RUSSELL-COOKE SOLICITORS

PRIVATE CLIENT DEPARTMENT

# ESTATE PLANNING AND THE FAMILY HOME

## Why Has Inheritance Tax Suddenly Become Important?

- More and more of us (or should we say our children) face an increased Inheritance Tax ('IHT') liability on our death. The primary reason for this is the boom in house prices, particularly those in and around Greater London.

- For example, the average price for a semi-detached property in SW15 has risen from approximately £250,000 in 1996 to over £750,000 in 2007 with recent trends illustrating even higher prices. The average flat now sells for over £300,000 compared to £75,000 10 years ago.

- During that same time period the IHT threshold has risen from £200,000 to £300,000.

## Why Has Life Become So Much More Complicated?

- Despite the myths it has never been a sensible idea simply to simply transfer your residence to your children. Indeed, for many years it has been a highly ineffective form of estate planning which in most cases has resulted in an increased tax liability.

- In addition, since the mid-1990s the Revenue has introduced numerous pieces of legislation designed to counter many of the IHT mitigation schemes that were popular in the late 1980s and early 1990s. These schemes (which were heavily marketed and commonly known as 'Ingram' schemes, 'Eversden' schemes, loan trusts and family debt arrangements) were systematically undermined and many homeowners found themselves tied up in schemes that they never fully understood and which no longer had the attractive tax saving advantages.

## Asset Rich, Cash Poor…

- A common problem now faced by many homeowners is that the majority of their wealth is tied up in a single property from which they wish to benefit whilst they simultaneously want to reduce the value of their estates for IHT purposes.

- It is important to stress that there is no one-fix solution that will apply to all homeowners. Many parents will want to avoid 'death taxes' by spending all their hard earned savings during their retirement whilst others will want to put their children's needs before their own. More often than not, a compromise between tax saving and maintaining lifestyle is required.

- Understandably parents wish to make provision for their children and increase the Treasury's balance sheet by as little as possible but the cliché of the tail wagging the dog should not be ignored. People are living longer and therefore a 60-year-old couple may easily live a further 30 years, which they need to navigate financially. It is not always a greedy child who is to blame. Innocent and unintended circumstances arising out of a divorce, bankruptcy or an unexpected death could result in financial disaster for parents if they have overstretched themselves by giving away more than they could comfortably afford.

## A Little Knowledge Is A Dangerous Thing…

- Over the past 10 years the increased access to information has resulted in the circulation of many myths and legends when it comes to Estate Planning and IHT. We are bombarded with a constant stream of internet pages, magazine articles and letterbox circulars proclaiming the latest tax saving scheme or investment product.

- It is important to be aware that for a married couple or those in a civil partnership, IHT is very much a second death issue. Provided that the couple have sensible wills, there should be no liability on the first death.

## Light At The End Of The Tunnel…

- So what options are there? Much will depend on your specific requirements. For some people an equity release scheme will provide certainty and relatively hassle-free access to a lump sum. For others it may be an expensive and restrictive mistake. Some people are happy to relinquish control of assets to their children whilst many wish to retain control. What is important is that before any action is taken appropriate advice is obtained. People should not be lured in by a glossy brochure or a panic inducing article in the Sunday paper money section.

- There are still numerous options available for estate planning using the family home depending on your circumstances and future intentions. Some of these are outlined below:-

  - The most obvious (but less glamorous option) is to downsize whether as a general policy or following the first death which will hopefully release cash either for spending or making gifts to children.

  - As mentioned above, equity release schemes are becoming more competitively priced but can still pack a surprising punch when the loan is repaid on the second death.

  - The use of inter-family equity release schemes was limited by the introduction in 2005 of Pre-Owned Asset Tax. Such schemes are still possible if family members have sufficient resources to fund the scheme but Stamp Duty Land Tax and Capital Gains Tax issues need to be carefully examined.

  - Structures which involve the retention of a leasehold interest are also still possible but again Stamp Duty Land Tax and Capital Gains Tax liabilities can heavily reduce the overall tax saving.

  - There is also the possibility of giving the family home to a child and then paying a full market rent to occupy. This can be attractive for older homeowners with surplus income but as with a lot of such arrangements, it is vital to appreciate the overall tax exposure. There is little point trading one tax liability for another unforeseen one.

  - One under used exception to the reservation of benefit rules is the co-occupation exemption. This is particularly attractive to the homeowner who has an adult child living with them who is likely to remain living at the property for the foreseeable future. In such circumstances the homeowner can give a share of the property to that child and the value of that share is a potentially exempt transfer which will be outside of the parents estate if they survive for a further 7 years.

- As with all schemes it is important that the homeowner takes a step back and looks at the bigger picture and asks themselves to which degree they are happy to sacrifice their security. Is parting with ownership of the family home actually a wise thing to do in the long-run for both practical and financial reasons? Is the planning something that should be postponed until the first death when the practical needs and financial requirements of the surviving spouse/civil partner will undoubtedly have changed? Only once these questions have been answered should the tax reasoning be examined.

- Usually the best scenario is the simplest one. No-one should enter in to any arrangement unless they fully understand the reasoning behind doing so and the risks involved.

## How can Russell-Cooke Solicitors help?

- If you would like to discuss estate planning issues then we are happy to advise you, in consultation or in writing, on the options available to you.
- Our usual charging rates will apply and fees will be charged in accordance with the amount of time spent dealing with your instructions.
- If you require further information or advice please contact any of the following:


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