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Newsletter

Where there's a will there's a way

The intestacy rules in England and Wales have been changed. These are the rules that govern what happens to a person's estate if they die without making a will. Over half the adult population have not made a will so this is an important change. The changes do not apply to the Scottish intestacy rules.

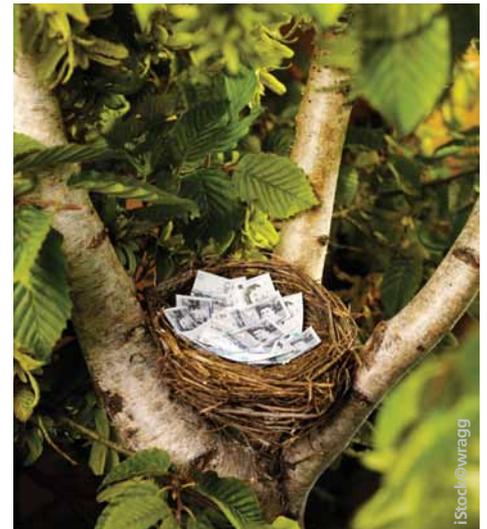
The new rules introduced in October tend to benefit a surviving spouse or civil partner and vary according to whether or not a couple have children.

- Where there are no children, the rules now say that the surviving spouse or partner should receive all of the deceased person's estate outright. Previously, they would have received the first £450,000 plus half the remainder – and the other half would have been divided between the deceased person's other relatives.
- If there are children, the surviving spouse or partner will receive the first £250,000 of the estate, plus half of the rest of the estate absolutely – and the other half will go to the children. Previously, the surviving spouse or partner was only entitled to the income for their lifetime from their half of the estate. After the surviving spouse's or partner's death, the children, would have eventually received the capital.

The other main intestacy rules remain broadly unchanged; so, for example, if a person dies with no surviving spouse or partner, the children will receive all their estate. Where there are no children, the estate will pass to the deceased's parents. However, step-children and step-parents do not qualify as children and parents for the purposes of these intestacy rules.

The intestacy rules are unlikely to be good enough for many people because families have many different needs. In particular, the update does virtually nothing to address the situation of cohabiting couples. Unmarried couples have no automatic inheritance right to their partner's estate, even if they have children. Legislation to give rights to unmarried couples has been drafted, but it will not be enacted during the current parliament.

Many people might think that their estate is too small to worry about making a will, but with recent increases in property values this may have changed – especially as a much greater share now goes to a spouse or partner rather than to children. Inheritance tax is also an important issue. Making a will can help with tax planning and we are here to advise you.



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Employment law makes waves

Some overtime pay now has to be included in most holiday pay, following an Employment Appeal Tribunal decision in November 2014. Under the previous rules, it was only necessary to take basic pay into account when calculating holiday pay.

This follows an earlier ruling by the Court of Justice of the European Union (CJEU) that holiday pay should include commission and other elements of contractual variable pay such as shift allowances.

That case involved a salesman who received a basic salary plus variable commission, which made up about 60% of his total remuneration. He therefore suffered financial hardship as a result of taking a holiday because he could not earn any commission while he was away from work. The CJEU said that the purpose of holiday pay is to put workers in the position they would have been if they had been at work.

The tribunal ruled that holiday pay should include pay for non-guaranteed overtime; this is overtime that an employee must work if asked, but which the employer does not have to offer them. It is not clear whether the ruling covers voluntary overtime – which the employee can refuse.

There is a complication because the decision only applies to the four weeks (20 days) of paid annual leave that employers have to provide under the Working Time Directive. Employers are still allowed to make payments at



the lower, basic pay rate for the eight days of additional leave required under the Working Time Regulations 1998. This overturned an earlier decision that employees could choose which days would be covered by the Working Time Directive.

Backdated claims

Employees must make their claims for the extra holiday pay that they may be owed within three months of the underpayment of holiday pay, and there may be limits on the amounts of their claims for back pay. Employees will have to bring their claims quickly to avoid being time barred.

Future holiday pay arrangements

Employers should consider how they should calculate employees' holiday pay in future. Although there would be some cost saving, it may be awkward and inconvenient to pay a higher rate for the first four weeks of holidays than for subsequent days.

One way to reduce the increased cost of holiday pay in the future might be to reduce the amount of overtime that they require employees to work.

Let us know if you need our guidance.

Autumn Statement tax announcements

The 2014 Autumn Statement contained several tax surprises and turned out to have some of the characteristics of a mini-Budget.

Residential stamp duty land tax (SDLT) was restructured with effect from midnight on 3 December 2014. Property buyers now have to pay a rate of duty on the portion of the purchase amount that falls within each band in much the same way as income tax.

The rates and thresholds have been adjusted. There is no tax on the first £125,000 of any residential property transaction and the rates then rise to 12% on the slice of value above £1.5 million. The net effect will be to reduce SDLT for 98% of homebuyers.

ISAs An unexpected announcement was that spouses and civil partners will be able to

inherit their deceased spouses' or partners' ISA balances for deaths on or after 3 December 2014. The balances will continue to earn tax-free returns. The details of how this will operate should be announced in due course.

Peer to peer (P2P) lending A new relief will be introduced allowing individuals who lend through P2P platforms to offset any losses from loans that go bad against other P2P income. It will be effective from April 2016 and individual investors will be able to make a claim for relief on losses incurred with effect from April 2015.

Non-UK domiciled individuals who wish to use the remittance basis of taxation will

have to pay higher charges if they have been UK residents in 12 out of the last 14 years or 17 of the last 20 years. The government will also consult on making the election for the remittance basis apply for a minimum of three years.

Inheritance tax The government no longer plans to introduce a single settlement nil-rate band as it originally proposed.

However, there will be new rules to target avoidance through the use of multiple trusts and simplify the calculation of trust taxation.

We are here to advise you.



HMRC's updated advisory fuel rates from 1 December 2014 see 1p reductions to the petrol rate for cars of 1400 cc or less and also for petrol cars over 2000cc, reflecting some of the fall in oil prices. There is a similar reduction for diesel cars over 2000cc. Other rates, including all the LPG rates, remain unchanged. The new rates are:

Engine size	Petrol	Diesel	LPG
1,400cc or less	13	11	9
1,401cc to 1,600cc	16	11	11
1,601cc to 2,000cc	16	13	11
Over 2,000cc	23	16	16

Rates will be reviewed again on 1 March, although current rates can be used for a further month after then.

Restrictive covenants on employment contracts

Following a recent case, employers who require employees to sign a contract that restricts their activities after termination must make sure its terms are accurately drafted and well thought through.

Employers use restrictive covenants to stop former employees from engaging in activities that might compete with their business. Such clauses are usually unenforceable because they are a restraint of trade and are contrary to public policy, unless the employer can show that it has a legitimate interest to protect and has reasonable grounds for having this protection.

In a case that went to the Court of Appeal, a non-competition clause had been poorly drafted and, if it were read literally, it provided the former employer with no protection. An employee whose contract included a restrictive covenant had left his job and joined another company in a similar line of business. The company he had left tried to take out an injunction in accordance with the restriction to prevent the employee from joining the new company for one year after termination of his employment.

The clause in question prevented the employee from dealing with the former employer's

products, rather than similar products. However the High Court decided to give effect to what were obviously the parties' intentions by correcting what it viewed as a drafting error. The Court of Appeal concluded that it would be correct to interpret an ambiguous clause in such a way as to give it a commercially sensible effect. However in this case, the meaning of the clause was clear and it was poor drafting that gave it no practical effect. The employment with the competitor therefore did not breach the clause.

Restrictive covenants provide employers with a valuable way to protect their commercial interests but they can also have a potentially major impact on the freedom of former employees and can therefore be hard to enforce. In particular, the courts will reject blanket and excessive restrictions.

Legitimate restrictive covenants may prevent a former employee from competing with the former employer; dealing with or soliciting the former employer's customers or suppliers, or



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enticing away other employees. A restriction lasting more than a year is unlikely to be justifiable.

An employer taking on an employee subject to a restrictive covenant should take care not to induce the employee to breach the clause, because that would leave the new employer open to being sued.

VAT and new rules for digital services

If you supply digital services to consumers in other EU countries, you should be aware that new VAT place of supply rules apply from 1 January 2015.

Digital services means broadcasting, telecommunications and e-services, with e-services especially being a fast changing area. They include everything from downloaded apps, e-books and anti-virus software, to video on demand and music downloads.

HMRC treats business-to-business (B2B) supply of services as the place where your customer is situated, so there are no VAT implications for a

UK business selling to other EU countries. These rules are not changing.

From 1 January 2015, the business-to-consumer (B2C) rules mirror the B2B treatment, replacing the old rule, under which B2C supplies were regarded as made where the supplier was situated. VAT is therefore now payable in the country where the customer is situated and at that country's rate of VAT.

With B2C supplies, the customer is a consumer and is therefore not registered for VAT, so the supplier remains liable for the tax.

Rather than having to register in every member state you supply to, an easier alternative is to use HMRC's online VAT mini one stop shop. You then just submit a single quarterly return and payment, and HMRC does the rest on your behalf. Let us know if we can help.

The mansion tax debate continues...

The top end of the residential property market has been depressed by high rates of stamp duty land tax and may yet suffer from the annual 'mansion tax' proposed by both Labour and the Liberal Democrats if they were to come to power after the May election.

Leading Labour politicians have provided details of their current proposals, which seem to be popular with much of the electorate, although probably not those directly affected. The proposed tax would target high-value properties, more than 95% of which are situated in London and the south east of England. The suggested starting threshold of £2 million would affect around 100,000 homes. In contrast, Scotland and Wales combined currently have fewer than 1,000 homes worth more than £2 million.

The current suggested structure is a simple banded system possibly based around the annual tax on enveloped dwellings (ATED) which was introduced in 2013. ATED currently applies where property valued at over £2 million is owned within a corporate 'wrapper' or 'envelope', with higher annual charges applying for property values exceeding £5 million, £10 million and £20 million.

Details are lacking, but Labour has said that the annual mansion tax charge would be £3,000 for properties valued between £2 million and £3 million, with higher bands possibly set at £5 million and £10 million. The £2 million band would rise broadly in line with property values. Overseas owners of second homes in the UK might be required to pay proportionally more. Homeowners would be expected to make an assessment of their property's value for submission to HMRC. This would save the cost of an independent valuation, but it could lead to penalties being charged if HMRC were to dispute a valuation.

Labour is proposing a facility to help homeowners on a relatively low income – i.e. probably basic rate taxpayers. They may be able to defer paying the tax charge until the sale of their properties or earlier death. It is too early to speculate about what tax planning, if any,



might be effective. One approach might be to avoid the purchase of a single expensive main residence, and instead buy a less costly property and use the spare cash for a holiday home.



If you are employed, HMRC can currently collect tax debts of up to £3,000 using your PAYE coding. From 2015/16, this coding limit will be on a sliding scale. The limit will remain at £3,000 if you earn less than £30,000, but it will increase in £2,000 steps for each additional £10,000 band of earnings. A maximum of £17,000 will apply where earnings are £90,000 or more.

For example, where earnings are between £50,000 and £59,999, the limit will be £9,000. The increased limits will apply if you have self-assessment or class 2 NIC debts, and to overpayments of tax credit.

TAX CALENDAR Every month

1 Annual corporation tax due for companies (other than large companies) with year ending nine months and a day previously, e.g. tax due 1 January 2015 for year ending 31 March 2014.

14 Quarterly instalment of corporation tax due for large companies (depending on accounting year end).

19 Pay PAYE/NIC and CIS deductions for period ending 5th of the month if not paying electronically. Submit CIS contractors' monthly return.

22 PAYE/NIC and CIS deductions paid electronically should have cleared into HMRC bank account.

30/31 Submit CT600 for year ending

12 months previously. Last day to amend CT600 for year ending 24 months previously.

File accounts with Companies House for private companies with year ending nine months previously and for public companies with year ending six months previously.

If the due date for payment falls on a weekend or bank holiday, payment must be made by the previous working day.

JANUARY 2015

31 Submit 2013/14 self-assessment return online. Pay balance of 2013/14 income tax and CGT plus first payment on account for 2014/15.

FEBRUARY 2015

1 Initial £100 penalty imposed where the 2013/14 return has not been filed or has been filed on paper after 31 October 2014. Further £300 penalty or 5% of the tax due if higher where the 2012/13 return has not yet been filed.

2 Submit employer forms P46 (car) for quarter to 5 January 2015.

3 Third 5% penalty imposed on tax still unpaid for 2012/13.

MARCH 2015

2 Last day to pay 2013/14 tax to avoid automatic 5% penalty.

31 Last few days to use any CGT and IHT annual allowances and exemptions and to invest in an ISA in 2014/15.

APRIL 2015

1 Single 20% rate of corporation tax introduced (except ring-fence profits).

1 Land and buildings transaction tax replaces stamp duty land tax in Scotland.

6 First day of the 2015/16 tax year. Changes to tax allowances, rates and thresholds, start of transferable allowance between spouses and civil partners.

6 Start of additional flexible access to pension funds and abolition of the 55% tax charge on certain inherited pension funds.

6 Proposed CGT on future gains made by non-residents on UK residential property to begin.