

Trusts crackdown

For some years now HMRC have looked to increase their inheritance tax revenue not by obvious rate rises but instead by a more rigorous application of existing rules. HMRC's latest announcement in respect of trusts is a continuation of this low-key but effective policy.

From April 2011 Revenue teams will investigate trusts which they believe are created as part of IHT avoidance schemes. The focus will be on off-shore trusts and accounts. However, UK trusts will also come under far greater scrutiny. It is felt that self-administered schemes where the trustee functions are often neglected will be particularly at risk. This makes it all the more important to review your trusts on a regular basis and to make sure that tax returns, minutes of meetings and properly documented payments to beneficiaries are all in place.

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Families should also take care with nil-rate band discretionary Will trusts which may have been set up under the previous inheritance tax regime and which, given the

transferable nil rate band, are now no longer required. In these cases, the initial trust structure cannot simply be ignored on the first death. Even if it is decided that the trust is not necessary, it must

be formally terminated. HMRC have always scrutinised discretionary trusts but their new, fiercer approach from April 2011 makes the correct action by executors and trustees all the more important.



Claire Bendle,
associate

Wills reviews

The rule of thumb is that you should review your Will at least every three years. However, in addition to this routine review programme it is important that you also consider your Will if you experience a change in your circumstances. For instance, care fee commitments might reduce the value of your estate to the extent that generous legacies in your Will become impractical. On the other hand, an unexpected windfall or inheritance may mean that you are able to make additional legacies or that existing small gifts look inappropriate. Changes in your family circumstances such as the birth of additional children or grandchildren, a falling out with a relative or perhaps the death of a beneficiary should also prompt you to alter your Will.

A review of your Will is particularly important in the event of your marriage, separation or divorce. The statutory provisions state that, once the decree absolute is granted, your ex-spouse is treated in your Will as if they had died before you. However, the process of divorce is often drawn out and you will probably have long since decided not to benefit your spouse by the time the decree absolute is granted. It is therefore important to change your Will as soon as your mind is made

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up. Think also about co-owned property. While the divorce is going through you should consider severing any joint tenancy on co-owned property so it no longer passes automatically to the surviving spouse on death but instead falls within your estate. This will have the desired effect for your own half share but do remember that it also cuts you off from your spouse's half share of the property should he or she die before you while the property is still co-owned.

Marriage on the other hand has the unexpected effect of revoking a Will altogether leaving you newly-wed but intestate. Some newly-married couples will prepare Wills ahead of their wedding day and sign them on or immediately after the marriage. Others will wait until after the honeymoon to draw up the new Wills. Neither of these plans is ideal. Better is to execute a Will before the wedding but have it drawn up expressly in contemplation of marriage. In this way the Wills are not revoked by the marriage and there is no need to rush to prepare fresh documents in the days or even hours after the wedding occurs.

The hidden costs of financial products

A decision on trading income from the Tax Chamber of the First Tier Tribunal would not normally make it to our private client newsletter. However, the facts in the appeal decision of *Countrywide Estate Agents FS Limited v Revenue & Customs Commissioners (00557) (2010)* were eye-catching because of the size of the lump-sum payment given to Countrywide Estate Agents. The payment was made in return for an exclusive intermediary agreement with a life assurance provider. Countrywide received £25m to act as intermediary and to refer to the provider all life cover enquiries arising from its own mortgage services business. In addition to this one-off payment Countrywide was also entitled to commission on each product sold.

The generosity of the deal for Countrywide shows just how lucrative these policies can be for the policy provider and indeed all of the parties involved in selling them. It also hints at the excessive costs that the purchasers of these policies may be having to meet.

The last Pre-Budget Report?

Since 1998 the Chancellor's autumn pre-budget report has been used to trail new legislation ideas and even to fix out-of-the-blue dates for the introduction of new tax regimes. However, the Budget Responsibility and National Audit Bill introduced last month will abolish the requirement for the Treasury to publish a pre-budget report. The Bill will not become law until later in the year so it gives us time for one last pre-budget report on 29 November this year.

In fact, this year's report will take the form of a statement delivered by the Chancellor in response to the autumn forecast of the Office for Budget Responsibility. Anticipating the new regime, we are told that the Chancellor intends to avoid "significant fiscal policy changes" and will focus on the various Treasury consultations that have taken place since June 2010.



Nigel Roots,
partner

Support for Cohabitants

A year ago the Law Commission launched a consultation paper reviewing the law of intestacy and family provision claims on death. The review covers a number of fascinating areas and considers questions relating to general expectations to benefit after someone dies and, in this context, the family structure and the social importance of marriage. It also asks whether any strengthening of the laws in these areas – principally the intestacy rules and the Inheritance (Provision for Family and Dependents) Act 1975 – brings us too close

to a position of forced heirship. The consultation period ended earlier this year and a report and draft Bill are expected late next year. In the meantime, as part of the Law Commission's review process, the National Centre for Social Research was asked to conduct a survey of public opinion on the matter. It is interesting to see the strong general support given to the idea that the family home should be protected for the surviving spouse or co-habiting partner. We await the draft Bill.

Radmacher decision

Last month's Supreme Court decision in the Radmacher divorce case gained a good deal of attention in family law circles. Indeed, you can find a review of the decision on our website. The most eagerly awaited parts of the Supreme Court's findings were those in relation to pre-nuptial agreements which have for some time been a grey area in family law. However, it is not just in matters of divorce that pre-nuptial agreements are relevant. They can also have a significant effect on the death of a spouse where the widow or widower wishes to make a claim under the Inheritance (Provision for Family Dependents) Act 1975 that the deceased's Will or intestacy fails to make reasonable financial provision for them. This is because a pre-nuptial agreement will most likely include a limitation or prohibition on such claims. In the early

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years of a marriage such an arrangement may well suit the couple. However, the longer the marriage lasts, the more likely circumstances are to change making it that much more reasonable that a surviving spouse would want to pursue a 1975 Act claim in spite of the provisions of the deceased's Will and the pre-nuptial agreement.

On the face of it, the support given to pre-nuptial agreements by the Supreme Court is not helpful to the widow or widower. However, Radmacher can to some extent be said to have less application to a claim on death so that, notwithstanding the Supreme Court decision, pre-nuptial agreements in these circumstances remain very much open to challenge and interpretation.