Sting in the Tail for "Tax Free" Savings

The news that individual savings accounts (Isas) are to remain a permanent feature of the UK's tax-free savings landscape has been greeted with muted enthusiasm. While Financial Planners are please that ISAs will remain with us, the announcement that the annual allowance will only be raised for investments to £7200 and in a cash ISAs to £3,600 (from April 2008) was disappointing.

Moreover, figures from the Way Group, a firm of investment managers, suggest that many savers, in particular the elderly, are in danger of being hit by inheritance tax (IHT) charges because they hold on to their Pep and Isa savings for too long. The Way Group's figures suggest that about 165,000 investors aged 70 and over have Pep and Isa portfolios worth at least £100,000.

They go on to say that many investors are hanging on to these Pep portfolios without appreciating the tax position, accumulating investments within a 'tax-free' wrapper, without realising that their hard-earned savings suffer a punitive IHT sting at death, whereby their families potentially lose 40 per cent.

Many older investors hold significant equity-based investments within their portfolios but have made no provision to transfer these portfolios into alternative schemes to shelter their savings.

One way to avoid the inheritance tax charge is to encash up to the nil-rate band (£300,000) of the Pep and Isa savings and gift the money in a flexible trust. Assuming that you then live for a further seven years, this money will then fall outside of your estate.

There are various scheme available which allows the donor(s) access to their money, as well as gifts or loans of assets to beneficiaries. This is useful if long-term care is needed because the costs can then be withdrawn.

Encashing Peps and Isas is less painful from a tax point of view than encashing investments that are not held within tax-free wrappers, since there is no capital gains tax to pay.

Moving your money from Peps and Isas to a scheme to mitigate IHT, may save more than £100,000. Many clients think that their savings are already in a tax-free environment. But if the estate values are substantial, savers are merely growing their investments for the Chancellor to take advantage of it.

Savers should continue to use their full Isa allowances, depending on the amount of capital they have available, but you may may also need to look at estate planning and consider switching to an IHT-mitigation arrangement.

Article based on an extract from The Times on Saturday 2nd December.

Life Planning Seminar

Moss Solicitors invite you to attend our latest seminar providing legal and financial information for you and your family

On **25th July 2007** from **2.30pm until 4.00pm** at **the Quorn Country Hotel, Leicester Road, Quorn, Leicestershire.**

Who will inherit your property when you die? What kind of medical treatments will you want to receive - or avoid - if you become critically ill? Thinking about these questions - before illness or death strike - is what' life planning' is all about.

Planning your estate includes, talking to family members now to decide how to handle your financial and medical affairs if you become incapable of making your own decisions. It also means working with a solicitor now to draw up a will or establish a trust that will distribute your property according to your wishes after you die. That way, your loved ones won't be confused or burdened with financial troubles when you can no longer make them.

In order to have your personal affairs in order, you must consider your options carefully. To help guide you through the maze of 'life planning' this seminar will concentrate on some of the more topical issues including:

- Importance of making a will
- Making gifts
- The benefits of Enduring Powers of Attorney (EPAs)
- The effects of increasing property prices on your estate
- Residential care planning
- How financial planning is essential in arranging your Life Plan
- Inheritance Tax (IHT) planning

There will also be an opportunity for open discussion within the group setting or individually with the guest speakers. To reserve a place, please register your interest by:-

- Telephone on **01509 217770**
- Email to **enquiries@moss-solicitors.co.uk**
- Our website at **www.moss-solicitors.co.uk**

There is a restriction on numbers at this venue; you are therefore advised to reserve your place(s) early. If you know someone who would like to join you at the seminar - let us know. They will be welcome to attend.

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POWERS OF ATTORNEY NEW AND OLD

As the Government has decided to delay the introduction of the new Lasting Power of Attorney (LPA) until October 2007 (the original 'change-over date' was set for April 2007), now seems an appropriate time to outline the main differences in practical terms between these and the existing Enduring Power of Attorney (EPA) which the LPA will replace.

Under an EPA, you appoint either single or joint attorneys who can make certain decisions on your behalf. Normally, this is to apply if you become physically or mentally unable to do things yourself but, should you wish it, an EPA can be used at any time after it is executed. An EPA only has to be registered with the Public Guardianship Office (PGO) if you no longer have the mental capacity to make decisions on your own behalf, whereas none of the attorney's powers under a LPA will be operative until this has been registered with the PGO. There is a fee for doing this.

The main practical difference is that the attorney under an EPA cannot make decisions concerning your welfare, they can only make decisions regarding your finances. If you wish, a LPA can be set up to allow the attorney(s) to make decisions regarding your welfare as well as decisions regarding property and financial matters. This could, for example, allow an attorney the power to refuse medical treatment on your behalf in certain circumstances. However, this power will only come into force should you lose the capacity to make such a decision for yourself. The financial LPA and the welfare LPA have to be two separate documents.

There are also different procedures for revoking and registering LPAs and EPAs, but both can only normally be revoked by the person who made the power, providing he or she has the mental capacity to do so, or if that person or the attorney is made bankrupt. However a LPA for personal welfare will not be revoked by bankruptcy. Before applying to register an EPA on someone's behalf, a prescribed list of that person's relatives must be notified whereas the notification requirements for LPAs will be more flexible.

If you do not appoint someone to handle your day-to-day affairs, in the event that you are unable to do so yourself and later require this help, a receiver (either a relative or a professional person) has to be appointed by the PGO. This process can take time and cause unnecessary delays and problems for your family if they need to do things on your behalf but have no power to act and is quite costly.

EPAs are relatively simple to operate. Should you wish to have one in place, you will need to arrange to do this before the EPA is replaced by the LPA. EPAs already in existence at that time will continue to be valid.

If you would like to discuss the options available regarding the arrangements you can make to allow your affairs to be managed in the event of your incapacity, contact us soon.

Problems with Chattels

One problem often encountered with wills is that whilst some of the property bequeathed is easy to identify, other items may be less so. This is particularly so when the items concerned are normal household items (called 'chattels' in legal parlance, although the term also includes other items, such as boats, cars etc.). Given the nature of many chattels, these may change or be replaced over time. However, chattels can also be valuable, so it is often sensible to think carefully about how they are to be distributed under your will.

For example, you might replace your Ferrari with a Volkswagen, so a bequest of 'my car' could be one of widely fluctuating value. Where a will stipulates that the chattels are part of the 'residue' of the estate - i.e. what is left after all the specific bequests have been made - it will be up to the executor to determine how best to divide them between the beneficiaries.

However, one of the biggest problems with chattels is that of valuation. It may not be obvious, for example, that some possessions are valuable. A stamp collection might be worth pennies or millions. A 1957 Gibson Les Paul might look like an old guitar to an executor not interested in such things, but these days it might well be worth tens of thousands of pounds.

Firstly, if you have any particularly valuable chattels, it will help your executor a great deal if these are identified. Taking photographs and obtaining professional valuations (no bad idea from the point of view of making sure insurance cover is adequate also) are to be recommended and a note should be placed with the will as to where the valuations can be found.

You might wish to arrange for your chattels to be distributed equally among your beneficiaries, but again there might be drawbacks. For example, a matching pair of Ming vases is likely to be worth far more as a set than as two individual vases. Particular consideration should therefore be given to the valuation and distribution of any chattels which logic dictates should be kept together as sets.

In practice, unless a chattel is particularly valuable or has sentimental value, and is capable of exact identification, it is normally better not to mention it specifically in your will. A 'letter of wishes' for your executor, outlining to whom which items should be given, might make the process of the division of the estate more manageable. Such a letter is not legally binding and the will always takes precedence if there is a conflict between its provisions and those of a letter of wishes. Any letter of wishes should be signed and dated, so the executor knows which version is the most recent if you have written more than one.

For advice on making a will or on any aspect of family wealth protection, contact us.

Statutory Wills

It is a source of concern to lawyers and families alike that the majority of people never make a will. Often, the intention to make a will is there, but somehow the person never seems to 'get around to it' and dies, or becomes incapable before a will can be made.

It is possible, however, for a will to be written for someone who lacks the mental capacity to make one. The Court of Protection can, when there are objectively reasonable grounds for doing so, order that a statutory will is created. Such a will can be a variation on an earlier will or, where there is no earlier will, a will can be written from scratch to prevent the estate being distributed according to the laws of intestacy. Sometimes, a statutory will is desired when there has been a change in the circumstances of someone who has an existing will which is no longer appropriate.

For a statutory will to be created for someone, that person must lack the mental capacity to do this for him or herself. The task which faces the Court of Protection is to create the will which would have been written by the person at that time were he or she mentally competent to do so. In doing this the Court will consider the known views and attitudes of that person with regard to relevant matters and people. The Court will not try to steer the middle path in order to 'keep the peace' within a family if it is the Court's view that that is not what the person would have done.

To have a statutory will prepared, sufficient evidence must be gathered regarding the person's lack of mental capability. Only if the Court is convinced that the evidence is there will it permit a statutory will to be drawn up. The Court will then take account of the person's circumstances and known views in order to take a reasoned view of the content of the will.

If a statutory will is being considered, it is important to take legal advice early in the process, especially where the statutory will is intended to vary an earlier will, as there may well be technical legal issues to address. Consideration will also need to be given at an early stage to possible claims on the estate by dependants. Once all the necessary information has been gathered, it is presented to the Court, which will consider the evidence before it: the Court will seek to take a 'broad brush' approach and will not seek to create a will filled with detailed provisions.

An application for a statutory will can be made by:

- the receiver for a patient under the Mental Health Act or the person who has applied for the appointment of a receiver if none has yet been appointed;
- anyone who would benefit from the person's known will or under the application of the intestacy rules;
- any person for whom it might be reasonably expected that provision would be made under the will;
- the person's attorney; or
- any other person authorised by the Court.

For information and advice on dealing with the affairs of a family member who is not mentally competent, contact us.

Varying Bequests After Death

It is widely thought that a will can be changed after the death of the person who made it (the testator). Although this can be the practical effect of arrangements between beneficiaries, technically post-death variations do not in fact vary the will itself.

There are two ways by which the effects of a will can be varied. The simplest of these is a disclaimer, whereby the beneficiary under the will refuses to accept the bequest. A disclaimer must be made before any benefit under the will is accepted by the beneficiary. Disclaimers are normally only made when the property passing under the will is subject to a significant detriment (for example a building which needs massive expenditure for repairs). If a specific bequest is disclaimed, the bequest will fall into the residue of the estate (the assets left after all specific bequests have been made). If the residue of an estate is disclaimed, it passes according to the laws of intestacy.

The other way of rearranging the distribution of an estate after death is by way of Deed of Variation. These require the agreement of all the affected beneficiaries and are often undertaken to redirect all or part of an inheritance for Inheritance Tax (IHT) purposes.

For Capital Gains Tax (CGT) and IHT purposes, a valid Deed of Variation is regarded as being a variation of the will, provided that it is not a sham, no inducement is given to the beneficiaries to persuade them to sign it, it contains the correct tax wording and it is executed within two years of the death. Only a single Deed of Variation can be executed in relation to any given property. However, it is possible to execute a Deed of Variation even if the administration of the estate is complete.

For IHT purposes, a Deed of Variation is treated as if it were made by the testator. Normally, the CGT treatment is similar, although there can be complications, especially when trusts are created under the will. For Income Tax purposes, the Deed of Variation normally takes effect when it is executed, not on the date of death. Again, there are circumstances when the Income Tax effect can be retrospective.

Deeds of Variation can be effective tools for the redistribution of assets in a family, especially where the original will has not been brought up to date for the changing circumstances of family members. If you are the executor of, or a beneficiary under, a will which does not best meet your family's circumstances, contact us for advice.

Avoiding Inheritance Tax Using the Alternative Investment Market

In recent years, Inheritance Tax (IHT) has affected more and more families, largely due to rising house prices. IHT is payable at 40 per cent on the net assets of an estate where these exceed £300,000 - the current nil-rate band. Investing in Alternative Investment Market (AIM) shares is one way of reducing the IHT liability on an estate.

The AIM was launched in 1995 as a flotation market for small companies. Over 1,300 companies are currently listed - generally smaller, youthful enterprises with potential for rapid growth. Putting money into these companies is generally regarded as a somewhat riskier undertaking than investing in more established companies.

Qualifying AIM shares offer much more generous IHT relief than some other assets as they are considered to be business property. If property is held as AIM shares in certain trading companies, for a period of at least two years, it becomes eligible for IHT 'Business Property Relief' (BPR) at 100 per cent and will fall out of the estate for IHT purposes. This relief is a relief by value - in other words, the shares are treated as having no value for IHT purposes. In addition, there are also Capital Gains Tax advantages to holding AIM-listed shares.

Some stockbrokers and asset managers now offer their clients investment portfolios based on AIM shares. These invest in a wide range of shares (typically around 60), which offers the investor the possibility of having an IHT-efficient portfolio and a spread of risk.

Not all AIM companies are eligible for BPR however. To qualify, a company must be a trading company carrying out the majority of its business in the UK. Businesses trading in land or securities, or receiving a substantial amount of income from letting property or land, are excluded. Also, it must not be listed on another recognised stock exchange. If a company qualified for IHT relief when the shares were bought, but was subsequently disqualified under these criteria, investors must reinvest their holdings into new qualifying shares within six months to retain the BPR exemption.

AIM shares can be unpredictable. AIM companies are smaller; less established companies and the AIM has fewer investors than other stock markets so share prices can be volatile, rising or falling rapidly. Shares can sometimes lose more than 40 per cent of their value, thereby nullifying any IHT saving.

AIM investment is particularly attractive for older people since AIM assets are exempt from IHT after two years, compared with the seven years required before gifts that are 'Potentially Exempt Transfers' cease to carry an IHT liability. Investing in the AIM will suit financially secure people with other liquid capital who can invest widely enough to bear the risks involved. However, any investment decision should always be made with the benefit of professional advice.

Values-Based Financial Planning

To be able to help our clients to be able to understand what is truly important to them, we use a method called 'Values-Based Financial Planning' ™ which was created by financial expert Bill Bachrach. In the grand scheme of things, money's not that important. It's important to the extent that it allows you to enjoy what really matters to you. And not worrying about your finances is critical to having a life that excites you, nurtures those you love, and fulfils your aspirations.

Many people have a 'hotch pot' of financial products purchased one by one over the years. They end up reacting to events rather than designing and implementing a financial plan. What would your life be like if you had a financial strategy based on what is truly important to you? What if your investments and insurances were working in harmony to achieve your goals?

Regardless of your financial status, plans for the future, or current level of fiscal sophistication, 'Values-Based Financial Planning' ™ will help you make informed choices about your money. This method does not offer get rich quick tips. It is about taking control of the financial planning process. 'Values-Based Financial Planning' ™ is about you.