Tax, Trust and Probate ~ September 2021

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Dying With Your Affairs in Disarray is a Poisoned Legacy for Your Loved Ones

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**Dying With Your Affairs in Disarray is a Poisoned Legacy for Your Loved Ones**

Not every life is profitable, at least in financial terms, and it is important to remember that your debts do not die with you. A High Court ruling showed the serious problems that dying insolvent, without putting your affairs in order, can create for your loved ones.

The case concerned a once highly successful businessman whose fortunes suffered greatly in the 2007 financial crisis and who was heavily indebted when he died. His widow set about administering his estate. Some years later, after acknowledging that the estate was bankrupt, she obtained an administration order. A trustee was duly appointed to administer the estate for the benefit of its creditors.

The trustee later took action against the widow claiming that various sums of money and business assets that were transferred to her personally in the years following her husband's death were part of his estate and should therefore rightfully have been distributed to his creditors.

Ruling on the case, the Court noted that the widow was not financially sophisticated and had faced heavy family responsibilities following her husband's death. She had spoken movingly of the toll that the financial wrangling and litigation had taken on her, her new husband and her young children.

The Court, however, ordered her to transfer shares that formerly belonged to her husband to the trustee, together with cash sums totalling more than £700,000. The Court was troubled by the calamitous impact its decision would have on the family, particularly the children, but was compelled to conclude that the widow's various defences to the trustee's claim could not succeed.

Says <<CONTACT DETAILS>>, "To avoid situations such as this, it is important to put your financial affairs in order as soon as possible, with the help of an expert. We can assist you."

**Partner Note**

Sleight v Callin [2021] EWHC 1050 (Ch)

**Hotel Management Company Director Pays Personal Price for VAT Default**

If your company is trading in default of its tax obligations, the corporate veil may very well afford you no protection against the financial consequences. The sole director and shareholder of a hotel management company that failed to register for VAT found that out to his personal cost.

Following an unannounced visit to the hotel, HM Revenue and Customs (HMRC) officers conducted an investigation and concluded that the company had failed to pay over £200,000 in VAT over a period of about 13 months. On the basis that the company's default was deliberate, its director was issued with a personal penalty totalling over £130,000.

Challenging the penalty bill before the First-tier Tribunal (FTT), the director said that he had told the hotel's manager to register the company for VAT and was unaware during most of the period that that had not been done. The FTT, however, noted that he was in complete control of the company and that it was his responsibility to ensure that the crucial step had been taken.

It was not disputed that the company's turnover was such that it should have been registered for VAT throughout the relevant period and the penalty had been properly calculated on the basis that its default, although not concealed, was deliberate. The director had failed to discharge the burden of proving that HMRC had overestimated the hotel's takings during the period. His appeal was dismissed.

For advice on all matters relating to tax law, talk to our expert team.

**Partner Note**

O'Doherty v The Commissioners for Her Majesty's Revenue and Customs [2021] UKFTT 244 (TC)

**Judge Unravels Agatha Christie-Style Plot to Detect Will Forgery**

Agatha Christie would struggle to imagine the plots of some inheritance disputes that come before the courts. That was certainly so in one case in which a judge found that a son resorted to forgery in concocting a bogus will after his mother died.

Prior to her death, the mother executed a professionally drafted will by which she left the whole of her estate to her niece. The son, however, claimed that, just four weeks after the first will was signed, he prepared another will at his mother's request. By that document, he said that his mother had left all that she possessed to three of her grandchildren, two of whom were the son's children.

After the niece launched proceedings, the judge found that the first will was clearly genuine but the same could not be said of the second. The mother knew her own mind and it was highly improbable, indeed verging on the impossible, that she would have chosen to make two wills in the space of a month.

There was no change of circumstances or intervening event that could explain such a dramatic change of heart on the mother's part. She had a close relationship with her niece and, had she wished to change her will, it made sense that she would have again sought professional assistance in doing so.

The judge noted that the son did not immediately produce the second will after his mother's death. His claim that he had forgotten where he put it and later found it in his loft was unbelievable. He obtained probate in respect of the second will without telling the niece and immediately put his mother's house up for sale.

After considering expert handwriting evidence, the judge found that the mother's purported signature on the second will was a forgery and that the document had been concocted by the son at some point after her death. Although it was not possible to identify the forger beyond doubt, the judge found that it was probably the son or someone else acting at his behest. Due execution of the second will having been fabricated, the judge ruled in favour of the first will.

It is important to ensure you make your intentions regarding your estate clear and put them into effect in a legally binding form, as soon as possible. Our expert team can guide you through the process and hold a copy of your will for safekeeping.

**Partner Note**

Rainey v Weller and Others [2021] EWHC 2206 (Ch)

**Record Amounts of Inheritance Tax Being Paid in UK**

A record amount of Inheritance Tax (IHT) is being recouped from UK taxpayers by the Treasury, according to recent data published by HM Revenue and Customs.

The statistics, released in late August, show that £2.1 billion was collected by the government from IHT in April to July 2021 – a £500 million increase on the amount collected during the same period the year before.

Rising property and share prices are having a knock-on effect by increasing the value of estates passed on through inheritance and pushing them into a higher IHT band.

Earlier this year, the Chancellor of the Exchequer announced that the nil rate IHT bands would be frozen until April 2026, which means growing numbers of families will be faced with higher IHT bills as the value of property and assets shifts estates beyond the nil rate threshold.

Says <<CONTACT DETAILS>>, "The standard IHT rate is 40 per cent and it is charged on the part of your estate that is above the threshold. We are seeing more people liable to pay IHT, which means the need for expert tax and estate planning advice is more pressing than ever."

Further details on IHT rules can be found at <https://www.gov.uk/inheritance-tax>

**Seeking Investment Advice? Only Authorised Practitioners Can Be Trusted**

When seeking investment advice, it is vital to only use the services of authorised practitioners who are highly qualified and regulated by law. As a High Court case showed, it is otherwise all too easy to fall into a fraudster's clutches.

A woman was introduced by an acquaintance to a man who held himself out as an investment specialist. She quickly placed her full confidence in him and entrusted him with £2.1 million, effectively her entire fortune. Less than half of the money was in the event returned to her. She subsequently launched proceedings with a view to recovering her loss.

Upholding her claim, the Court noted that the man was currently in prison, having been convicted of involvement in a fraudulent tax evasion scheme. He was not a regulated investment adviser and undertook none of the checks that would be expected of a respectable financial professional. Due to her lack of financial sophistication, however, she was not put on her guard.

The Court found that the man had deceived her and breached the general prohibition contained in the Financial Services and Markets Act 2000 (FSMA) on the giving of financial advice by unauthorised persons. He also breached the fiduciary duty he owed her.

He and an offshore company, through which he operated and which was at the time entirely his creature, were also liable for breaching the FSMA prohibition by managing, or purporting to manage, her assets. The company also breached the trusts on which it held those assets. The Court made various orders that were designed to assist her in the recovery of her money.

**Partner Note**

Van Zuylen v Whiston-Dew and Another [2021] EWHC 2219 (Ch)

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