

CLIFTON INGRAM: KEEPING YOU POSTED WITH NEWS OF THE LAW | SPRING 18

CITATION

INHERITANCE TAX - NIL COMPLEXITY - I

The RNRB, Residence Nil Rate Band, took effect from 6 April 2017 and enables individuals to claim an additional £100,000 of inheritance tax allowance against their estate to the extent that they leave their principal residence to direct lineal descendants. The RNRB is, like the ordinary inheritance tax nil rate band of £325,000, transferable between spouses and this means in practice that spouses can claim now an additional £200,000 of inheritance tax allowance.

From 6 April 2018 the RNRB is increasing to £125,000 per person and in further stages so that by 2020 it will be worth £175,000 per person, effectively making an overall inheritance tax allowance available to married couples of £1 million. So far, so good...

The availability of the RNRB is, however, heavily constrained by the complexity of the new legislation and which restricts the availability of the relief in a number of circumstances;

The relief is only available if your principal residence passes to direct lineal descendants. If you have no children, then the allowance is not available. That said, stepchildren, foster children and the spouses of your children count as "direct lineal descendants"

If your estate is worth more than £2 million then the relief is withdrawn by £1 for every £2 that £2 million is exceeded effectively creating a marginal rate of inheritance tax of 60% for individuals whose estates exceed £2 million up to the point where the relief is withdrawn completely where your estate is worth £2,700,000. For married couples, this means in practice your combined estates. Continued overleaf



[INHERITANCE TAX]

This introduces some novel considerations in the inheritance tax planning context, for example, it will be sensible, where possible, to keep your estates below £2 Million in value.

The terms of your Will can affect your ability to claim at the RNRB. It is important to review your Will now (or make one if you have not already done so) to make sure that your family can claim the RNRB after your lifetime.

Property and RNRB

The RNRB will still be available where you have sold your home or downsized to a less valuable property provided that you sold your home on or after 8th of July 2015 and at least part of your estate is inherited by a direct lineal descendant. If you no longer live in your residence (for example because you have moved into a care home) the RNRB will still apply provided the property was your residence at some time during your period of ownership.

If you plan to give your home to your children (or have done so already) it gives

rise to extremely complex issues of tax law and practice. There are some circumstances in which you might still be able to claim the RNRB if you continue to occupy a home which you have given away. It is essential that you review your Will and take advice in circumstances such as these.

Trusts and RNRB

Trusts cause particular problems in relation to the RNRB. Where property is left to a Trust then this is not treated as a gift to direct lineal descendants and so on the face of it the RNRB is lost. Some Trusts are unaffected, however; for example if a husband leaves his share of the family home in Trust for his wife enabling her to live there rent-free for the remainder of her life and on her death the Trust provides that that share passes direct to their children then the full RNRBs for both will be available on the death of the widow.

On the other hand, if the husband's Will had provided that on his wife's death his share of the house passes to a Trust for the benefit of the children (and this is quite a common arrangement in what are known as "flexible"

Wills) then it would not be possible after the wife's death to claim the RNRB unless steps were taken before his wife's death to rectify matters. Obviously, carefully made plans could be upset by this and if you have Wills of this type you should seek advice to see what steps could be taken to minimise the risk of losing the additional allowance.

The phrase "giving with one hand, taking with the other" springs to mind in the context of the RNRB which appears on the first instance to offer a great deal but on closer inspection has many traps for the unwary.

[GET IN TOUCH]

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SHARED PARENTING - WHAT IS NOW AND WHAT IS NEXT?

Almost 20 years ago, the Children Act 1989 replaced the commonly used terms of “Custody” and “Access” for children with “Residence” and “Contact” Orders.

The Court could impose such Orders regulating shared living arrangements for children in cases where it felt it necessary to recognise the equal role of parents in a child's life. Until 2014, however, there was no legal presumption of equal or shared parenting. The Child and Families Act 2014 introduced an amendment into the Children Act 1989 to include a presumption of parental involvement in a child's life as part of the Court's considerations of a child's welfare. It is therefore a recognised principle in Children Act proceedings that children are entitled to a meaningful relationship with both parents. The question is whether the correct balance has been struck and whether there is scope or even need for more effective changes to the existing legislation.

The 2014 Act replaced “Contact” and “Residence” Orders with “Child Arrangements” Orders which set out who the child spends time with and who the child lives with. The aim was to remove the labels of residence and contact and shift the focus from parents perceiving that they had won or lost as a result of proceedings. The primary principle set out in the Children Act 1989 is that all applications in relation to children are resolved in accordance with their best interests, rather than the best

interests of the parents or any other adults involved in a child's life. The concept of one parent being a main carer has shifted following the 2014 Act towards finding an arrangement which is best for the child.

In introducing the changes in 2014, the government considered it important that “children have an on-going relationship with both their parents after family separation”, where that is safe, and is in the child's best interests. This does not mean that having a meaningful relationship entitles the parents to an equal division of time with the child but is intended to reflect the quality of parenting received by the child from both parents.

The Court has to consider the presumption of parental involvement in a child's life when asked to make, vary or discharge an Order under Children Act and the proceedings are contested or, when making or discharging a Parental Responsibility Order in favour of a father or second female parent. The Court has to presume, unless the contrary is shown, that involvement of that parent in the life of the child concerned will further the child's welfare. “Involvement” can include either direct or indirect involvement but not any particular division of a child's time. There is currently no default position that a child should share his or her time equally between each parent. The presumption of parental involvement is intended to shift the balance so that one parent is not able to exercise his or her parental responsibility to the exclusion of the other from the child's life and is intended to emphasise that both parents have equal status.

Some Courts however seem to have interpreted the legislation to the effect that parents may now have to show good reason why there should not be a shared care arrangement. This was not intended by the legislation. Children are not chattels, capable of being physically divided.

A Private Members Bill was introduced to Parliament in May 2017, designed to strengthen the law and the presumption of parental involvement and shared parenting. MPs agreed that although the 2014 Act had improved the position there is a lot further to go. We shall have to wait and see whether the Family Justice Bill becomes law and what the impact will be in practice.

In the meantime, parents should remember that a presumption of parental involvement does not mean shared or equal day to day care, the presumption should not be interpreted as to what is in the best interests of parents and all applications under the Children Act 1989 must be resolved in accordance with the child's best interest rather than what the parents consider “fair” for themselves.

[GET IN TOUCH]

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FIRST TIME BUYERS GUIDE

As the number of first-time buyers has reached its highest level in a decade we thought it might be helpful to offer a short guide for those about to get on the first rung of the property ladder.

Know your Value

As a first time buyer you are in a strong position when buying a property. Many sellers will value the fact that you are not in a chain and therefore the reduced likelihood of the transaction falling through that this can bring. Bear this in mind during your negotiations.

Your Mortgage

It is generally a good idea to apply for a mortgage decision 'in principle' before you go house hunting to find out how much the mortgage company will lend you based on your income and credit rating. Having a decision in principle not only gives you certainty in respect of how much you can borrow, but will put you in a strong position when making an offer on a property.

Budget some more

Remember, when working out your budget you need to put quite a lot of

money away before you can buy that new sofa. Stamp Duty, legal fees, survey costs, insurance, mortgage costs etc can all mount up, so do your sums in advance and work out how much you can realistically afford. It is also a good idea to work out the likely cost of your outgoings following your purchase, such as utilities, Council Tax, etc, to ensure you will be able to afford the monthly mortgage repayments.

Government's Help to Buy Scheme

There are three initiatives from the government that you need to be aware of 1) Help to Buy ISA: For first time buyers 2) Help to Buy Shared Ownership: For owning a share of a home 3) Help to Buy: Equity loan: For brand new homes in England. You can find out more information here...

<https://www.helptobuy.gov.uk/>

Building Surveys

Once you've found your dream home you ought to get it surveyed to check that it is structurally sound. There are a number of different types of survey available and they vary greatly in what they offer and the amount of detail they provide. The type of survey you will choose will depend on a number of factors such as the age and state of the property, the cost of the survey and your attitude to risk.

Unmarried Couples

If you are buying with someone you are not married to, especially if you have contributed unequal amounts towards the deposit, it is sensible to enter into an agreement called a Declaration of Trust. This is a document drawn up by a solicitor which states who has contributed what and how the proceeds will be divided in the event of the sale of the property.

Before Exchange of Contracts

Your solicitors will check the contract and title documents and also send search applications to the local authority, the water authority and other agencies to obtain information on such matters as sewers, roads, planning and local land charges affecting the property. This normally takes up to two weeks. It is likely that there will be queries arising from the documents your solicitors have received and the search results, which will be put to the seller's solicitors.

Exchange of Contracts

When all of the above is in order contracts are exchanged with your seller's solicitors. Now you are bound to go ahead with the purchase and the completion date is set. Your solicitors will prepare the final documents to transfer the property to you and any mortgage papers for your signature.



Completion

Exchange and completion can be on the same day, but this is unusual. There is usually approximately one to four weeks between exchange and completion. On the day of completion the purchase money is sent to the seller's solicitors by direct bank transfer as early as possible in the morning; the money usually takes an hour or so to reach the solicitors' bank, at which stage completion takes place, the keys will be released to you and you can finally move in. It's yours!

Remember, we at Clifton Ingram will be here throughout the process to guide you, use our experience to help you avoid any pitfalls, and get you successfully on that property ladder.

[GET IN TOUCH]

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REDUCING REPAIR LIABILITIES ON LEASE EXPIRY



Repair liabilities arising on the expiry of a lease are one of the most significant areas of dispute between landlords and tenants. Tenants' terminal dilapidations liabilities (breaches of lease covenants that relate to the condition of a property when the lease ends) will usually centre on lease covenants relating to repair, reinstatement of alterations and redecoration.

Most tenancies will end with a dilapidations claim and tenants should give early consideration to the issues arising in this regard. A large number of disputes arise because either a landlord or a tenant has not read their lease carefully or do not understand what it means. In addition, the parties may not agree on the extent of a tenant's liability.

In assessing a tenant's dilapidations liability, the parties should first consider the standard of repair required under the lease. A tenant may also be liable to replace parts of the property that are in disrepair under a lease if it is not economically feasible to repair the same. In these circumstances replacement with a modern equivalent is often the most effective option. However, this can be onerous on a tenant, particularly given that they will have no future interest in the property once the lease expires and they vacate.

If it is established that the tenant is in breach of its obligation to repair then on the expiry of the lease the landlord's remedy will be limited to a claim for damages, usually equivalent to the cost of putting the premises

into repair. Loss of rent and other losses during the period required to carry out such repairs could be relevant as well.

That said, the Landlord and Tenant Act 1927 provides that the damages the landlord can recover will effectively be capped at the amount by which the value of the landlord's interest in the property has fallen as a result of the tenant's failure to repair. It is generally for a landlord to prove that damages should not be reduced as a result of this limitation.

Damages will not be recoverable where it can be shown that the property is to be pulled down or where structural alterations are to be carried out at the end of or shortly after the end of the term.

The tenant may also be able to mitigate its liability if it can demonstrate that the repair works required by the landlord would not survive any upgrading of the property to modern standards in order for the landlord to re-let. For example, if the property has a borderline EPC rating and the landlord needs to undertake improvements in order to re-let then the tenant should not be incurring costs in connection with valueless repair works.

It will usually be the case that a schedule of dilapidations will be prepared on behalf of a landlord setting out works that are required to be carried out at the end of the term by the tenant. In practice, these will be the works required both to reinstate alterations carried out by the tenant during the term and also to put the property back into repair. Damages for failure to reinstate are calculated

by referring to the landlord's loss and whether it is a reasonable requirement for such reinstatement to occur.

In order that a tenant might reduce its risks associated with dilapidations liabilities, they may wish to negotiate a schedule of condition prior to entering into a lease. They should also consider the following in good time before lease expiry:

- Undertaking the required works themselves.
- Financial settlement with the landlord.
- Carrying out some of the required works themselves and otherwise agreeing a financial settlement with the landlord.
- Participating in alternative dispute resolution with the landlord in order to resolve any differences.

In practice, dilapidations cases rarely go to Court although a strategy for negotiation comprising some of the alternatives set out above should be considered at an early stage by tenants. Engaging a competent surveyor and solicitor at the outset and setting clear deadlines for conclusion should assist.

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NO PROTECTION FOR MORRISONS AS COURT FINDS THEM LIABLE FOR EMPLOYEE'S ACTIONS

In the first ever class action for a data breach in the UK, the High Court has found that WM Morrisons Supermarkets PLC was vicariously liable for a deliberate disclosure of personal data by a rogue employee who had a grudge against his employer. He deliberately disclosed the personal information of around 100,000 of his co-workers onto a file sharing website.

The employee committed a criminal offence by his actions and was sentenced to eight years in prison.

Morrisons were found liable for the employee's actions, even though this was exactly what the employee wanted to achieve – financial and reputational damage. Morrisons are going to appeal, but, unless the case is overturned, it could be extremely expensive for Morrisons. It could also have worrying consequences for other employers who find that an employee has disclosed data without their knowledge or consent.

The court found that Morrisons had appropriate measures in place to keep information secure. Although Morrisons could have had a better process for deleting information, the court found that this did not lead to the disclosure. Morrisons were found to be liable for policy reasons, rather than because of their actions. The reason for the decision was to protect the data subjects - in this case, the Morrisons' workers who had their data shared on the internet. The court wasn't moved by Morrisons' arguments about the financial consequences of vicarious liability. It thought that many companies would take out insurance to cover these sorts of claims.

The new data protection laws implementing the GDPR which come in soon and increase liability for employers and data processors, will also raise the financial stakes even more. We may see more class actions for compensation too. This is definitely a case to watch closely on appeal.

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THE ARTS SOCIETY

After reading that pupils from Bulmershe School desperately needed funds to enable them to take their musical, 'That Emperor's Fool', to premier at the Edinburgh Fringe, The Arts Society Wokingham sprang into action and sent £500 was sent to ensure that this talented group of young people could cover the costs of their trip.

One of the aims of The Arts Society is to help young people expand their horizons through their involvement in creative arts activities. This grant helped to cover the day-today costs of their trip and without

it many of the cast could not have afforded to go. As a result in 2018 The Arts Society is setting up a Young Arts Programme.

As a corporate partner of The Arts Society, Clifton Ingram sponsors some of their monthly lectures. The next sponsored lecture is on Thursday 26th April at 7.45pm at Salisbury Hall, Newbold College. It is entitled 'The History of the Harp - from Mediterranean Antiquity to C20th Europe' by Sarah Deere-Jones. More details can be found on: www.theartsocietywokingham.org.uk

Clifton Ingram have a limited number of free tickets available for this lecture so if you would like to come along please contact [Melissa Baxter](mailto:Melissa.Baxter@cliftoningram.co.uk) on melissabaxter@cliftoningram.co.uk to reserve your place.



WEALTH MANAGEMENT EVENT

February saw Clifton Ingram hold its annual Wealth Management event for over 100 attendees at the Hilton in Wokingham.



This event provides attendees with a practical overview of the legal and financial issues relating to later life and wealth management. Topics covered included Inheritance Tax Planning, Lasting Power of Attorney, Trusts and Care Home Funding, amongst others. Feedback from attendees is always very positive,

"Thank you and your colleagues for organising yesterday's seminar. We do like to keep abreast of changes which could affect our situation and

the events you arrange are a really excellent way of providing the updates we need".

[GET IN TOUCH]

If you would like to ensure you are on the invitation list for future Wealth Management events please contact

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