

FiNE LINE[•]

Advice that adds up



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PROPERTY CRACKDOWN

The historic love affair with UK property ownership is a bit battered just now.

In March 2012, the Government announced three main measures designed to discourage the ownership of high value property by companies or offshore structures.

1. With immediate effect, a 15% rate of Stamp Duty Land Tax (stamp duty) is introduced on the purchase of residential property worth more than £2 million by certain non-natural persons. A non-natural person is defined as 'any person who is not an individual' but excludes for this purpose trustees and personal representatives (PRs). Charities remain exempt if they would also be exempt from capital gains tax under existing rules.

Held over for consultation this summer with a view to their introduction from April 2013, are the following two measures:

2. An annual charge on residential properties valued at over £2 million where they are

owned by non-natural persons - effectively a 'wealth tax'.

3. The extension of capital gains tax (CGT) on the sale of such property by certain non-resident, non-natural persons (but including trustees under current proposals).

Broadly, under existing tax law, a purchaser of shares of a company that owns a UK property avoids some or all stamp duty. An individual purchasing the same property would be liable to stamp duty at rates of up to 7% depending upon the value of the property. It is this avoidance that the Government is targeting with its three-pronged attack.

Looking to buy property now?

Along with the potential impact of these changes, you should consider that:

- Property held through an offshore company can be an effective IHT shelter for non-doms.
- If owned personally, it attracts IHT at 40% upon death.
- Alternative solutions to mitigate IHT include

"Property is the pivot of civilization"

Leon Samson

life assurance, using debt to reduce property value and splitting ownership between family members.

If you already own UK residential property through a company, the following issues should be carefully considered, although generally any final decisions to restructure should be delayed until the Autumn's draft legislation has been fully reviewed.

For non-UK residents

- Consider winding up companies owning high value UK residential properties and instead holding the property personally or, depending upon the outcome of the consultation, through a trust.
- If you are holding your UK property through an offshore structure, consider selling the property before 6 April 2013 without triggering any CGT.

For UK residents

- Take decisions with care to avoid triggering CGT under current rules – the climate has changed!
- Where the property is held in an offshore trust ➤

(cont.)>

and is occupied rent free by a UK resident beneficiary, that individual is likely to be exposed to a CGT liability if the structure is wound up.

- Where the property is held in an offshore trust but no UK resident beneficiary has occupied it rent free (i.e. if it has been rented out), it should be possible to restructure or sell the property before 6 April 2013 without incurring a CGT liability.

Before winding up an offshore company that holds UK residential property, caution is needed as anti-avoidance rules apply to UK resident shareholders (and other tax participators).

Other considerations

If you are affected by these changes you should consider whether the annual charge might be preferable to an IHT charge on death. Thought should also be given to whether the extended CGT regime will be relevant to your individual circumstances. Where the intention is to hold a property, allowing it to pass through the family generations, the IHT protection given by holding it through a company may be more attractive than a potential CGT liability upon sale.

The consultation makes a number of broad proposals, particularly in relation to CGT, although the detail has been left open for the moment. The Treasury is keen to avoid any adverse impact on the high end of the UK residential property market or on the reputation of the UK as a safe investment destination with a fair approach to taxation. However, the changes are hugely significant and will undoubtedly have a major impact on the way in which high value UK residential property is held. Ownership needs to be looked at on an individual basis to ensure the most appropriate property owning structure is implemented for each particular circumstance.

If you would like to discuss property ownership in detail, please speak to your contact partner. [LF](#)

LF CLIENT PROFILE

DR FREEMAN AND PARTNERS



Dr Howard Freeman

Dr Freeman and Partners is no ordinary GP practice and Dr Howard Freeman, no ordinary GP. With nearly 20 partners and five surgeries, Dr Freeman oversees the largest GP practice in South West London making it one of the largest in the whole of London.

“There are three main reasons for our growth and expansion,” explains Dr Freeman. “The first is because people like the services we offer. Secondly, general practice is no longer a front room activity and the future is increasingly about larger units offering more services from better premises. And third, we’ve had opportunities which the partners have had the foresight and wisdom to seize.”

“The reassuring thing about Lubbock Fine,” added Dr Freeman, “is that having been our accountants for around 20 years, they have a unique understanding of what is a very complex and unusual GP organisation and that’s very helpful indeed.”

Having studied at Cambridge and University College London Hospital (UCLH), Howard Freeman began his London career in the early



1980s. He joined his current practice which, at the time, ran from a small surgery in the back garden of the founding doctor’s house in Tooting as well as from another small premises.

A stroke of luck soon allowed Dr Freeman to apply for a general practice vacancy in Tooting, which came with premises. This was swiftly followed by taking on a second site in Tooting and, soon afterwards, an opportunity arose to move into the current Durham Road premises. With that move came a recruitment drive and by 1984 the practice comprised four or five GPs (not all full time), including Dr Penny Smith. A decision to invest in nurses at that time was an innovative step for a London practice, and soon, Dr Freeman and Partners was able to run family planning services based entirely on nurses.

The practice went from strength to strength and in 1988 became the only practice to train GPs in Wandsworth. Experiencing steady growth, they bravely became a ‘first way fund holding’ practice in line with a scheme introduced by the then Conservative government and bitterly opposed by most of the medical profession. This allowed the introduction of many more



Artist impression of new Raynes Park Health Centre Development

services, further investment in nurses and the introduction of counselling services, still provided to this day. The funding also allowed the total redevelopment of their premises at a time when most GPs feared the risk and didn't see the need.

"Through all of our growth and development we've increasingly needed excellent financial support and advice," said Dr Freeman. "For the last 20 years, Lubbock Fine and particularly our relationship with Jeff Gitter, the partner responsible for us, have given us that. As we've grown, the need for expert accountancy advice has, of course, increased."

A series of interesting and high profile activities followed developments in Wandsworth, including the opening of a new surgery alongside a large, new private housing estate in Tooting, the absorption of another local practice, focusing on training young doctors and medical students, and then the development of another state of the art surgery, at a cost of £1.2 million, which opened in 2011.

The latest and most exciting project is the

development of brand new, cutting edge premises at Raynes Park which is due to open towards the end of 2012. "This has been undertaken with the support of a specialist third party developer, MEDICX," said Dr Freeman "and lots of support from our accountants!"

The new premises will be the largest purpose built medical premises in South West London. Kingston Hospital will be providing a range of diagnostic hospital facilities on the ground floor with St Anthony's hospital providing private outpatient and diagnostic services on an upper floor. There will also be a private physiotherapist on the premises.

Having achieved unprecedented growth of his practice together with stability and a great reputation, Dr Freeman is now at an age where he has an eye on retirement. In a bid to take a back seat and decrease the pressure he is increasingly handing responsibilities over to his partners. As an example, Dr Penny Smith has led the new Tooting development project. He is also busy with a number of high profile appointments, including sitting on Boris's London Health Improvement Board and



"We've become increasingly involved with Dr Freeman's practice as it has expanded. As well as annual accounts and tax compliance, we also provide tax advice and, lately, management accounts and general business advice. We also act as their 'quasi' accounts department, undertaking their bookkeeping, payroll and VAT which has proved very efficient and cost effective for them."

Jeff Gitter, Lubbock Fine partner.



"Dr Freeman and Partners outsource a great deal of work to us. This means that we don't simply act as accountants to the practice; we're a big part of it and act operationally on a regular basis which gives us a greater insight into all its component parts."

Lee Facey, Lubbock Fine partner.

being the current chair of the London Clinical Commissioning Council which represents all GP commissioners in London.

Dr Freeman is confident about the future. "The practice needs a period to bed down in its new premises across all its sites and to consolidate. The most important aspect is a safe transition to a successor as I take more of a back seat. The new system of clinical commissioning will mean increased focus on how GPs use NHS resources but this practice has always done that and it shouldn't therefore mean a huge cultural shift for us, as it will for some of our GP colleagues." ^{LF}

IR35 CRACKDOWN AND NEW RULES FOR 'CONTROLLING PERSONS'

The controversy

The chief executive of the Student Loans Company, Ed Lester, and his tax arrangements have triggered a Whitehall crackdown on tax avoidance in the Civil Service. The Government is now proposing to create sweeping legislation that requires a broad range of organisations to place all 'controlling persons' on its payroll.

The controversy arose when it was revealed that Lester was being paid through a personal service company (PSC). An inquiry revealed that his arrangements may have allowed him to reduce his tax liability by an alleged £26,000 per year. Soon afterwards, it was revealed that similar arrangements were endemic in Whitehall with almost 2,500 people working for government departments or quangos being paid in the same way.

What is IR35?

In April 2000 tax legislation called IR35 was introduced with the aim of ensuring that 'disguised employment' is taxed at a rate similar to employment. These 'disguised employees' are defined as workers receiving payments from a client via an intermediary and whose relationship with their client is such that had they been paid directly, they would be employees of the client.

Before the introduction of IR35, workers owning companies could receive payments from clients direct to their company and use the company revenue as would any small company. Company profits could be distributed as dividends, not subject to National Insurance payments. Splitting ownership of the company with other

family members in order to place income in lower tax bands could make additional tax savings. Ironically, this was initially encouraged by government business publications whilst concurrently attacked as tax fraud by the Revenue. Although full details are not in the public domain, it would appear that the existing IR35 rules should have applied to cases such as Ed Lester's so as to prevent any tax advantage being obtained by forcing the 'service company' to treat virtually all of its income as the individual's salary.

The Government has, however, admitted that "IR35 can be difficult to understand", leading to uncertainty whether the rules apply to a particular case. Furthermore, although a lot of debate has centred on how to ensure a contract is 'IR35-proof', the courts have confirmed that the practical arrangements between the parties are often more relevant than the contracts that have been signed. Between 2010 and the 2011 Budget, the Government went through various machinations regarding IR35, eventually announcing its intention to keep IR35 'as is' whilst creating a new IR35 Forum and making changes to HMRC administration.

The proposed 'controlling persons' rules now look to further complicate this area and put the emphasis back on the 'engaging organisation', which has up until now been largely protected from HMRC scrutiny of service company arrangements under IR35.

The proposed new 'controlling persons' rules

Broadly, the result is that the Government

proposes to introduce legislation in the 2013 Finance Bill to require organisations to place all 'controlling persons' on its payroll. This provision places the responsibility of deducting the tax and NIC payments on the engaging organisation although these new rules are not intended to apply to 'micro businesses', ie those standalone businesses with fewer than 10 employees and turnover or assets of less than €2 million (or approximately £1.7 million).

So what is a 'controlling person'? HMRC's 29-page consultation paper explains that it means a person integral to the running of an organisation: someone who is able to shape the direction of the organisation having responsibility or



authority in directing or controlling the major activities of the organisation, such as anyone who has managerial control over a significant proportion of the employees or the budget of the organisation.

Other IR35 developments

These proposals come hot on the heels of HMRC's introduction of 'business entity tests' for IR35. It is proposed that the 'controlling persons' measures will run side by side with IR35, with the former taking precedence.

HMRC's checklist of 12 tests is designed to help decide whether the IR35 rules apply. The tests have various degrees of importance and are given

'points' which the organisation adds up to see whether the engagement is at a low, medium or high risk of attack under IR35. Although the validity of the weighting given to some of the tests can be called into question, these are important as they will form the basis of HMRC's decision as to whether or not to commence an enquiry. Alongside this new guidance, HMRC has also made "improvements to the way [it] polices IR35, including strengthening [its] specialist compliance teams" – suggesting perhaps that more enquiries and investigations could follow in this area.

Summary

These proposals might be viewed as an

admission by HMRC that IR35 is just not robust enough to do its originally intended job, which was to tackle tax avoidance. There is a potential impact on clients who pay management or consultancy fees to directors, senior managers or their PSCs as well as anyone else using a personal service company. The IR35 changes are a reminder that these rules cannot be ignored, so it is important to structure any arrangements properly to reduce the risk of an HMRC challenge.

This is a highly complex area. If you have any questions relating to IR35 and/or to 'controlling persons' within your organisation, please speak to your contact partner. [LF](#)



THE ABOLITION OF COMMISSIONS

By Neville Pereira LL.B (Hons) PFS Dip, Financial Services Director,
Lubbock Fine Financial Solutions LLP

In June 2006 the Financial Services Authority (“FSA”) launched the Retail Distribution Review (“RDR”). The purpose of this was to modernise and improve upon how financial advice including investment advice is provided to consumers in the UK.

The RDR is a key part of the FSA’s consumer protection strategy. One of the main components of the strategy is the abolition of commissions on retail investment products.

Amongst the biggest bugbears soon to be abolished is the potential subjective reason behind the recommendation of a particular product geared to generate higher levels of commissions. The FSA wishes to eradicate commission bias in the advisory process. Therefore, from 1 January 2013 product providers will not be able to pay commissions on any of their retail products. In implementing this strategy, the FSA hopes the RDR will ensure that consumers are offered a transparent charging system for the advice and services they receive.

It is clear that the introduction of RDR has had, and will have, a profound effect on the future of financial planning. These changes will apply to all advisers in the retail investment market, regardless of the type of work they undertake (product providers, banks, financial advisers, wealth managers and stockbrokers).

From 1 January 2013 there will be a clear distinction between advisers who call themselves “independent” and what will be called “restricted” advice. In order to provide independent advice, advisers will need to show that they provide “a

comprehensive and fair analysis of the relevant market” together with “unbiased and unrestricted advice”. The FSA wants advisers not to be subject to any kind of influence and indeed to consider the suitability of all retail products. Restricted advisers on the other hand will specialise in specific areas, for example, pensions or offer only limited advice on a smaller range of products.

In any event, all advisers will have to satisfy a certain level of minimum professional qualification and require a Statement of Professional Standing from an accredited body to continue trading post 31 December 2012.

The FSA has also published new rules which confirm that firms will be required to disclose and separately charge clients for their services, irrespective of whether they are independent or restricted advisers. Advisers should implement charging structures based on the level of service they provide rather than the particular provider or product they recommend. They will need to disclose those charges to consumers up front.

Ongoing charges can also only be levied where there is a service proposition in place. A key component of the new rules is that product providers will not be allowed to pay trail commission to advisers.

In future, any customer agreed remuneration can be paid either in the form of a deduction from the client’s investment or separately, for example, by cheque and based on, say, a time costed analysis. Clearly, ongoing charges should only be levied where the consumer is paying for ongoing services

such as performance reviews of the investments, tax planning, monitoring and reviewing of clients’ circumstances. Advisers may be required to provide a menu of services together with clear agreed charges. Providing they undertake this, they will satisfy the new regime.

Consumers should be aware of these developments and ask their current advisers some key questions, including the following:

- a) Will they be independent or restricted?
- b) What professional qualifications does the adviser have?
- c) What is the advisory firm’s client service proposition?
- d) How much will the advice cost?
- e) What ongoing charges are payable in order to meet the deliverance of this service?
- f) How will this payment be made?
- g) With regard to the investment proposition, how is my risk profile analysed and how are funds managed and reviewed on an ongoing basis?

The FSA is hoping that the changes will result in increased confidence and trust in the advice a client receives, together with an assurance of exactly what he or she is paying for. As costs can no longer be included in the charges of products that people buy, the argument is that there will be a higher level of technical expertise and service delivered by professionally qualified individuals.

One of the repercussions of the proposed changes is that a number of professionals will not satisfy the minimum criteria and will be forced to leave the industry.

Potentially there will be an increased cost for providing the advice and the continued servicing and monitoring of the client's positions. The introduction of the RDR has already resulted in a number of major institutions, including Barclays, pulling out of the market. However, one advantage may be a reduction in charges levied by product providers to combat the more healthy competition.

There could be situations where people with small amounts to invest may not be able to afford to pay for professional advice.

Many clients may prefer to source and action investments directly and without advice. However, due to the complexity of some of the financial planning products available in the market place and taking into account client circumstances, including his or her tax position, and the need to advise on accumulating and subsequently decumulating assets, there is still likely to be a very healthy market place for quality professional advice.

Many people believe that the introduction of the RDR is long overdue. They are indeed correct and financial advisers will now move from simply being industry professionals to members of a profession.

If you would like to know more about the issues raised in this article, please speak to your contact partner or to Neville Pereira at LFFS on 020 7490 7766 or nevillepereira@lffs.co.uk. ^{LF}

This article is for information only and professional advice should be taken in advance of any changes to your financial affairs.

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Channel 4 presenter and awards host Krishnan Guru-Murthy, pictured left. Hemal Mehta (specialist procurement officer), Nitin Mehta (managing director, centre) and Amar Shah (procurement director, pictured right) with their award for Medium Sized Business of the Year

CONGRATULATIONS TO OUR CLIENT SHEARGOLD LIMITED



No strangers to awards, Lubbock Fine client Sheargold Limited has recently won an important award for Medium Sized Business of the Year. The company's previous awards include the Business Excellence Award for International Trade and Export in 2008. In 2010 it was also featured in the Sunday Times International Track 100 as one of Britain's fastest growing private companies in the international sales category.

Having accepted the award, Nitin Mehta, managing director, said, "We are delighted to win the prestigious award of Medium Sized Business of the Year. Recognition such as this motivates the Sheargold team to continue providing the highest level of service on a very personal level. We share this success with our loyal clients, suppliers, employees, bankers and professional advisers."

A specialist procurement and sourcing organisation, Sheargold is based in ultra modern premises in Ruislip, close to Heathrow Airport. As well as working with

the Government and other organisations in the electricity, ports and harbour and water sectors, it also has a specialised department working with UN agencies globally, supplying a wide range of IT, electrical, mechanical, technical, engineering and industrial products.

Having known Nitin Mehta from childhood days, Lubbock Fine partner Pankaj Shah has been acting for Sheargold since it was established in 1991.

"I am very proud to see that Sheargold has once again been recognised for its great achievements by the Business Excellence Awards," he said.

"We offer our sincere congratulations to all at Sheargold and in particular the driving force behind the great success of the company, managing director Nitin Mehta. Everyone at Lubbock Fine is very proud to be associated with Sheargold and we look forward to a long and successful future working relationship." ^{LF}

SUPPORTING THE ARTS

As part of our long association with the arts and a desire to 'give something back', we have implemented a programme of support for a number of arts and media organisations. We act for thousands of individuals and many companies in the creative and media industries.

In addition to our ninth year of sponsoring Regent's Park Open Air Theatre, we also have a long association with the Orchestra of the Age of Enlightenment. This year, we're very proud to be adding sponsorship of the Royal Academy of Arts and

we're supporting the West End production of a new musical, *Soho Cinders*.

The Royal Academy has been an independent institution since its foundation in 1768. Receiving no government funding, it relies on donations to support its activities. As a unique venue where art is made, exhibited and debated, learning and education play a vital role in fulfilling this process. The institution works to provide an environment for the free exchange of ideas about art and art making, open to a diverse audience and supported by an



outstanding programme of events and resources.

We have a strictly limited number of tickets available for many of these organisations' events. If any of our clients are interested in taking a pair of tickets to upcoming events, please speak to your contact partner.

For more information about exhibitions and events at the Royal Academy of Arts, please go to royalacademy.org.uk; for Regent's Park Open Air Theatre it's openairtheatre.org, and for the OAE's programme please go to oae.co.uk. [LF](#)

WE'RE RAISING MONEY FOR MACMILLAN!

For the first time in Lubbock Fine's 83 year history, we are entering two amazing teams into the Adidas 24 hour Thunder Run on Saturday 28 and Sunday 29 July. The aim of this grueling challenge is to raise as much money as we can for Macmillan Cancer Support, the charity nominated by our staff.

The Thunder Run 24-hour relay race comprises 10k laps. One member of each team will be on the course at all times, day and night. Held at Catton Park on the Staffordshire/Derbyshire border, the course is all off-road and is made up of varied surfaces including grass tracks, farmland and wooded areas.

Our stupendous teams are made up of partners,

staff and two gallant ex-Lubbock Finees with ages ranging from a youthful 21 up to someone old enough to be his grandfather.

Our teams are (1) Phil Blackburn, Geoff Cavanagh, Jerome Dussard-McFarlane, Jeff Gitter, Rebecca Lindsay, Phil Moss, Mark Turner, David Twambley, and (2) Ken Bryant, Simon De Souza, Matthew Green and Maria Gorman.

Everyone taking part will run at least one 10k lap and team two's plan is for its four members to run at least five laps each with virtually no sleep on a diet of pure caffeine and chocolate. Good luck to them with that! The teams are approaching the challenge with huge amounts of vigour, optimism and unadulterated panic.

Read more about individual team members and their harsh training regimes on our new blog at www.lubbockfine.co.uk/blog. [LF](#)

If you would like to donate to this very worthy cause, just Google 'Lubbock Fine JustGiving' which will take you to our fundraising page. Alternatively, please send a cheque in favour of Macmillan Cancer Support to your usual Lubbock Fine contact.

**WE ARE
MACMILLAN.
CANCER SUPPORT**

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