Tax, Trust and Probate ~ May 2023

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**Stamp Duty Land Tax – When is a Property Unsuitable for Use as a Dwelling?**

A newly purchased house may require a great deal of renovation and repair work to render it habitable – but does that mean it is unsuitable for use as a dwelling for the purposes of Stamp Duty Land Tax (SDLT)? A tribunal considered that issue in a guideline case.

A couple paid over £1.7 million for a detached house that had in the past been tenanted but which had been empty for some months prior to its acquisition. Amidst signs of vandalism, the property was strewn with rubbish and the kitchen gave off an unbearable smell. The boiler was hanging off the wall, the basement was flooded by leaking water pipes, utilities could not safely be used and the property's electrical wiring was in a life-threatening condition.

The couple paid £177,000 in SDLT on purchasing the property, but subsequently asserted that they were entitled to a rebate of almost £100,000 on the basis that it was not suitable for use as a dwelling on the date of acquisition. The matter came before the First-tier Tribunal (FTT) after HM Revenue and Customs took a contrary view.

Ruling on the matter, the FTT accepted that the state of the property was not such that a reasonable buyer might be expected to move in straight away. Amongst other things, the property required complete rewiring and installation of a new boiler and pipework. Broken windows and doors required repair to make the property secure and skip loads of rubbish had to be removed.

In rejecting the couple's challenge, however, the FTT noted that suitability for use as a dwelling house is not equated with immediate readiness for occupation. In the context of SDLT, only very serious, fundamental problems – such as radioactivity or a risk of imminent structural collapse – are sufficient to render a property unsuitable for such use.

Whilst accepting that it would have been dangerous for the couple to move into the property immediately, the FTT noted that the relevant defects were curable. They were not fundamental and did not come anywhere near the threshold at which a reduced rate of SDLT is payable.

It is vital to seek expert legal advice before entering into tax tribunal proceedings. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Mudan and Another v The Commissioners for Her Majesty's Revenue and Customs [2023] UKFTT 317 (TC)*

**Tax Residency – Australian Entrepreneur Challenges Million-Pound CGT Bill**

The belief that you cease to be a UK resident for tax purposes simply by staying out of the country for a certain number of days is a common fallacy. As a TV personality, entrepreneur and property investor found out to his cost, the legal test is very much more nuanced than that.

The man was born in Australia but prospered mightily after relocating to England in the 1980s. He was assessed for over £1 million in Capital Gains Tax (CGT) after selling various UK properties during the 2012/2013 tax year. In challenging the bill, he asserted that he was not resident in the UK for any part of that year.

Pointing out that he had spent only 38 days in the UK during the tax year, he said that he had, by then, returned home to Australia, as he had always intended to do. Having placed his UK home on the market, he was winding down his business interests in this country and returned here during the tax year only to tidy up his remaining affairs and say goodbye to his friends.

Ruling on the matter, the First-tier Tribunal (FTT) noted that the tax year pre-dated the introduction of a statutory residence test in April 2013. The previous, common law test thus applied to the case. The crucial issue was therefore whether he had made a distinct break in the pattern of his life in the UK to the point where he had ceased to have a settled or usual abode in this country.

The FTT acknowledged that he was intent on refocusing his business activities on Australia, where he owned a home, together with other properties, and where his family was based. He had, amongst other things, taken steps to realise his UK property assets and had shipped his Ferrari to Australia.

In rejecting his appeal, however, the FTT found that he had not, during the tax year, loosened his ties to the UK sufficiently to qualify for non-resident status. Although he put his UK home up for sale, he stayed there when he was in the country. He carried on as chairman of an English-registered company and maintained in Companies House filings that he was resident in England.

He had continuing business investments in this country and remained registered with a UK dentist and doctor. His girlfriend lived in England during the tax year, as did his dog, to whom he was greatly attached. Whilst he had set in train various steps to enable him to relocate to Australia, they had not, by the start of the tax year, reached the point of being a substantial loosening of his ties to the UK. Overall, the FTT found that he was UK tax resident for part of the tax year.

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

**Partner Note**

*Lyons v The Commissioners for Her Majesty's Revenue and Customs [2023] UKFTT 294 (TC)*

**This Is Why You Should Make a Will Whilst You're Still Hale and Hearty**

There are all sorts of good reasons why you should instruct a solicitor to draft your will whilst you are still hale and hearty. As a High Court case showed, waiting until you are old and vulnerable before performing that vital task is to positively invite dispute between your loved ones after you are gone.

The case concerned a widow who was in her 80s when she made a will leaving the lion's share of her estate – which largely consisted of her home and farmland – to her daughter. In challenging the will's validity following her death, one of her sons asserted that the daughter had taken advantage of her vulnerability and brought undue influence to bear upon her.

Ruling on the matter, the Court noted that, by the time she made her will, the widow was in failing health and had poor mobility. Her sight was deteriorating and she required help with many day-to-day tasks. The daughter, who lived with her, provided most of her care.

On the other hand, she was not wholly dependent on her daughter, who was not her sole beneficiary. The nuanced terms of the will sought to achieve a balance between all members of the family. It was drafted on her instructions by a highly experienced solicitor, who ensured that all legal formalities were complied with and who testified that he had no cause for concern that undue influence might be in play.

In ruling the will valid, the Court noted that she was referred to as 'the boss' within the family. Despite her vulnerability, she was a strong woman who knew her own mind and was in control of her own powers of decision-making. She was not someone who would be easily influenced by others and the Court was satisfied that her freedom of choice was not overborne by her daughter.

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

**Partner Note**

*Braniff v Braniff [2022] NICh 15*

**What Constitutes the 'Grounds' of a Large House? Guideline Tax Ruling**

Do the 'grounds' of a large house extend to areas that are difficult to access and that provide no practical benefit to the property's owner? The Upper Tribunal (UT) addressed that important issue in the context of a Stamp Duty Land Tax (SDLT) appeal.

The case concerned a country house that, together with a number of outbuildings and 15.5 acres of land, had been purchased for £2.8 million. Approximately two of those acres consisted of ancient, dense and heavily protected woodland, sloping steeply down to a river bank.

The estate's owner contended that the woodland was not residential in that it did not form part of the property's grounds, within the meaning of Section 116(1)(b) of the Finance Act 2003. On that basis, it asserted that the property was in mixed use and that SDLT was thus payable at a lower rate.

Had that argument prevailed, the owner's SDLT liability would have been reduced by more than £200,000. HM Revenue and Customs (HMRC), however, took a contrary view that the whole of the estate, including the woodland, was residential in nature. The owner's initial challenge to that decision was rejected by the First-tier Tribunal (FTT).

Ruling on the owner's appeal against that outcome, the UT identified a number of legal and procedural flaws in the FTT's decision, which was set aside. Rather than remitting the matter for reconsideration by the FTT, however, it elected to remake the decision itself.

Although the woodland was crossed by a public footpath, the owner pointed out that it was otherwise inaccessible from the house, save with the assistance of industrial machinery. The owner could make no greater use of it than any member of the public and it could not be commercially exploited in that it was covered by a tree preservation order. It could not be used for walking, picnicking or other 'residential' purposes and it provided no benefit to the owner.

The UT noted that the evaluation it had to perform was inevitably impressionistic and not an exact science. The woodland fell within the legal title of the property and provided some measure of privacy and security to the house, from which it was not inordinately distant. The fact that it was not in agricultural or commercial use was a factor that also weighed in favour of HMRC. Overall, the UT was satisfied that the woodland formed part of the property's grounds.

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

**Partner Note**

*The How Development 1 Ltd v The Commissioners for His Majesty's Revenue and Customs [2023] UKUT 84 (TCC)*

**You Are Duty-Bound Reasonably to Provide for Your Dependants in Your Will**

Making reasonable provision in your will for those who depend upon you financially is a duty, not a choice. A judge made that point in coming to the aid of two sisters who were left in acute need when their father bequeathed them nothing.

In a will made four months before he died, their father left the entirety of his estate – consisting of his home, which was worth £355,000 – to their brother, who lived in the property. The sisters launched proceedings under the Inheritance (Provision for Family and Dependants) Act 1975.

Ruling on the matter, the judge noted that both sisters were in their 60s and in poor health. Their father had, from time to time, helped them out with gifts of money and their disinheritance had left their finances in a parlous state. Their brother, aged in his 70s, had almost entirely failed to engage in the proceedings.

The judge found that the father, whilst anxious to ensure that his son continued to have a roof over his head, had also stated his intention to make provision for his other children. In failing to reflect that intention in his will, he had failed to make reasonable provision for the sisters. In order to meet their reasonable needs, the judge ruled that one sister should have £70,000 from the estate and the other £90,000.

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

**Partner Note**

*Dignam-Thomas and Another v McCourt and Another [2023] EWHC 546 (Fam)*

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