

## Private Client Enews – 27 September 2006

### Mistaken Trust

Where mistakes have occurred in the drafting of a trust, whether it is set up during a person's life or by their will, it may be possible for the aggrieved parties (settlor, trustee or beneficiary) to have the mistake rectified.

Rectification is a remedy available at the Courts discretion which can enable the parties to a trust, amongst other things, to correct mistakes in the way it has been recorded.

It is available in cases where particular words have been added, omitted or wrongly written as the result of a clerical error. It can also be sought where there has been a failure to understand the instructions received or where the words of a document have been used intentionally but on the mistaken assumption that those words have a different meaning from their correct meaning.

In such cases, the Court may rectify the wording of the document so that it expresses the true intention of the person who set up the trust.

In a recent case an attempt was made to stretch the bounds of rectification. The claimants were executors of a deceased's will. In an effort to avoid Inheritance Tax ("IHT") the deceased had set up and transferred £550,000 to a trust during his lifetime.

Regrettably it transpired that the deceased had set up a Discretionary Trust. With such a trust the sum transferred above the Nil Rate Band ("NRB") (the exemption from IHT available to each person's estate which is currently £285,000) will be what is called a 'chargeable transfer' and subject to the payment of IHT.

Broadly, on a lifetime transfer to a trust there is an immediate charge of 20% on the funds above the NRB followed by charges of up to 6% on each 10 year anniversary and when funds exit the trust.

The claimants failed to obtain rectification. The deceased's mistake was not as to the language, terms or effect of the trust. On the available evidence his only mistake had been the belief that the transfer to the trust would be a potentially exempt transfer ("PET".)

A gift which is treated as a PET will be free of IHT if the donor survives making it for a period of seven years. If the donor dies within 3 years of making the gift its full value will be included within their estate for IHT purposes. If the donor dies between 3 and 7 years after making the gift, the IHT charge will be reduced.

Whilst the last two Finance Acts have closed off quite a few well established avenues for IHT planning, it must be noted that the discretionary trust regime referred to above remains unchanged.

If you are planning to set up a trust with a view to limiting your estates liability to IHT it is essential that you obtain sound legal and financial advice on the options that are available to you.

If you have any queries you can phone or email Glenn Smyth or Rod Smith on [glennsmyth@boltburdon.co.uk](mailto:glennsmyth@boltburdon.co.uk) or [rodsmith@boltburdon.co.uk](mailto:rodsmith@boltburdon.co.uk) or phone 020 7288 4700. Our full range of services includes Financial Planning, Trusts Wills & Probate, Property, Matrimonial and Family Law, Commercial Law, Commercial Dispute Resolution, Debt Collection, Compensation Claim Litigation. Visit our web site at [www.boltburdon.co.uk](http://www.boltburdon.co.uk). To stop receiving this bulletin, reply stating 'unsubscribe'.