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WARREN & Son.

NEWSLETTER

December 2021

Autumn Budget

There was very little in the recent Budget that affects individuals and small businesses. The tax allowances for 2022/23 were announced although few of them have changed. Virtually all the allowances and thresholds are the same with the exception of the new Health and Social Care levy which commences under that name in April 2023. However for the previous year there will be a 1.25 % surcharge for both the employer and employee national insurance contributions (including class 4 for the self employed), and 1.25% added to the dividend tax. This is to enable time for a new structure to be set up for the new levy, at which point the 1.25% surcharge will transfer to the new levy.

Most other national insurance rates and thresholds are increased by approximately 3%. One important threshold is the amount a director, or indeed any employee, can be paid without incurring national insurance. From April 2022 this increases from £737 to £757 per month.

Capital Gains Tax, Inheritance Tax, Pension and VAT rates and thresholds also remain the same. However there is one small change to a procedure which many people did not know even existed. This relates to the sale of a residential property where an estimate of the Capital Gains Tax must be paid to HMRC within 60 days of the completion of the sale. Until this October the period was only 30 days. Sometimes your solicitor will complete this form, but if not it is important that you contact us immediately following a sale.

Finally the minimum wage rates increase in April 2022. Employees aged 23 and over increases to £9.50, those aged 21 and 22 increases to £9.18 and for those aged 16 to 20 the increase is 4.1%.

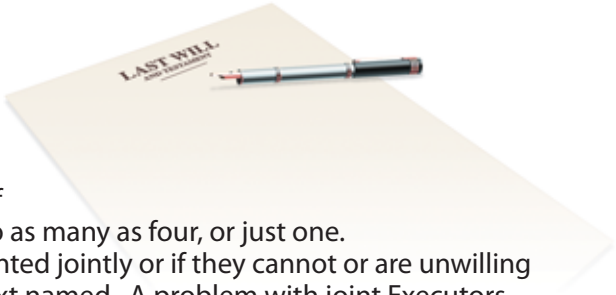
Tax relief on cars

The tax relief for a car is, in total, the same whether you buy it outright/ HP or on a lease/rental agreement. Both give 100% tax relief on the overall cost of ownership. With outright purchase/HP for an electric car you obtain 100% tax relief on the cost of the car in year one, but when you then sell it you pay tax on 100% of the sale proceeds. For a petrol/diesel car you still obtain 100% tax relief on the overall cost of ownership, but the relief is limited to 6% or 18% (dependant on Co2) each year until you sell it, and the tax relief is then made up to 100% of the cost of ownership.
With leasing/rental you can obtain 100% tax relief on the leasing costs, although there is a 15% tax disallowance for cars with emissions of over 50gm/km. One area of difficulty can arise when one has to decide whether the deal is an outright purchase or a rental. These are generally Personal Contract Purchases (PCP) which can fall into either category. It is the residual value that is the deciding factor. If the residual value is set by the leasing Company at a figure which will probably be lower than its actual value at the time, the deal will be treated for tax purposes as an outright purchase. However if the residual value is set at a figure which is higher than its actual value at the time then it will be treated as a rental.

The foregoing applies equally to whether a company or an unincorporated firm acquires the vehicle. The only difference is how HMRC tax the private mileage. With a Company the employee pays the tax through an annual benefit in kind adjustment to their code number. From a personal point of view the tax situation is much better for an electric car (on HP or lease) than an ICE car. You pay a benefit in kind tax of just 1% this year (rising to 2% for 2022/23). If the car is hybrid this gradually increases to 13% dependant on the range. For an ICE car the BiK can be as high as 37% dependant on the Co2.
For unincorporated businesses the tax relief is restricted on a percentage basis depending on the proportion of private mileage.

VAT cannot be recovered (except specialised cars such as those for taxis and driving schools) on the purchase of a car (HP or outright), but can be recovered on commercial vehicles used for the business.
For leased cars 50% of the VAT can be recovered.

Making a Will – Part 2



THE WILL ITSELF

B1. Generally the first part of a Will is the appointment of an Executor. This can be up to as many as four, or just one. Executors can either be appointed jointly or if they cannot or are unwilling to act, it transfers onto the next named. A problem with joint Executors, particularly with two or four, rather than three, can arise should there be a dispute. An even number may disagree, for example one might wish to accept an offer for a property but the other may wish to wait for a better offer. It can be expensive to appoint a Solicitor, or particularly a Bank, to act as Executor. Remember that although you may choose to have a solicitor to draft the Will, they don't have to be an executor. Instead they can be consulted when needed. Family members are generally preferable, as they can then consult a solicitor or accountant if necessary.

B2. If one considers that after ones death the Will would be challenged or contested, take the following steps – have the Will drawn up professionally to avoid any ambiguity. The meetings should not involve anyone else, where it might be said later that undue influence was brought to bear by them. Always remember that a Will in due course will become a public document, therefore attach a side letter to the Will setting out the reasons for ones 'wishes' – make ones wishes known to relatives, close friends and your executors – obtain a doctor's report if there is any possibility that the Will could be challenged because you are not of 'sound mind'.
Ensure that you make your Will before you become of 'unsound mind'!

B3. If it is considered that a bequest (or not making a bequest) will cause a problem, explain the reasoning in the Will (no one can ask you after your death).

B4. In the case of ***Ilott v. Jackson 2015 EWCA Civ 797*** the Court ruled that the daughter should inherit one third of her mother estate, despite the fact that the mother had specifically stated in her Will that her estranged daughter was to have no inheritance. The case was perhaps exceptional in that the daughter was on the poverty line and that the mother had left her assets to Charities in which she had previously not expressed any interest.

However the case went to the Supreme Court ***(Ilott v. Blue Cross 2017 UKSC 17)***, which held that the wishes of the deceased, in a valid Will, had to be adhered to.

B5. A Will must be compatible with that of one's spouse, and also provide for the situation of the two persons dying, either together or within a short period of time.

B6. The Will must be dated and signed by the Testator, and just the signature (not the contents of the Will) must be witnessed by two adult people who are not beneficiaries (or directly connected with beneficiaries or the testator). They must also state their addresses. An executor can be a witness, provided of course that they are not included in the above.

B7. All names mentioned in a Will must be very precise and should be the name on their birth certificate ***(obtain copy)***, and not what they are usually known as (if different). Alternatively it may be wished to leave money to a category of the family (grandchildren /nieces etc) some of whom cannot be named because they have not been born. It may be advisable to refer to them as 'blood' relatives.

B8. If one intends to leave ones residence to a beneficiary, be specific about the address (and add 'or any subsequent property that I owned as my residence') because it may not necessarily be your place of residence at date of death, for example if you are living with a relative or in a residential home at date of death. Remember to change the Will if one moves.

B9. The full name for a Will is the 'Last Will and Testament". Strictly speaking, and as originated many centuries ago, the 'Last Will' leaves ones possessions and money, and the 'Testament' leaves ones land.

B10. Under current intestacy laws a child under 18 cannot make a valid Will. On death the assets, normally held in a bare Trust, must first pass to the parents, with full IHT allowances.

B11. When writing the Will be mindful that when Probate is granted it becomes a public document, and it is not unknown for perpetrators of fraud to take advantage of the information contained in the Will.

SPECIFIC BEQUESTS

C1. Before deciding what you wish to leave to who, it must first be established what you have to leave. One area of difficulty can be in establishing ownership of 'virtual' assets such as music, books and social media sites. Many Internet sites will deny access to an Executor, so that timing of the notification of the death to these organisations is important. Confidentiality of usernames and passwords (and master passwords and usernames) is also a difficult area, but it may be vital for the executor to access them. Including them with the Will may be a security risk, an alternative is just to state where they can be found. Apple Inc. refused to release the password of a bequeathed iPad to a Josh Grant in 2014 unless they received a Court order.

C2. If a person holds any property or investment overseas it is important that the inheritance laws in that Country are in harmony with that person's Will.

C3. It is important for all individuals to draw up an asset (and liabilities) register to avoid assets being missed, and to be updated as items are acquired and disposed of. This register should also include a list of all loans and gifts made. Every Will should have a 'residue' clause dealing with any asset not referred to in the Will. These assets often include assets acquired after making the Will.

C4. Check the ownership of an asset – assets owned as joint tenants, such as property or a savings account, cannot be included in a Will as they pass automatically to the other owner on death. Jointly owned property must be held as 'tenants in common' for it to be included in the Will.

One point to note is where the Company shares qualify for the nil rate of IHT, being 'Business Property Relief' (BPR). Ideally the joint ownership should not be with the surviving spouse as two IHT exemptions would be utilised, causing a particular problem if the Company ceased to qualify for BPR as a result of the death. There could even be a problem in that BPR may not even still be available at the second death.

C5. Prior to October 2009 many Wills created a Trust for the deceased half of their previous residence to be transferred to, having in most cases first transferred their residence from a joint tenancy to a tenancy in common.

However with the new £100,000 residence nil rate band, introduced in April 2017, rising to £175,000 by April 2020, it is essential that the property passes directly, and not in Trust, to their immediate descendants (children, grandchildren, and spouses thereof), which may require revision to a Will.

C6. Ownership, as joint tenants, by a husband and wife automatically transfers in the absolute ownership of the survivor. However in other cases there would have to be additional written evidence that explicitly shows the intention to give ownership to that second person. For example just making a daughter a signatory to a bank account would not give them any automatic right to the money in that account, either during their parent's lifetime or after death. Many people do not realize that a person's assets are effectively frozen during the period from date of death until the date that the Will has been proved and the Executor duties start.

C7. Overdrafts or loans in joint names can create a problem for the survivor, as most such debts are written as 'joint and several'. Debts in the name of the deceased only have to be repaid from the deceased's assets. However they cannot be repaid from an asset that is held as a joint tenant, unless the debt is in joint names.

C8. Leaving an asset jointly to two or more beneficiaries can cause problems in the future. A particular problem arises if one has a business. If this is a Limited Company then it can be simpler in that one can just leave shares to one's immediate family and they then vote who will actual run the business in the future (choosing the shareholding ratios carefully can dictate who will have control). Many consider that, particularly for smaller businesses, it is better to leave a business to just one family member, with a possibility that they have to pay a predetermined amount(s) at some future time to other family members.

C9. If one owns and runs one's own business (either as a Company, partnership or sole trader) the assets or shares in the business will have to be dealt with as with any other asset. However it may be advisable to leave a letter setting out suggestion for the continuance of the business. This letter would not be binding on the Executors, but could be invaluable in preserving the value of the business. It would possibly include the names of the main professional advisors, a list of the assets and liabilities, the staff hierarchy, signatories, access passwords (and master passwords and usernames), safe combinations, location of keys and a suggested post

death business plan. Difficulties can arise for sole traders and Companies with just one Shareholder/ Director because on death or mental incapacity there can generally be no continuity of the business. This may be avoided by having a silent partner who is a bank account signatory, by having a second minority shareholder who could appoint another Director or by giving power in the Articles for the personal representative or executor, of the last remaining shareholder, to appoint a director by a notice in writing. If none of these apply see the case of ***Williams v. Russell Price 2020 EWHC Ch 1088.***

C10. If a legacy relates to a specific asset, be very precise when describing it, if you expect it to remain in your estate at date of death. However for assets that get changed frequently one should, for example, refer to one's car, rather than a specific make /model.

C11. Certain assets can be listed and then a direction made that they have to be sold and the proceeds paid to beneficiaries in specified percentages.

C12. A difficulty can arise where an estate primarily comprises just a residence and perhaps a business, but where one wishes to divide the assets fairly amongst several children. A clause could be included where by one child could be offered the right to purchase say the residence, at a discounted price (consider expressing it as a percentage rather than an actual figure, to take account of inflation). This would then provide liquid funds in the estate to distribute to the other children.

C13. Do not just state that members of the family can choose which personal possessions they want – this will just cause strife. Various other methods can be adopted – allocating one person to distribute the possessions as they think fit, or one item to be taken in a specific order of beneficiaries, and then repeated until all are reserved. Alternatively make each beneficiary bid for an item, the money for which goes into the pot, which is then distributed equally or in specified shares. Beware that this method could increase the value of the estate.

C14. Since 2015 personal possessions and chattels do not include those items which are held as investments. When leaving such items, the Will should be clear as to whether they are considered to be investments or not.

C15. Do not forget that one can skip a generation, or leave just a life

interest in an asset. There is a danger that if a child inherits a significant sum at say the age of eighteen, it could be wasted on fast cars, or even drugs.

C16. Be aware of the provisions of a Deed of Family Arrangement, where by all the beneficiaries can agree to change the Will – a 'blocking' beneficiary could be considered.

C17. Always ensure that any dependant has been provided for, as the Court can subsequently change a Will so that they are. A common law spouse can be treated as a dependant, as in the case of ***Wynford Hodge dec'd 2018 EWHC Ch 688***. As the Court can award an absolute interest, it may be better to create just a life interest. Also ensure that there are adequate funds immediately after death, as there can be a long wait before Probate can be obtained – this may be best achieved with a joint account (with sufficient funds) that passes to the survivor on death.

C18. In law there is no automatic right to an inheritance for an unmarried partner, even though the two of them may have lived together for over 50 years.

C19. Bequests to Charity can be a problem area as creating a non - friends/family beneficiary because they can take a very hard line with the Executor and be very inflexible and demanding. Where the gifts to Charity are small, an alternative is to nominate say a member of the family who would then make a personal donation to the Charity. Alternatively set up a Trust in the Will directing that the Trustee give specified funds to a Charity. Neither of these is appropriate where a reduced rate of IHT is being claimed because 10% of the estate is being given to Charity.

C20. A Trust deed must be made within the Will, if the beneficiary is under eighteen.

C21. All Wills should provide for a beneficiary pre deceasing them. There are three main options, stating that the bequest should be –

1. Given instead to a spouse or child(ren) of that deceased beneficiary (or indeed any other person or institution), or
2. Divided amongst others in the same category (eg children or siblings), or
3. Form part of the residue of their estate

The third and final part of this Article will be included in our next Newsletter. It will relate to the procedures after making the Will and the duties after death

Staff changes

We are pleased to announce that Hannah Mahon has joined our team as a full time member of staff. Even though she has only been with us for a couple of months she has fitted in extremely well. Welcome Hannah. Simon, who many of you have known for a decade or more is still undertaking occasional work for us, but now in a consultancy capacity.

This newsletter deals with a number of topics which, it is hoped, will be of general interest to clients. However, in the space available it is impossible to mention all the points which may be relevant in individual cases, so please contact us for personal advice on your own affairs.

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