the new ISA rules

The rules relating to Individual Savings Accounts (ISAs) have been revised substantially since 6 April 2008. The changes are aimed at simplifying what had turned into a rather complex regime.

The good news is that ISAs remain available and continue to be tax free. The maximum yearly investment you can make into an ISA is £7,200 of which a maximum of £3,600 can be in cash. If you wish to split your cash and share-based investments between two different ISA providers, that is also allowed. One improvement which has been made is the ability to switch investments from a cash ISA to a stocks and share ISA during the tax year without affecting the allowance. However, holdings of stocks and shares ISAs cannot be switched to cash ISAs.

As part of this process, the old-style Personal Equity Plans (better known as PEPs) have now become ISAs.

A cash ISA can be taken out by anyone over the age of 16, whereas a stocks and shares ISA is only available to those aged 18 or over. A child trust fund can be transferred into an ISA on maturity without loss of the tax advantages. The best news of all is that ISAs are to continue indefinitely – they were originally scheduled to cease in 2010.

"Because of the usually generous rates of return and tax free status, ISAs form part of most investment portfolios," says David Wright. "However, like all investments, it is the overall strategy which is important – for example, considering the tax and estate planning issues as well as the income tax benefits. Therefore, taking professional advice is a must in any investment planning."

TRACING LOST MONEY

It is by no means uncommon for people to have money in accounts which they or their relatives have forgotten about and the scale of the problem is illustrated by the fact that National Savings and Investments (NS&I) reports that it has £435 million in dormant accounts and bonds. An extra £23 million sits in unclaimed Premium Bond wins.

However, help is at hand. A website set up by the British Bankers' Association, the Building Societies Association and NS&I will allow the tracing of lost or dormant accounts to be simplified.

If you think you may have a forgotten or dormant account you can no longer find, look at **www.mylostaccount.org.uk**

cohabitation and estates

When one member of a cohabiting couple dies, it can come as an unpleasant surprise to the bereaved partner to discover that not all of their late partner's estate will pass to them in the absence of a will.

It is only when this happens that many people become aware that there is no such thing in law as a 'common law' spouse, so it is important that people living together give thought to protecting their position by the means currently available to them.

Where there are assets which are jointly held (as 'joint tenants' in legal terminology), these will pass by survivorship to the other partner. Property held jointly and joint bank accounts are normally held in this way. Also, if there is a life assurance policy or there are pension benefits payable to a nominated person, then the surviving partner will receive these if they are the named beneficiary.

Once such assets have been dealt with, however, the rules of intestacy apply if there is no will. An intestate estate passes (with a rather complex formula regarding its division depending on the size of the estate) to the relatives of the deceased. This will normally leave the deceased's partner with nothing.

However, the law does allow a claim for provision to be made from the estate of the deceased by dependents if they are persons for whom the intestate person might reasonably have been expected to make provision.

A surviving cohabitee can make a claim if the deceased died intestate or failed to provide for them in the will if:

- **they were maintained by the deceased in whole or in part immediately before the death of the deceased;** or
- **for two years prior to the death of the deceased they lived in the same household as the deceased as if they were the husband, wife or civil partner of the deceased.**

In such cases the court may be requested to make 'reasonable provision' for the applicant. There are a series of guidelines which have been set to ensure that the provision made is fair bearing in mind the size of the estate and the circumstances of those with an interest in it.

The court's powers to divide the estate are considerable and can include making orders for periodical payments or lump sums or the transfer of specific property to the claimant. However, it should be remembered that transfers on death to a cohabitee do not qualify for the 'spouse' exemption from Inheritance Tax which applies to transfers to a spouse or civil partner.

Says Anthony Benskin, "With nearly 2.5 million people cohabiting in the UK, issues arising following the death of one partner are becoming more and more frequent. The sensible thing to do is to make a will. However, don't forget that if a couple then decide to marry or enter into a civil partnership, previous wills become invalid and new ones should be written."

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MOSS SOLICITORS newsletter

AUTUMN 2008

LEICESTERSHIRE LAW SOCIETY **COUNTY LAW FIRM OF THE YEAR 2008**

Leicestershire Law Society Awards Ceremony, 11 April 2008, Moss Solicitors LLP County Law Firm of the Year 2008

county law firm of the year 2008

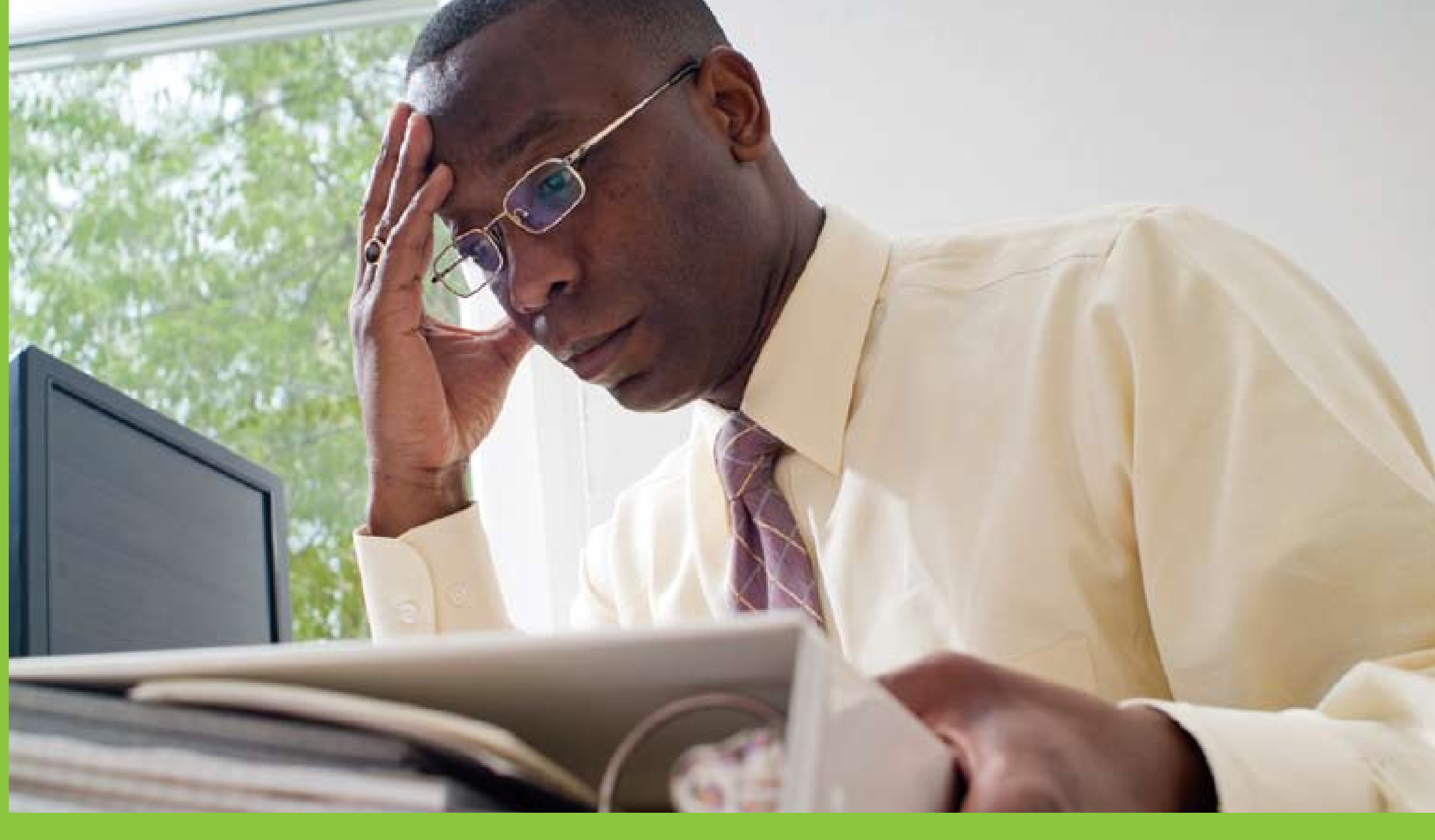
At a wonderful *"Night at the Oscars"* themed awards ceremony, Moss Solicitors LLP celebrated picking up the highly prestigious County Law Firm of the Year award.

The firm achieved this coveted award on the basis of its contribution, understanding and commitment to the locality, its strong service and consistent excellence in the legal field.

David Pagett-Wright Commercial Litigation and Employment Law Partner said, "We are delighted to have won this award which we see as reflecting our achievements both locally and within the East Midlands. This annual awards ceremony is an important event in the Leicestershire calendar and the firm's success is due to our relationships with all who work with us and our practical approach to our clients' business and personal matters. This year is a particularly significant one for the firm with major changes in our structure and some challenging times lying ahead for law firms generally. We have embraced this period of change by opening up a new office in Coalville, with continued improvements to our bespoke IT systems, and by recruiting experienced key personnel into our team. This award is a fitting testament to the success of our most important asset - our team of lawyers and support staff."

INHERITANCE TAX THRESHOLD

As announced in the 2007 Budget, the threshold above which Inheritance Tax is payable on a deceased person's estate rises to £312,000 for the tax year 2008/2009. The threshold for 2009/2010 will be £325,000, followed by a further rise bringing the level to £350,000 for the tax year 2010/2011.



executor removed by beneficiaries -

lessons to be learned

An executor who 'went too far' recently found himself liable for the legal costs of beneficiaries under the will who sued him for his failures in administering the estate.

The circumstances were that the estate of a lady who died in 2006 came to be administered by a friend, who was the executor. Her will provided that another friend had the right to live in her house for life, after which the estate would pass to three charities for animals.

The charities, becoming aware of their entitlement under the will, demanded information about its administration from the executor and were supplied with a copy of the will and a letter purported to be signed by the friend indicating that she wished to remain in the house. Incomplete information was provided in response to the charities' repeated enquiries and the executor provided them with a valuation of the house far lower than one which they had obtained independently.

Unsatisfied, the charities investigated further and discovered that the house was in fact occupied by the executor. The other friend had actually been living in sheltered accommodation for some time and had no intention of returning to the house.

The charities, as beneficiaries, applied to the court to remove the executor and to have him replaced by an independent professional executor. The executor claimed he was administering the estate as the deceased would have wished.

The court acceded to the charities' requests and ordered the executor to pay their costs.

In this case, there is no doubt that the executor's actions were not acceptable. Had a professional co-executor been appointed, his behaviour would have been preventable. It is often a surprise to executors how aggressive charities can be when pursuing their own ends. In the space of little over a year (probate was granted in December 2006 and the case reached court 13 months later), the charities had clearly incurred considerable expense in sending repeated solicitors' letters and having their own valuation of the property carried out. The appointment of an independent professional executor would undoubtedly have led to substantial additional costs. In different circumstances, the real loser might well have been a family member who stood to inherit a share of the residue of the estate.

The lesson to be learned here is to be careful in your choice of executor and to whom you leave your estate. Administering an estate is an onerous and time-consuming exercise and having demanding residuary beneficiaries can add to an executor's difficulties. It is often preferable to leave to charity a fixed sum, but the problem there is that specific bequests are met before the residue of the estate is distributed and in some circumstances (for example when significant care costs are incurred) that may mean that the specific bequests are met and there is little or nothing left for the residuary beneficiaries.

Normally, the most sensible arrangement to make is to appoint a spouse, partner or friend as executor and a solicitor as co-executor. This usually permits the estate to be administered quickly and cost-effectively.

Contact us for advice on any matter relating to your will or on questions relating to the administration of an estate.

giving to charity - tax efficiently

There are a variety of ways of giving to charity, some of whi are more tax-efficient than others. Here is a short round-up some of the possibilities.

For company directors, consider making the charitable gift out of the company if the alternative is to make the payment out of your after-tax income. This will allow the company to claim Corporation Tax (CT) relief as a deduction against profits and will, in effect, save the employer's and employee's National Insurance Contributions on the payment. Note, however, that there will be no additional recovery of tax by the charity (by the grossing-up of the gift) as there can be in the case of payments made by individual taxpayers.

Remember that to qualify as a charitable donation a gift by a business must be a gift of cash. Gifting non-cash assets or the value of services will not qualify for relief against CT and might in some circumstances have VAT implications. There are a number of more technical exclusions also, so if a proposed gift is of a larger arrangement of any sort, take advice

For individuals, gifts of money to charity qu for income tax relief. Normally, the gift is de to have had basic rate tax deducted and addit relief is available for higher rate taxpayers by of a claim on the giver's tax return. The charity reclaim the basic rate tax directly if the approp documentation is filled out, confirming that donor is a UK taxpayer.

Gifts to charity in a will attract full Inheritanc relief at (currently) 40 per cent. There are pros and cons of either making gifts as a bequest of a specific sum or as a percentage of the residual estate, so if you are considering putting a substantial charitable bequest in your will, it is worth taking professional advice.

will changed when dependant suffers

If the will of a relative on whom you are financially dependent fails to make provision for you, it is possible to apply to the court under the Inheritance (Provision for Family and Dependants) Act 1975 (PFDA) for it to be altered.

An example can be seen in a recent case concerning a man who died in 2001. His will gave his widow the right for life to live in the family house (which was in his name). The house was worth £340,000. The goodwill in his business he left to his four sons. All his other assets were put in trust to be held equally by his widow and his sons. This arrangement left his widow with a place to live but an inadequate income.

The widow applied to the court to vary the will on the ground that it had failed to make sufficient financial provision for her. The main issue in point was the value of the business, which had been effectively built up jointly by the man and his sons, who had all worked in it throughout their adult lives.

Oddly, no formal valuation of the business was undertaken. However, the judge placed a value on the estate of between £1.15 million and £1.35 million. It was therefore a straightforward matter for him to decide that the widow's needs had not been provided for properly under the will. A clean break was sought and the judge awarded her the matrimonial home absolutely (i.e. it was transferred into her sole ownership) and a lump sum of £410,000.

"This case clearly only came to court because the family could not agree the matter between themselves. If they had been able to do so, the will could presumably have been altered by a deed of family arrangement," says Anthony Benskin. "The net effect of the dispute (leaving aside the legal bills) was to give the widow more than half of the estate – a result which was probably not the one anticipated by the sons and possibly a more beneficial outcome for her than might have been agreed through negotiation rather than recourse to the court."

If your will fails to make adequate provision for a dependant, it may be subject to legal challenge. If you are the dependant of a person who has died and as a result of their death you will be financially distressed, you may be able to obtain relief under the PFDA. Contact us for advice in either case.

surviving the stock market 'wobbles'

If you own shares, these are interesting times. The London stock market has fallen around 10% since the current turmoil started at the beginning of July. That's the biggest drop since the current upward trend in share prices (known as a bull market) started in March 2003.

If you have investments in shares, property or bonds these are interesting times. The London stock market had fallen around 20% this year at the time of writing, with many people forecasting worse to come.

The economists are worried about the impact of losses in the US mortgage market spreading further still (the 'credit crunch'), rising inflation with soaring prices of global foodstuffs, metals and oil, and the ability of governments to turn things round. Closer to home, real people are worried about the price of houses, less money in their pockets, and whether their job will still be there next year. As always, trying to predict the outcome of all these events is like trying to predict the winner of every race on the card at Newmarket a year in advance.

So what should you actually do if you own individual shares, funds and other stock market-related investments in order to ride out these 'wobbles'? Isn't there a better way to profit from the undoubted opportunities that exist in the long term?

The problem with trying to invest based on picking the right time to buy and sell (known as market timing) is that it's notoriously difficult to get right. Our experience is that trying to make such judgements is a game for fools.

With rare exceptions, most of the people trying to outperform markets fail to do so in the long term. When a thorough analysis of the gains and the losses is carried out, you can't help but reach the conclusion that it isn't timing the market but time in the market that makes for successful investment.

Another important issue is whether you are an investor or a speculator. True investors seek a future stream of income from their holdings, whether it is in the form of dividends from shares, interest from bonds, or rent from property. One of the reasons that house prices are suffering is that most novice investors - especially in the 'buy-to-let' market - have focused on capital gains and haven't been at all concerned with income generation. This high level of speculation has driven prices to a level that is simply out of touch with reason.

The good news here is that the further prices fall the higher the potential income yield. Indeed, despite the woes of the property market, some commercial property investment funds are currently delivering regular income in excess of 10% p.a. - the highest level for years. If, like us, you are investing for the long term these have to be worth considering.

Our message is do your planning by making sure you have cash to cover foreseeable needs, and then follow a rigorous and proven process aimed at long term growth with low risk. That's what we continue to deliver to our clients and, despite the short term wobbles, it is what will get them to their goals.

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