

# Estate Planning



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the extra mile.**

**At Howes Percival, it's the law.**

**The past year has seen great changes in the whole area of Estate Planning, some caused by the Government and some by cases before the Courts.**

This is a brief selection of items which have hit the headlines, with some general comments. To the extent that the comments are reassuring please do not rely this outline, but take advice if you think you may be affected.

### **Changes to Trust Taxation**

Although the Government introduced radical changes to the structure of tax on trusts (particularly inheritance tax) in 2006, in their passage through Parliament they were watered down so that most people will not be affected. In particular, the rules about discretionary trusts have not changed and most people with straightforward Wills (even if they have nil-rate band discretionary trusts in them) will not need to change them. However, the tax rules on lifetime gifts have radically changed, and any sophisticated tax planning needs to be completely reviewed. In particular, Trustees of all accumulation and maintenance settlements and life interest settlements must make a decision before 6 April 2008 whether to alter the terms of the trust (even though the decision may be to do nothing). At present tax rates, many people feel that the benefits of leaving property in trust is worth the cost, to protect against the evils of death, divorce and bankruptcy.

However, the writing is on the wall. The Treasury has made it clear it

would like to see all gifts (even between individuals) taxed again as they used to be under Capital Transfer Tax, and many people also expect the rate of tax on gifts into and out of trusts to increase, possibly even to double.

If you are contemplating making any gifts, this may well be the best time to do it.

### **Agricultural Relief on Farmhouses**

The farmhouse is often the most valuable single asset belonging to a farmer and agricultural property relief on it at 100% is frequently the most important exemption in the whole of farm estate planning. However, relief is only given on the "agricultural value" (the value that the house would have if it was subject to a perpetual covenant against any use except agriculture). Furthermore, it has to be a "farmhouse", be of a "character appropriate" to the farm land, and satisfy numerous other detailed tests.

Two cases have been before the Courts, *Antrobus* and *McKenna*, one before the Lands Tribunal and the other before the Special Commissioners.

*Antrobus* was a case on the agricultural value of farmhouses; the short result has been that the Revenue will often try to give agricultural property relief only on a maximum of 70% of the value of the farmhouse in cases where they feel that much of the value of the house comes from what might be paid by a "lifestyle farmer" - that is, a person who has made money outside farming and primarily wants a country house.

It was suggested that such a person was not genuinely a 'farmer' for tax purposes. This was developed somewhat devastatingly in *McKenna*. There the Special Commissioner held that a beautiful manor house with a small amenity farm attached to it did not qualify. The most dangerous reason given was that it could not be a farmhouse because it was not lived in by the farmer. In this case the owner was the farmer in every technical sense of the word, but the farm was actually managed by a local Land Agent who found contractors by tender on a regular basis. In practice HMRC are arguing that every farmhouse must have both a farm and a 'farmer'; but not every farm has a farmhouse.

The clear warning is to ensure that if you own a farmhouse:

- a) if it is a large house, you own as much farmland as possible with it to justify the house as a farmhouse of an "appropriate character"; and
- b) you are directly involved in the day-to-day management of the farming.

We may return to the days when to obtain agricultural property relief you had to be a full time working farmer; and the Government could easily halve the current rates of relief. Once again, if you are contemplating making any substantial gifts, it would be as well to take action quickly.

## Enduring Powers of Attorney

Enduring Powers of Attorney are a very convenient and sensible way of providing for somebody else to sign on your behalf if you are incapacitated or unable to sign for any other reason.

If you have given an Enduring Power of Attorney to someone else, they can use it to sign on your behalf whenever it is more convenient, (e.g. when you are on holiday) but it does not have to be registered with the Public Guardianship office unless and until you lose mental capacity.

In October this year the Mental Capacity Act will introduce a new "Lasting Power of Attorney". This has the advantage that your attorney may be able to make decisions not only about your property, but also about your care and medical treatment.

However, it has the disadvantage that it cannot be used until it is registered, and registration is likely to cost several hundred pounds and will probably involve filling in forms and serving notices on relatives. Many people will find the present Enduring Power of Attorney is a much better bet.

You will no longer be able make an Enduring Power of Attorney after the new rules come in this October and we would strongly recommend that you make one now, since it can then last for the rest of your life.

## The Phizackerley case

A great deal of inaccurate publicity was given to this case, because it appeared to land a new inheritance tax liability on non-working wives. This was far from true, and it is not a worry for most people.

The arguments were highly technical, and will affect a very small number of people who have carried out inheritance tax planning using nil-rate band gifts. It turns on an anti-avoidance section which prevents you claiming tax relief on a debt due from your estate, if the debt relates to property which you once gave away. Although it is of great interest to tax specialists, few people are likely to be affected.

It causes a problem where a husband and wife have carried out quite sophisticated tax planning using assets which has been originally given, in part or in whole, from one to the other; and if action is taken promptly it can usually be put right.

If you think you may be affected by these or any other tax problems please do contact us.

## Sponsorship

Howes Percival have been working with farmers and landowners in East Anglia for many years and we are keen to support organisations and events involved in this community.

The firm has had a close association with the Houghton Estate for many years and we were delighted to be one of the main sponsors of Houghton International 2007. As well as being members of the Agricultural Law Association we have a Council Member with the Royal Norfolk Agricultural Association and continue to sponsor the Rural Education Awards and Working Hunter Ponies at the Royal Norfolk Show.

If you would like to add your name or those of your colleagues to our circulation list to receive legal updates or information on seminars, please contact Lucy Najid on 01603 762103/lucy.najid@howespercival.com or visit our website at [www.howespercival.com](http://www.howespercival.com)



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