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LEGAL STANDARD

AUTUMN/WINTER 2024

Welcome to the Autumn/Winter 2024 Edition of the bennettbrooks legal newsletter, the Legal Standard. In this Edition we dive into taxation, divorce, cyber health, enhancing your business strategy and everything in between.

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Please don't hesitate to get in touch with us directly to discuss how we can support you and your business. We offer initial consultations free of charge, and would be delighted to help.

CAPITAL GAINS TAX IN DIVORCE

By Claire Hills

The breakdown of a marriage or civil partnership is a difficult time for all concerned. The Capital Gains Tax regime (CGT) (the tax payable on the profit from asset sales) has recently been changed to alleviate some of the financial concerns that can add extra stress to families during divorce.

Meaning of separation

For CGT purposes, you are able to transfer assets between you and your spouse or civil partner without incurring an immediate CGT liability provided you are not separated from them. The transfer is said to occur at 'no gain no loss'. In a 'no gain no loss' transaction, your 'proceeds' are deemed to be such that there is neither a gain nor a loss. This is regardless of the amount actually paid or received in return (if anything).

You are separated from your spouse or civil partner for CGT purposes if you are separated:

- under a court order, or
- by a formal deed of separation, or
- in such circumstances that the separation is likely to be permanent

If you separated from your spouse or civil partner in circumstances likely to be permanent before the date of the relevant court order or formal deed of separation (as will generally be the case), then the date of separation for CGT purposes will be the earlier date.

If you are not married or in a civil partnership with your partner, then you cannot transfer assets between you on a 'no gain no loss' basis.

Transfers of assets after separation up to 5 April 2023

It was previously the case that you could only get 'no gain no loss' treatment up to the end of the tax year in which you separate from your spouse or civil partner. For example, if you separated in November 2022, assets transferred between you up to 5 April 2023 would not trigger a CGT charge. For those separating later in the tax year this did not give much time to arrange financial affairs.

Transfers of assets after separation on or after 6 April 2023

The big change is that for transfers of assets taking place on or after 6 April 2023, the rules are now much more helpful: separating married couples/civil partners continue to have 'no gain no loss' CGT treatment applied on transfers of assets to each other for up to three years from the end of the tax year of separation.

However, if the couple divorces (or otherwise they become legally separated by court order) before the end of the three-year period, 'no gain no loss' treatment will end at the date the divorce is finalised, unless the transfer of assets takes place as part of a formal divorce (or court separation) agreement. Where assets are transferred as part of a formal divorce (or court separation) agreement, there is no time limit applied to 'no gain no loss' treatment of asset transfers.

These rules also include a change to how capital gains are calculated on the sale of the former marital home, where one party moves out following separation and there is an agreement for that person to receive a percentage of the proceeds from the sale. This allows that party to have any main residence relief on their share of the gain unaffected by the fact they did not live in the property between their moving out and the property being sold.

Example – transfer on separation

Peter and Charlotte are married but separated permanently in February 2024. They own a rental property jointly.

They agree in October 2024 that Peter will transfer his half share in the rental property to Charlotte. The transfer will take place at 'no gain no loss' as it is within three years of the end of the tax year of separation (so they actually have until 5 April 2027 to make any asset transfers between them – assuming they do not divorce or enter into a court separation agreement before that date).

Note that Charlotte will receive the half share of the property at Peter's original 'base cost' for CGT and therefore might suffer a higher charge to CGT if she decides to sell the property at a later date.

In general terms, if transfers of assets between spouses/civil partners do not qualify for 'no gain no loss' treatment, they will be treated as gifts and therefore liable to CGT. However, as shown below, main residence relief may be available if the asset being transferred is the family home.

Sale of the family home

It might be the case that on separation a jointly owned family home needs to be sold.

One spouse's share of the proceeds will remain free of CGT provided the home has been that spouse's main home throughout the entire period of ownership. However, if you have moved out of the property before sale then you may need to think about your CGT position.

Usually, if the property is sold within 9 months of moving out, then main residence relief should be available to cover the gain. If you move out more than 9 months before sale, a proportion of the gain may become liable to tax.

There is however a special relief available where, in connection with a permanent separation or divorce or dissolution of civil partnership, the family home is sold to an unconnected third party.

The relief is only relevant if the leaving spouse or civil partner makes the transfer more than 9 months after having left the property, because the leaving spouse or civil partner would be entitled to main residence relief for the final 9 months of ownership of their share in any case. All of the following conditions must apply:

- The property is transferred (sold) to someone other than the remaining spouse or civil partner.
- During the period after having moved out, but before the sale, no other property becomes a main residence of the spouse or civil partner who has moved out.
- During the period after having moved out, the property in question remained the main residence of the remaining spouse or civil partner.

If these conditions are met, the leaving spouse or civil partner will still obtain main residence relief from CGT for the period from his or her moving out to the point of transfer. Of course, if you have purchased another property to live in following moving out of the family home, then if that property is elected as your main residence, you may lose the ability to claim main residence relief under the special rules above.

If the property is not sold, but your share is instead transferred to the remaining spouse/civil partner, then the usual no gain no loss rules should apply, provided the transfer takes place in the relevant time frame. ■

TRUST REGISTRATION SERVICE - IT'S HERE TO STAY

By Anthony Whittaker

Following the introduction in 2017 of the succinctly named Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, any UK trust with a tax liability was required to register on an online portal administered by HM Revenue & Customs (HMRC).

Because this first stage related to trusts with any tax liability (so not just income tax and capital gains tax but also inheritance tax and stamp duty land tax) and because the portal was managed by HMRC, the TRS was often misguidedly associated with tax. It did not help that the TRS portal was the only place that trusts or complex estates could obtain their Unique Taxpayer reference (UTR) that allowed them to report income and gains.

However, the clue was in the name. The TRS is part of the UK's response to the threat of money laundering and terrorist financing and its quite a detailed piece of legislation with far reaching consequences well beyond the need to register trusts on the portal.

In 2020, the requirement to register was widened to encompass all UK trusts, irrespective of tax liability, with a few notable exceptions. The most recently published figures (March 2023) show that 633,000 trusts have been registered with around three quarters of those registrations made between April 2022 and March 2023. These figures are well below HMRC estimates of the total number of trusts that need to be registered and based on the steady stream of registrations we have been receiving, there are still a large number of unregistered trusts out there.

The process was a little bumpy in the beginning, and those who tried to register in December 2017 when the online system first became available will testify to the vast improvement to the service today.

A few of the outcomes of the TRS legislation were initially surprising and, in some cases, counter intuitive:

- The requirement to register estate administrations two years after death if the residuary clause in the Will uses the phrase 'on trust',
- The requirement to register (and immediately close) a trust that was in existence on 6 October 2020 but has since wound up,
- And (most surprisingly) the requirement to register a non-exempt property co-ownership trust following the death of a beneficial tenant in common.

Some of the above issues are currently under review with HMRC and the professional bodies and we eagerly await the outcome of those deliberations in the hope that there will be sensible solutions.

However, the publication of HMRC's online Trust Registration Manual was a game changer. The Manual provides very specific guidance with several relatively clear worked examples.

The Manual is updated regularly and is always worth referencing to check your understanding of the most recent position.

To a large degree, the TRS has been very successful in reminding professional trustees of their record keeping obligations. Under the legislation, trustees need to maintain accurate, up to date written records of all the actual and potential beneficial owners of the trust. Professional trustees are also required to hold the specified information for five years after the final distribution from the trust.

Another impact on professionals acting for trusts, is the obligation when engaging with the trustees of a registrable trust, is the need to check that the trust is registered on the TRS, and the information is up to date.

In line with all of our ongoing compliance obligations, it is now also necessary to carry out discrepancy checks by reviewing the entries on the TRS, to check for any material differences with the information held.

There are procedures for how these discrepancies can be resolved (such as asking the trustees to register or update the TRS before engagement) but if these issues cannot be resolved, we must report the discrepancy to HMRC. Thankfully, HMRC have provided guidance on what they consider to be material discrepancies at TRSM70050 of the TRS Manual.

Now that almost every trust must register before it can even open a bank account, we are encountering a large number of discretionary relevant property trusts, holding investment bonds as the only asset. The trustees have not needed to engage with HMRC (or any professional adviser) for several years, as these bonds do not generate reportable income or gains unless there is a chargeable event.

Trustees can make tax deferred withdrawals to trust beneficiaries without any income tax reporting obligations and do so frequently. However, any distribution is classed as a capital distribution under trust law and potentially subject to an inheritance tax (IHT) exit charge.

These capital appointments also reduce the trust's nil rate band on a 10-year anniversary calculation. This has resulted in trusts with a value well below £325K incurring IHT liabilities that the trustees did not expect, just by looking at the market value of the bond on the anniversary.

If no IHT return was submitted at the time, under legislation (S240(7)/IHTA1984) HMRC are able to go back 20 years to recover any unpaid tax. This has resulted in some pretty hefty tax bills for a lot of trusts. More upsettingly for these trusts, chunky penalties (max £3,200) and late interest payments (currently at 7.5%) can also be incurred, when this money should really have been going to the trust beneficiaries.

If you are a professional trustee with any of these investments or are acting for trustees with the same, then we would suggest that a quick 'health check' with a suitably qualified trust accountant may be in order. ■

LANDED ESTATES AND RURAL BUSINESSES

By Rob Black

Rural businesses are often very complex to manage – in many cases, the business needs must be balanced delicately alongside that of family interests. Not only do businesses in the rural industry have family considerations but due to a growing complexity of regulations, economic challenges and new markets to account for there are now a number of additional factors business owners need to account for.

With many landed estates and agricultural businesses diversifying into new areas such as renewable energy, property letting businesses,

glamping, investment portfolios, carbon credits, BNG agreements or residential developments, many are moving away from, what was once their core business, and as a result, potentially tax reliefs.

For rural businesses, it is becoming increasingly important to have an expert involved at the time any changes are made, to allow for appropriate structures to be created, ensuring that not only proper taxation is managed but to also to ensure that liability risks are minimised to the core business.

Land sales for residential development for example are often areas where, if improperly managed, can result in high tax payments.

Residential development site sales can be life changing events for many clients and planning should be undertaken to maximise the net return. Mistakes or misinformation can often lead to an increased tax burden, if appropriate advice isn't taken at the time, which can be devastating for rural businesses.

Many landowners are unaware that a structure where the landowner benefits from a share in the future proceeds from the development, could be caught by anti-avoidance provisions, requiring these proceeds to be taxed as income rather than capital gains. If this happens, it can result in a higher tax rate being paid and not being able to use capital gains tax reliefs such as 'Rollover Relief' and 'Business Asset Disposal Relief'.

Other tax regimes should also be considered before entering into an agreement. For example, a 90-year-old landowner may own agricultural land with development potential. The current business structure does not provide 100% inheritance tax relief on the 'hope' value of the land. Additional planning should be undertaken to maximise the structure and obtain 100% relief.

Understanding the implications of changing business structures and focuses, is becoming ever more important, and so therefore is the need to seek support from consultants who are experienced and knowledgeable in the sector to help rural businesses make the transition.

From preparing the annual accounts and tax returns, capital gains tax planning for gifting or the disposal of property, inheritance tax planning to reduce exposure and maximise family wealth, many family-run rural businesses have a vast number of considerations to make - all whilst trying to appropriately balance the consideration of the family and future succession.

Working with specialised teams which cater for the needs of landed estate, rural and agricultural clients is paramount to helping secure the future of rural family businesses – as is the need to engage with an advisor who specialises and truly understands the complexity involved in these unique and specialised businesses. ■

WHY SPECIALIST FINANCIAL LEGAL SERVICES ADVICE PAYS FOR ITSELF

By Neil Wilson

Financial management in the legal sector isn't just about balancing the books – it also involves navigating complex regulations, maintaining compliance with strict industry standards and optimising cash flow. This is where working with a specialised team can often make a significant difference for law firms and legal professionals.

Legal practices face unique challenges, such as handling client funds, managing tax structures and maximising efficiency within the business. Specialist knowledge can go beyond traditional accounting practices, enabling businesses to identify opportunities for savings and tax efficiencies, all whilst ensuring financial decisions align with long-term business goals, including succession planning.

Often, one of the most pressing concerns for legal practices is cash flow. Delayed payments or contingency fees and the impact of evolving regulations and wider economic uncertainties can often create financial strain. Having an expert who understands the complexity of the sector can help alleviate many of the day to day worries legal businesses face; by helping you structure your finances to weather these fluctuations, maintaining stability, even in uncertain times.

Pro-active tax planning can feel like a burden, often competing with the time that could be spent on client work. But with the right strategy in place, guided by a knowledgeable advisor, can minimise your tax liabilities whilst staying fully compliant with regulations.

Tailored financial support for legal businesses may include:

- Financial Clarity and Planning – handling the essentials like preparing annual accounts, tax computations and offering comprehensive tax advice in a timely fashion
- Supporting your growth – advising on reorganisations, demergers, fund raising or transitions to Employee Ownership Trusts
- Valuations and Strategic Insights – providing expert valuations and benchmarking to inform key decisions, such as acquisitions, sales or partner changes
- Regulatory Compliance - conducting SRA audits and assisting with SRA recognitions, ABS applications, Lexcel or SQM assistance and other compliance matters
- Streamlining Operations - managing payroll, preparing management accounts, and assisting with draft budgeting and forecasts
- Specialised Estate and Trust Management – offering specialised support for managing Estates and Trusts, ensuring that you are always fully compliant

Whilst many firms may see specialised consultation as an 'additional' cost to their ever-growing list of outgoings, ultimately long-term savings and the prospect of complete financial security often way outweighs the investment. Investing in tailored financial support can allow you to focus on what matters the most to your business – delivering impeccable legal services to your clients in a financially sustainable way for you. ■

THE RISE OF LIMITED COMPANIES IN THE LEGAL SECTOR

By Neil Wilson

There has been a steady increase in the number of law firms opting to operate as a limited company in the UK. According to information available from the ICAEW, 30% of law firms were limited liability companies in 2013 which had increased to 55% by September 2023.

The rise has been driven by a number of factors including the desire for greater flexibility, tax efficiency and limited liability protection.

As with any significant structural change, it is important that advice is taken to ensure the transition is appropriate and feasible for your business. Each structure has pros and cons, and there are implications (particularly regarding tax) which need to be carefully considered alongside a trusted advisor to ensure that transitioning to a limited company is the right decision for your business. Even if your day-to-day may look the same, altering the firms structure can have a significant impact on how your business is managed behind the scenes.

Key things to consider then looking at the viability of becoming a limited company:

Pros

- Limited liability protection
- Tax efficiencies
- Easier succession and ownership changes
- Flexibility in financing and investment
- Often seen to add credibility to a business

Cons

- Increased regulatory and compliance burden due to a more complex legal structure
- Less flexibility in profit sharing
- Loss of privacy due to Companies House reporting

Becoming a limited company may not be suitable for all legal firms, but it is an attractive option for those who may be looking for a more flexible business structure. However, it is important to consider the increased regulatory obligations surrounding the change. Assessing the balance in line with your business's operational structure, long term vision and financial goals, with the support of a trusted advisor will enable you to make an informed decision that is right for you.

At bennettbrooks we have been incorporating law firms for over 20 years and offer a bespoke package of services to assist you including advice on closing the old practice, opening the new one and everything in between!

You need to consider PAYE and VAT taxes, SRA applications, the goodwill valuation if being sold to the company, personal tax, how the company will be structured, and closing the old firm etc. Considering these complexities, this is rarely a quick process so forward planning is important. If you would like to explore how incorporation may look for your firm, please get in touch with us. ■

WHY YOU SHOULD OUTSOURCE YOUR LEGAL CASHIERING

By Joshua Murphy, Managing Director, Numero Accounts Services, Specialists in Outsourced Cashiering

It can be a struggle for law firm owners to delegate work. Most business owners have been there, you feel like you need to be in control of everything.

The truth is, there's only so much you can do before productivity (and your sanity!) starts to take a hit. That's why it's important to know when it's time to outsource tasks when your time can be spent better elsewhere in the business.

Your time should be spent doing what you do best

Our guess is you didn't start a law firm to spend your time focusing on the numbers. Your skill set is helping your clients and the more time you spend with the books, the less time you get to work on what you're really good at.

It's important to remember that if you want something done efficiently, it's best to give it to someone who has experience and can get the job done. If your legal cashiering is done incorrectly, it can land you in hot water.

You'll ensure your firm is compliant

Here's a word of warning for you. There's a myth that any bookkeeper can do legal cashiering. They can't. You need to make sure whoever is handling your legal cashiering is experienced. If you fall foul of regulation, you could end up with fines, a bad reputation and potentially even having your firm shut down.

The Solicitors Regulations Authority (SRA) has recently boosted its fining powers by 1,000% to £25,000. This highlights the importance of using an experienced and trusted legal cashier. It's about keeping up with the usual basic financial rules and the added legal regulations and responsibilities.

An experienced legal cashier's knowledge is gold dust to your firm. That's why it's not a job for your average bookkeeper.

Outsourcing is agile and scalable

You can scale outsourced legal cashiering up and down as your firm requires. This makes growing the firm easier because you don't have to worry about finding the right employees. By the same token, you don't have to look at cutting hours or even redundancies during leaner periods. It's win-win.

Outsourcing can save you money

According to Law Firm Ambition, outsourcing your legal cashiering can save you around 30% in salary costs. Not only that, but you get your time back. This means you can focus more on growing your firm, securing new clients and delivering results.

You'd never want Del Boy looking after your legal cashiering but in the words of the famous Trotter, "you know it makes sense."

The big pot of experience

An in-house cashier may have a wealth of experience, however that experience will be limited to their exposure. This is not to say that in house cashiers are not doing a good job, they usually are, however exposure can be a huge help in how to deal with situations unknown to the individual.

When you outsource there are a team of cashiers working together, sharing knowledge with each other on the different things they have encountered. Your cashier will have worked on many different law firms accounts meaning they can suggest enhanced processes, better ways of working and ensure compliance with all the differing situations that may arise. ■

CYBER HEALTH: A GROWING CONCERN

By bennettbrooks

Handling vast amounts sensitive data, financial records, personal information, confidential business details and often, significant client funds are mainstays of legal firms. But as a result, recent and alarming statistics show a rising tide of cyber-attacks on the UK legal sector.

In recent years, Law firms have become lucrative targets for scrupulous cyber attackers, using sophisticated techniques to infiltrate previously secure systems. Greg Stanton, our Technology Director, noted that attacks often involve ransomware (which, according to a survey conducted by the Law Society, effected 30% of UK law firms reporting attacks in 2023 – up from 20% in 2022), phishing schemes and data breaches – often using sophisticated techniques to encrypt a firm's data and demanding significant payment for release. "The threat of confidential information being released, breaching client confidentiality and potentially damaging a firm's reputation is extremely worrying but very real," commented Greg. "Ensuring an entirely robust security system is in place is absolutely vital, particularly as the attackers become increasingly advanced in their approach".

"Phishing attacks are amongst the most common forms of attack, because they exploit human error" Greg continued. Staff error, according to PwC's 2022 law firm report, was the reason behind 77% of cyber attacks in that year. "From reception and door staff to Directors and Partners, it's incredibly important that all members of any Legal firm are clued up around the do's and don'ts of cyber security."

Not only can firms risk damaging their reputation, the financial losses suffered can be significant. In addition, if organisations fail to secure personal data, the UK's General Data Protection Regulation (GDPR) can impose fines of up to £17.5 million or 4% of annual turnover. Client Director at bennettbrooks, Neil Wilson said, "The sad reality is that many legal businesses are now the targets of devastating cyber-attacks – and it's becoming an increasing concern for many within the industry. As well as losing considerable funds, a key concern for our clients is also the erosion of trust with clients and the long-term harm and reputational damage such attacks can cause to businesses and the individuals within them." The Information Commissioner's Office (ICO) is reported to have issued fines totalling over £2 million to law firms that suffered data breaches due to inadequate cybersecurity measures in 2023.

According to a report by The National Cyber Security Centre (NCSC), nearly three quarters of the UK's top 100 law firms have been impacted by cyber-attacks, but this doesn't make smaller businesses exempt. Often small to medium sized firms have security measures in place to deter attacks, but increasingly devious tactics mean that systems can often be penetrated. Robust cybersecurity measures can be costly to smaller businesses and the risk of threats sometimes misunderstood and underestimated.

Attempted cyber-attacks are now inevitable, but the key to reducing the chances of significant impact on business, is mitigating risk early on. "Investing in cyber security is no longer a 'nice to have' but is paramount – ensuring your IT provider is a certified Cyber Essentials practitioner is a great place to start. Basic security measures such as regular staff training, encryption, multi-factor authentication and frequent security audits need to be prioritised. Prevention is always better than managing the fall-out of an attack." said Greg.

Here are some practical tips to help you avoid cyber-attacks:

- Ensure multi-factor authentication is enabled on all accounts
- Ensure the software and systems you use are always updated
- Use anti-virus and anti-malware software
- Ensure your wi-fi network is secure
- Limit the level of access to sensitive information to only those who need it
- Educate and train all employees
- Regularly monitor and audit the systems you have in place
- Develop an incident response plan – and keep it updated
- Avoid clicking or downloading suspicious links
- Thoroughly check and verify the contact details of anyone requesting personal information
- Back up your data regularly

As the threat of cyber-attacks in the industry increase, so too does the need for the sector to adapt and adjust accordingly. Investing in advanced security measures, collaborating with trusted suppliers and IT specialists who can provide the tailored expertise and the support necessary to keep confidential data confidential, is a must to remain secure in an increasingly open and digital world.

The NCSC (a branch of UK Government) has announced a significant strengthening of the Cyber Essentials standard for those seeking certification/re-certification beyond April 2025 after which a 'pass' will only be achievable through demonstrable adoption of industry and vendor security recommendations spanning each of the platforms you make use of, leaving less room for deeming legacy/ little-used system as 'out of scope' and requiring your security/ technology provider to transition from responsive to proactive.

If concerns around cyber security are on your radar and you'd like to speak to either our legal team or our Cyber Essentials Plus accrediting technology team about how you can keep your practice safe, please don't hesitate to get in touch. ■

ENHANCING YOUR LAW FIRM'S FINANCIAL STRATEGY

By Neil Wilson

In the past year, we've witnessed many law firms benefitting from the upward trend in interest rates, maximising returns on client funds they hold. Currently, there are easily accessible options around the 4% credit interest mark, if you're not already capitalising on this, it could be an option worth considering – but it may require diversifying your funds beyond the traditional high street banks.

While earning interest on client funds is advantageous, its crucial to navigate the complexities with guidance and care. Ensuring that you comply with the solicitor's accounts rules, accurately and transparently communicating with clients about interest policies and evaluating your de minimis levels are all integral. As interest levels rise, it is also essential to consider the implications for VAT partial exemption calculations, which could potentially affect your firms overall costs if you go above the de-minus levels for this.

Finally, regardless of what level of client interest you are receiving, you should consider a provision at the year-end for any interest earned but not yet passed on to your clients as there is typically a time lag on this which will be potentially artificially inflating your profits and tax.

Whether you require guidance on interest policies, VAT partial exemption, or comprehensive financial planning, it is important that you work with a trusted advisor who specialises in assisting legal firms, to support you. ■

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We have offices based in 8 key locations in the North West of England and Wales, serving clients across the UK and would be delighted to see how we can help support you and your business, so please don't hesitate to get in touch.

Our specialist legal team can help advise on any queries, challenges and consultancy support you may need, but if you are unsure which of our services you may need, we can also advise you on which solution best suits your situation.

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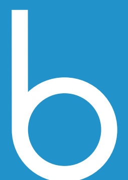

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