NEXUS

PROTECTING YOUR WEALTH AND YOUR FUTURE

ISSUE 2

In this edition:

The importance of mediation

Future-proofing for non-doms

Budget 2024

Overage agreements

hcrlaw

WELCOME

As the past few years have shown more clearly than ever, the only thing that's certain is uncertainty.

The second edition of Nexus, our private wealth magazine, is packed with articles designed to help you navigate the uncertainty and control the controllables.

We give an overview of the Spring Budget 2024 and explore the implications of the non-dom tax proposals.

On the subject of wealth management, there's insight into the value of insurance policies when estate planning.

For landowners, there are two articles. The first offers advice on the tax and succession implications of letting your land for solar or battery use. We also look at overage agreements as a way to benefit from a potential future uplift in the development value of your land.

For business owners and others with responsibility, our article on safeguarding against the risk of the incapacity of key individuals shares important tips and advice on safeguards that can be put in place.

Our article on the messy reality of ethical investment for charities mirrors the conversations we've been hearing around our charity clients' boardroom tables.

For families, we look at the value of mediation in settling family disputes.

Finally, as we look forward to the summer months, we consider the issues around bringing a nanny with you to the UK on holiday.

Ultimately, our goal with all our articles is to give you practical insight you can use to inform your thinking.

I hope you enjoy this edition and find it a useful read.

Bernadette O'Reilly
Partner, Private Client

This is intended as market insight and does not constitute legal advice.

IT'S NOT EASY BEING GREEN

Are you curious about letting your land for solar, wind or battery use? Is it the right step for you and your business enterprise?

In this article we use the example of one landowner contracting with an external solar developer to set out the key practical stages of securing a deal and some of the tax and succession issues to consider along the way. Whilst alternatives, such as joint ventures or in house development are possibilities, they are beyond the scope of this article.

Initial offer

What happens at this stage?

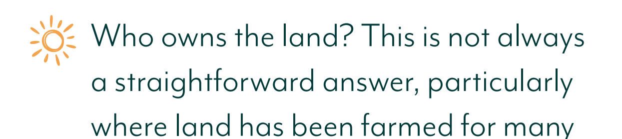
A developer may contact you because they have already obtained or are looking to secure a connection to the electricity grid nearby and see your land as a potential place for solar panels and/or battery storage for the grid.

It is important not to sign anything at this stage without advice, because if you enter into an exclusivity arrangement, or give consent for the developer to seek a connection to your land, you are ruling out other potential offers. It is important to evaluate the developer's experience, source of funding and previous success rate. A specialist surveyor or land agent can help here.

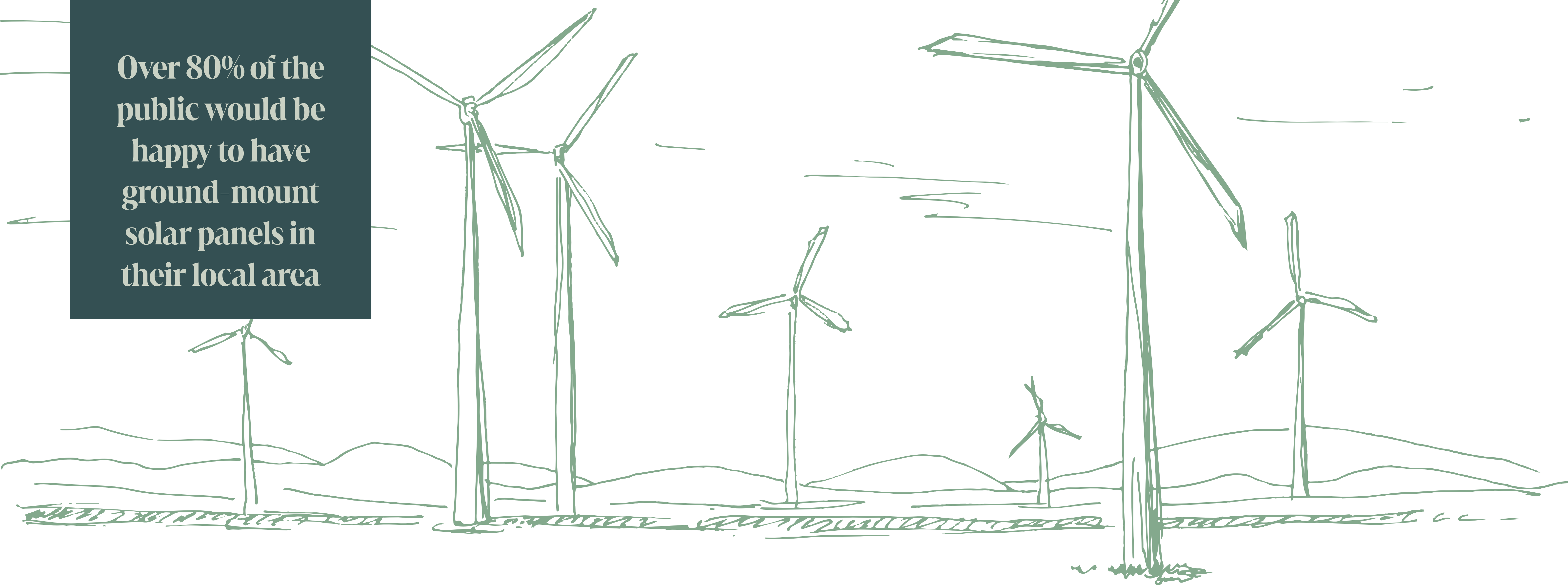
> EMBRACING THE GREEN AGENDA, WHILST NAVIGATING A COMPLEX TAX AND LEGAL LANDSCAPE

The tax and succession issues to consider

At this stage, we need to go back to basics.



- Who owns the land? This is not always a straightforward answer, particularly where land has been farmed for many



generations or in partnership, but is of course crucial before negotiations start, ensuring the correct parties are involved from the outset. A review of your legal documentation such as title deeds, leases, partnership agreements, partnership accounts and so on will help you clarify and, if necessary, correct the position.

- What is the land currently used for? How much of your land is under offer? Is this grade 1 farmland, which is crucial to the viability of any ongoing farming business? Consider the impact of removing this land from farming operations.
- What are your succession plans? Are the next generation involved in the business or will they be in due course? Your family's long-term objectives will inform your strategy for structuring any deal.

Heads of terms

What happens at this stage?

If you are happy to proceed, the heads of terms is usually a non-legally binding document which sets out the structure of the transaction and the key terms the lawyers will work to. There will likely also be binding exclusivity and confidentiality provisions to protect the developer's interest in your opportunity.

The most common legal contract structure is an option or agreement for the developer to take a lease in the future, by serving notice on you after they have secured planning permission and a grid connection. The heads of terms should be negotiated with your land agent and solicitor's input to check for any potential issues and to ensure your position is protected.

The tax and succession issues to consider

At the earliest stages of the project, and certainly before any binding option or agreement for lease is in place, you need to consider the Inheritance Tax (IHT) implications. Sensible planning upfront can dictate structural changes to the deal, with a view to mitigating possible increased tax exposure.

When your land is used for agricultural purposes and used as a part of a trading farming business, most likely (provided the relevant conditions are met), the land and your interest in the business would qualify for valuable IHT reliefs, namely Agricultural Relief (AR) and Business Relief (BR). These allow you to pass on the assets free of IHT when you die.

However, if the land is turned over to solar and taken out of agricultural production, the reliefs are at risk of being lost, significantly increasing the IHT liability on your estate.

Whilst some solar leases may permit limited agricultural activity such as sheep grazing or bee keeping alongside the solar panels, retaining AR is by no means guaranteed. Certainly, HMRC will seek to deny AR where the primary use of the land is not agricultural. Even if AR is available, it will only cover the agricultural value of the land. Market value where a solar farm is in place is likely to exceed the agricultural value.

Further, reducing the size of the holding being farmed could have the ancillary effect of losing AR on the farmhouse as it may no longer be 'character appropriate' for the size of the farm.

BR is also at risk. For your business to qualify, whether a sole trader, partnership or limited company, it must be wholly or mainly trading. For a diversified business, where income is derived from both a trade e.g. farming and investment activity e.g. rental income, this threshold must always be borne

Source: Department for Business Energy and Industrial Strategy (BEIS)

Talk to me about land development opportunities

in mind. Increased capital values and revenue from a solar farm may tip the balance of the business, risking relief on the whole enterprise.

To mitigate this, now is the time to consider succession planning, passing land or your interest in the business over to the next generation.

There are various means of achieving this transfer. Outright gifts, or bringing the next generation into partnership, may be appropriate if they are older and already to some extent involved in farming operations. An outright gift whilst the value is lower and the business is trading may provide IHT and Capital Gains Tax (CGT) advantages.

If the next generation are not in a position to have a direct interest in the enterprise, perhaps because of age or personal circumstances, land or business interests may be transferred into trust whilst it qualifies for AR and BR. A trust can provide many advantages not least, flexibility, asset protection and retaining control. We can assist with developing the right strategy for you and your family.

Exchange of the option agreement

What happens at this stage?

The lawyers will negotiate the option agreement and the form of lease that will apply once the option is exercised (so there should be no surprises when the time comes to hand over occupation). Once it is agreed, the parties sign and exchange the option agreement and the developer usually pays a fee to secure the opportunity at this stage. From this point, you are legally obliged to grant the lease when they serve an exercise notice, and you must make the land available with vacant possession.

The tax and succession issues to consider

The value of the land is unlikely to have increased just by virtue of the option being agreed. However, any succession planning should ideally be concluded before reaching this stage. This avoids having to novate the agreement later on due to a change in landowner.

Planning permission is granted

What happens at this stage?

The developer should keep you updated as their application progresses through planning. Once consent is secured, you can expect the option notice to follow shortly after if they wish to proceed with taking the lease and have funding in place. At this stage, you may also be asked to agree variations to the form of lease to suit the planning consent and the developer or their funder's needs.

WHEN YOUR LAND IS USED FOR AGRICULTURAL PURPOSES, THE LAND AND YOUR INTEREST IN THE BUSINESS WOULD QUALIFY FOR VALUABLE IHT RELIEFS

The tax and succession issues to consider

Once planning permission is granted, the value of the land will likely have increased and, as highlighted above, any 'hope value' will not be covered by AR. Certain planning opportunities may now have been missed or be more limited.

Lease completion

What happens at this stage?

The developer takes occupation of the solar farm and will begin work on the installation as previously agreed. You may have the opportunity to graze the land by way of a licence back, or to manage any ancillary green spaces and trim the hedges but, in reality, you are now an investor collecting rent rather than farming the land for profit.

The tax and succession issues to consider

If you have not undertaken any tax or succession planning this far, it is not necessarily too late to take some carefully considered action.

Outright gifts can still be considered, although your assets are potentially more valuable and therefore may have greater IHT exposure if you fail to survive seven years. Careful consideration would also need to be given to CGT as certain reliefs may no longer be available if the asset is no longer used in a trading business.

An eye should continue to be kept on the level of trading versus investment activities. Some solar leases have very generous increasing rent rolls or bonuses attached, (including receiving a share of the solar farm revenue) which even if BR is retained at the outset, could be put at risk later on. Consideration to demerging the trading and investment arms of the business may be needed at a future date to retain BR on the farming side.

Finally

Throughout the process, and as matters change in the future, ensuring that key family members' wills and powers of attorney are in place and up to date is essential. Not only will this protect the family's interests if there is an untimely death or incapacity at a key stage of the project, it will ensure the correct parties benefit in the long term.

Katherine Hague
Head of Private Wealth

Emily Pumfrey
Head of Agriculture and Estates, Cambridge

THE IMPORTANCE OF MEDIATION IN FAMILY AND CIVIL DISPUTES

In 2023, more than 17,000 families chose mediation over the court process to reach resolution

Source: Survey commissioned by CEDR

What is mediation?

Mediation is a form of structured Alternative Dispute Resolution (ADR) available to assist the parties in reaching a resolution outside court.

With the use of a trained neutral third party (a mediator), the parties are encouraged to narrow the disputed issues and work collaboratively with a view to reaching a concluded agreement. The process usually involves some back and forth between the mediator and each individual party on a confidential basis, which enables common ground to be established.

If an agreement is reached, it can be converted into a legally binding agreement in accordance with the specific requirements of that area of law. Alternatively, a mediation agreement can be prepared, however it is important to note that this is not necessarily legally binding.

Why should you consider mediation?

Mediation can be an invaluable tool to settle disputes, and as such is frequently used by legal practitioners across a broad range of practice areas. This includes, but is not limited to, family law disputes and contested trusts and probate matters. Some key benefits include:

Cost

Court proceedings are unpredictable and expensive, and the escalating costs can often be disproportionate to the issues at hand. Mediation is a far cheaper alternative that can also provide clear certainty as to costs.

Time

As well as the expense, the progress of a case in proceedings is at the mercy of court availability. Mediation offers the parties the opportunity to set a time that suits their availability to deal with the matter swiftly and causes minimal impact on their day to day lives.

Informality

Mediation is not as formal as court, so the parties often feel more comfortable and able to focus their minds in a less stressful setting.

Flexibility

Parties can choose to mediate at whatever stage of proceedings they are in, if at all. This offers parties an opportunity to put an early end to proceedings if desired. In addition, there is no time limit when it comes to mediating (subject to the costs and availability of the mediator).

High success rates

The success of mediation depends on the willingness of the parties to actively partake and reach common ground. However, in respect of civil litigation the success rate is high. Whilst the family mediation figures are generally lower, success is not merely defined by bringing the litigation to an end – if it results in a narrowing of the issues, it should still be viewed as a beneficial exercise.

Control

Most importantly, engaging in mediation enables the parties to keep control of the direction and terms of settlement. This can result in a structure of settlement that the court would not have awarded. Leaving it in the hands of the court can lead to all parties feeling unsatisfied.

Notwithstanding the clear benefits, mediation is not suitable for all cases. This is particularly true within a family law context, for example cases with an element of domestic violence.

It is also worth noting that mediation also does not guarantee a 'fair' outcome, nor does it place an obligation on the parties to disclose. Therefore, if disclosure (or lack of) is a key issue, mediation may not be appropriate.

Can you be forced to mediate?

Within civil proceedings, the court must balance an individual's right to a fair trial (Article 6, ECHR) with the obligation on the court and those using it to deal with litigation in a just and proportionate manner.

Mediation is therefore strongly encouraged by the judicial system and legal practitioners alike.

The current rules do not provide for enforced mediation, but the recent case of **James Churchill v Merthyr Tydfil County Borough Council and others [2023] EWCA Civ 1416** demonstrates the changing landscape in this area.

In this particular case, the court acknowledged the wide powers available to it to put a pause on proceedings for almost any reason it sees fit – so long as it furthers the 'overriding objective'. The court found that putting a pause on court proceedings for ADR, combined with an order forcing parties to engage in the process, would further the 'overriding objective' but that such an order must be made

> MEDIATION IS A FAR CHEAPER ALTERNATIVE THAT CAN ALSO PROVIDE CLEARER COST CERTAINTY

cautiously to protect Article 6 ECHR the right to a fair trial.

It remains unlikely that a blanket enforcement of mediation could be introduced, but there is certainly the potential for mediation to be enforced in certain cases. Indeed, the Government has proposed enforced mediation in a variety of cases. However, they have faced opposition and, to date, nothing has come into fruition. The same can be said within a family law context.

Resolution, the organisation of family law professionals committed to the constructive resolution of family disputes, has long guarded against mandatory mediation. In June 2023 it responded to the Ministry of Justice's consultation on supporting earlier resolution of private family law arrangements, stating the following: "We do not support a requirement for pre-court mediation as proposed in the consultation paper. We guard against forcing families into mediation, regardless of whether it is the best way forward for them."

Whilst there is no requirement for parties to take any steps prior to issuing financial remedy proceedings, since April 2014 it has been a requirement (subject to a handful of exemptions) for any person applying to the court to resolve a dispute involving children to first attend a Mediation Information Assessment Meeting. This is a meeting with a specifically trained family mediator to explore whether mediation is a viable option.

If the mediator believes there is a chance for the parties to resolve their dispute with mediation, then the parties are encouraged and provided with the opportunity to do so. However, it is not essential.

The key to a successful mediation process

Ultimately, the success of mediation fully depends on the attitudes and intentions of all involved. All parties must to be committed to bringing litigation to an end by way of compromise and should strongly consider the strengths and limitations of mediation prior to partaking. With this commitment, mediation stands the strongest possible chance of having the desired effect.

Beth King-Smith
Head of Disputed Wills, Trusts & Estates

Richard Scott
Head of Family, Cardiff

> MEDIATION IS STRONGLY ENCOURAGED BY THE JUDICIAL SYSTEM AND LEGAL PRACTITIONERS ALIKE

ETHICS VERSUS RETURNS – SOME KEY INVESTMENT CONSIDERATIONS FOR CHARITY TRUSTEES

The current market trends and inflationary pressures are causing charity trustees to look at their requirements for income. For many, there's a struggle at play: their investment strategy is hampering their ability to pursue their charitable objectives.

Why? Because the past year's top performing stock market sectors include oil, gas, armaments, tobacco and mining – sectors that are often excluded from a charity's investment portfolio by trustees wishing to protect the reputation and responsibilities of their charity.

At the same time, the sectors that are traditionally the ethical safe havens for charity investment, such as technology, consumer discretionary and even renewable energy, are seeing declines.

How can trustees balance their ethics with their need for income? In this article, we look at the issues and consider the options.

What are charity trustees' duties in relation to their investment powers?

We'll start by understanding what the law says about charity trustees' investment powers. The Trustee Act 2000 imposes specific duties on trustees with regard to the exercise of their investment powers. In particular, trustees must periodically review the charity's investments and, considering the standard investment criteria, vary them if appropriate.

In addition, a trustee must generally obtain and consider proper advice about the way they exercise their power of investment.

The 2022 case of **Butler-Sloss v Charity Commission (Butler-Sloss)** gives us an insight into how these requirements should be interpreted. In it, the trustees of two unincorporated charitable trusts sought clarity on whether they could align their investments with the goals of the Paris Climate Change Agreement.

The ruling stated that this was possible, even if it had a dramatic impact upon their portfolios. It stated that it was reasonable to suggest that investing in companies that are not aligned with the goal to limit global temperature rises would contradict the charities' objectives in regard to the environment and the relief of poverty.

The ruling thus places trustee decision-making regarding financial investments in the same context as trustee decision-making generally. Even though the judgment was given specifically in the context of trustees of unincorporated charities, the Charity Commission considers that the same duties are likely to apply to trustees of all charities whatever their legal form, by virtue of their fiduciary position in relation to their charities.

Butler-Sloss is now seen by the Charity Commission as the leading case in relation to the law on investment decision-making by charity trustees. This becomes particularly relevant when decisions regarding the ethical and individual moral opinions of trustees towards certain investment types are considered.

SECTORS THAT ARE TRADITIONALLY THE ETHICAL SAFE HAVENS FOR CHARITY INVESTMENT, SUCH AS TECHNOLOGY, CONSUMER DISCRETIONARY AND RENEWABLE ENERGY, ARE SEEING DECLINES

Trustees must consider all relevant factors, including potential conflicts between investments and their charitable objects. They must also exercise their discretion appropriately (as with all other types of decision taken by a board of trustees). Investment decisions require charity trustees to comply with their general duties and exercise their powers in furtherance of the purposes of their charity.

The ruling has created a more permissive environment for charities to put their purpose at the forefront of their investment strategy. It gives trustees the ability to consider increasingly ambitious investment approaches where their values are concerned.

In this sense, the judgment provides welcome assurance for charities considering adopting an investment policy that excludes investments conflicting with their objects. At the same time, where there is no conflict, the decision must be entered into in the proper manner.

However, trustees will need to bear in mind the judge's caution against making decisions on purely moral grounds.

Navigating the moral complexities of ethical investments

There are often conflicting opinions within a trustee board regarding the use of ethical or, in more recent years, ESG (Environmental, Social, and Governance) -screened or Greenbank portfolios. These investments prioritise companies and projects that adhere to principles, aiming to generate financial returns while making a positive impact.

Some trustees feel it is important to invest in these portfolios. On the other hand, others feel that actively removing sectors of the investment sphere has a negative impact on the portfolio returns. They feel that reduced returns on investment in turn reduce the funds available to deliver the charitable objectives.

However, it is increasingly difficult for trustees to look at different sectors of the investment sphere in

isolation and to therefore have a firm 'exclude' or 'invest' strategy.

Understanding the practical implications of these restrictions is crucial when evaluating the financial consequences of any rigid ethical policy.

The following questions and examples mirror conversations held around some of our charity clients' boardroom tables by way of example.

Should all investments in oil producing companies be restricted if the charity's purpose was to protect the environment? The answer might feel obvious, but scratch the surface of some of the big-hitter dividend income payers such as BP and it is apparent that much of their profit is reinvested into 'green energy' producing initiatives. Could it reasonably be argued that this reinvestment of these profits into ensuring a 'greener future' is a 'good thing'?

Similarly, a company such as British American Tobacco (the third highest dividend payer on the FTSE 100 in 2023) is focussed in an industry few would dispute as producing a harmful product. However, the company also holds a BBB+ ESG rating. This would be a rating level that showed a good basis for inclusion of the investment within an ESG-screened portfolio, rather than rejecting it on moral grounds.

The BAT website's ESG reports highlight the company's strong commitment to addressing climate change and ensuring environmental sustainability. They emphasise that supporting farmers with profitable farms and good incomes can reduce reliance on cheaper labour thus preventing exploitation. BAT aims to provide fair wages and safe working conditions for employees, qualities that align closely with objectives of various charities focused on promoting social justice and economic empowerment.

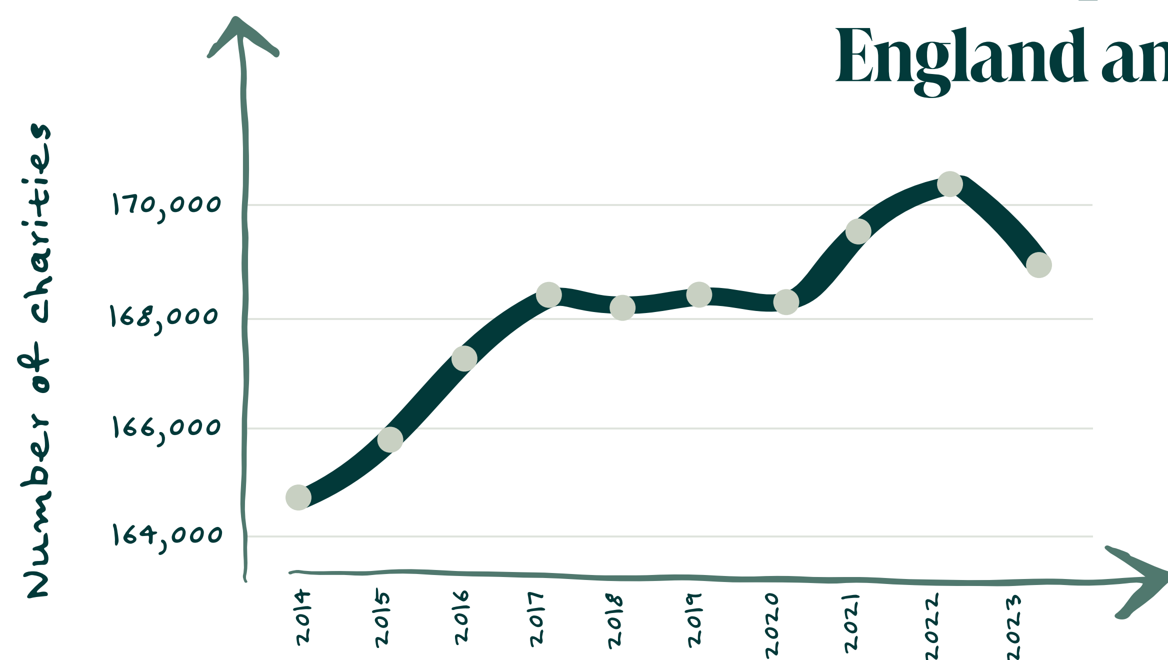
If a charity decides to adopt a zero-tolerance approach to tobacco, it would not only exclude major tobacco manufacturers but also supermarkets such as Waitrose, Tesco and Sainsbury's, all of whom sell tobacco products. Taking that stance one step further, oil companies with petrol stations that sell cigarettes, and even Amazon, would be excluded.

Taking a more balanced approach might mean that instead of a complete exclusion a revenue threshold could be applied. This would ensure that only the major tobacco manufacturers would be excluded. However, trustees need to be mindful of what these exclusions can mean regarding the overall diversification of a portfolio.

Another sector that is often requested by trustees to be omitted from any charity portfolio is that of armaments. Much like the tobacco example, few would argue that investing into a sector that enables harm to be caused should ever be entertained by a charity. However, the methods of warfare are shifting at alarming pace and the multi-faceted methods of production of weapons, AI and drone warfare means it is extremely challenging for trustees to exclude investments on a 'face value' basis. For example, you could exclude Boeing or Lockheed Martin from the portfolio on reasonable grounds as drone manufacturers, but it would be hugely difficult to ensure that the component manufacturers or software companies whose products are used in the drones were also excluded.

Note that these examples are merely to highlight the challenges trustees face and do not constitute as recommendations to invest in any specific sector.

As of March 2023, there were 168,850 charities operating in England and Wales



Source: Survey commissioned by Statista

The importance of an investment policy statement (IPS) in ethical investing

Leaving aside the moral and ethical questions, we also need to consider how charity trustees can ensure that their decisions are enacted, especially given that the majority of charities will outsource their investment management to specialist firms.

The IPS is a useful tool. It gives a way to ensure that the investment manager structures and monitors the investment portfolio in a way that meets the charity's objectives.

However, bear in mind that even though the management of the funds has been outsourced, trustees need to be certain that their instructions are being followed. The responsibility for ensuring that the strategies for managing the charity's assets in line with the charitable objectives remains firmly with the trustees.

Regularly reviewing the IPS is vital too.

A review allows trustees to adapt their investment strategy to changing economic, social and environmental conditions to ensure that the charity's investments remain aligned with its objectives and risk tolerance.

It provides an opportunity for trustees to analyse the performance of the charity's investments against benchmarks and objectives, helping to identify areas of improvement or potential risks.

It also enables trustees to assess the impact of their investments on the charity's financial stability and long-term sustainability.

Can the trustees of a charity unknowingly hamper returns by rigidly sticking to investments that only align with the charity's values?

As we've seen, ethical principles should guide trustees to make sound decisions. However, the Charity Commission promotes caution against making decisions purely on a trustees' individual moral opinion. The IPS should effectively support a charity's mission and help trustees ensure that the charity's investments are consistent with its purpose and values.

Ultimately, charities need financial resources to operate efficiently and to fulfil their charitable activities. Ensuring their investment portfolios are structured with ample diversification (within the agreed risk tolerances) and only applying ethical constraints when there is a legitimate reason to do so means trustees can be confident that they are maintaining public trust whilst simultaneously ensuring sufficient resources are available to achieve the charitable objectives.

Alexia Simon
Charities Manager, Charities and Not-for-Profit

Find out how our specialist charities team can help you

STEERING THE SHIP: SAFEGUARDING AGAINST THE RISK OF INCAPACITY OF KEY INDIVIDUALS

It is difficult for anybody to contemplate that they could lose mental capacity, particularly at a time when they are fit and well. However, none of us knows what the future will hold. While we associate a loss of mental capacity with old age, it can happen at any stage of life. It can be permanent, perhaps due to an accident, or temporary, due to factors such as bereavement, medication, mental health issues or infection.

For those in positions of responsibility such as business people and trustees, it is essential to consider these possibilities. It is also responsible, particularly for individuals who operate in multiple roles, to put effective protections in place. This ensures that your affairs and responsibilities can be taken care of if the unexpected should occur.

> WHILE WE ASSOCIATE A LOSS OF MENTAL CAPACITY WITH OLD AGE, IT CAN HAPPEN AT ANY STAGE OF LIFE

In this article, we highlight the impact incapacity can have when appropriate protective measures have not been put in place. We also signpost steps you can take in advance to minimise disruption if you were to lose capacity.

If you are a sole trader

You are your business and your business does not have a separate legal personality. As a result, any incapacity which affects you will have a direct impact on the business.

Without an authorised representative, your bank accounts could not be accessed, bills and contractors would be left unpaid and your business would grind to a halt until applications can be made to the Court of Protection for deputies to be appointed to manage your affairs and your business.

Best protections? A Lasting Power of Attorney (LPA) for property and financial affairs.

Top tips

1. Secure comprehensive legal documents for your business, including bespoke agreements and suitable articles of association.

2. Plan ahead with a Lasting Power of Attorney (LPA) for both personal and business matters, as well as for health and welfare decisions.

3. Choose attorneys wisely; trusted individuals with appropriate skills or professional attorneys can ensure effective management of your affairs.

4. Understand your trust arrangements and prepare for contingencies in case of loss of capacity.

5. Seek advice early to understand the implications for your business and trusts if a key individual, including yourself, were to lose capacity.

If you are a company director

As a director, you are responsible for the decision-making and management of the business. A loss of mental capacity could have a devastating impact on company functions. For example, it might not be possible to make essential decisions such as authorising payroll or completing on an important contract. Consider too how an individual could make damaging decisions during their period of incapacity.

The role of a director is a personal one and it cannot be delegated. As a result, it may be necessary to terminate the individual's appointment as a director.

How this can be done will depend on the company's Articles of Association.

For many companies, model articles are adopted. Model articles prior to 28 April 2013 included a provision which automatically removes a director who is incapacitated. This will continue to apply unless the company has resolved to amend what was article 18(e) for private companies limited by shares and/or guarantee. Even if 18(e) remains, companies should be mindful to seek to ensure that removal of a director under this article does not leave them at risk of a discrimination claim.

Model articles adopted since 28 April 2013 have removed this automatic disqualification by virtue of the Mental Health (Discrimination) Act 2013. Instead, article 18(d) will allow a director's removal if a registered medical practitioner gives an opinion to confirm the director has become unable to act as director and that this is likely to continue for more than three months.

If all else fails, in the absence of any express authority to remove a director due to incapacity, shareholders have the power to remove the incapacitated director under section 168 of the Companies Act 2006.

Best protections? Fully-thought-out Articles of Association – if your existing articles are not sufficient perhaps they should be reviewed and updated. Business and personal LPAs, especially if you are a sole director and shareholder.

If you are a shareholder

As a shareholder, you hold a beneficial interest in the business. Your interest is not lost by virtue of incapacity, and you will still be able to receive dividend payments. However, you will not be able to transfer, dispose or otherwise deal with or vote on your shares.

If you have an attorney, they will be able to vote on your behalf as a shareholder, unless this is restricted in the Power of Attorney, Articles of Association or any Shareholder's Agreement. It is therefore vital to give careful thought to who may be able to act for you in those circumstances and whether this would be appropriate for the business.

Best protections? Again, check the company's Articles of Association. Put in place or review a Shareholders' Agreement and a tailored LPA for property and financial affairs.

IT IS VITAL TO GIVE CAREFUL THOUGHT TO WHO MAY BE ABLE TO ACT FOR YOU AND WHETHER THIS WOULD BE APPROPRIATE FOR THE BUSINESS

If you are a partner in a partnership

The impact of incapacity on the partnership depends primarily on the terms of any partnership agreement. As with directors, partners cannot delegate personal performance. Whether or not decisions can be made by any attorney will therefore depend on whether the activities and duties of the partner are personal to the individual.

The continuity of the business may also be impacted generally, as the incapacity of a partner could trigger automatic termination of the partnership. This will depend on the terms of any partnership agreement and whether the partnership is a registered limited partnership, a limited liability partnership or a general partnership-at-will.

Best protections? Bespoke partnership agreements – put one in place or review and update the existing agreement. An LPA for property and financial affairs.

If you are a trustee

You may be appointed as a trustee in relation to a family trust, will or settlement. You may even be acting as a trustee without knowing it.

A trustee is a person who holds assets for the benefit of another person or persons. This may be under a written trust document or as a result of circumstances. For example, a trustee relationship exists where two or more people hold property on behalf of themselves or others.

If a trustee loses mental capacity to make those decisions, it can bring the administration of a trust to a standstill. Unless the terms of the trust provides otherwise, the incapacitated trustee would generally need to be formally removed and replaced by another competent trustee.

The process to remove an incapacitated trustee depends firstly on the powers set out within the trust itself. Some trusts provide powers for that trustee to be removed in prescribed circumstances such as incapacity. In many cases though, an express power of removal is not available and the only option is to make a court application for the incapacitated trustee to be replaced.

The complexity and type of court application depends on a number of factors, such as whether the incapacitated individual has a beneficial interest in the trust fund, whether the trust relates to property or land and whether or not the trustee has an attorney or deputy.

The role of a trustee is a separate legal responsibility and so the involvement of an existing attorney or deputy does not necessarily preclude the need for a court application. This will depend on the circumstances of the case.

In very limited circumstances, an attorney will have the power to act in the individual's place as a trustee. Mainly, this will be where the incapacitated trustee has a beneficial interest in land or property which is co-owned with another competent trustee. However, care needs to be taken when considering appropriate attorneys to cover this situation as a trustee will not generally be able to act for themselves as trustee and attorney for another trustee.

Best protections: A trust deed providing appropriately for removal of incapacitated trustees. Consider stepping down as a trustee if your capacity is waning. An LPA for property and financial affairs to cover some limited trust arrangements.

Bernadette O'Reilly
Partner, Private Client

Tonina Ashby
Head of Older and Vulnerable Persons team

The number of LPA's registered in the first quarter of 2023 is up 33%

Source: Today's Wills and Probate

Lasting Powers of Attorney (LPAs)

An LPA is a legal document which allows a person to choose an individual or individuals (attorneys) to act and make decisions for them, should they become unable to do so in the future.

There are two types of LPA:

- One which covers property and financial decisions (which covers those connected to businesses as highlighted under sole traders, shareholders and partnerships above); and
- One which covers health and welfare decisions for the individual personally.

These documents allow the maker to retain control of their affairs by choosing who they wish to act for them, when and how they can act.

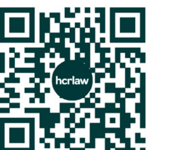
Multiple LPAs can be created to cover the same individual and the same period of incapacity, allowing business and personal affairs to be managed separately by appropriate individuals.

LPAs must be made at a time when the individual does have sufficient mental capacity. For that reason, it is not advisable to ignore this important planning exercise as circumstances may overtake and you may find yourself unable to pursue this avenue.

The only option to manage an individual's property and financial decisions without an existing LPA is to apply to the Court of Protection for a Deputy Order. This process can be costly, stressful and time-consuming. It also takes several months to put in place, during which time bills and decisions cannot be actioned.

LPAs can last throughout the individual's lifetime (though you can revoke them whilst you have capacity) and will prove to be a valuable investment if the worst should happen.

Find out more about how we can help you plan ahead for your business and personal needs



FUTURE-PROOFING FOR NON-DOMS

IT CAN BE HARDER TO RELINQUISH A UK DOMICILE BY CUTTING TIES WITH THE UK THAN TO ACQUIRE A UK DOMICILE BY ADOPTING TIES

'The end is nigh for Non-Doms' yelled the newspaper headlines following the Budget in March. Well, yes and no. If you are not domiciled in the UK, but want to spend any length of time here, you need to understand how the current, and proposed, rules affect you.

What does domiciled mean?

If an individual has close links with the UK (domicile of origin or dependence), including by being born here or having a domiciled father (if the parents are married) or by actively making the UK their permanent home (domicile of choice) alongside giving up any previous home that individual could well be domiciled in the UK.

If there are no such UK links, the individual is unlikely to be UK domiciled. However, it is not quite that simple.

Keep in mind, it can be harder to relinquish a UK domicile by cutting ties with the UK than to acquire a UK domicile by adopting ties. At the time of writing, the residence of an individual is only one factor. So far, so complex.

To add a layer of complexity, an individual can become 'deemed domiciled' (for tax) by being resident in the UK for a period of time.

To codify this rather woolly area of law should be a blessing (in the same way that we welcomed the statutory residence test, which allows you to work out your residence status for a tax year, in 2013).

In practice, much can depend upon intention as well as fact, and rarely are two cases the same.

Resident but not domiciled in the UK?

If you are resident (or may become resident) in the UK but are neither actually or deemed domiciled, there are special tax rules. For the sake of space, let us call you a 'RND' (Resident, Non-Domiciled).

Broadly, as a RND you pay UK tax on income and gains from a UK source. UK tax is payable on non-UK sources only if brought into (i.e. remitted to) the UK. This has been an attractive draw for non-UK domiciled clients because it protects the non-UK income and gains from UK taxation. This beneficial tax treatment can continue until you have been resident in the UK for at least 15 of the previous 20 tax years. At this point, you become 'deemed domiciled'. Income tax and capital gains tax can then be levied on your respective worldwide income and gains, although there may be available relief from double taxation on that worldwide income.

What is changing?

Relative to the complexity of the existing domicile rules, the proposed new rules are simple(ish).

From April 2025 the existing regime will be replaced by a new four-year residence rule. For the first four years of residence in the UK you can bring in non-UK income and gains without any tax implications. The government says this is a much simpler and more attractive regime because the non-UK income and gains will not be taxed at all.

After the four-year period, if you remain UK resident, there will be UK tax levied on your worldwide income as it arises. For individuals returning to the UK, you must have been non-UK resident for at least ten years (consecutively) in order to benefit from this four-year period.

It is well worth noting that even under the current regime, how you plan and structure assets to mitigate income and gains by holding certain asset types, to include the timing of income and gains being realised, remains an important consideration.

> A POPULAR OPTION IS TO PUT NON-UK ASSETS INTO A TRUST WHILST STILL NON DOMICILED – THOSE ASSETS WILL STAY OUTSIDE THE IHT NET EVEN ONCE YOU HAVE BECOME DEEMED DOMICILED

What is happening with protected settlements?

If you put non-UK assets into a trust as an RND, you currently benefit from an attractive tax regime by which you do not suffer a tax charge if and when you become deemed domiciled in the UK. If there are subsequent benefits made from the trust in favour of you or any of the beneficiaries (e.g. by distributions) this benefit can be matched with any income and gains that have arisen within the trust to the extent that they are brought into the UK. From 6 April 2025, this favourable tax treatment will only be available for the first four years after you or the respective beneficiary has become deemed domiciled in the UK. After this time, there may be UK tax levied on the value of any distributions of benefit.

What are the inheritance tax (IHT) implications?

There were no immediate changes to the inheritance tax regime for RNDs.

However, the government has announced a consultation with a view to moving to an IHT regime based on residence, not domicile, from April 2025.

Currently, your non-UK assets will fall within the IHT regime if you become deemed domiciled, i.e. if you have been resident in the UK for 15 of the previous 20 years. If the plans go ahead as we think they might, those non-UK assets will be caught in the IHT net after ten years of residence. They will also remain caught for ten years after you cease to be UK resident.

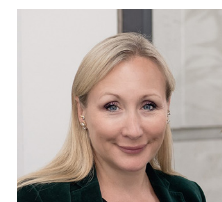
A popular planning option for RNDs is to put non-UK assets into a trust whilst still non domiciled – those assets will stay outside the IHT net even once you have become deemed domiciled. The Government has provided some comfort by stating that these types of trusts, set up before April 2025, will remain outside the IHT net. Even though there will be some income and capital gains tax implications of these types of trusts after April 2025, as discussed above, the retention of the IHT benefits mean they remain an attractive and effective planning tool. There are of course other, non-tax, benefits of holding assets in trust.

What should you do now?

Don't panic. We have seen enough of these drastic shake ups to know that they take a fair while to implement. Getting the detail right will be no easy task. There is also a general election to factor in.

However, if the new regime could be relevant to you, you should take advice as soon as possible, so that you are prepared in good time for any planning options that would be beneficial for you.

If you need to plan for asset protection or generational succession planning, domicile is still a relevant factor and trust planning (and other structuring options) may remain something that you should consider. Whilst the parameters of the tax rules may be changing, we are confident that there will remain many planning opportunities.



Amanda Nelson
Head of Private Client, London

BUDGET 2024: THE HEADLINES AND WHAT THEY MEAN FOR YOU

For many private wealth clients and advisors, the scene stealer from the Spring Budget delivered on 6 March 2024 was the changes to the non-dom tax regime. However, there were a raft of other smaller but not to be missed measures that are also worth noting.

Non-dom tax regime

The signalling of the end of the special tax regime available to non-doms (i.e. those whose permanent home or domicile is outside of the UK), means the introduction of a new taxing regime from 6 April 2025.

The announcement may have rung alarm bells for many, but it is important to note that the proposed changes also bring with them a host of short and long term planning opportunities.

In brief the proposed changes are as follows:

- The abolition of the remittance basis of taxation of income and gain which allows (subject to specific requirements and payment of a levy in many cases) non-doms to only pay tax on foreign income and gains which they bring into the UK.
- The introduction of a new taxing regime for income and gains that is based upon residence in the UK. With this new regime, individuals will be exempt from UK tax on their non-UK income and gains for their first four years of residence. After that period, they will be subject to income and gains arising on their non-UK property.
- During the tax years 2025/6 and 2026/7 transitional rules will be available enabling non-doms, who were eligible to pay tax on the remittance basis, to bring in income and gains to the UK and pay a flat reduced tax charge (12%).
- A further transitional measure available for current non-doms who have claimed the remittance basis of taxation is that they will be permitted to elect to rebase the value of their offshore capital assets to 5 April 2019 values, so that going forward they will only be taxed on gains made after that date.
- Foreign income and gains arising in offshore trusts will be taxable on a UK resident settlor who has been resident in the UK for four years.
- Where non-domiciled individuals create offshore trusts before 6 April 2025, the property in those settlement will continue to be outside of the UK inheritance tax net.

% With respect to reforms to the inheritance tax regime (IHT) applicable to non-doms, we know what the government intends – a move to a residence-based system and a reduction of the period of residence before an individual becomes subject to IHT on their worldwide assets. The detail of the IHT changes follows a consultation, with the intention that the new rules will apply from 5 April 2025.

Of course, legislation to bring in these proposed changes still needs to make its way through parliament and onto the statute books. Given we are in a pre-election period, it is far from certain that what ultimately becomes law will fully reflect the proposals set out in the budget.

For a more in-depth discussion of the changes, see our article on Future-proofing for non-doms.

Other key Budget announcements

Capital Gains Tax (CGT)

For higher rate taxpayers, the rate of CGT on disposals of chargeable residential property (i.e. second homes or rental properties) has been reduced from 28% to 24% for disposals on or after 6 April 2024. The rate for gains falling within a taxpayer's basic rate band remains at 18%.

National Insurance Contributions (NIC)

The chancellor announced a further cut of 2% to the main rate of Employees' Class 1 NIC, reducing the rate to 8% with effect from 6 April 2024. In addition, the main rate of Class 4 NIC (for the self-employed) will be reduced from 9% to 6% from 6 April 2024.

High Income Child Benefit Charge (HICBC)

The HICBC threshold has been increased from 6 April 2024 from £50,000 to £60,000, tapering down for those earning between £60,000 and £80,000. This system still presents difficulties for a household with one high earner. Accordingly, the government announced plans to reform HICBC from April 2026, looking at combined household income, rather than individual incomes. In practice, there is some uncertainty regarding the implementation of this as HMRC would need the power to consider the joint income of a couple.

Furnished Holiday Lets (FHL)

The current, sympathetic tax regime for qualifying FHL will be abolished from 6 April 2025. Landlords will no longer be able to take advantage of lower CGT rates and rollover relief or deducting the full cost of their mortgage repayments from rental income. In addition, anti-forestalling provisions will take effect from 6 April 2024, to prevent any advantage being gained from entering into unconditional contracts for sale to obtain CGT relief prior to 6 April 2025.

Agricultural Relief (AR) and Environmental Land Management Schemes (ELMS)

In a welcome announcement, it was clarified that any land managed under a government backed ELMS would, from 6 April 2024, qualify for AR and be relieved from IHT. Some queries still remain about the status of such land until this date and whether land in these schemes will qualify as a trading asset for the purposes of Business Relief.

IHT and Grants on Credit

In many cases, personal representatives need to pay IHT before they can obtain a Grant of Probate. The Direct Payment Scheme allows banks and certain other financial institutions to release monies direct to HMRC for this purpose. However, if the estate consists of assets requiring a Grant before access can be gained (for example, property or foreign assets), this can present a cash flow problem, meaning the personal representatives may have to borrow money to fund the tax. From 1 April 2024, personal representatives will be able to apply for a 'Grant on Credit' without needing to demonstrate they have tried to obtain a commercial loan.

British ISA

The Government has launched a consultation on a new British ISA, which would give an individual an additional annual allowance of £5,000 to be invested in British companies. This is clearly designed to bolster investment into the FTSE 100, but there is a lot of work to do to implement this and no date has been set for the introduction of such a product.

What is clear from the above is that much of the detail is still unclear. We expect that once the announcements are put into draft legislation, the intricacies will become evident. Whether or not these changes are implemented before the next general election, however, is another matter.

Katherine Hague
Head of Private Wealth

Bernadette O'Reilly
Partner, Private Client

INSURANCE POLICIES AS PART OF YOUR ESTATE PLANNING

Insurance policies sit alongside the array of tools available for effective estate planning. However, they also stand out as versatile instruments that offer numerous benefits beyond mere risk protection. In this article, we delve into some of their advantages in estate planning.

Wealth transfer

Insurance policies can serve as a powerful tool for passing on wealth to future generations in a structured and tax-efficient manner.

When you designate beneficiaries to receive a pay-out under your insurance policy, the proceeds from the policy are typically paid directly to them upon your death, bypassing the ever increasing lengthy and, on occasion, complex probate process.

In many cases, estate assets may be illiquid (e.g. property) or subject to market fluctuations (e.g. stocks and shares), making it challenging to access funds promptly for immediate expenses or to settle debts.

Life insurance policies, however, offer a guaranteed pay-out, ensuring that your beneficiaries have access to cash when they need it most, whether it's to cover funeral expenses, pay off outstanding debts, or to sustain their lifestyle in your absence.

INSURANCE POLICIES CAN SERVE AS A POWERFUL TOOL FOR PASSING ON WEALTH TO FUTURE GENERATIONS

Discharging liabilities on death

One of the often-overlooked benefits of insurance policies in estate planning is their role in discharging liabilities upon the policyholder's death. Individuals typically accumulate various debts and obligations throughout their lives, ranging from mortgage loans and personal debts to tax liabilities.

Without proper planning, these liabilities can significantly diminish the value of the estate and potentially lead to claims against it on death.

Where a specific gift of an asset has been left in your will, for example a gift of a house, the starting principle is that the debt follows the asset. In other words, the recipient under your will becomes responsible for the debt. What would be the impact on your wider estate and the beneficiaries if the debt attaches to the asset or needs to be picked up from the wider estate pot itself? This could lead to a position where beneficiaries have not been adequately provided for from your estate because they are unable to sustain the debts.

Here, life insurance can serve as a strategic tool to offset such financial burdens. The proceeds from a life insurance policy can be used to settle outstanding debts and obligations, ensuring that your estate remains intact for the benefit of your beneficiaries. By proactively addressing potential liabilities through insurance, you can protect the assets you've worked hard to accumulate and prevent them from being eroded by creditors or other claimants.

Privacy

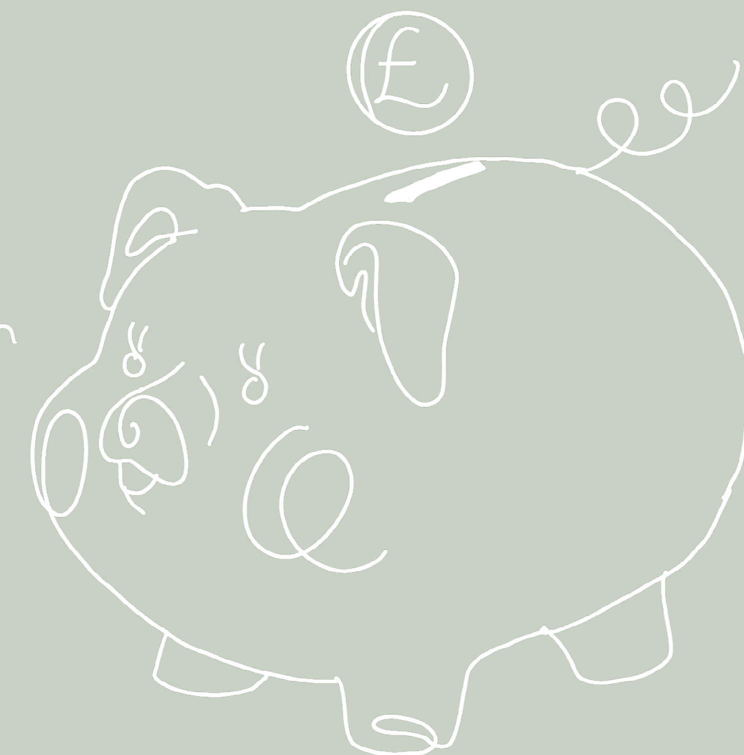
Life policies can also be used to benefit individuals that you do not want named in your will. Once your will has been proved, it becomes a public document and open to anyone who wishes to obtain a copy to see. This is not the same as your insurance policy, which would remain private between you and the appointed trustees of the insurance company.

Additionally, life insurance policies can provide peace of mind by offering a safety net against unforeseen financial setbacks or liabilities, allowing you to navigate life's uncertainties with greater confidence and security.

Mitigating IHT burdens

Perhaps one of the most significant advantages of incorporating insurance policies into your estate planning strategy is their potential to mitigate inheritance tax burdens. IHT is charged against your estate on death at a rate of 40%.

However, life insurance proceeds are not subject to IHT when paid directly to named beneficiaries. By structuring your estate plan to include insurance



Talk to me about structuring your estate to protect your assets

policies, you can effectively shield a portion of your assets from the reach of HMRC, ensuring that your heirs receive a more substantial share of your wealth.

Plus, the monthly premiums paid by you for the benefit of the policy are treated as a gift out of surplus income and do not need to be factored in to your estate's IHT calculation as other gifts would be if you failed to survive them by a period of seven years.

The risks

Life and critical illness insurance can provide protection and peace of mind if the worst should happen. However, for such policies to respond as intended, careful regard should be had to the scope of the policy, premiums payable and key terms and exclusions. This includes the information provided by you before the policy even begins.

> LIFE AND CRITICAL ILLNESS INSURANCE CAN PROVIDE PROTECTION AND PEACE OF MIND IF THE WORST SHOULD HAPPEN

Your medical history

Most life and critical illness insurance policies will specifically exclude cover for pre-existing conditions. As a policyholder, you have a duty to disclose any information the insurer may deem relevant to the policy. Failure to provide a fair representation of your medical history or advise them of any changes to your circumstances may entitle the insurer to avoid paying a claim under a policy.

Typical conditions insurers will ask about are cancer, heart attack and strokes. We have also seen an increasing focus on the disclosure of diagnoses of mental health conditions.

Payment of monthly premiums

Once the policy is in place, it is conditional on the payment of a monthly premium by the policyholder. Where there has been non-payment of premiums, insurers are entitled to void the policy in its entirety and therefore avoid paying out to your nominated beneficiaries. In these circumstances, premiums paid prior to that date are not refundable.

Given the importance of maintaining cover and the peace of mind these policies offer, it is important to make arrangements for the continued payment of premiums in the event you are diagnosed with a condition that may result in a loss of capacity.

Scope of the policy

Life and critical illness policies are often bespoke and will depend on the information you provided before the policy was incepted. It is therefore important that you fully understand which conditions fall within the scope of the policy, which conditions are excluded and the point at which a payment will be made to your beneficiaries.

Another provision to be aware of is the survival period requirement. This is included in most policies and refers to the time period which you must survive after being diagnosed with a critical illness. If you do not survive this period, the insurer will not pay out under the policy. Survival periods generally range from 10 to 30 days.

Claiming under the policy

In addition to complying with the key terms of the policy, it is also important that both you and your beneficiaries understand how to make a claim under the policy.

In the event you are diagnosed with a critical illness or sadly die, your friends and family will understandably be under a great deal of emotional stress. It is important to ensure practical arrangements are in place to help them make a claim. For example, sharing the details of your policy, such as your policy number and claim notification details, with a trusted friend or family member.

A word of wisdom

It's essential to approach estate planning holistically, taking into account your unique financial circumstances, goals, and preferences. Consulting with qualified financial and legal professionals can help you navigate the complexities of estate planning and design a comprehensive strategy that aligns with your objectives.

Ultimately, by leveraging the unique features of insurance products, you can ensure that your legacy is preserved, your loved ones are adequately provided for and your estate is managed with maximum efficiency and effectiveness.

Jonathan Edwards
Head of Insurance

David King
Partner, Private Client

OVERAGE AGREEMENTS

A typical overage payment would be 25% to 45% of the uplift in value of the land

Overage agreements have increasingly been used over the last 25 years as the demand for houses has increased and landowners have sought to protect a potential uplift in the development value of land they own.

By entering into an overage agreement with a buyer, a seller can ensure that they or their family and beneficiaries will benefit financially from a future significant uplift in the value of the land if planning consent for development of the land is granted or implemented.

An overage agreement may suit families who are keen to realise a property asset now but believe there may be scope to develop the land in future and do not have the experience or appetite to apply for planning consent themselves.

Typically, they are used by landowners who have land with the potential for infill development or several acres of undeveloped land. Homeowners with large gardens and/or an adjoining paddock may also consider that entering into an overage agreement with a buyer may be appropriate.

Such agreements do require careful negotiation and drafting to ensure that the landowner's position is both legally and commercially protected.

In this article, we look at a few of the areas to consider.

Term of the agreement

Typically, overage agreements tend to last for 20 to 30 years, particularly where there are no immediate plans for development. Once this period has elapsed, the overage provision will fall away and the seller will not benefit from any uplift in value of the land. If shorter term development is envisaged, then a typical term would be 5-10 years.

Overage payment

In order to ensure that both parties benefit commercially from an uplift in value, a typical overage payment would be in the region of 25% to 45% of the uplift in value of the land. However, the buyer would want to ensure that the significant costs they incur in applying for planning consent and/or paying for local authority planning obligations are deducted from any final payment agreed.

Trigger event

The parties have to agree on a suitable trigger event for the payment. While the landowner may view the granting of planning consent as the key event, a buyer may not have the cashflow available to fund the overage payment until the land is sold with the benefit of planning consent. The latter option tends to be favoured given the practical cashflow considerations.

It is also important to ensure that by obtaining planning consent in relation to a smaller part of the whole plot, this does not result in the agreement falling away in relation to the remaining land (otherwise the overage payment made to the seller would be far less than envisaged). The seller should ensure that an overage payment is made for each separate trigger event that occurs for the whole and any part of the land during the overage period.

Protecting the overage provision

The lawyer acting for the seller must ensure that the benefit of the overage agreement is clearly protected, even if the original buyer sells the land before the

THEY ARE USED BY LANDOWNERS WHO HAVE LAND WITH THE POTENTIAL FOR INFILL DEVELOPMENT OR SEVERAL ACRES OF UNDEVELOPED LAND

overage period expires. This can be achieved in different ways, although typically the overage agreement will provide that a restriction is entered on to the title at the Land Registry and any future sales of the land cannot take place unless a new buyer enters into a 'deed of covenant' to comply with the provisions of the original overage agreement.

Recently, residential mortgage lenders have been reluctant to lend on properties subject to an overage provision. For this reason, if you are selling a residential home with a very large garden/adjoining field, it is better to ensure that the overage provision relates only to the land that can be developed in future, rather than the house itself.

OVERAGE AGREEMENTS TEND TO LAST FOR 20 TO 30 YEARS, PARTICULARLY WHERE THERE ARE NO IMMEDIATE PLANS FOR DEVELOPMENT

Tax considerations

While Capital Gains Tax (CGT) may be payable on the original sale of the land, there may be a subsequent CGT sum payable when the overage payment is made. It is important to obtain tax advice at the outset to ensure you are fully advised on the tax implications of entering into an overage agreement.

The importance of taking advice

Overage agreements have many appealing advantages for landowners. However, the key points listed here are not exhaustive and, given the potential for disputes, particularly in relation to trigger events and overage payments, it is important for any seller to obtain advice from a lawyer experienced in dealing with overage agreements before proceeding.

Find out how we can help you when buying or selling a property with an overage agreement

Lisa Gibbs
Head of Residential Property

There are over 167,000 family nannies currently employed in the United States

Source: Zippia

CAN I TRAVEL TO THE UK WITH MY NANNY?

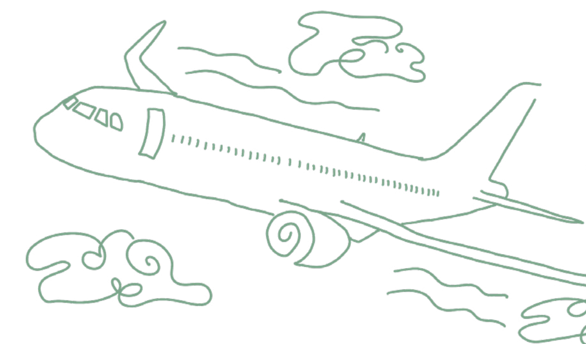
Since summer is around the corner, you may be wondering if you can travel to the UK with your nanny. The answer is yes – with proper planning.

The basics

You must cover all your nanny's expenses while travelling. This includes the costs of travel, hotels and meals but does not include personal expenses. If your nanny accompanies you on excursions, you will also need to pay for these excursions for them.

Your nanny should have their own room and some free time to spend as they choose. If your nanny is looking after a baby, especially during the night, they should be paid for the overnight hours.

It is important that your nanny has a clear understanding of their duties whilst travelling, as well as a clear understanding of the structure of the holiday.



The visa rules

If your nanny is not a UK national, they will need permission to travel. You can use an Overseas Domestic Worker visa if your visit is for a short period of time not exceeding six months.

In order to be eligible for this visa, your nanny must:

- Be 19 years old or older
- Have worked for you for at least one year
- Work full time
- Have funds
- Have a salary that meets the UK national minimum wage

IF YOUR NANNY IS LOOKING AFTER A BABY, ESPECIALLY DURING THE NIGHT, THEY SHOULD BE PAID FOR THE OVERNIGHT HOURS

The process:

1. Ensure that the nanny has a valid passport (in date).
2. Your nanny will have to ensure they have all the relevant documents and supporting evidence.
3. The application process is completed online and must be done outside the UK.
4. The process can take up to three months, so allow time for the visa to be approved before booking tickets.
5. Once your nanny has submitted the visa application online, uploaded the relevant documents and made the relevant payment, they will have to attend an appointment at their local visa centre.
6. Once you and your family leave the UK after your holiday, your nanny will also have to leave. If you and your family extend your stay in the UK, your nanny will have to leave once the visa expires at the end of the six month period.

THE PROCESS CAN TAKE UP TO THREE MONTHS, SO ALLOW TIME FOR THE VISA TO BE APPROVED BEFORE BOOKING TICKETS

Your nanny should be aware that this visa is temporary and does not lead to settlement in the UK.

If you and your family plan to stay in the UK and you would like your nanny to stay with you, consider a Skilled Worker visa. This visa lasts for up to five years and can be extended as many times as needed as long as your nanny is still eligible. After five years, your nanny can apply to settle permanently in the UK if they wish.

Paula Ursu
Solicitor, Employment and Immigration

Find out about our Employment and Immigration service

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