ISSUE 5/2022

SHAKESPEARE MARTINEAU

LIFE TIMES

THE COAL IN YOUR CHRISTMAS STOCKING

contents

4

The coal in your Christmas stocking

18

Divorcing couples

8

The dangers of joint property

14

It's awards season!

hello

Welcome to the latest edition of Life Times – and what a few months it is has been!

Since we last published the country has seen three prime ministers and FIVE Chancellor of the Exchequer – so I think we can all be forgiven for feeling a little unsettled at the moment.

From a private wealth and family perspective it has been a year of change – the introduction of the 'no fault' divorce legislation (finally!) has been a game changer for many divorcing couples. And the recent 'mini budget' has ushered in some changes to the tax regime which will impact private clients.

In this issue we cover some of the important topics of the day including Capital Gains Tax and divorcing couples, to gifting at Christmas to the dangers of joint property and much more.

We also introduce our new colleagues from our Bristol office. Since completing a recent merger, we now have a south west presence and additional expertise in all things private client, family and residential conveyancing.

Victoria Tester
Managing Director
– Life and Business

The coal in your Christmas stocking

What is inheritance tax?

Quite simply, it is a tax on a person's assets when they die. It can also be applied to the recipient of a gift that costs over a certain amount and the giver has then died within seven years. The gift does not have to be monetary; it could also be property or possessions.

What's the limit?

Per tax year, a person is able to give away a cumulative total of £3,000 to whoever they choose. They can also give as many small gifts under £250 to different people as they like.

What's the seven-year-rule?

The seven-year-rule becomes relevant when a person gives away over £3,000 in one tax year. It states that the giver must survive for seven years after the gift for it to be exempt from inheritance tax. If not, the value of the gift is counted back into their estate when calculating the inheritance tax due. Such gifts will use up the tax-free allowance (nil rate band) available on their death and, if the value exceeds this, the recipient is liable to pay inheritance tax. However, the tax payable does start to taper if it has been more than three years since the date of the gift.

Are there any gifts that are exempt?

Donations to charity and some gifts for marriages or civil partnerships are not liable for inheritance tax, depending on how closely related a person is to the happy couple. All gifts between married couples or those in civil partners are also exempt.

Is there a way to avoid inheritance tax for certain?

Unfortunately, unless a person is psychic, there is no sure-fire way to avoid inheritance tax on gifts over £3,000.

Nevertheless, there is the option of using 'excess income'. If a person can prove their income meets all their living costs, and that their standard of living can be maintained after the gift, then it may be possible to claim an exemption for inheritance tax. However, to qualify, there must be a regular pattern to this gifting.

All this being said, as long as the giver communicates effectively with the recipient about the potential risks of an expensive gift, generosity does not need to be feared. If in doubt, seek advice from an expert.

Suzanne Leggott
suzanne.leggott@shma.co.uk
+44 (0)7850 508853

Making you hard to hack this Christmas

Christmas is almost us upon us! Unfortunately, at this time of year there is a heightened risk of cyber-attacks due to among other things an increase in email traffic marketing Christmas gift ideas and then post-Christmas sales.

Below are three simple steps you can take to make you, your family, your business and Christmas #hardtohack.

Step 1

Password management:

Change your password. Now, right now. Please. Yes, it's a faff; yes, you will need to think of a new password and then remember it. Yes, you could do it tomorrow, but you won't. Do it right now. NOW!

There are millions of emails and passwords for sale on the Dark Web that have been breached by companies that have not protected your personal data sufficiently. Cyber criminals can buy this data for pence and use a computer algorithm to test the email / password combination against web facing email portals - think: Hotmail, Gmail, Microsoft 365 etc - to gain access to your emails. They will look for social media accounts and online high-street accounts and then test your email password combination to gain access. From this they can gather more personal data until they may have enough to take out credit in your name or use your saved payment cards to make online purchases.

Changing your password associated with each of your email addresses is the single greatest defence you can make to protect yourself against a cyber-attack and will instantly make yourself, your family and your business safer.

Step 2

Personal data dreach identification:

Next it is a good idea to understand whether your data has actually been breached so you can put in place other measures to protect yourself. First let's understand the problem. To do this you can use a free service provided by haveibeenpwned.com (HIBP). To put your mind at ease, the site is run by ethical hackers. What is that? Think of hackers in terms of angels and demons. Demon hackers are criminals. Angel hackers are those with the same skill set as demon hackers, but with decency, morals and integrity. Angel hackers use their skills to protect mankind.

Enter all your email addresses one at a time into the search function. HIBP will then tell you whether the email is associated with a breach and if so, what other data has been breached.

Oh no, you have been breached. What now? Well because you have already changed your password you have broken the chain and are already safer.

What we now need to understand is whether you have been entered into any spambots. Spambots as the name suggests are bots that send spam to you. Some spam is laughable, other spam is highly credible. The problem is that if you are tired, rushing, distracted and unthinkingly click a link in a spam email, you could have executed malware or ransomware on your device. Remember, the cyber-criminal only needs to be lucky once, you have to be lucky every time.

So, what to do about it. Unfortunately the only way to rectify and avoid your exposure to spam and thus the chances of clicking on a malicious link is by changing your email address. This is best done by transitioning emails address information on websites over a period of time.

Cue you: "What!!! You are kidding right? I have had this email for years."

Don't be a victim, do the right thing and protect yourself.

Step 3

Check your anti-virus:

Make sure your Anti-Virus software is installed, activated with a valid licence and updated. Remember, in life you get what you pay for. While there is free anti-virus available it will not protect you sufficiently. Competition to provide the best anti-virus changes year on year between the main vendors, as they achieve technology breakthroughs in response to the evolution in cyber threats. The best thing to do is check a site like www.techradar.com or www.pcmag.com for reviews of the best current anti-virus. There are always new customer deals. We recommend buying a one-year licence, and then when it comes to renew assess which company has moved to the forefront of anti-malware protection. There will always be new customer deals to be had.

This article has been written by Mike Wills from CSS Assure, a cyber and data security consultancy - part of the Ampa Group.

Mike Wills
Director of Strategy & Policy
+44 (0)7891 549536

The dangers of joint property

"How is your joint property held" is a question we ask every client undertaking estate planning or making a will.

The answer can potentially have very significant consequences, particularly where the family home is the main asset.

For some, the ability to hold property as either joint tenants or tenants in common may be very familiar concepts. For others, the decision of how to hold the family home has often been made many years ago or was not something ever actively considered.

Other clients have undertaken estate planning many years ago, which resulted in their property being held as tenants as common. However, when the couple have moved, the new property has inadvertently been purchased as joint tenants, potentially undermining any estate planning they have put in place.

Where property is held as joint tenants, on the death of one owner, the property passes automatically to the other, regardless of the provisions of that person's will.

But in contrast, where property is held as tenants in common, when one person dies, the share belonging to them passes in accordance with the terms of their will.

Many family homes are held as joint tenants, as this is often seen as the "default" for married couples and although this may work well for many people, it is not always the best option.

Considerations for the future

Consider a second marriage, where the first to die wishes to protect their share of the property for the children of previous relationships. If the home is held as joint tenants, the surviving spouse has complete control after the first death – they could give the property away or they could leave it in their will to their own children or to a new spouse if they remarry. If they die without a will, the laws of intestacy will decide who will inherit this on their death and this will not include step-children.

The possible unintended consequences of holding a property as joint tenants are clearly demonstrated by a recent case where a married couple were both found dead at their home. It was unclear who had died first and each had a daughter from a previous relationship.

The couple held their home (and their bank account) as joint tenants, meaning that whoever died second would inherit the other's share.

Where it cannot be determined who has died first, the law considers this to have been the older person, in this case the husband. As a result of this, the wife was deemed to hold all the assets at her death and her daughter inherited everything. The husband's daughter inherited nothing. Had the property been held as tenants in common instead, each daughter would have received half.

How it affects estate planning

Holding property as tenants in common can also sometimes be useful even where the ultimate intended beneficiaries are the same for each joint owner.

Many people choose to include Nil Rate Band trusts in their wills on the first death, not least because this allows up to £325,000 to be held outside the estate of the survivor, providing protection of this sum from care fees. If the main asset is the family home, it is often necessary to ensure that the share belonging to the first to die passes under their will in order to have enough value to make full use of this Trust.

This will not happen where property is held as joint tenants.

These are the key features of joint tenants vs tenants in common but whether they are pros or cons can be subjective and frequently depends on individual circumstances. It's important to obtain legal advice before committing to one option over another so that you know that you're making the right choice for you and your family.

Victoria Taylor
+44 (0)121 214 1229
victoria.taylor@shma.co.uk

SHAKESPEARE MARTINEAU

Trust registration scheme update

There has been a recent update to the way trusts and estates are registered. This is known as the Trust Registration Service (TRS).

As of the 1 September 2022, new requirements are in place for both trusts and estates in respect of the requirements for registration with the TRS, even if the estate or trust is not producing any income.

Trusts

The vast majority of express trusts, both taxable and non-taxable, which are created now have to be registered on the TRS. Therefore, it is important that when dealing with trusts you must consider whether they have already been registered or whether they need to be.

There are a number of exceptions where trusts do not require registration, including:

- Charitable trusts, that are registered as a charity in the UK or which are not required to register as a charity.
- Trusts for bereaved minors.
- A trust imposed by courts or created by legislation therefore, those set up under the intestacy rules.

Estates

Complex estates are required to be registered on the TRS.

A complex estate is one where:

- The total Income Tax and Capital Gains Tax due for the administration period is more than £10,000
- Value of the estate was more than £2.5 million at the date of death
- Value of the estate's assets sold by the personal representatives in any one tax year was more than £500,000

Those estates considered non-complex are not required to be registered on the TRS. However, if the will creates a trust (which will depend on the wording of the will), if the estate has not been administered within two years of the date of the deceased's death, then the estate will need to be registered by the executors with the TRS.

For example, Mr Smith dies in England on 1 June 2022. He leaves his estate to his executors and trustees to hold on trust to pay his debts and funeral expenses, with the remainder distributed between his wife and son. The trustees are not required to register the trust immediately however, if the estate is not full administered by 1 June 2024 the trust would need to be registered on the TRS as the wording of the will confirmed that it was to be held on trust.

This is most likely to affect charities where they are acting as the personal representative and the estate administration is taking over two years. This can happen if the estate is complex, the will only comes to light sometime after the deceased's death so there is a delay starting the estate administration or there is a dispute over the will (eg a construction claim or will challenge).

Ongoing Obligations

The TRS must be kept up to date.

Firstly, the details that are held about the trust must be kept up to date for example, the names of any trustee or beneficiary.

In addition, in respect of trusts liable to tax, an annual declaration must be submitted and that the details of those associated with the trust are accurate and up to date.

Deadlines

The deadline for registrations for non-taxable trusts was the 1 September 2022.

Trusts now need to be registered within 90 days of it either being created or becoming liable for tax or for estates, by the second anniversary of the deceased's death.

There are penalties for trustees/ executors for failing to register the TRS – though it is not clear what those will be yet.

Some lay executors may not be aware of the rules so if your charity is a beneficiary of an estate which could be affected by this, then you may wish to refer them to the government guidance.

Elaine Hart
+44 (0)121 214 1237
elaine.hart@shma.co.uk

SHAKESPEARE MARTINEAU

Financial settlements

never a one size fits all

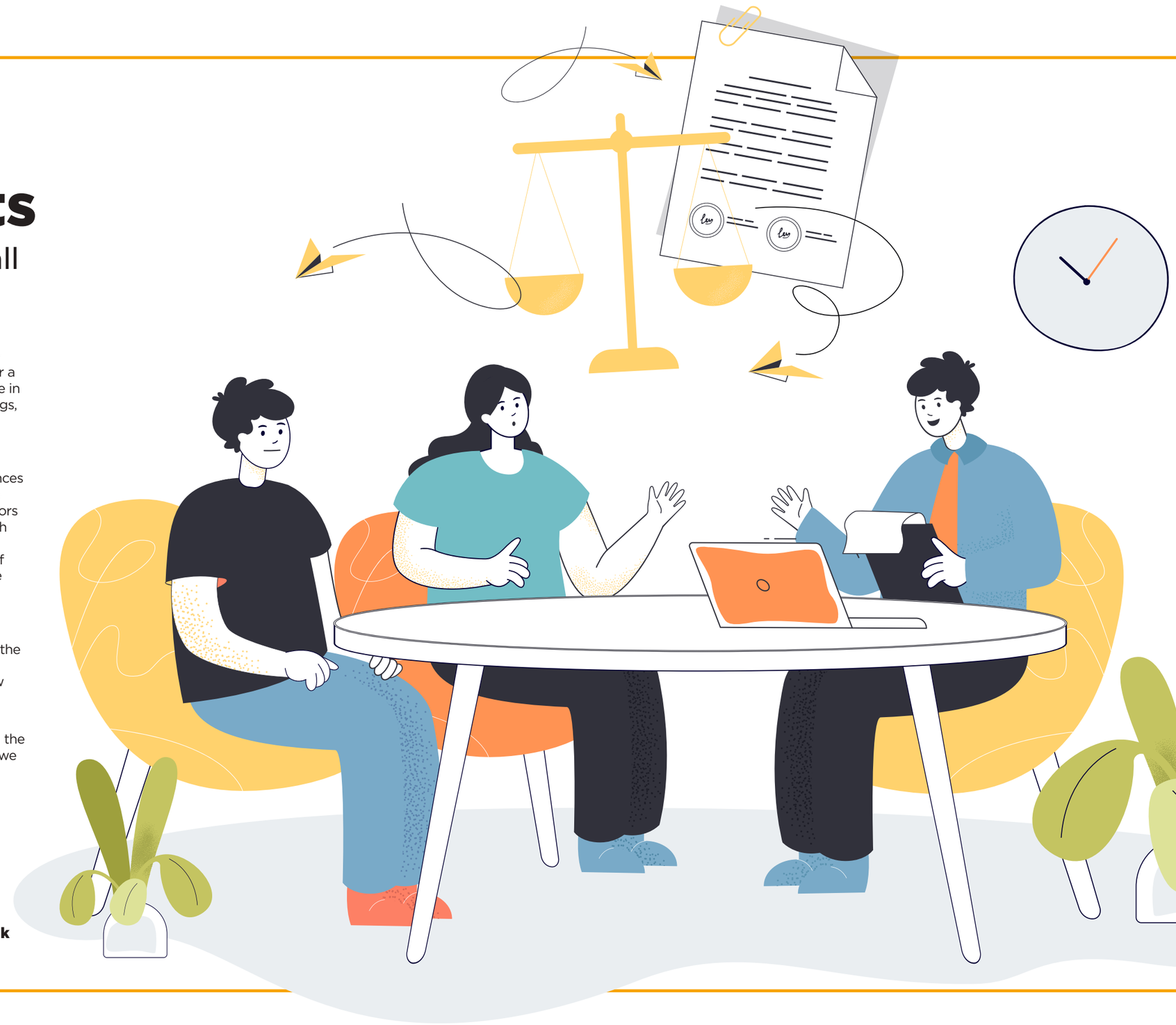
Every single family will have their own unique, different set of circumstances and these varied circumstances are always in evidence when family lawyers are looking at resolving financial claims for a separating couple. No two cases are ever the same in terms of a couples financial assets; property, savings, pensions, businesses, income, liabilities and so on.

Family lawyers must assess each case on its own facts, considering how those particular circumstances sit against the factors outlined in section 25 of the Matrimonial Causes Act 1973. These statutory factors are not equally weighted across all cases (although needs of any children and the parties will always be the priority factor). In some cases, the length of the marriage is relevant, perhaps the health of one of the parties, or one parties contributions to the matrimonial wealth.

The point is there is no magic formula to produce the "correct" outcome, which is why it is so important to take early and ongoing advice from a family law specialist when separating.

If you are fearful your partner may walk away with the assets, leaving you in a tight spot, get in touch so we so we can discuss your concerns.

Katherine Marshall
+44 (0)7872 507755
katherine.marshall@shma.co.uk



SHAKESPEARE MARTINEAU

It's awards season!

The long awaited Legal 500 and Chambers results have recently been announced and once again our private client and family teams have achieved band one rankings across the firm. Much of this success is down to the fantastic testimonials from many of our clients and colleagues across the sector and we'd like to say a huge thank you for the feedback.

Our private client and wills team has also won Charity Legacy Probate Collaboration of the Year at the National Wills and Probate Awards 2022. We were also shortlisted for Probate Team of the Year - Midlands and North and Heledd Wyn from our Bristol office was also shortlisted for a national industry champion award.

Our family team has also won the Family Law Award for Wellbeing 2022 at the Lexis Nexis Family Law awards. We were also delighted to have been shortlisted again for Family Law Firm of the Year – Midlands and Wales, following our win in 2020.

Well done to all our fabulous teams.

Meet the new Bristol team

In October Shakespeare Martineau completed its merger with leading Bristol-headquartered firm GL Law – expanding the firm's reach into the Southwest for the first time. Bristol becomes our 11th office nationwide. We have welcomed more than 60 people to the Shakespeare Martineau team overall and added a team of highly regarded and extremely experienced private client, family and residential conveyancing lawyers to join our award winning teams.

Client service remains a top priority to us all and we look forward to working with you from our new Bristol office and existing offices nationwide.

- Private Client
- Residential conveyancing
- Family

Ben Coulson

ben.coulson@shma.co.uk
+44 (0)7985 675263

Georgia Denner

georgia.denner@shma.co.uk
+44 (0)117 906 9455

Margarita Kappanen

margarita.kappanen@shma.co.uk
+44 (0)117 906 9427

Heledd Wyn

Head of Private Client and Long Term and Elderly Care South West
heledd.wyn@shma.co.uk
+44 (0)7985 675318

Tracy Bateman

tracy.bateman@shma.co.uk
+44 (0)117 906 9235

Emma Burnett

emma.burnett@shma.co.uk
+44 (0)117 906 9497

Lauren Downs

lauren.downs@shma.co.uk
+44 (0)7985 675164

Emily Evans

emily.evans@shma.co.uk
+44 (0)117 906 9256

Alice Gibson

alice.gibson@shma.co.uk
+44 (0)7985 675258

Louise Kiely

louise.kiely@shma.co.uk
+44 (0)7985 675181

Kath McEvoy

kath.mcevoy@shma.co.uk
+44(0)117 906 9235

Rebecca McMorrow

rebecca.mcmorrow@shma.co.uk
+44 (0)207 299 9814

Bev Forse

bev.forse@shma.co.uk
+44 (0)117 906 9440

Ben Griffiths

ben.griffiths@shma.co.uk
+44(0)7985 675285

James Myatt

Head of Family Team South West
james.myatt@shma.co.uk
+44 (0)7906 714422

Kit O'Brien

kit.obrien@shma.co.uk
+44 (0)7927 549567

Sandeep Multani

sandeep.multani@shma.co.uk
+44 (0)117 906 9498

Roxy Parveen

roxy.parveen@shma.co.uk
+44 (0)117 906 9460

Nathania Hall

nathania.hall@shma.co.uk
+44 (0)7985 675188

Clare Hopkins

clare.hopkins@shma.co.uk
+44 (0)117 906 9464

Rachel Pritchard

rachel.pritchard@shma.co.uk
+44 (0)117 906 9439

Anamaria Roman-Puia

anamaria.roman@shma.co.uk
+44 (0)117 906 9426

Lesley Warren

Head of Residential Property South West
lesley.warren@shma.co.uk
+44 (0)117 906 9410

Divorcing couples

be aware of tax traps

Going through a divorce can be an emotional time with many new situations to navigate and decisions to be made. On top of the other financial considerations that need to be finalised, there are also some rather unexpected tax traps which could apply to couples that have been separated for a long period of time. Many couples are not aware that it is the moment of separation rather than the commencement of a divorce that can trigger tax consequences.

Best practice when it comes to money

When a couple reaches the decision to permanently separate, seeking early and specialist advice can enable a couple to ensure their financial separation is structured in the most tax efficient way possible and also prevents any unwanted surprises further down the line.

Alongside seeking early legal advice having the right financial advice will make sure that couples not only formalise and protect their financial positions with a court approved financial order, but will also make sure that they can navigate their separation and implementation of the financial agreement smoothly.

Capital Gains Tax (CGT)

The government introduced the Finance Bill 2022/23 which, if passed in its current form will come into force on 6 April 2023. This bill seeks to reduce the CGT burden at an already difficult time for divorcing couples.

The current rules

Transfers of assets between spouses do not usually give rise to CGT. This only applies when a divorcing couple transfers chargeable assets as part of their wider financial settlement during their tax year of separation. Timing is therefore absolutely key. If steps are taken to permanently separate at the beginning of a tax year, then a couple will still be able to transfer chargeable assets CGT free right up until the end of the tax year on the following 5 April. However if steps are taken to permanently separate towards the end of a tax year then the couple run the risk of not having enough time to utilise the potential tax savings.

Following the end of the tax year of separation any transfers between spouses will be deemed to be at market value.

The (potential) new rules

Unfortunately in many divorces the financial separation can take more than a year to resolve. Timing of separation is often a key factor in the financial remedy and can leave couples with little time to reach an agreement.

The Finance Bill 2022/23 goes some way to removing these issues. It is designed to extend the window of 'no gain, no loss' to three years (rather than maximum one year) after the end of the tax year of separation which gives considerably more breathing room for divorcing couples.

It also helps where there is a court order transferring assets between spouses. The 'no gain, no loss' treatment will apply even if the asset is transferred more than three years after the tax year of separation following the order.

Beware however. The bill does not remove the consideration of CGT for divorcing couples entirely and will still need to be considered as part of the overall net effect of any settlement.

Any transfer will be taken at the acquisition cost, so if the value has increased then the party receiving the asset will inherit the gain (ie if the acquisition cost was £300,000 and the current value of the asset is £350,000 then the gain of £50,000 is inherited). This only matters when the asset is sold.

The bill goes even further and extends the availability of principle private residence relief. The party that moves out of the family home will not lose principle private residence relief where they have retained an interest and the property is sold to a third party, even if they have not occupied the property themselves since separation. Appropriate tax advice should be sought

There are important tax aspects to consider alongside a proposed financial settlement before steps are taken to document and implement any agreement. The tax implications arising on separation can be diverse and will likely depend on what assets are held and how they are going to be divided. As always seeking advice early on, if separating and divorcing, is invaluable to ensure assets are transferred as tax efficiently as possible.

Louise Kiely
+44 (0)7985 675181
louise.keily@shma.co.uk

SHAKESPEARE MARTINEAU

Working with organisations of all sizes, the firm delivers a broad range of specialist legal services and has particular expertise across areas including but not limited to: energy, education, banking & finance, healthcare, investment funds, manufacturing, agriculture, family business, Islamic finance, later living, social housing and real estate. Shakespeare Martineau also provides services for families and private clients.

The firm's purpose is clear;

to unlock potential, and its ambitions are unlimited; aiming to become one of the most admired top 30 law firms by 2025.

Shakespeare Martineau has been listed in Best Companies for top 25 law firms, top 100 Midlands and top 50 large London businesses.

With more than 1000 people, Shakespeare Martineau has offices in Birmingham, Bristol, Edinburgh, Glasgow, Leicester, Lincoln, London, Milton Keynes, Nottingham, Sheffield, Solihull and Stratford-upon-Avon.

@SHMALaw

Shakespeare Martineau

03300 240 333

www.shma.co.uk