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## DONATIONS TO CHARITY THROUGH THE TAX RETURN

The 2003-4 Self-Assessment Tax Returns include a new facility, at question 19A of the return, to enable individuals to donate some or all of any tax repayment to a chosen charity.

Participating charities have signed up with the Inland Revenue and have been allocated a unique code, which is then entered in the relevant box on the return. A list of these charities is available on the Inland Revenue website at http://www.inlandrevenue.gov.uk/charities/charities-search.htm.

Many taxpayers will not know the exact amount of the tax repayment due to them when they complete their Self-Assessment Return. There is no obligation to donate the whole repayment. The return allows the option to specify a maximum donation. If the repayment is less than this amount, the total repayment will go to the charity. If the repayment is more than the specified maximum amount, then the balance will be repaid to the taxpayer.

If a repayment is donated to charity and it then transpires that the repayment occurred owing to an error on the part of the taxpayer, the Revenue will recover monies due to them from the taxpayer. If a repayment is sent to a charity by mistake by the Revenue, then it is their responsibility to recover the payment.

Charitable donations made through the tax return can be made under the Gift Aid scheme, whereby the charity can claim basic rate tax on the gift, provided the individual pays at least as much Income Tax or Capital Gains Tax as is reclaimed by the charity.

Gifts to charities made in this way will be treated as made when the donation is passed to the charity by the Inland Revenue. In most cases, the payment will be made during the tax year following the one to which the return relates.

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# REVENUE WINS DAY ON 'ONE MAN BAND' COMPANIES

Taxpayers who supply services through 'one man band' companies have had a setback following a decision in a recent tax case.

The Inland Revenue's Special Commissioners -who hear tax cases which are based on significant points of law -dealt with a tax appeal relating to a family company in which a husband and wife company paid dividends to the wife, despite the fact that the services were supplied by the husband who was the sole director.

The effect of their arrangements was that the wife, Mrs Jones, received considerable dividends and the tax paid by the Jones family as a whole was reduced by virtue of the fact that her income was taxed at a lower rate of income tax than her husband's.

The question which was in point was whether or not the original transfer of shares (an income producing asset) from Mr Jones to Mrs Jones was effectively a 'settlement' and thus was caught by what is now S660 of the Income and Corporation Taxes Act 1988. This provides that where such a transfer takes place, with the effect that the right to income is transferred from a higher rate taxpayer to one with a lower rate, the income is treated as belonging to the transferor.

What was most interesting was that the Special Commissioners took very different views from one another as to the interpretation of the legislation as applied to the facts in this case. The final decision was made in favour of the Revenue on the casting vote of the presiding Commissioner.

One Commissioner appeared to take the view that the entire arrangement by which the company was set up, with husband and wife both owning shares in it, constituted an 'arrangement' in which Mrs Jones' receipt of shares was 'wholly or substantially' a right to receive income. A second Commissioner took the view that because the arrangement was made before the company had reached the position of trading or being able to pay dividends, it could not be a transfer of the right to income and thus was not caught.

It appears that had Mrs Jones also been a director of the company and had the ability to influence the dividend policy of the company, the result might have been different.

Because of the differences of opinion of the Commissioners, it is likely that the case (which was backed by The Professional Contractors Group, who have many members who operate in a similar way) will be appealed.

Share transfers in private companies, even gifts of shares to other family members, can be a tax minefield. Contact us for advice on how to avoid the pitfalls.

# LIVING TOGETHER - PROTECTING YOUR PARTNER AFTER YOUR DEATH

Under current law, cohabitees have no automatic right to inherit if their partner does not make a will to this effect. This can lead to serious problems for the surviving partner in a relationship. Whilst the trend is towards fairer treatment for unmarried partners, as the law stands at present it is vital that unmarried partners give careful thought to what could happen after their death.

According to a recent survey, two-thirds of the UK's adult population have not made a will. Nearly 60 per cent of those surveyed mistakenly believed that if they die intestate their assets will automatically pass to those closest to them.

The most common reasons given for not drawing up a will were:

- couldn't be bothered
- too time-consuming and depressing
- too expensive

If you die intestate, the state determines who will inherit what. Here are some examples of what can go wrong if the correct steps are not taken.

John and Jane have lived together for over 7 years when John dies suddenly. The house is in John's name and the couple have not made a will. John's parents are dead and he has no children. He does have a brother however, who decides that he wants the house. Under intestacy rules, the brother is entitled to it. A grieving Jane finds herself involved in a litigation battle to remain living in what she thought was her home.

Peter is married to Claire, who has three grown up children from a previous relationship. The couple are living in Claire's house when she dies unexpectedly. Peter and the children are the executors of the will, which leaves half of the house to Peter and the other half to be divided amongst the three children. Peter is given the right to live in the house as long as he wants. However, the children want their share now. They refuse to cooperate in obtaining a Grant of Probate until Peter agrees to sell the house.

James set up home with Sarah after leaving his wife, but James and his wife did not get round to divorcing. Many years later, James does decide to go ahead with a divorce but dies before everything is finalised. Sarah gets nothing.

Sanjay has not seen his parents for many years. He lives with Anna, whom Sanjay's parents have always disliked. There is no will. When Sanjay dies, his parents refuse to let Anna have anything to do with the funeral arrangements. They also receive Sanjay's death in service pension because he has failed to nominate Anna as his beneficiary.

These examples illustrate what can happen if couples do not take advantage of the means available to them to make sure their partners are not disadvantaged after their death. A will does not have to be complicated or expensive. Taking the simple precaution of making your wishes known in a properly drafted will can prevent exposing your loved ones to financial pain.

Contact us if you wish to make a will, or to discuss other issues raised in this article.

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# INTEREST ON LATE PAID TAX - NEW RATES

The Inland Revenue has issued an update (IHT4, September 2004) incorporating revised interest rates on Inheritance Tax payments and other tax payments made after the due date.

# OVERSEAS PENSIONS - KNOW BEFORE YOU GO

With almost half of UK residents thinking of moving abroad at some point, it is important to know what effects such a move could have on your pension income before you make it, because UK pensioners who live abroad do not always receive the same regular increases in their state pensions as do UK residents.

Whether or not an individual's pension is indexed in the normal way depends entirely on where they live. If, for example, they have chosen to live in the USA or the EC, their pension goes up annually in line with the increase in inflation. If they live in South Africa, or a number of other countries, their pension is frozen when they leave the UK or when they emigrate. This leads to pension entitlements for expatriates in those countries failing to keep up with those of pensioners who are resident in the UK.

Although this seems, on the face of it, unfair, the courts have backed the Government in refusing to increase the pensions of residents in the countries concerned, despite the Government's admission that their policy was not based on logic and has arisen in a piecemeal fashion.

If you are considering retiring abroad, take advice. As well as pension issues, there are significant variations between different countries in tax treatment, inheritance law and healthcare provision for those who are retired.

## WHEN IS AN INVESTMENT OPPORTUNITY TOO GOOD TO BE TRUE?

When is an investment opportunity which is too good to miss, worth missing?

The answer to the question is...when you find out about it via an unsolicited telephone call from a 'financial adviser' or 'asset manager', offering to 'let you in on a great investment opportunity' or offering 'tax free investments'.

Unsolicited calls and emails are becoming increasingly common as unscrupulous companies harvest telephone numbers and email addresses from a growing range of sources.

Emanating from offshore financial centres - the last two we have seen were (ostensibly anyway) from Beijing and Luxembourg - the unhappy reality is that the majority of these are just scams. Once your money has left your bank account, you are unlikely ever to see any of it again.

As always, if it seems too good to be true, it is too good to be true. If you knew about shares destined to skyrocket, why would you pass that knowledge on to a complete stranger? If you are investing and want the benefit of proper investor protection, you should use an investment adviser who is authorised by the Financial Services Authority.

We can advise you based on a sound knowledge of your aims and the UK tax system.

# OFFSHORE ARRANGEMENTS UNDER REVENUE SCRUNTINY

Last year, the Inland Revenue announced its Offshore Arrangements Project, an initiative designed to crack down on tax evasion using companies and trusts in offshore tax havens. Many such arrangements represent legitimate tax planning structures but the Revenue has begun carrying out risk assessments to identify those that represent the highest risk of unpaid tax revenues and which are worth subsequent investigation.

If you are concerned about your tax planning arrangements, we can review the structures and procedures and advise you if any action is necessary.