



PEM Private Clients

Winter 2014



**Peters
Elworthy
& Moore**
Private Clients

Welcome

Welcome to the winter edition of our Private Clients newsletter.

What happened to 2014? No sooner had summer ended than autumn vanished in a flurry of fallen leaves – and now the cold weather has arrived. What better time to sit by a warm fire, reflect on the past year and look forward to the opportunities of 2015?

I am forever advising clients to plan for the future and put their houses in order. It may seem that there is no urgency, but time inevitably catches up with us all. The politicians are already limbering up for the general election in May and while I don't expect any significant withdrawal of beneficial tax reliefs before we go to the polls a "new broom" may have different ideas. Therefore I challenge you to make it your New Year resolution to look closely at your personal planning and to review your will and inheritance tax position if you have not done so for three years or more.

You'll find a number of thought-provoking articles in this issue. On page 03 we look at the problems caused by not reviewing wills and the changes to intestacy rules. I suspect that a good number of readers will be affected by one or the other.

Changes to pension legislation have been a hot topic in the media recently. On page 05 we examine the positive changes that will benefit all, and may even change the general perception of the value of investing in pensions. It is really important that everyone approaching retirement reviews their pension and considers all their options. In conjunction with PEM Carrwood we will be holding a seminar on 10 February 2015 addressing some of these issues. However, if you need pensions advice before that date the team at PEM Carrwood will be pleased to help.

The new individual savings account (NISA) comes under scrutiny on page 06. We discuss the potential to extend the tax efficiency of an existing ISA from just capital gains and income tax savings to include inheritance tax savings.

I do hope this newsletter continues to be an enjoyable and informative read. If you feel that any of the articles are relevant to you, your family or friends or would like to discuss any other issues please do not hesitate to speak to me or your usual contact in my team. As ever I welcome your feedback.

I would like to take this opportunity to thank you for your continued support and extend, on behalf of the Private Clients team and the whole of PEM and PEM Carrwood, our very best wishes for Christmas and a happy and prosperous New Year.



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Tax Relief And The Importance Of Timing



In life whether pitching a baseball, capturing that perfect photograph, or launching a new product, timing is crucial.

The same is true if you want to take advantage of certain tax reliefs. Get your timing right and you can cut your tax bill dramatically; get it wrong and your liability can soar.

There have been two recent tribunals both focusing on capital gains tax calculations where timings have been critical to receiving the relief claimed.

The Rice case addressed the eligibility of entrepreneurs' relief (ER) reducing the tax payable on a gain from 28% to 10%.

Mr Rice owned a business selling sports cars from premises on a busy road in Peterborough, with no internet presence. Mr Rice sold this business because his premises were repeatedly targeted by vandals. He then started up a new internet business selling family cars from home by appointment only. Eventually he managed to sell the premises in Peterborough, and claimed ER on the disposal.

HMRC asserted that the business had never ceased and therefore denied the claim to ER.

The key issue was whether Mr Rice had ceased to carry on his first business (and if so, when) and later started a new business, or whether he had simply moved an established business to new premises.

The tribunal eventually determined that Mr Rice was allowed to claim ER on the sale of his premises as the two businesses were of different character. The tribunal also agreed the cessation did not occur immediately on the move from the

Peterborough premises, which meant that the disposal occurred within the three-year time limit to qualify for ER and that tax at only 10% was payable.

The Dickinson case considered the timing of disposal on a plot of land originally owned as part of a private house and whether principal private residence (PPR) relief was due, reducing the taxable gain to nil.

Mrs Dickinson owned a house which had a large garden and grounds, including a tennis court, which she had planning permission to develop. She agreed to sell the tennis court to a development company and when her contract for the sale was approved by the solicitors she gave permission for the company to start ground works; but the solicitors actually delayed the exchange until some time later because of issues with the local authority.

Mrs Dickinson claimed PPR relief on the sale of the land based on the actual date of exchange but this was challenged by HMRC as the "diggers had already moved in".

However, the tribunal ruled that until the actual date of exchange the change in use of land was not permanent – either party was free to walk away from the transaction – and that the land had only "temporarily" ceased to be garden and grounds. Therefore Mrs Dickinson won and tax was not due on the sale of the house and grounds.

Both of these cases hinged on decisions related to timings and both taxpayers were able to demonstrate that their timing was right, and won their cases. However, they highlight the need for careful planning and close attention to detail: failure to do so can result in a significant and unexpected liability.

How To Avoid A Battle Of Wills



Tales of intrigue, bitter family feuds and even murder – an inheritance battle makes fascinating fiction. We love novels, dramas and documentaries about disputed wills or cases where there is no will at all.

It's surprising then that fewer than one third of the UK adult population have a will. We should know by now that confusion over inheritance is a very bitter legacy for our loved ones.

Even if you have a will, are you sure that it is up to date? Of the wills currently in place many haven't been reviewed recently and do not reflect current circumstances and changes in legislation. Often it is not necessary to completely redraft the will as a simple codicil can achieve minor alterations.

As an example, many wills currently in existence will be affected by changes introduced in 2007 allowing unused nil rate bands to be transferred between spouses.

One of these un-reviewed wills recently made history in the courts over how an estate should be split between the family and a charity. Following the 2007 changes the available nil rate band can, in certain circumstances, be augmented by any unused nil rate band from a previously deceased spouse.

The court case was over a will which was structured to make a gift to the family of the "available" nil rate band,

with the remaining estate being gifted to The Woodland Trust.

The executors of the estate claimed that the "available" nil rate band included the transferred unused nil rate band from a previously deceased spouse and thus the eventual gift for the Woodland Trust was worth only £30,805 rather than the much more considerable one of £355,805 which would have been made if the unused nil rate band had not been augmented.

What the deceased wished to happen is of course unknown, as the will had not been reviewed since the change of legislation. Was the intention to maximise the tax-free gift to the family, as the executors argued? Or was the intention that only a single nil rate band, based on the legislation when the will was drafted, was gifted to the family with the majority of the estate going to the charity? The case eventually went to the Court of Appeal which finally ruled in favour of the family but the legal costs must have significantly diminished the gifts to both parties.

While this situation was undesirable at least there was a will and a gift to the family was clearly stated. Where there is no will assets are distributed in accordance with the rules of intestacy. These have historically led to assets being distributed in unexpected and arguably devastating ways, particularly where a family unit includes an unmarried couple.

Where a couple has lived together unmarried for many years and has children, on the death of one of the partners all assets are transferred to the children. This could potentially create a position where the remaining parent has to effectively sue their own children to have enough to live on.

Conversely, in a recent case the parents were unmarried and the mother had been absent without any contact since the children were very young. On the death of her adult

child under the rules of intestacy the assets passed back to the absent mother as well as the father and siblings.

Historically some individuals have considered the rules of intestacy and determined that they are sufficient to govern the dissemination of assets. However, on 1 October 2014 changes were made to these rules. These are summarised below. Relying on these rules is unsatisfactory and nothing is as valuable as a well-drafted correctly-executed will.

Scenario	Old Rules	From 1 st October 2014
Surviving spouse/civil partner and children	<ul style="list-style-type: none"> Spouse/civil partner will receive: <ul style="list-style-type: none"> Personal chattels Cash legacy of £250,000 Half of the residue on 'life interest' terms [able to enjoy the income but not capital - to children over 18 on death]. Children inherit second half of the residue outright at 18. 	<ul style="list-style-type: none"> Spouse/civil partner will receive: <ul style="list-style-type: none"> Personal chattels Cash legacy of £250,000, now index linked [adjusted at least every five years]. Half of the residue outright. Children inherit second half of the residue outright at 18.
Surviving spouse/civil partner but no children	<ul style="list-style-type: none"> Spouse/civil partner will receive: <ul style="list-style-type: none"> Personal chattels Cash legacy of £450,000 Half of the residue outright Second half of residue outright to other relatives 	<ul style="list-style-type: none"> Spouse/civil partner will inherit entire estate outright.
No spouse/civil partner	<ul style="list-style-type: none"> Whole of the estate outright to children at 18. If no children, entire estate to other relatives. If no relatives, entire estate passes to the Crown. 	<ul style="list-style-type: none"> Whole of estate outright to children at 18. If no children, entire estate to other relatives. If no relatives, entire estate passes to the Crown.

Pension Policies Become Family Savings Funds



Once we saw our pension simply as a way of providing income in retirement.

This year though the Chancellor George Osborne announced the most radical shake-up of the pensions system in 100 years. Now savers are waking up to much greater flexibility and choice in what they can do with their hard-earned pension pot.

New rules will mean that a defined contribution pension can be used as a tax-efficient savings vehicle. In addition it may be possible to pass your pension pot to your heirs free of inheritance tax. The changes began in March this year and will be widened further in April 2015.

Historically from the age of 55 you could take a maximum 25% of your pension pot as a tax-free lump sum but were obliged to use the rest to buy an annuity. Those buying an annuity during periods of low interest rates lived with the consequences for the rest of their lives. An alternative tactic was to draw a capped income from savings while controlling the pension fund itself (pension drawdown).

From 2015 pensioners will still be able to take 25% of their pension pot tax free – but then they will be free to cash in as much of their pension pot as they wish, subject to their ordinary rate of income tax.

Pension drawdown will allow flexibility, to help ensure sustainability of the remaining fund and to avoid incurring high levels of income tax. However, more investment risk will be taken by policyholders, and financial planning advice

which would include a full appraisal of the appropriate levels of risk will need to be taken before embarking on this strategy.

In addition the Chancellor has promised to remove the current 55% tax charge on inherited pension funds – welcome news to those who want to maximise their pension fund and pass it on to their beneficiaries. This means the tax system will no longer penalise those who draw sensibly on their pension fund, making pensions a very attractive wealth transfer wrapper.

If death occurs before 75, the pension fund can be taken tax free, at any time, either in instalments or as a one-off lump sum (and irrespective of whether the pension has been placed into pension drawdown, or remains undrawn). Using this fund to provide beneficiaries with an ongoing stream of income allows the residual fund to potentially grow tax free, while remaining outside the estate for inheritance tax purposes.

If death occurs after 75, beneficiaries will be able to access the fund, with income drawn taxed at the beneficiaries' highest marginal rate. Alternatively they can access the fund as a lump sum, again after a tax charge at their marginal rate.

The new rules will have a positive effect on most pension savings which is likely to change the perception of pensions as a whole. A word of warning though: care needs to be taken as the tax charge on income payments has been much underplayed to date and could cause unexpected reductions in the pension received.

A NISA Way To Protect Your Nest Egg

Since 1999 Individual Savings Accounts (ISAs) have provided a haven for investors where returns are free from income tax and capital gains tax. Over the years the annual ISA savings allowance has steadily increased and recently the media has been buzzing with stories of the first "ISA millionaires".

The downside of building up a significant savings pot is that on death the value is subject to inheritance tax (IHT) of 40%. However, a new solution to this problem has been introduced.

In July, when the annual ISA savings allowance was increased to £15,000, certain restrictions were also lifted. Investments made under these new rules are known as New Individual Savings Accounts (NISAs). A NISA continues to offer tax-free growth and income but also allows greater flexibility of investment, potentially protecting the fund value from IHT.

The new rules allow NISA funds to be invested in shares listed on the alternative investment market (AIM) for small and growing companies. Before the new rules a Stocks and Shares ISA could only be invested in companies on the main London Stock Exchange. The major tax advantage is that, once the shares have been held for a full two years, they attract business property relief from IHT at 100%. This means that the entire value held within a NISA can be free from IHT.

This valuable tax benefit has been introduced because the

government wants to attract investment into the AIM market and encourage external funding for new and smaller companies. While some companies quoted on AIM fall by the wayside others are very strong, long-established and highly profitable companies which have significant potential. For example Majestic Wine has a history of 12 years of profit growth since floating on AIM in 1996. May Gurney floated on AIM in 2006 but was founded in 1926.

Specialist advice needs to be taken when investing in AIM as the shares are considered higher risk than the more tried-and-trusted blue chip shares on the main London Stock Exchange. The values of AIM shares tend to have greater volatility with possibly a more "bumpy ride" than the main stock market, so generally it is considered this type of investment should only comprise a smaller part of a portfolio.

Another, and potentially the most valuable, change introduced in July now allows transfers between Cash and Invested ISA funds. This lets investors move existing ISA funds to a NISA without losing any of the accrued benefits. As already noted this opens up the possibility of achieving IHT saving of up to 100%.

Remember that ISA and NISA holdings should be considered in the round as part of an overall investment and IHT planning strategy. Investment decisions should not be purely tax driven, but be based on personal goals balancing tax saving and risk within overall financial objectives.



About Us

Our experienced Private Clients team offers expert advice and support for all areas of personal taxation to suit your specific needs. Please meet the Private Clients team who will be happy to talk to you about any issues you may have.

For further advice, information or to feed back please do not hesitate to contact Sanchia Norris on **01223 728225** or email snorris@pem.co.uk



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