined our team in October 2013 and advises on a wide range of matters including Probate and estate administration (including intestacies, complex/high value estates and estates with an international element), Trusts, Lasting Powers of Attorney and Wills.

I would like to wish them every success in their new roles.

If you would like to discuss the issues raised in any of the articles with the contributors or, if you require any other legal advice, then we would be happy to hear from you.

You can stay up to date with the latest news by visiting our website www.rlb-law.com

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In this issue

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employment reforms - the impact on individuals

The Government has implemented a number of employment law changes over the summer which will have an impact on individuals and their employment rights. Sejal Raja, a Partner in the Employment Department, considers these changes and how they impact on individuals. In summary, they are:

- The introduction of fees in the employment tribunal and employment appeal tribunal
- Pre-Termination settlement negotiations no longer admissible in Employment Tribunal proceedings for unfair dismissal
- New cap on unfair dismissal compensatory award
- New tribunal rules

Employment Tribunal Fees

Claimants will now be required to pay a fee if they want to commence proceedings in the Employment Tribunal.

The level of fee depends on the nature of the claim. There are two types of claim as follows:-

Type A	Type B
Statutory redundancy payment	Unfair dismissal
Equal pay	Discrimination
Unlawful deduction from wages	Whistleblowing
Breach of contract	

- The Issue fee payable by a Claimant will be £160 for a Type A claim and £250 for a Type B claim.
- The Hearing fee payable by a Claimant will be £230 for a Type A claim and £950 for a Type B claim.

The fees will be payable through HM Courts & Tribunal Service (HMCTS) online or collected through a centralised processing centre (there will be one in England and Wales and one in Scotland). In general, Tribunal offices will not have the facility to take fees in any form.

Employees will need to be aware that a claim will be rejected if it is not accompanied by the appropriate fee or a remission application. If this happens and the claim is later submitted, it may then be deemed to be out of time.

After 29 July 2013, fees will be payable for any appeal to the Employment Appeal Tribunal (EAT). Fees will be paid online or by cheque to the central processing centre.

- The Appellant must pay the £400 "issue fee" by a date specified in a notice which will be issued by the EAT after it has received the Notice of Appeal.

- The Appellant must pay a £1,200 "hearing fee" by a date specified in the notice which will be issued by the EAT after it has directed that the appeal should proceed to an oral hearing at which the appeal will be disposed of.

If the employee cannot pay, then he/she will need to apply for a fee remission or part remission. The fee remission process is complicated but a summary is as follows:-

Qualifying benefits: No fee is payable if, at the time when the fee would otherwise be due, the party is receiving one of five qualifying benefits (e.g. Income Support or Job Seeker's Allowance).

Gross annual income: No fee is payable if, at the time when the fee would otherwise be due, the party's gross annual income (together with that of their partner if part of a couple) is calculated to be not more than the following thresholds:

- Those with no children: £13,000 (single); £18,000 (couple).
- Those with one child: £15,930 (single); £20,930 (couple).
- Those with two children: £18,860 (single); £23,860 (couple).
- Those with three children: £21,790 (single); £26,790 (couple).
- Those with four children: £24,720 (single); £29,720 (couple).
- Those with more than four children should add £2,930 for each further child to the thresholds given for those with four children.

Disposable monthly income: If a party has not qualified for a full remission of fees on the grounds of qualifying benefits or gross annual income, they may qualify for a full or part remission of fees by reference to their disposable monthly income as follows:-

- If a party's disposable monthly income is £50 or less they qualify for a full remission of fees.
- If a party's disposable monthly income is more than £50 but does not exceed £210, the amount payable is an amount equal to one-quarter of every £10 of their monthly disposable income, up to a maximum of £50.
- If a party's disposable monthly income is more than £250, the amount payable is an amount equal to £50 plus one-half of every £10 over £200 of their monthly disposable income.
- When the fee payable exceeds the maximum fee that a party could be required to pay, calculated using the above method, the fee will be remitted to the above amounts.

Pre-Termination Negotiations

An interesting change relates to pre-termination offers or discussions of settlement. In short, most offers made or discussions held with a view to terminating an employee's contract of employment on agreed terms will be inadmissible in any subsequent unfair dismissal proceedings.

In effect, the existing "without prejudice" regime will be extended in the context of unfair dismissal proceedings to include situations where no dispute has arisen at the time of the settlement discussions. This means a settlement agreement proposal could be made at any stage of an employment relationship. There are however exceptions. The new rule will not cover:

- Claims alleging breach of the Equalities Act (in other words, discrimination claims).
- Claims alleging breach of contract including wrongful dismissal.
- Claims alleging automatic unfair dismissal, such as whistle-blowing or asserting a statutory right.
- Where there has been improper behaviour by the employer.

Improper Behaviour

The ACAS Code has listed a list of non-exhaustive examples of what could be deemed to be improper behaviour

- All forms of harassment, bullying and intimidation, including through the use of offensive words or aggressive behaviour.
- Physical assault or the threat of physical assault and other criminal behaviour.
- Disciplinary action on the basis of age, sex, race, disability, sexual orientation, religion or belief, transgender, pregnancy and maternity, and marriage or civil partnership.
- Putting undue pressure on a party, for example, not giving reasonable time for consideration of the proposal in accordance with the Code, for example:
 - an employer saying, before any form of disciplinary process has begun, that if a settlement proposal is rejected, then the employee will be dismissed; or
 - an employee threatening to undermine an organisation's public reputation if the organisation does not sign the agreement, unless the whistle-blowing provisions of the Public Interest Disclosure Act 1998 apply.

New Cap on Unfair Dismissal Compensatory Awards

Dismissals that take effect on or after 29 July 2013 will now be subject to a new cap which will be the lower of the statutory cap (which is currently £74,200) or one year's pay. The main concern is that this limits the amount which employees could recover in the Employment Tribunal for unfair dismissal, particularly senior executives.

New Employment Tribunal Rules

Employees should also be aware of the new 'robust' rules that are now in place to manage all current cases (irrespective of when they were started). The key points to note are:

- Power to manage cases more robustly: This includes the introduction of a 'sift' stage, strike out powers and issuing timetables for the running of hearings including how long each party has to give evidence and cross examine.
- Power now to award up to £20,000 costs rather than having the costs determined by a court

The overall desire of the new rules is to reduce the cost of the employment tribunal system for the tax payer. These new rules will clearly impact on employees who are seeking to bring claims against their employer.

If you have any questions regarding this, then please contact Sejal Raja.



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what's in a will?

The recent series of Downton Abbey highlights the importance and effect of having a valid Will.

Downton Abbey's Matthew Crawley wrote a letter to his wife Lady Mary Crawley shortly before his unexpected death in which he stated that he was conscious he had not yet drawn his Will (though he planned to do so upon his return) and that as he did not yet know whether their unborn child would be male or female it was his intention to name Mary as the sole heir to his share in Downton. Until the discovery of this letter, it was believed that Matthew had left no Will and that his half share in Downton would pass on intestacy leaving his father-in-law, Lord Grantham, in charge of his newly born son's share and only a small part to his wife. It therefore became necessary to establish whether or not the written expression of his wishes could constitute a valid Will.

What are the requirements for a valid Will?

The formal requirements for a valid Will which must be followed are set out in Section 9 Wills Act 1837 and remain in substantially the same form today. In order to be valid, a Will must be in writing and signed by the testator in the presence of two witnesses who must also sign in the presence of the testator.

Apart from these seemingly straightforward requirements of signature and attestation, there is no form of Will prescribed by statute. In fact, the statutory requirements for validity have been somewhat relaxed as Wills no longer need to be signed at the foot of the document in order to be valid; it is enough that the testator signed anywhere on the document with the intention of giving effect to the Will.

The writing may be handwritten, typewritten or in any other format, in ink or pencil, so long as it is visible. Further the writing can be on any material as illustrated by *Hudson v Barnes* (1926) where the testator wrote his Will on an empty eggshell. Wills have also been made on petticoats, t-shirts, tree trunks and microscopic engraving on coins (although ink and paper is advisable).

There is also no specific form of attestation clause required, though a proper form of attestation will lead to a presumption of due execution which may otherwise need to be proven by affidavit evidence.

In *Downton Abbey*, Matthew's letter to Mary setting out his intentions in the event of his predeceasing her had been signed by him and duly attested. Therefore the letter was affirmed as his Will on the basis it complied with the formal requirements thereby enabling Mary to 'take charge' as Matthew had intended.

Recently in *Marley v Rawlings* [2012], the significance of compliance with the formal requirements for validity was reiterated. In that case, simple mirror wills were prepared for a husband and wife in which they left everything to each other and on the death of the survivor to a man whom they had treated as a son.



Unfortunately, when it came to signing the Wills, they each signed the other's Will by mistake. Although the court has discretion to rectify clerical errors as well as in circumstances where the testator's instructions have not been accurately reflected in a Will, the court cannot rectify a Will which was not valid in the first place.

The Court of Appeal held that the Will was not valid as the testator could not have signed the wrong Will, with the intention of giving effect to it because had he known that it was the wrong Will, he would not have signed it. The testator's intention as to the destination of his estate was apparent despite the mistake; however, the Court could not rectify an invalid Will and his two sons, who were not mentioned in the Will, inherited his entire estate on intestacy.

Importance of having a valid Will

Most importantly, a Will enables the testator to take advantage of his testamentary freedom and direct who should inherit his estate, in what proportions and at what time. The process of making a Will also provides an opportunity for the testator to consider the tax implications of the bequests that he wishes to make and to seek advice on the most beneficial way to dispose of his estate.

There is a common misconception that if an individual dies without a Will his estate will pass automatically to any surviving spouse or civil partner free of tax and thereafter to the children equally. While this is often the desired result, an intestacy limits the amount that passes to the surviving spouse to £250,000 and a life interest in half of the residue, the other half being held on trust for the children on attaining 18.

The life interest is only an entitlement to income and, depending on the size of the estate, may be insufficient to maintain the survivor. Furthermore, if there are minor children, a substantial part of the estate may be tied up until they reach majority. A major disadvantage of intestacy is that it does not always fully utilise the spouse exemption and often results in tax becoming payable on the first death, which is unlikely to be tax efficient and is usually inadvisable.

Consequently, it is imperative to take steps to plan for your beneficiaries and make a Will which ensures your wishes are carried out. If you already have a Will in place you should confirm that it is valid as, although the requirements are not extensive, the ramifications could be.

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charitable incorporated organisations

After years of planning and discussion the Charity Commission finally started accepting applications on 10 December 2012 for the long-anticipated new legal structure for charities. The Charitable Incorporated Organisation, or CIO, was created in response to requests from charities. Its aim is to offer some of the benefits of being a company whilst reducing the administrative burdens.

What is a CIO?

A CIO is an incorporated legal form for charities. A charity can choose to be either an unincorporated form, such as a trust or unincorporated association or an incorporated form, which is usually a company limited by guarantee. Incorporated charities have their own legal personality, which allows them to enter into contracts in their own right, and their trustees have better protection from personal liability for the charity's debts.

In the past, charities looking for the protection offered by the incorporated form most commonly chose to be a company limited by guarantee. However, this resulted in the need to comply with dual regulation from the Charity Commission and Companies House. It also meant that they are subject to company and charity law. Some found this burdensome.

CIOs will only need to register with the Charity Commission, and not also with Companies House. A CIO will not be subject to company law and therefore the running of a CIO should be more straightforward than for a charitable company. However, running a CIO will involve more formality than running a charitable trust or unincorporated association.

The structure will not be suitable for all organisations and the Charity Commission believes that it will be most suitable for small to medium sized organisations, which enter into contracts and/or employ staff. The cabinet office has assumed the target market for CIOs to be charities with an income of between £10,000 - £500,000.

The main benefits and disadvantages of being a CIO

The main advantage of a CIO is that the trustees will have limited or no liability for the debts of the organisation, consequently, affording them a safeguard from the financial liabilities the charity incurs, in a way that is not possible for a charitable trust. This is alongside the lower administrative burden of being regulated only by the Charity Commission.



A CIO is a legal entity that can enter into its own contracts and also hold property in its own name, which has advantages with regard to the succession of the charity.

The CIO may also be more flexible than a charitable company limited by guarantee as the governing document provides for a less rigid regime than for charitable companies. The constitution can also be tailored in certain areas to reflect the wishes of the organisation and therefore more bespoke than articles of association. However, company law does confer absolute rights on its members in a way that a CIO does not. Company law also allows for the governing document to change with a written members' resolution of 75%; a written resolution for a CIO must be unanimous.

A CIO is not thought to be suitable where a charity will want to raise money by using debt securities, as there is currently no system to register non-property charges for charities with the Charity Commission.

Whilst the CIO is an exciting development, it is a new legal form that is as yet untested. Therefore grey areas are bound to emerge throughout the next few years as the structure develops.

Conversion or Registration

As of November 2013, new charities and existing unincorporated charities with income of over £5,000 can apply for CIO registration. From January 2014 this will be extended to all new and unincorporated charities, regardless of income.

New charities should consider whether a CIO might be a suitable vehicle. It will appeal to smaller charities that want the protection afforded by a limited liability organisation together with lower administrative burdens. Those that are planning to hold significant assets or borrow funds may still prefer a corporate form.

Existing unincorporated associations or charitable trusts may also consider converting to a CIO. Limited liability without the administrative burden of Companies House will again appeal to smaller charities.

The current legislation includes provisions for existing charitable companies, charitable industrial and provident societies and community interest companies to convert to CIOs, but those provisions are not currently in force. The aim is that such conversions will become possible during 2014.

How can we help?

The Charity Commission is unable to give advice to organisations on the right structure for your charity. We have an experienced Charities Group and are able to assist and advise by providing full information and options as to the best vehicle through which to run your charity.

For further information please contact Hetty Maher.

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are you benefiting from child benefit?

Are you one of the 165,000 Higher-rate tax paying parents who have not yet registered for self-assessment?

If you are a parent, who has an income of over £50,000 and have claimed child benefit since 7 January 2013 and have not registered for self-assessment, you should do so now, or face a penalty of between 10% and 100% of the money owed back to the taxman, as well as the amount due. Even if your salary is less than £50,000, the Revenue will include your other income, such as your interest from savings and dividends from shares and any rental income due to see if your total income exceeds £50,000. If it does, you should register for self-assessment, if you have claimed Child Benefit since 7 January 2013, as you will have to pay some or all of it back through the tax system.

If you think you may be affected by this issue contact Michael Zakiewicz on 0207 227 7375 or e-mail him on michael.zakiewicz@rlb-law.com for advice and guidance on how to register for self-assessment and to decide if it is worthwhile to continue to claim child benefit.

You have until 31 January 2014 to register for self-assessment and pay back any child benefits due to the Revenue, but do not leave it until the last minute, as the registration process can take several weeks and we expect HMRC to be very busy in January issuing UTR numbers which are necessary for the submission of Tax Returns on-line.

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Newsflash...Newsflash...Newsflash...

Tax Return deadline fast approaching

REMINDER: The deadline for filing your tax return online is midnight on 31 January 2014. Filing even one day late will incur a penalty of £100.

If you wish to discuss your tax affairs please contact Michael Zakiewicz by email michael.zakiewicz@rlb-law.com or call 020 7227 7375.

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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