Tax, Trust and Probate ~ February 2023

**Tax, Trust and Probate Titles ~** **February 2023**

Businessman Pays Dearly for Delay in Lodging VAT Penalty Appeal

Feel That You've Been Done Out of an Inheritance? Contact a Solicitor Today

Making a Will? Court Ruling Underlines the Benefits of Professional Advice

Rugby Union Commentator Relieved of £700,000 Tax Demands in IR35 Appeal

Thought About Appointing a Professional Executor? It Can Pay Dividends

**Businessman Pays Dearly for Delay in Lodging VAT Penalty Appeal**

Those dissatisfied with HM Revenue and Customs (HMRC) decisions must exercise any right of appeal within tight legal time limits and should consult a solicitor as a matter of urgency. The point was powerfully made by the case of a businessman who failed to act promptly and was left nursing a six-figure bill.

Following an investigation, HMRC issued a seven-figure demand against a company in respect of alleged errors in its VAT returns. An inaccuracy penalty was also raised, and the company subsequently entered liquidation. The businessman was issued with a personal liability notice (PLN) on the basis that he was the company's sole director and shareholder.

He had 30 days in which to lodge an appeal to the First-tier Tribunal (FTT) against the PLN, which, after amendment, came to almost £875,000. However, he did not notify the FTT that he wished to challenge the bill until more than 38 months after that deadline expired.

In seeking to explain the delay, he asserted that he had reached an agreement in principle with HMRC and thus believed that there was no need for a formal appeal. He argued that the PLN was invalid and that HMRC had contributed as much as he had to the muddled handling of his case. He said that HMRC had itself recognised that the PLN was excessive and that he was likely to be forced into bankruptcy were he required to pay the full amount.

Refusing to entertain his late appeal, however, the FTT found that the main reason for the delay was either his wilful disregard of the deadline – in the hope that the matter would simply go away if he ignored it – inattention, or an assumption that everything would be sorted out satisfactorily without further involvement on his part. None of that could be viewed as a good reason for the delay.

The FTT acknowledged that the dismissal of the appeal on grounds of delay would cause very great prejudice to the businessman. On the other side of the balance, however, was the need to ensure that statutory deadlines are respected. If the appeal were permitted to proceed, HMRC would be required to devote resources to re-examining matters it had long considered closed.

It is important to source specialist legal advice if a dispute with HMRC arises. Our expert team can assist.

**Partner Note**

*Pawar v The Commissioners for Her Majesty's Revenue and Customs [2023] UKFTT 81 (TC)*

**Feel That You've Been Done Out of an Inheritance? Contact a Solicitor Today**

If you feel that you have been unjustly denied an inheritance, you should get in touch with a solicitor straight away. The dangers of delay were made plain by a case in which foot-dragging led to the sacrifice of a possible six-figure legacy.

The case concerned a man who died suddenly at the age of 50. His widow, whom he married just five months previously, obtained letters of administration on the basis of her sworn deposition that he was domiciled in England and Wales and died without making a will. The bulk of his estate, which was valued at almost £500,000, was thereafter distributed to her.

A decade later, the man's brother launched proceedings with a view to revoking the letters of administration. He was the sole beneficiary of a will that the man had made prior to his marriage. His ultimate objective was to recover the estate from the widow so that it could be distributed to him in accordance with the will.

He contended that the man was in fact domiciled in Scotland when he both married and died and that his widow had knowingly made a false deposition in order to obtain the letters of administration. He pointed out that, unlike in England and Wales, under Scottish law a will is not revoked by a subsequent marriage.

Ruling on the case, the High Court noted that the man had drafted a new will around the time of his marriage by which he intended to leave most of his estate to his wife. However, he died before he could sign the document. The Court found that, following his death, his brother initially told his widow that he wanted nothing from the estate and that she should have all of it. Only subsequently did he change his mind.

The widow, the Court ruled, was guilty of no impropriety, either in her making of the deposition or in administering the estate. She was open and transparent in her dealings and acted on professional advice that the will was invalid and that her husband had, throughout his life, probably been domiciled in England and Wales, where he was born.

In dismissing the brother's claim, the Court found that his delay in prosecuting the matter was both gross and inexcusable. The estate had long ago been distributed and the widow had sought to rebuild her life around her inheritance. She would suffer significant financial prejudice, and be forced to relive painful memories, were the brother permitted to proceed with his case. It would be unconscionable, at this late stage, for him to recover from the widow any of the estate's assets.

For advice regarding inheritance law, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*McElroy v McElroy [2023] EWHC 109 (Ch)*

**Making a Will? Court Ruling Underlines the Benefits of Professional Advice**

Engaging a professional to draft your will and give advice has many advantages that may not be apparent at the time. In a case on point, a lawyer's prudence in arranging a medical assessment of an elderly client proved decisive in the Court of Appeal's decision to uphold the validity of his final will.

Following the death of an elderly farmer and businessman, his estate was valued at almost £2 million. By his first two wills, he left business assets to two of his children and farmland to his third. After the third child died suddenly, however, he instructed a solicitor to draft a new will which made significantly different bequests.

He had been experiencing problems with his memory for some time and the death of his child had a devastating impact on him. The solicitor was concerned to ensure that he had the mental capacity required to make a valid will and, with that in mind, she asked the man's GP to carry out an assessment.

After doing so, the GP noted that he was fully orientated and gave no appearance of being confused or distressed. He was able to go through the will, bit by bit, with very little prompting. After an inheritance dispute developed within the family, however, a judge found that the will was invalid for want of testamentary capacity.

Reversing that decision, the Court noted that the case raised important issues about the proper weight to be attached to the evidence of a drafting solicitor and a medical practitioner's assessment of capacity. The man was astute enough to realise that it might be sensible to change his will following his child's death and the document he signed was rational on its face.

The solicitor had prudently enlisted the GP's assistance and was entitled to, and did, rely on his medical assessment. Neither of them was required to question the man as to his reasons for changing his will. The Court concluded that, had proper weight been given to their evidence, it would not have been open to the judge to find that the will was invalid.

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

**Partner Note**

*Hughes v Pritchard and Others [2022] EWCA Civ 386*

**Rugby Union Commentator Relieved of £700,000 Tax Demands in IR35 Appeal**

Many media personalities who provide their services via their own private companies have, in tax terms, expensively fallen foul of the so-called IR35 legislation. However, in one case, a Rugby Union commentator's company succeeded in overturning six-figure HM Revenue and Customs (HMRC) demands.

The man engaged in lucrative work as a media pundit after enjoying a stellar career on the field of play. Via his company, his services were provided to a broadcaster. Citing IR35, HMRC took the view was that he was to all intents and purposes the broadcaster's employee. On that basis, the company was assessed for almost £700,000 in Income Tax and National Insurance contributions.

Ruling on the company's challenge to those demands, the First-tier Tribunal (FTT) found that there was a mutuality of obligation between the man and the broadcaster. He was obliged to perform his services personally and the broadcaster was required to pay him a fixed annual fee. The broadcaster also had a sufficient level of control over how he went about his work to found an employment relationship.

Upholding the appeal, however, the FTT drew a distinction between the man's role as a commentator – providing analytical insights and 'second voice' punditry during matches – and that of a programme presenter. The broadcaster did not stipulate a minimum number of days on which he had to work, only a maximum, and his annual fee did not resemble a salary. It was more in the nature of a block fee paid for the exclusive right to have first call on his services for a specified period.

There was no embargo on him reproducing in other media outlets opinions he had previously expressed during one of the broadcaster's live shows. He took a personal reputational risk every time he appeared on air and he bore editorial responsibility for every word falling from his lips.

His work schedule was apparently set by a process of gentlemanly consensus. The broadcaster was reasonable in its demands on his time and, in the event of clashes, granted him reasonable leeway to refuse engagements. Although the company derived about 60 per cent of its turnover from the broadcaster during the relevant period, the FTT noted that the man also wrote popular newspaper columns and provided his services to other broadcasters. Overall, the FTT did not view his relationship with the broadcaster as one of employment.

Contact us for specialist legal advice on IR35 tax disputes.

**Partner Note**

*S & L Barnes Ltd v The Commissioners for Her Majesty's Revenue and Customs [2023] UKFTT 42 (TC)*

**Thought About Appointing a Professional Executor? It Can Pay Dividends**

When you die, it is the executor or executors of your will who will bear the burden of distributing your estate to your chosen beneficiaries. You are perfectly free to appoint a family member or friend to that important role but, as a High Court ruling made plain, there can be advantages in engaging an independent professional.

The case concerned a man who died at the age of 85, a few days after making a will by which he appointed his brother as one of his executors. Issues concerning the will and the distribution of his estate had since become the focus of disagreement within the family. In that context, four of his beneficiaries launched proceedings with a view to removing, or passing over, the brother in his role as executor.

Ruling on the matter, the Court noted that the deceased was fully entitled to choose his brother to serve as his executor and that his brother was keen to fulfil the task laid upon him. Having declared an intention to pursue significant personal claims against the estate, the brother's position was heavily conflicted. On the face of it, however, such conflict arose from the deliberate acts of the deceased himself and did not, by itself, justify passing over or removing his brother.

In nevertheless upholding the claim, the Court was quite satisfied on the available evidence that the brother was unfortunately incapable of acting as a disinterested, objective administrator of the estate. The welfare of the beneficiaries as a whole would be best served if he were not involved in the administration process.

The effect of the ruling was that the estate would be administered by a professional trust corporation. The Court, however, emphasised that it was making no findings of wrongdoing on the brother's part. He was undoubtedly well meaning and firmly believed that he knew what the deceased would have wanted and that he was capable of implementing his wishes.

For advice on making sure your estate will be dealt with fairly and efficiently, to avoid contentious situations such as this arising, contact us.

**Partner Note**

*Pegler and Others v McDonald and Others [2022] EWHC 2405 (Ch)*

These articles are provided for general interest and information only. They do not constitute legal advice. Whilst every effort is made to ensure that the content accurately reflects the law in England as at the date of its transmission, no liability is accepted for any loss or damage arising from any act or omission resulting from any information contained herein.