Tax, Trust and Probate ~ August 2023

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**Always Back Up Your Digital Financial Records – Tax Tribunal Cautionary Tale**

Business owners who store financial records on a single computer, without backups, create a hostage to fortune. A company director whose laptop was stolen amidst the chaos accompanying the onset of the COVID-19 pandemic found that out to his cost when confronted with an HM Revenue and Customs (HMRC) inspection.

The man became the company's sole director when its founder resigned. The founder gave him paper copies of the business's financial and tax records. He scanned them onto a laptop and then proceeded to destroy the paper records. In failing to ensure that the records were sufficiently backed up so that they could be retrieved if needed, he admitted that he should have known better.

He was abroad on business when the pandemic hit. As lockdowns started to be imposed across the world, he managed to book a flight home to the UK amidst scenes that bordered on panic. He had to leave behind his car, which had the laptop inside it. Both were subsequently stolen. Shortly after his return, an HMRC officer conducted a scheduled inspection of the company's VAT records going back to the date of its incorporation.

In the absence of satisfactory documentation, most of which was on the laptop, the officer concluded that the company's returns in respect of eight VAT periods were inaccurate. The company was issued with a 'best judgment' VAT assessment of £29,586 and a substantial inaccuracy penalty. The director received a personal liability notice (PLN) on the basis that he bore responsibility for inaccuracies.

Ruling on his and the company's appeal against the penalties, the First-tier Tribunal concluded that they were justified in respect of three of the VAT periods. It found, however, that HMRC had failed to establish that the other five VAT returns were inaccurate at the time they were submitted. Given the director's unchallenged account of the laptop's theft, a further reduction in the penalties was merited.

The director's PLN was reduced from £17,097 to £3,417 and the company's penalty from £21,457 to £10,251. A PLN imposed on the company's founder was also adjusted. There was no appeal against the VAT assessment.

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

**Partner Note**

*Aizio Associates Ltd and Others v The Commissioners for His Majesty's Revenue and Customs [2023] UKFTT 576 (TC)*

**Mutual Wills – There is a Big Difference Between Moral and Legal Obligations**

There is a big difference between moral and legal obligations. The High Court made that point in finding that mirror wills signed by a married couple did not impose on either of them a binding obligation not to change their bequests in future, save by their mutual consent.

The couple attended a solicitor's office and made mirror wills whereby each of them left the entirety of his or her estate to the other. The effect of the wills was that, when the second of them died, all that remained of his or her assets would pass in equal shares to their child and the husband's three other children from a previous marriage.

When the husband died, the wife duly inherited his estate. However, shortly before her own death, she made a new will bequeathing all that she owned to her child, cutting out her three stepchildren.

In challenging her final will, the stepchildren argued that the mirror wills were mutual in character. She and their father had bound themselves not to make any further wills without the other's consent. On that basis they contended that, on their father's death, the wife's mirror will was rendered irrevocable.

The solicitor who drafted the mirror wills testified that he had advised the husband that there was no guarantee that the wife would not change her will following his death. He recalled that the wife had given an oral assurance that she would not disinherit the stepchildren. The husband had stated that, after 45 years of marriage, he trusted the wife implicitly and that there was no way she would do such a thing.

In rejecting the stepchildren's case, a judge found that the wife was under a moral obligation not to disinherit them after their father's death. However, she was not subject to a legally binding obligation to that effect. The couple had not entered into a reciprocal agreement, amounting to a contract, that their mirror wills would be irrevocable and remain unaltered, save by mutual consent.

That may have been their common expectation and desire at the time, but that was not enough. Even if it could be said that the wife had promised that she would not alter her bequests, the husband had given no reciprocal promise. The wife was thus free to make a new will after his death.

Dismissing the stepchildren's appeal against that outcome, the Court found no error of law in the judge's decision. He was entitled to find on the evidence that there was no clear agreement between the couple that, in the absence of mutual consent to the contrary, their mirror wills would be set in stone.

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

**Partner Note**

*McLean and Others v McLean [2023] EWHC 1863 (Ch)*

**Woman Denied Non-Resident Status Faces Seven-Figure Tax Demand**

HM Revenue and Customs (HMRC) adopts a tough approach when considering whether a person who claims non-resident tax status has spent more than the permitted number of days in the UK. It certainly brooked no compromise in the case of a woman who ended up with a seven-figure tax bill.

The day before the end of a tax year, the woman moved to Ireland. In the following tax year, her husband transferred shares to her on which she received about £8 million in dividends. HMRC rejected her claim to non-resident tax status and assessed her for £3,142,550 in additional tax.

She accepted that she had spent 50 nights in the UK during the relevant tax year –five nights more than the 45 nights permitted under the statutory residence test (SRT) contained in the Finance Act 2013. She asserted, however, that there were exceptional circumstances, beyond her control, which prevented her from leaving the UK on the excess nights in question.

Allowing her appeal against the tax demand, the First-tier Tribunal (FTT) found that she had twice returned to the UK to visit her sister, who was suffering from alcohol addiction and depression. Whilst not accepting that her visits were prompted by her sister's threats of suicide, the FTT found that she needed to be in the UK to look after her sister's children until alternative care arrangements could be made.

In upholding HMRC's challenge to that outcome, however, the Upper Tribunal (UT) found that the FTT erred in law in finding that she was 'prevented' from leaving the UK. It noted that the word 'prevent' means stopping something from happening, or making an intended act impossible, and connotes more than a mere hindrance.

In finding that exceptional circumstances applied, the FTT reached conclusions on the evidence that were inconsistent, and thus perverse. It further erred in failing to consider whether all elements of the SRT were met on each of the five excess nights, taken individually.

The UT acknowledged that the woman may have felt morally bound to remain in the UK to care for her sister's children. However, it found on the evidence that any such sense of moral obligation did not amount to exceptional circumstances preventing her from leaving the UK. In upholding the tax demand, the UT ruled that she was resident in the UK during the relevant tax year.

For advice regarding HMRC disputes and tax status, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*The Commissioners for His Majesty's Revenue and Customs v A Taxpayer [2023] UKUT 182 (TCC)*

**Online Traders are Not Beneath the Tax Authorities' Radar**

Some people who trade online do so in the fond hope that the income they generate will fall beneath the tax authorities' radar. A tax tribunal ruling that left one such trader on the verge of bankruptcy showed how very wrong they are.

On his relevant tax returns, the man declared his modest income as a security guard but made no mention of his profits from online trading. That prompted HM Revenue and Customs (HMRC) to conduct an in-depth inquiry into his financial dealings. He was issued with back tax demands totalling £19,607, together with £9,341 in inaccuracy penalties.

Challenging those bills, he asserted that he had no income from online trading during the four relevant tax years and that he was being harassed by HMRC. He accepted that he had eBay and PayPal accounts, but contended that they had been hacked, resulting in many transactions that he had not authorised. Other transactions were personal in nature and did not amount to trading.

Ruling on the matter, the First-tier Tribunal (FTT) found that those explanations were not credible. HMRC had obtained his bank records, which showed numerous entries indicative of trading, including payments to suppliers and delivery firms. Deposits via PayPal amounted to a six-figure sum in a single year and his eBay account included hundreds of customer ratings for his online store.

The FTT found that his failure to declare his self-employed trading income on his tax returns was deliberate, although not concealed. He was thus liable to maximum penalties of 70 per cent of the potential lost revenue. In the event, HMRC had agreed to reduce the penalties substantially to take account of assistance he had provided during the inquiry.

In dismissing his appeal, the FTT noted that HMRC's approach was, if anything, generous to him. The tax assessments were justified and not excessive. Although he was suffering from a medical condition and on the edge of bankruptcy, there were no special circumstances that would justify a further reduction in the penalties.

**Partner Note**

*Milasenco v The Commissioners for His Majesty's Revenue and Customs [2023] UKFTT 620 (TC)*

**Terminally Ill Woman's Marriage Triggers High Court Inheritance Dispute**

It is quite common for people to get married in the knowledge that they only have a short while to live. However, as a High Court ruling underlined, such a step is often fraught with legal difficulty in terms of inheritance and should never be taken without legal advice.

The case concerned a woman who was fully aware that she was terminally ill. Her assets in England and abroad were worth about £10 million. She was being cared for in a hospice when, a few days prior to her death, she made a will with the help of a priest and a man who was described on her admission papers as her close friend and next of kin. She executed the document without having received professional legal advice from a solicitor.

By the will, she left around one sixth of her estate to the friend, bequeathing most of the balance to her sister and members of her family. However, on the same day that she signed the document, she and the friend were married in a religious ceremony. That was followed soon afterwards by a civil ceremony at which her sister served as a witness. Three days later, she died.

The friend subsequently launched proceedings, asserting that the marriage had the effect of revoking the will and that she therefore died intestate. As her husband and next of kin, he asserted that he was thus entitled to inherit the entirety of her estate. His claim was resisted by the sister, but he applied for summary judgment on the basis that her defence had no real prospect of succeeding.

Ruling on the matter, the Court noted the general rule contained in Section 18 of the Wills Act 1837 that, when a couple get married, any previous wills either of them have made are automatically revoked. That provision does not require them to have any intention to revoke their wills or even to be aware of the rule's existence.

In rejecting the friend's application, however, the Court found that the sister had a real prospect of establishing that the woman made her will in anticipation of her forthcoming marriage. If it could be shown that she intended her will to survive her nuptials, an exception to the general rule would apply. Some, but not all, other aspects of the sister's defence were also viable and the Court found that the matter could only be resolved fairly following a full trial on the merits.

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

**Partner Note**

*Lattimer v Karamanoli [2023] EWHC 1524 (Ch)*

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