Tax, Trust and Probate ~ October 2021

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**Building Your Own Home? You Need Professional Tax Advice**

So-called DIY builders who 'construct' their own homes can reclaim VAT incurred in doing so. As one case showed, however, there is a very great difference between the ordinary English usage of that word and its meaning in VAT legislation.

The case concerned a couple who bought a derelict farmhouse. It had holes in the roof, its front wall was bowed and water was running out of the door. They carried out extensive building works that left only the building's two gable ends standing but succeeded in transforming it into a comfortable home. Their request for DIY builders' relief was, however, rejected by HM Revenue and Customs.

Ruling on their challenge to that decision, the First-tier Tribunal (FTT) noted that, as a matter of ordinary English, the project clearly resulted in the 'construction' of a dwelling. The Value Added Tax Act 1994, however, specifically provides that conversion, reconstruction or alteration of an existing building do not amount to works of construction.

The Act also states that a building only ceases to be an existing building when it is demolished completely to the ground or where the part remaining above ground consists of no more than a single façade, the retention of which is a condition or requirement of the relevant planning permission.

The couple's case did not fall within either of those categories in that they did not demolish the entire building – they did not have planning permission to do so – and the gable ends could not be viewed as a single façade.

DIY builders' relief is also available where non-residential buildings are converted for residential use. However, the couple could not benefit from that provision in that the farmhouse was clearly designed as a dwelling and had been used as such fewer than 10 years prior to the commencement of the building works.

In rejecting the couple's appeal, the FTT acknowledged that there are some oddities in the conditions that must be satisfied in order to take advantage of the DIY builders' scheme, particularly when viewed in the context of the planning regime. However, it was not its task to reason why and there was no way the legislation could be interpreted in a way that permitted the couple's case to succeed.

For expert advice and guidance on the complexities of VAT law, contact our specialist team.

**Partner Note**

Hackett v The Commissioners for Her Majesty's Revenue and Customs [2021] UKFTT 317 (TC)

**Buying a Home Abroad? Have You Considered Inheritance Issues?**

It is many people's dream to buy a home abroad, but it is important to remember that ownership of foreign property can give rise to complications when it comes to inheritance. The point was made by a bitter High Court dispute concerning an apartment on Spain's Costa Blanca.

By her will, a woman left all that she owned, save for a few pieces of jewellery, to her husband. They had been married for less than two years prior to her death. Some years previously, she and her son had acquired the Spanish flat, holding it in equal shares. After she died, the son instructed a Spanish notary to transfer his mother's share in the flat to him so that he became its sole registered owner.

The son's action prompted the widower to seek an interim injunction against him, restraining him from selling, disposing of or diminishing the value of the flat. As sole executor of his wife's will, he argued that her share of the flat formed part of her estate and that it should have passed to him in accordance with her will.

In defending the application, the son argued that he and his mother owned the flat as joint tenants and that her share therefore passed to him automatically on her death under the doctrine of survivorship. He also asserted that he became the beneficial owner of the entire flat pursuant to mutual wills he and his mother had made, which could neither be revoked nor varied. She had also made a Spanish will by which she named her son as sole beneficiary of all her property in Spain.

Ruling on the matter, the Court noted evidence from a Spanish lawyer that there is no doctrine of survivorship in Spain, where all co-owners of property are tenants in common, rather than joint tenants. The Spanish will had been automatically revoked either on the woman's marriage or on the execution of her later, English will. Given other points he made in his defence, however, it could not be said at this stage that the son's case was unarguable.

In granting the injunction sought, the Court noted that the widower's claim was also not unarguable and that he had raised a serious issue to be tried. Although the son stated that he had no intention of selling the flat or diminishing its value, the matter was sufficiently urgent to justify the grant of an interim order that would serve to maintain the status quo pending a full trial of the matter.

For advice on making sure your estate will be dealt with fairly and efficiently, contact us.

**Partner Note**

Wilson v Withington [2021] NICh 13

**Father Who Disinherited Daughter Lacked Capacity to Make a Valid Will**

You are perfectly entitled to write your children or other close family members out of your will, but such a course can be an invitation to dispute after you are gone. That was certainly so in a High Court case concerning a man who left everything he owned to a close friend, thereby disinheriting his daughter.

The daughter would have been his principal beneficiary under a will he signed four years prior to his death, aged 86. However, a few months before he passed away, he executed a new will in his friend's favour. The daughter challenged the later will on the basis that her father lacked the mental capacity to make it. Her arguments, however, failed to persuade a district judge.

Upholding her appeal against that outcome, the Court noted that, given medical and other evidence which cast doubt on the man's capacity, it was for the friend to prove that he had the sound mind, memory and understanding required to make the later will. The judge's apparent confusion as to where the burden of proof rested led him to reach the wrong conclusion on the evidence.

There was no doubt that the man was in a vulnerable state when he signed the later will. He was recently widowed and his son had died only four weeks previously. Only about two months before he made the will, he had failed a well-regarded screening test for cognitive impairment by a substantial margin.

The apparent rationality of the will, and a letter of intent that accompanied it, did not address the question of whether his affection for his daughter had been poisoned as a result of his cognitive impairment. Substituting its own decision on the case, the Court ruled that the later will was invalid and opened the way for the earlier will to be admitted to probate.

Contact us for expert advice on any matters relating to will disputes.

**Partner Note**

Lonsdale v Teasdale and Others [2021] EWHC 2342 (Ch)

**Inheritance Tax Property Valuations – Don't Dispense With Professional Advice**

Residential property often represents the majority of a person's wealth and valuing it for Inheritance Tax (IHT) purposes is, par excellence, a matter for professionals. In a case on point, a son who dispensed with expert tax and valuation advice following his mother's death found himself in very deep water.

When the mother died, she owned three terraced houses in the same street. When it came to calculating IHT payable on her estate, HM Revenue and Customs (HMRC) valued them at £2.42 million in total. Her son, acting as her personal representative, challenged that assessment before the Upper Tribunal (UT), arguing that they had an aggregate value of just £840,000.

The son represented himself before the UT, without the assistance of lawyers or a property valuation expert. He presented statistical evidence and argued, amongst other things, that the value of the properties was restricted by the returns that could be achieved by letting them. Ranged against him was HMRC's legal team and a chartered surveyor with 33 years of experience in valuing properties.

Ruling on the matter, the UT noted that its task was to assess the properties' open market value as at the date of the mother's death. In doing so, it considered prices that had been fetched by comparable properties in the same area. It found that the properties were worth a total of £2.68 million on the relevant date – substantially more than HMRC's original assessment.

We can advise you on any matters relating to inheritance tax law. Contact us for advice.

**Partner Note**

Zabavnik v The Commissioners for Her Majesty's Revenue and Customs [2021] UKUT 213 (LC)

**What Does 'Survivor' Mean? High Court Resolves Inheritance Doubts**

Words are not numbers and even the most careful draftsperson cannot guarantee that the meaning of a will is always clear beyond doubt. As a High Court case showed, however, judges are adept at resolving ambiguities so that the true intentions of testators are put into effect.

After specific bequests, a woman left the residue of her estate equally to her four siblings 'or the survivor or survivors of each of them'. Each of the siblings died before her but three of them were survived by a total of one widow and 15 children. An issue arose as to whether the widow and children fell into the category of 'survivors' who were entitled to inherit under the will.

Ruling on the matter, the Court noted that the 'survivors' of a plane crash are those individuals who remain alive after the accident. As a matter of common English, the word does not refer to the families of those who died. Similarly, the Court ruled that the 'survivors' of a list of beneficiaries named in a will means those of their number who remain alive at the date of the testator's death.

The plain meaning of the phrase was not undermined by any of the will's other terms and there was nothing to indicate that the woman intended to benefit the spouses or children of her siblings in the event that any of the latter predeceased her. Had that been her intention, it would have been a straightforward matter to craft a suitable clause in her will.

On the basis that the phrase referred only to the named siblings, none of whom had survived her, the Court found that the gift was of no effect and that the woman's residual estate was thus the subject of a partial intestacy.

We can ensure that your wishes are made clear in an expertly drafted will. Contact us for advice.

**Partner Note**

In the Matter of the Estate of Mary Alice Smyth, Deceased [2021] NICh 16

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