

Agricultural Property Relief Decision is Good news for Farmers

The recent tribunal decision in *Golding v- Her Majesty's Revenue and Customs (HMRC)* has provided important clarification on whether Agricultural Property Relief (APR) on Inheritance Tax is likely to be available on certain farmhouses.

The Relief is stated to apply to 'any farmhouses, cottages or buildings, which are of a character appropriate to the property'. This means that the buildings must be 'proportionate in size and nature to the requirements of the farming activities conducted on the agricultural land or pasture in question.'

Initially, HMRC had refused to accept the three-bedroom farmhouse in question as appropriate for the relief since the farming income of the smallholding was limited in relation to the size of the house. However, the tribunal reversed HMRC's decision after taking into consideration several factors relating to the use of the land and the property. Although the smallholding was only used for growing some vegetables and eggs for sale at the time of the owner's death, this was consistent with the fact that the owner was well past retirement age so it would be unreasonable to expect the farming activities to be any more extensive. He had purchased new farming equipment so the tribunal could conclude that he intended to continue to use the land for farming purposes.

The case is interesting as it shows that cases should be looked at in all the circumstances, taking into account any relevant circumstances such as age and past use.

HMRC on the Offensive

HMRC intends to produce a list of tax planning schemes that it views as contrived. Extra penalties are intended as the result for those who don't heed the warning.

Judge calls for major divorce reforms

The UK's controversial family law system has been put under the spotlight after a High Court judge called for a spate of radical reforms.

The last major review into the UK's divorce laws were held way back in 1950, but the High Court's Sir Paul Coleridge has argued that an independent commission must look to reform divorce law as family relationships are "unrecognisable" from those in the fifties.

He also accused the Government of "ducking" reforms, leading to a situation where pre-nuptial agreements and cohabiting relationships were legitimised by "stealth". As a result, Sir Paul, who sits as Mr Justice Coleridge in the family division of the High Court, now believes family law in the UK must be pulled into the 21st century.

According to Justice Coleridge, private law cases, including divorce and the break-up of unmarried couples, have risen by 35% in the past five years, with 135,000 new cases in 2010. He estimates that 320,000 children enter the family law system each year, suggesting that more than 3 million children are now caught up in the legal process.

"The scale of the problem is genuinely alarming," he said. "The incidence of family breakdown is so terribly high now that the way in which family law is shaped and managed has, I believe, a direct and profound impact on the private lives of huge numbers of the population."

For more on current divorce law, pre-nups, or any other area of family law, contact Penny Lewis on 01376 321311.

Inheritance Tax Planning Case Study

James is 62 and has been diagnosed with terminal cancer, with a life expectancy of just over a year. His wife died some years ago and he has remained a widower. He is the sole carer for his grandson, Ben, aged 8, his daughter having had nothing to do with her child or father since Ben's birth. James has a son, Peter, who works in New York, a declared bachelor.

James's assets are:

- House (his only residence), value £1.5 million, no mortgage
- Death in Service Benefit, value £1 million, payable at the discretion of the pension trustees.
- Portfolio, value £500,000.
- He works part time with an income of £75,000.

What is James's IHT position?

He is worried about Ben. He wants to make absolutely sure Ben's education continues apace (he attends a top-flight public school). James tells you that he has a niece who is close to Ben and it is arranged that Ben will be looked after by her. He does not see either of his children as a priority but would like to benefit both, Peter substantially more than his absent daughter.

A basic calculation shows there will be an inheritance tax bill of at least £1,070,000 on his death.

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Covered in this newsletter:

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Inheritance Tax Planning Case Study



What tax savings can James make in the short time he has available bearing in mind:

- generally speaking you must survive a gift by seven years before it is effective for inheritance tax planning, and
- James must not reserve or retain any benefit in a gifted asset – e.g. he cannot give his house to Ben and continue living there.

Action:

1) Contact Pension Trustees and make a NOMINATION of the death in service benefit in favour of a) Ben direct or b) a trust for Ben.

Result: Death in service benefit not subject to IHT on James's death.

2) As James wishes Ben to have a top class private education and will also be responsible for Ben's continued financial security in terms of maintenance and a home, paying for carers etc., he can utilise Section 11(2) of the Inheritance Tax Act.

Result: The amount gifted does not constitute a chargeable transfer for Inheritance tax purposes. James can make a gift of all/part of his portfolio. He would not have to survive the date of the gift by 7 years. There may also be scope for including the house in the gift. Gift with reservation of benefit will not apply due to the use of s11(2).

Section 11(2) allows a grandparent to make a lifetime gift to a grandchild where that child is not in the care of a parent. James can decide whether to make the gift to Ben in any of the following ways but it is generally believed that all the gifted assets must be able to be shown to be required for maintenance and education for the child until they reach 18 years.

- A direct gift to Ben. (Ben could have a very good time – Xbox and Wii in every room!)
- A gift to a BARE trust. This allows trustees to hold the gift for the child until 18 years. (Ben could have a good time at 18 but not until then and only if funds remained after his years at public school and after providing for his maintenance including a home). The money is treated as belonging to Ben for tax purposes. (A disadvantage here is that Ben cannot make a will, so if Ben died his mother and father as next of kin would inherit from Ben).
- A gift to a discretionary trust – more scope for the protection of funds after the child reaches 18 years (subject to HMRC approval). (Ben's mother and father would not inherit if Ben died before reaching 18 years). Discretionary trusts are taxed within a special trust tax regime (relevant property interests). There are a number of implications but the inheritance tax point is an issue here. Discretionary trusts are subject to inheritance tax at a maximum of 6%

every 10 years (or on assets leaving the trust-an exit charge). The tax is charged on assets in excess of £325,000, the current inheritance tax threshold.

- A gift to a number of discretionary trusts, commonly called pilot trusts. Ben would be advised to consider making a number of discretionary trusts (10 in number) during his lifetime. This would potentially reduce the 10 yearly and exit charge to zero.
- 3) The house. This does present an issue because if it is given away and James continues to live in it for his lifetime, then the gift would fail for inheritance tax purposes because it would be a gift with reservation of benefit. However James should consider whether he could gift the house to Ben / a trust and pay a market rent for his continuing occupation out of his salary.

Result: No inheritance tax. However, Ben would own a substantial asset at 18 and if he died before reaching 18 his mother and father would inherit from him as his next of kin.

4) Gifts out of income. If James has surplus income over his expenditure he could make gifts to Ben out of his income which would be exempt from inheritance tax.

Result: No inheritance tax as gifts out of surplus income may qualify as an exempt gift.

There are also financial products that could assist Ben and we would advise that he meet with his independent financial adviser to provide a comprehensive solution.

For further information on Inheritance Tax planning, please speak to a member of the Lifetime Planning Team on 01376 321311.

Smith Law Events

SLP Let's Talk Lunch

Wednesday 21st September at 12.30 at La Piazza, Rayne Road, Braintree, CM7 2QP.

The purpose of the lunch is an informal get together of local professionals in the town and is a great opportunity for each individual firm to catch up on local gossip, a chance to relax and socialise and share ideas.

If you would like to attend please contact Hilary on **01376 321311**.

Free Legal Advice Day

Wednesday 28th September 2011.

Just pop along to our offices for a FREE consultation where you will be able to speak to a member of the team on any of the following areas:

- Wills & Probate
- Buying & Selling a Property
- Divorce & Separation
- Living Together
- Powers of Attorney
- Large car park available

Wealth Protection Seminar

2.30 pm. on 12th October at Prested Hall, Feering

We will be looking at the facts about nursing and residential care provision and planning solutions and inheritance tax protection. (We will cover the questions most frequently asked regarding residential and nursing care planning - exploding the myths and giving solutions. Inheritance tax remains an issue for many people and it is doubtful whether the present inheritance tax threshold of £325,000 will rise in the near future).

If you wish to attend please ring Clare or Caralyn on **01376 321311**.

Contact us



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