

Taxing times

Furnished Holiday Lettings (FHLs) abroad

Individuals who let FHLs may qualify for generous tax reliefs. Until recently these tax reliefs were only available if the property was situated in the UK. HM Revenue & Customs (HMRC) now consider the tax rules on FHLs may not be compliant with European Law and to avoid any possible conflict with Brussels have extended them to cover property situated in the European Economic Area. Unfortunately, this is a hollow victory for taxpayers since the tax rules relating to FHLs are being abolished after 5 April 2010.

What are the qualifying conditions?

To qualify for the tax benefits the following conditions must be met:

- The property must be let on a commercial basis (ie. with an intention to make a profit)
- The property must be available for letting to the public generally as holiday accommodation for at least 140 days in the tax year (6 April to 5 April)
- It must be let for at least 70 such days
- The property must not be occupied by any individual for more than 31 consecutive days.

What are the benefits of FHLs?

Generally, UK property income, both on furnished and unfurnished lettings is treated as being from a single rental business. However, to the extent that the business meets the conditions to qualify as FHLs the income and expenses are treated as if they were generated from a trade. This has many valuable benefits such as being able to claim capital allowances on furniture and greater flexibility of loss utilisation when compared to normal rental income. More importantly, as the assets of the FHLs are business assets, the owner could benefit from rollover relief on replacement of assets, entrepreneurs' relief on disposal and, most beneficially perhaps, business property relief from inheritance tax.

How do the changes impact on me?

Due to the changes you may now qualify for additional tax reliefs or expenses against income in the current tax year (2009/10) or on income that has already been disclosed to HMRC on your annual tax return.

If you are within the normal time limits for amending your self assessment tax return, you should submit an amended return to HMRC. The normal time limit for amending income tax returns is one year after the 31st January following the end of the tax year concerned.

In addition, if you sold a foreign property after 5 April 2003 (which under the new guidance would qualify as a FHL) you should reconsider your tax position and see whether you are now eligible to claim tax reliefs such as business asset taper relief, retirement relief or holdover relief. Making a claim for any of these reliefs may reduce your tax liability for the relevant year and produce a tax repayment for you.

Any such claim must be made within 5 years after 31 January following the end of the tax year concerned. So for example, if you make a claim for 2003/04 it would need to be submitted to HMRC by 31 January 2010 at the latest.

For further information on FHLs or advice on any tax issue Malcolm Emery, associate can be contacted on 01823 625623 or email malcolm.emery@footanstey.com

IN THIS ISSUE

September 09

page
02



Trusting the
trustees

page
03



Time to care?

page
04



Claiming more than
their fair share?

Trusting the trustees

Trusts in Wills are popular and enable you to leave your assets to trustees to hold for the benefit of another. Perhaps with someone receiving the income from the trust for their lifetime and then the capital passing to a different individual, or where the beneficiaries are minors and you do not wish for them to receive their inheritance until they reach a certain age. It is common for your executors to also be appointed as trustees as a convenient option but this is not always desirable or in the best interests of the beneficiary for a number of reasons.

You may feel that family members or friends are better equipped to cater for the more personal interests of the beneficiary rather than professional trustees but one must be sure not to overburden the non professional trustee with responsibility that you did not wish to place on them.

Trustees must "exercise such care and skill as is reasonable" in order to administer the trust productively for the benefit of the beneficiary. The court can relieve the trustee of this burden in exceptional circumstances. It is also possible to lessen the burden on the trustees by express provision within your Will.

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Trustees are personally liable if they breach their duties. They will not have recourse to an indemnity from the estate unless your Will dictates otherwise.

Trustees must understand the Will in order to comply with the express provisions within it. Consider whether you feel your intended

trustees could understand your Will.

Trustees must treat all beneficiaries equally. For example, a balance must be struck between providing sufficient income for any person entitled to the income of the trust for life without disproportionately reducing the capital growth of the trust assets for the ultimate beneficiaries. Consider whether your family or friends could in fact act so impartially given their personal connections.

Two trustees are required to administer a trust, but generally no more than four. The trustees must act unanimously unless your Will states otherwise. Unanimity may be difficult to achieve if you appoint estranged or feuding relatives as trustees.

Trustees must invest the trust fund in a broad range of investments and must have regard to minimising the effect of inflation in order to reduce risk of capital loss. Trustees must seek professional assistance if they are unable to fulfil these duties but they cannot delegate all responsibility.

Deciding who to appoint as trustees is an important decision and you should ask yourself who you are willing to trust with your assets to act in a way that you would approve.

Our private client team are able to offer comprehensive advice which could offer you peace of mind that you have made an informed decision which is in your beneficiaries' best interests. To find out more, please contact Kelly Greig on 01823 243323 or email kelly.greig@footanstey.com

Time to care?

The recent publication of the Government's Green Paper "Shaping the Future of Care Together" proposes to reform our current social care system in a number of ways. In particular it aims to create a new National Care Service in respect of long-term care funding. This will have a huge impact on care home fees funding for the elderly, amongst other areas of care.

The current system has been in place since the 1940's when life expectancy was much lower than it is today. In the south west in 2007 18.8% of people were aged over 65 or older compared with 16% for England as a whole. It is projected that these percentages will rise to 24% for the south west by 2026.

The Green Paper suggests three ways in which the National Care Service could be funded in the future:

1. By a partnership between the people and the Government where the Government will fund around a quarter to one third of the cost of the care as a minimum, but for people with higher care needs they may still need to fund the rest out of savings or against properties
2. By an insurance scheme where people would be asked to contribute towards the cost of their care
3. By a comprehensive scheme where everybody (regardless of whether you need care or not) has to contribute towards the cost of their care, but in return, care is free.

However, one area the Green Paper does not highlight is the fact that care costs can equally be funded by the NHS via individual Primary Care Trusts (PCTs).

Those who have higher levels of need can access a completely separate pot of funding

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provided by the PCT rather than the Local Authority. The difference in this funding is that it is not means-tested. It can make the difference of not selling your home or using your life savings. The main principle is this. If a person's primary need is health care then the full cost of their care should be funded by the Primary Care Trust. This is called NHS Continuing Healthcare Funding. Families should be looking into this type of funding before they even consider social care. A continuing care assessment should legally form part of a multi – disciplinary team meeting, including someone from social care and someone from the Primary Care

Trust suitable to assess the needs of a person based on their diagnosis. This principle of partnership in a healthcare scenario is only now evolving out of the Green Paper with regard to social care.

There is now a 16 week consultation period following the publishing of the Green Paper after which the Government will produce a White Paper in 2010.

In the meantime, why wait? NHS continuing healthcare funding is available now for all those who fit the health eligibility criteria, regardless of financial means.

For further information on NHS continuing healthcare, or care for the elderly generally, contact Asha Beswetherick, solicitor in our elderly care team on 01752 675021 or email asha.beswetherick@footanstey.com



STEP private client nomination

Tricia Wass, partner in our private client team, has been shortlisted for the Elder Client Law Professional of the Year award at the forthcoming Society of Trust and Estate Practitioners (STEP) awards 2009.

The awards highlight excellence and innovation among private client professionals and wealth managers worldwide.

The Elder Law Professional of the Year is a new award which recognises commitment to providing and promoting robust, comprehensive and independent advice for older people their family and carers.

To be nominated for the STEP award is the reflection of the hard work and dedication

that Tricia and her team have given to providing advice and support in the elderly client field.

STEP is the leading professional body for private client professionals worldwide, membership is by thesis or examination and represents a quality mark, indicating that the adviser is one of the most experienced and senior practitioners in the field of trust and estates.



Claiming more than their fair share?

From Shakespeare to Dickens to the writers of Dallas, family dynamics and the consequences of inheritance are common dramatic themes and, in the real world, questions of who and how people should inherit can often be difficult and painful to answer.

In some cases, whatever a Will says, the family will accept and move on. However, in an increasing number of cases, there are likely to be challenges to the Will for a greater share of the deceased's estate.

One of the ways a Will can be challenged is by making a claim for 'reasonable financial provision' under the Inheritance (Provision for Family and Dependants) Act 1975. This legislation allows certain groups of people to claim for a greater share of an estate that they had otherwise inherited – whether there is a Will or not.

Those who are able to claim include spouses, registered civil partners, children, and co-habitees who have been continuously living with the deceased for two years prior to the date of death. With the exception of spouses and registered civil partners who are not limited in

what they can claim, the other parties can claim for their maintenance only.

More controversially, ex-spouses who have not remarried can also make a claim against the estate as can anyone who was being maintained, either wholly or in part, by the deceased prior to their death.

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Clients will often ask whether there is anything they can do to prevent such a claim being made. It is not possible to remove the rights of any of the above parties to bring a claim in the first place, but the court will balance the rights of the competing parties. For example the needs of two minor children will be considered greater than those of an able-bodied adult child.

It is good practice for anyone writing a Will which they believe may give rise to problems, to also write a side letter explaining their reasoning behind their Will. This cannot bind the Court, but it does at least ensure that at a time when the Court cannot ask you directly, you have made sure that the Court is aware of your feelings and decision making process.

If you think that you or your family may be affected by any of the above issues, please contact Tamara Richardson, solicitor specialising in private client matters on 01823 625615 or email tamara.richardson@footanstey.com

Parental responsibility

In legal terms, parental responsibility (otherwise known as "PR") is defined as "all the rights, duties, powers, responsibilities and authority which, by law, a parent of a child has in relation to the child and his property". But what does this mean for you in practical terms?

It means that when an important decision has to be made about your child's upbringing, anyone who has PR should be allowed to have a say in that decision. Those decisions will include changing your child's name; removing your child from the UK (including going on holiday abroad); medical decisions; religion and schooling. It does not mean that the day to day decisions have to be made in consultation with everyone with PR. Those day to day decisions, such as what is for lunch or curfew, will be made by the person with whom the child lives.

So who has PR? All mothers automatically have PR, regardless of their marital status. The father of the child will also automatically have PR if he was married to the mother at the time of the birth or if he married the mother after the birth. He will also have PR if he is registered on the birth certificate AND the child was born after 1 December 2003.

For those fathers who do not have automatic PR and step-fathers, there are several other ways you can acquire PR. The most common methods are by entering into a parental responsibility agreement with everyone who already has PR or by asking the Court to make a PR order.

If you have any questions about the implications of parental responsibility, or if you would like to gain PR for a child, please contact Pollyanna Hall on 01392 685339 or email pollyanna.hall@footanstey.com



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