

A.W.G

WARREN  
& Son.

NEWSLETTER

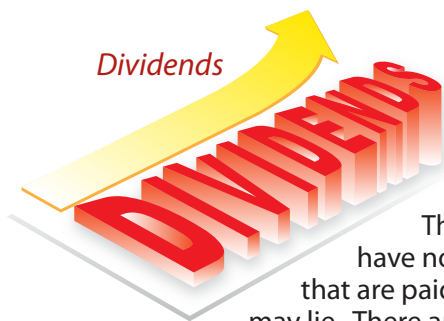
June 2022

### *Self employment status*

Currently HMRC are winning the majority of cases that they take before the tax Tribunals to change the self employed status to that of an employee. This also includes those who provide their service through their own Limited Companies. The main problem rests with those who are paying the worker. Without going into too much detail, if a person is paid say £100 as a self employed person and this is then successfully challenged by HMRC the same amount will then be paid in tax, national insurance, penalties and interest. There is then a sting in the tail, as was illustrated by the recent Pimlico Plumbers case, where a worker who had his status changed to that of an employee then claimed arrears of holiday pay totalling £74,000. A salutary warning!



### *Dividends*



Another area where HMRC are concentrating on, is payments to Directors and Shareholders of small Companies.

Most of these Companies pay a monthly salary to a Director of £758 per month.

This is free of both tax and NI assuming that they have no other earnings. However it is the dividends that are paid in addition where the potential problem may lie. There are strict rules that must be complied with.

The most important one being that it must look like a dividend and must not look like a wage. Therefore it must not be paid at the same time or regularity as wage. Ideally just one or two dividends should be paid annually. Before each dividend payment a calculation must be made to show that after the dividend payment the Company is still solvent, allowing for all tax payments on profits to date. There must also be a Shareholders meeting with minutes approving the dividend, although a Directors meeting will suffice for an interim dividend. Finally, dividend vouchers must be produced for the personal tax return of the shareholder. However, if you really want to have your money each month there is a workaround. Having gone through the procedures above for a dividend, enough for a year, say £36,000. Pay yourself this amount and then the same day lend £33,000 back to the Company who then repay you at the rate of £3,000 per month for 11 months. Unfortunately there will be more paperwork.

Firstly a minute of the Directors meeting approving the loan, and secondly a loan agreement between the Company and the Shareholder. Always remember that dividends must be paid out in the exact proportion as the Shareholdings. If you don't comply with these rules you leave yourself open to a challenge by HMRC who will endeavour to tax the so called dividend payment as wages, where over 28% national insurance will be added. The moral to this story is, if in any doubt, contact us before making any dividend payment.

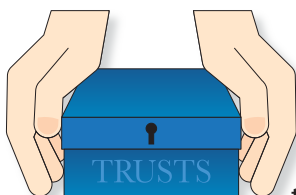
### *Pensions*

There are generally two dates in one's lifetime when a contribution defined pension policy has to be reviewed.



The first is when you are about to take your pension. You normally have the option to have a monthly payment to you, and you can choose the amount, subject of course to their being sufficient funds. The monthly amount will include 25 % which will be tax free, and the balance of 75% will be subject to tax, dependant on your other income. The second option is to draw down up to 25% of the total fund in one payment, which will be tax free. Then in the future any subsequent withdrawals will be fully taxable, once again dependant on your other income. There are other less popular options such as buying an annuity, or possibly deferring the pension until a future date. The second occasion when you must review your pension is when you are about to reach the age of 75. Once you have reached that age your pension fund, on death, if untouched, is free of Inheritance tax, but will be taxable when drawn by the beneficiary. There is in fact a third occasion when you must review your pension and this is when your fund, if you are lucky enough, is approaching the one million pound level. If one exceeds the figure of £1,073,000 it can be very expensive, and advice must be taken immediately. It must always be remembered that every pension policy is unique to each person. Although the Government lays down various maximums and minimums you are restricted to what it says in your policy, and it can be more restrictive than the law allows. It is therefore very important that at each review you seek the advice of your pension provider. Alternatively the Government will provide independent advice, which is free of charge. Please visit '[Pension Wise](#)'

## Trusts



There is now a requirement for all Trusts to **register with HMRC** (visit this website). As a result of a lack of publicity by HMRC they have agreed to waive all penalties for late registration, except for deliberate omissions – the deadline for registration is 1st September 2022 (only 200k+ registered so far, out of 1m Trusts). It may seem ridiculous but virtually all Trusts must register with HMRC, even though there is no tax implication. For example this includes a Trust that was made in Will leaving the occupation of the residence to the surviving spouse for life.



## Your Will - (part 3 of 3)

### AFTER MAKING A WILL

**D1.** Make a copy of the Will & tell relevant people where both are. The location should have a low risk of theft or damage by fire or water. Even though it should be kept safe, do not hide your Will, and ensure that one's executor(s), and possibly beneficiaries, know where it is. Also make additional copies in case the original is lost, stolen or accidentally destroyed, one of which should be sent to Martyn. A copy of a Will can be deposited with the Probate Service for fee of c. £25

**D2.** The Will must be reviewed regularly, particularly if one's marital situation changes, as any previous Will becomes invalid (unless that Will was made in contemplation of marriage). To avoid the Will becoming invalid consider including a clause stating that the Will should be adhered to even in the event of a marriage. Similarly consider making provision for one's children, even if they do not exist at the time of making the Will.

**D3.** A review is also necessary if the size of ones family increases or decreases, one inherits from someone else or if you move house. Also one's financial position can change as a result of IHT planning or local authority care planning.



**D4.** Consider advising any person who one has left a substantial asset that it is important that they should make a Will. For a spouse of course, it is essential.

**D5.** Consider all assets that pass outside of the Will, including assets held as joint tenants and assets held in Trust. These could include one's pension fund, insurance policies written in trust or indeed any other asset where one only has a lifetime or other non-beneficial interest.

### **AFTER DEATH**

**E1.** It may sound obvious, but there is nothing a deceased person can do after they have died. However many have tried to control their estate after death. A recent example was the father of the artist Alison Jackson. He was a strong believer in primogeniture, being that he considered that all his estate should be kept intact to hand down to future generations, by leaving it to the eldest son. He therefore left his mansion and 3,000 acres to his son, who then subsequently sold it all.

**E1a.** To preserve assets for the future a Trust must be used, although the future of the assets in the Trust depends on the wording of the Trust, and the decisions of the Trustees. Unfortunately for most people the tax advantages of a Trust were abolished in March 2006.

**E2.** An Executor can resign, but this must be done before they accept the appointment. Once they have accepted, an order from the Court is necessary to terminate their appointment. Once an Executor has been appointed the Court can consider whether they should be removed where -

- i) They wish to retire
- ii) They have been slow to act in the administration of the Estate
- iii) There is friction or hostility between them and the other Executors
- iv) There is friction between them and one or more of the Beneficiaries
- v) The Executor has a conflict of interest
- vi) Misconduct has taken place

**E3.** The Executors should check that the *initial arrangements* have been carried out. This may include arranging the funeral and notifying the Government. The duties of the executors must then be undertaken.

The most important items are –

1. Locating the Will
2. Advising the beneficiaries of the death, your appointment and the nature of their entitlement, subject to the debts of the estate. They should also be advised that the executors alone have a period of twelve months to administer the Estate and no beneficiary becomes entitled until all matters have been resolved.
3. Establishing all the assets, including those overseas (unless the deceased was of non UK domicile).
4. Insuring all assets where relevant
5. Establishing all previous gifts made by the deceased in the past seven years
6. Ascertaining all liabilities of the deceased
7. Collecting all the assets and paying the debts of the estate, including any Inheritance tax
8. Distributing the estate to the beneficiaries.

**E4.** Nobody is entitled to see the Will except the executors. The executors can decide to gather the beneficiaries together and read the Will, although this is normally only done in films. Alternatively a copy of the complete Will, or just details of an individual's inheritance, can be sent to beneficiaries. After Probate has been granted the Will is a public document and a copy can be applied for at <https://www.gov.uk/search-will-probate>

- E5.** The Will can be challenged, the most common reasons being –
- i) The deceased did not have the mental capacity to make the Will
  - ii) The Will is invalid, often by having no signature or valid witnesses
  - iii) Undue influence has been brought to bear on the deceased
  - iv) The principle of Promissory Estoppel applies – a provable promise made to an individual prior to death, which was not provided for in the Will
  - v) A contention that the Will was forged
  - vi) There is a claim for financial provision

A potential beneficiary can lodge a 'caveat' with the Probate Registry, and this normally delays the issue of the Probate.

A person may challenge the validity of a Will on any of the above grounds and may request a "Larke v. Nugus" statement. This must be prepared by the solicitor or other Will drafter, including any tax advisor, providing notes of the process discussions during the preparation of the Will.

A relevant case is that of *James v. James 2018 EWHC 43 Ch* where there was no evidence of either mental incapacity or a previous promise to leave an asset (a farm, to a son who had worked there for 35 years). It is possible to include a clause in a Will that states that if any beneficiary makes a legal challenge to the Will, then any previous provision for them is cancelled. The downside to this clause is that it may infer that the Will has been incorrectly drawn.

Also this clause cannot actually prevent a challenge being made.

An error in a Will, if very minor, is capable of rectification, if one could interpret the known wishes of the deceased. However a major error cannot be rectified, as was the case in *Marley v. Rawlings 2011 EWHC Ch 161*, where the testator and his wife had signed each other's Wills by mistake.

**E6.** A claim for financial provision (which must be made within six months of the Grant), above, will be considered by the Court, but they are not bound by it, on the basis of what would have been the award had the situation been a divorce. The possible claimants would include a –

- i) Surviving spouse
- ii) Former spouse
- iii) Child of the deceased, or of the family
- iv) Person co-habiting for a period of at least two years
- v) Person who had been treated as a dependant of the deceased

**E7.** The Executor must send the Will, Probate application *form PA1*, the death certificate and the appropriate fee to the Probate registry. Remember that will be the last time the Executor(s) will see the original Will.

**E8.** If there is a possibility that a liability to Inheritance tax may arise the Executor must *notify HMRC*. Martyn is able to do this. Also remember that if the estate itself has taxable income or gains this must also be reported to HMRC

The longest Will, of Mrs FES Cook on 9th Jan 1925, comprised 97,940 words.

The shortest Will, written by Charles Thorn on 19th May 1905, comprised just three words – “All to mother”.

Always remember the old English saying, originated by George Herbert in 1640 “Where there's a Will, there's a way”



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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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