

Why pay more inheritance tax than you need to?

We are increasingly being asked by clients what they do to limit their exposure to Inheritance Tax on death. This is hardly surprising as an increasing number of estates are now being caught by Inheritance Tax (IHT). This is the tax that has to be paid on an estate valued in excess of £285,000.00 from 6th April 2006. No IHT is payable on the amount up to the Nil Rate Band (NRB) but IHT is payable at 40% above this limit.

The Chancellor of the Exchequer has come under increasing pressure in recent years to abolish IHT. Perhaps not surprisingly he has been reluctant to give up what is a nice little earner for the Exchequer. Not only does the Government raise significant revenue from IHT but it is also extremely easy to collect.

There are a number of ways of either avoiding or, at least, reducing the charge to IHT.

- An individual can make annual gifts of £3,000.00 which will be exempt from IHT. This relief can also be carried forward to the following year if not used up in the current year.
- In addition to the annual exemption on gifts up to £3,000.00 a year you can

also claim exemption for gifts made from surplus income. It is important that you keep documentary proof that the gifts have been made from income and not from capital.

- Further relief can be obtained by creating a nil rate band discretionary trust in your Will into which assets can be transferred for your children and/or grandchildren. This effectively removes these assets from your estate for IHT purposes.
- In the past many people set up what were thought to be rather clever schemes for avoiding IHT. This has left them liable to income tax on "pre-owned" assets. This would typically be a property given away during the tax payer's lifetime but remaining in the occupation of the tax payer.

There are plenty of sound reasons for making a Will or checking that your current Will is still effective for the purposes you seek to achieve. We recommend that our clients at least re-visit their Wills every six years. There is certainly nothing to lose and possibly a good deal to be gained.

MELANIE PRATLETT — Partner

2006 Budget — Tax Changes to Trusts

At first blush Gordon Brown's 10th budget in March looked unexciting and innocuous. A close look at the small print, however, revealed the Chancellor's cunning plan to tax hitherto untaxed trusts.

There will now be an Inheritance Tax entry charge on virtually every trust followed by ten yearly charges. Only trusts for the disabled will be exempt.

Accumulation and maintenance (A & M) trusts and interest in possession (I.I.P) trusts created after 22nd March 2006 will, like discretionary trusts, be subject to:

- * A 20% IHT entry charge on transfers above the nil-rate band (now up to £285,000.00).
- * A ten yearly IHT charge at 6%.
- * An exit charge on transfers out of the trust.

To add insult to the fiscal injury existing A & M and I.I.P trusts will be charged. The A & M trusts can be protected by making sure the assets vest absolutely at age 18. Great care will be needed when creating trusts for children and grandchildren in the future.

MELANIE PRATLETT — Partner

Welcome

We are delighted to welcome the arrival of Anthony Marris at the beginning of April. He has joined our Commercial Property Team at the Saffron Walden office.

Anthony qualified as a Solicitor in 1980 and has many years experience specialising in a variety of commercial property transactions and other property related matters. He hopes to be able to assist clients in providing cost effective solutions to property related transactions and other matters. He trained in London and having spent many years at Wedlake Saint Solicitors in London and St Albans joins us from Cambridge firm Matthews Winter & Bullock.

Anthony is married with three children aged 10 14 & 17 all of whom are keen and accomplished violinists.

If you have any commercial property transactions you can contact Anthony on **01799 523441** or e-mail a.marris@adams-harrison.co.uk



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Long term care costs for the elderly

Elderly people or those nearing retirement often seek our advice on the advantages and disadvantages of transferring their home or other property to relatives whilst wishing to continue living in their home. There are some advisors who will suggest that it is a relatively simple matter to put into effect a scheme that will avoid the value of the client's property being taken into account to pay for residential care. Be very wary of these schemes which often fail to take into account the individual circumstances of the client and seldom highlight the other risks involved in gifting property to family members.

We have specialist lawyers at Adams

Harrison who will consider carefully each client's individual circumstances and give clear and realistic advice as to both the benefits and implications of making a gift of property. We will not give worthless guarantees that there is a foolproof way of avoiding the value of a home being taken into account in means testing. This is a complex area of the law requiring careful consideration and advice. It is not unknown for disposals of property to be set aside by the Courts and where this happens the costs involved can be significant.

In *Yule -v- South Lanarkshire Council* (1999) the Court decided that a Local Authority was entitled to take into account

the value of an elderly woman's home which she had transferred to her daughter over 18 months before entering residential care. The Court held that there was no time limit on a local authority when deciding whether a person had deprived themselves of assets for the purposes of avoiding residential care fees.

If you would like advice on future liability for cost of long term care or generally in connection with the disposal of your property please contact Melanie Pratlett on **(01799) 523441** or **m.pratlett@adams-harrison.co.uk**

MELANIE PRATLETT — Partner

Do you have an Enduring Power of Attorney?

Any Solicitor will tell you that you should have an Enduring Power of Attorney. As we grow older none of us can guarantee that we will retain our mental capacity and for this reason an Enduring Power of Attorney is important to ensure that our financial affairs are looked after by someone we know and trust.

People with declining mental powers are vulnerable to financial abuse and fraud

and quite often the perpetrators are either family members or so called close friends. Adams Harrison recently acted for a family in which a sister-in-law had systematically emptied the bank account of her elderly mother-in-law. The sister-in-law is now serving a prison sentence imposed by a Crown Court Judge.

An Enduring Power of Attorney needs careful consideration and the most

important decision is who to appoint as the Attorney or Joint Attorneys. Adams Harrison's advice and procedures for granting Enduring Powers of Attorney is based upon guidelines prepared by the Law Society's Mental Health and Disability Committee.

One of the most significant benefits of an Enduring Power of Attorney is that it continues to be effective after the Donor has lost his or her mental capacity. The important thing to remember is that the EPA needs to be granted whilst the Donor still has mental capacity. It is for this reason that we advise all our clients to consider making an EPA and this is frequently done when making a Will.

Our current standard charge for the preparation of an EPA is £75.00 plus VAT (£150.00 plus VAT for a couple). If prepared at the same time as making a Will the charge is £65.00 plus VAT for the EPA (£130 plus VAT for a couple).

If you would like to make an EPA you may care to contact either myself, Sarah Furlong or Kim Dalby on **01799 523441** or e-mail **m.pratlett@adams-harrison.co.uk**, **s.furlong@adams-harrison.co.uk** or **k.dalby@adams-harrison.co.uk**.

MELANIE PRATLETT — Partner

Our Wills Estates & Trusts Team



From left to right:

Kim Dalby — Legal Executive, Nicky Hamburg — Secretary, Gina Netsel — Secretary, Melanie Pratlett — Partner, Sarah Furlong — Legal Executive, Leanne Mayes — Secretary, Tracy Bysouth — Probate Assistant.

On the 5th December 2005, the Civil Partnership Act 2004 came into effect. Prior to this, same sex relationships were largely ignored and were not recognised by law in the same way as married couples. Following the Act, same sex couples entering into a Civil Partnership have broadly the same rights as spouses on intestacy and enjoy the same exemptions to inheritance tax. In order for same sex couples to enjoy the rights conferred by the Civil Partnership Act 2004, they must enter into a Civil Partnership by signing a Civil Partnership document in the presence of each other at licenced premises.

The facts

If you have already made a Will and you enter into a Civil Partnership, your Will will be immediately revoked, unless it names your Civil Partner and shows your intention to enter into a Civil Partnership with that person. If your Civil Partnership were dissolved, your Civil Partner is mentioned in your Will and there is no contrary intention, your Civil Partner is treated as having died on the date the Civil Partnership was dissolved. As such, any appointment of them as Executor or any gift to them will fail.

If you have not made a Will when you die i.e. you die intestate, your Civil Partner is treated in the same way as a spouse. Previously, a same sex partner would have been bypassed even if they had been a couple for many years. Briefly the intestacy rules state that if the deceased left issue i.e. children, their Civil Partner or spouse receive all personal chattels, a legacy of £125,000, and a life interest in half of the residue with the remainder passing to issue. If the deceased left no issue, the Civil Partner or spouse receives all personal chattels, a legacy of £200,000 and half the residue with the remainder passing to other relatives.

Sex Discrimination

Claims for sex discrimination where the employer is a company are invariably made against both the company and the individual accused of the act of discrimination.

In a recent case a female employee claimed she had been dismissed because she had refused to resume an affair with the Managing Director. The Employment Tribunal awarded her £40,866 for compensation. Because it was

Currently spouses do not have to pay Inheritance Tax on any benefit they receive from their spouse. If your estate exceeds the limit for Inheritance Tax, currently £275,000, it will be liable to Inheritance Tax on any value exceeding that limit at 40%. By taking advice from a firm of Solicitors, it is possible to mitigate your Inheritance Tax bill by careful drafting of your Will and taking advantage of the exemption. The Civil Partnership Act 2004 provides a Civil Partner with the same exemption as a spouse and therefore this can be taken advantage of for Inheritance Tax planning.

Legislation is available to provide specified persons with the ability to make a claim on someone's estate once they have died if they feel they should have been provided for or have not been sufficiently provided for. Prior to the Civil Partnership Act 2004 a same sex partner would have to show some form of financial dependency on their partner in order to qualify for a claim. Following the Act, they have an immediate right to claim as would a spouse.

What should you do?

If you have not made a Will, you must make one now, whether you are in a same sex relationship or not! If you have an estate which exceeds the Inheritance Tax limit, we can advise on Inheritance Tax planning and take advantage of the exemptions available to same sex couples.

For further advice please contact either myself, Melanie Pratlett or Kim Dalby on **01799 523441** or e-mail **m.pratlett@adams-harrison.co.uk**, **s.furlong@adams-harrison.co.uk** or **k.dalby@adams-harrison.co.uk**

SARAH FURLONG — Legal Executive

a small company with the Managing Director answerable to no one but himself the Tribunal said the employee could enforce the whole award against him if she chose. The Employment Appeal Tribunal overruled this decision and said the liability should have been split between the company and the Managing Director.

Either way the Managing Director will have regretted his indiscretion.

TOM HARRISON — Senior Partner

This little pig has stayed at home



Jemima is a pig — a saddleback sow to be precise.

Deborah Koehorst rescued Jemima seven years ago and keeps her in a large enclosure, with a shed. Last year the RSPCA took Jemima away and prosecuted Ms Koehorst for causing her cruelty. She had developed a skin condition which the RSPCA claimed had not been treated adequately.

On 27th January 2006 Ms Koehorst was cleared of cruelty to Jemima at Ely Magistrates Court where she was defended by Partner, Jennifer Carpenter, from our Criminal Law Department. The Court found no evidence of wanton neglect or lack of care. The Chairman of the Court said "Ms Koehorst has demonstrated much care and concern for her pig over the last seven years".

Jemima is now safely back home and, we are pleased to report, fully recovered from her skin condition.

An RSPCA spokesman commented "we are disappointed with the decision". This is hardly surprising since the RSPCA wins 97% of the cases it takes to Court.

Deborah Koehorst, who also owns several dogs and a horse, was delighted with the outcome. "My animals mean everything to me" she said.

JENNIFER CARPENTER — Partner

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Civil Partnership Act 2004

The Civil Partnership Act 2004 came into force on 5th December 2005 enabling same sex couples registered under the Act to enjoy the same legal status as heterosexual married couples.

The Act has 264 sections and its impact is extremely wide-ranging. Here are a few of the changes it brings:

- (i) Civil partners will enjoy the same tax treatment as married couples.
- (ii) Financial and property awards on termination of a civil partnership will be decided in much the same way as with divorcing spouses.

(iii) The estate of a deceased partner in a civil partnership will be dealt with in the same way as that of a married person. A surviving civil partner will be in the same position as a surviving spouse.

(v) The right to succeed to a tenancy will now be the same for a civil partner as for a spouse.

(vi) The Act extends the meaning of "parent" to include any civil partner in a registered partnership, whether it still exists or has been terminated.

(vii) A civil partner can apply to the Courts

for an Order for residence (custody) or contact (access) to a child of the family and for a parental responsibility Order. They may also apply to adopt children.

There will be no advantages for same sex couples living together who do not register ie "marry" under the Act. They will be in no different legal position to heterosexual co-habiting couples who do not marry.

The Courts will now have to prepare for the first civil partnership termination petitions ie same sex divorce. Also watch out for further hidden taxes as the Chancellor looks for cunning ways to re-coup lost revenue resulting from equal treatment for civil partners.

TOM HARRISON — Senior Partner

Separation — The Losers

Couples who do not marry or enter into a civil partnership can suffer financial hardship on separation—even after a long relationship. 'Common law marriage' is a common myth!

Here are some of the problems on separation.

Maintenance. — If you are not married or civil partnered, you do not have the right to claim maintenance from your former partner—even if you were together for years and even if you were financially dependent on your former partner. (N.B. If you have children, you always have the right to claim maintenance for them from their biological parents.)

Property. — If you are not married or civil partnered, any dispute about property is decided on strict trust principles. These are not necessarily 'family friendly' and can produce what seem like unfair results. Court proceedings to sort out disputes are expensive.

Tax. — If you are not married or civil partnered, you do not have available the special Capital Gains Tax or Inheritance Tax exemptions between spouses or civil partners.

Death. — If you are not married or civil partnered and your partner has failed to

provide for you in his/her will, you do not automatically have a claim against his/her estate. If your partner dies without a will, you could get NOTHING!

What can you do?

1. Consider getting married or civil partnered. If you are concerned about safeguarding or ring fencing certain assets or property prior to a marriage or civil partnership, our Family Department can advise you on whether a pre-marital or pre-civil partnership agreement is appropriate and can prepare a suitable agreement.

2. Consider how you and your partner own property. Our Conveyancing Department can advise on different forms of ownership and can prepare trust deeds to suit your situation and avoid problems in the future.

3. Make a will. Contact our Wills, Trusts and Estates Department for assistance with wills and tax planning.

Prevention is better than cure, however, if you do run into problems on separation, our Family Department can advise you and assist you in resolving difficulties.

SHOSHANA GOLDHILL — Partner

Marathon Mum



Gill Twelftree, as well as being one of the secretaries in our Conveyancing team at Haverhill and a mum with 2 children, is also a prodigious marathon runner. Over the last three years she has run six marathons.

This year's London marathon was her most recent achievement and the third time she has been in it. In 2004 she completed it and the Stratford-Upon-Avon marathon within a week of each other! Next stop — if that's the right word — is hopefully the Cardiff marathon later this year.