private affairs

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Welcome to the Winter 2011/12 edition of Private Affairs.

As the leading national private client team in the UK, we encompass a wide range of different disciplines, and this edition of Private Affairs reflects that variety of disciplines.

We are delighted to welcome new partner and chartered tax adviser Julia Rangecroft, who is based in our Leeds office, as a contributor to Private Affairs. Julia comments on the availability of the conditional exemption for inheritance tax purposes.

Elizabeth Field, from our Norwich office, considers gifts of personal possessions more generally in the light of the nationally reported case involving the Bishop of Grimsby and the legacy of a Chinese vase.

From our Norwich office, Lauren Parker and Jonathan Thompson, who is a senior solicitor in our agriculture and estates team and who is a Fellow of the Agricultural Law Association, ask whether those who own land tenanted under an Agricultural Holdings Act 1986 tenancy should seek a surrender and re-grant, and consider the tax advantages and disadvantages of doing so.

Alison Bull, leader of our family team in Manchester, considers the use of marital agreements as a method of family wealth protection, in the light of the Radmacher case last year, and the case of Z v Z which was decided in November.

Victoria Thompson, from our Cambridge office, reviews the thorny issue of trust expenses, and their apportionment between capital and income.

Finally, in our snippets section, Victoria Spratt, new to our office in Cambridge, considers the terms of the proposed 10 per cent reduction in the rate of inheritance tax on chargeable estates where 10 per cent of the net estate is given to charitable organisations.

If there is anything in particular that you would like us to cover in future editions, please let me know. We want Private Affairs to be informative and useful, and ideas for future articles are very welcome.
Capital taxation presents a constant obstacle to the custodian of privately owned heritage property seeking to continue the family’s success by retaining it as a family asset. The financial commitment involved in owning heritage property is a heavy enough burden, especially in the current economic climate, without the ever present concern of how to secure an affordable succession route. Never mind, there is always conditional exemption to fall back on – or is there?

Following the introduction of a relatively benign capital taxes regime in the late 1980s, seeking conditional exemption for heritage property became a last resort “straitjacket” remedy for those who could not, or had not, undertaken lifetime planning. Attention in the 1990s focused on trying to escape the public access regime imposed under old estate duty and CTT exemptions, especially with the prospect of re-exempting under a more testing public access regime.

The current capital tax regime is not as benign. Opportunities for tax efficient lifetime succession are limited, particularly where the heritage property remains in substantial private use. This change in tax regime has coincided with a substantial shift in attitude towards public access. Opening up to the public, driven by the economic necessity of putting the heritage property to work, is increasingly widespread. The concern now may not be how much public access medicine has to be swallowed, but whether the heritage property is of sufficient quality to secure the much needed exemption.

Government policy is to continue to incentivise private individuals to preserve the country’s heritage for enjoyment by the public, but it is also striving to reduce the public deficit. The test is one of “pre-eminence”, but government websites refer to “outstanding” chattels, land and/or buildings (together with qualifying amenity land and historically associated chattels). So, is that the test, and who decides?

The test for chattels is applied in the light of advice from the Arts Council of England. “Pre-eminence” has meant more than being suitable for exhibition in a museum for many years. A chattel must be capable of constituting a pre-eminent addition to a national, local authority, university or similar accepted collection. Most of the chattels that would have qualified for conditional exemption in the 1990s would not reach this standard.

In relation to land and buildings, the test of “pre-eminence” is judged in the light of advice from English Heritage (for historic land, buildings and their contents in England), Natural England (land of scenic, historic or special scientific interest in England) and the Forestry Commission (woodland areas).

Where chattels are not pre-eminent in their own right, the historical (at least fifty years in most cases) association exemption alongside conditional exemption of the house may be the salvation. Beware relying on securing exemption for a collection of wide-ranging objects. As well as being historically associated with the pre-eminent property, the objects must make a significant contribution to the appreciation of that property, or its history.

When deciding to go down the route of exemption by historical association, the consequences of disposing of part of the collection need to be noted. Such a disposal will bring down charges on each associated asset, and the collection must be put together bearing this in mind.

Relying on conditional exemption as the “if all else fails” succession plan, without undertaking a serious look at the option, could result in bedlam rather than the anticipated and acceptable, albeit uncomfortable, straitjacket. If it isn’t going to work out, better to know now while there is still time to put a new plan in place.
the case of the Bishop and the legacy of a vase which was not

People often like to make gifts of their personal items for sentimental, rather than value, reasons. However, unexpected tax consequences can arise – particularly where the item’s true value is not appreciated at the date of the gift.

A recent example of this was the tale of the Bishop of Grimsby and the Chinese vase reported in the national press. The vase was owned by Mrs Rodger, had been passed down several generations of her family and Mrs Rodger has assured her niece, Jennifer Watson, that she would inherit it. However, instead of including a specific legacy of the vase in favour of Jennifer Watson, Mrs Rodger’s will contained a flexible gift of chattels with a non-binding side letter requesting her executors (among whom was the Bishop of Grimsby) to pass the vase to Jennifer Watson free of inheritance tax (IHT).

When Mrs Rodger died in March 2011, the valuer acting for the estate realised the vase was far more valuable than Mrs Rodger had realised, being worth £9 million. As IHT was payable at 40 per cent on the total value of the estate (excluding her available nil rate band allowance), the gift to Jennifer Watson free of IHT would have resulted in the rest of the estate bearing an IHT burden of over £3.6 million.

The executors therefore decided to disregard the non-binding side letter written by Mrs Rodger and to sell the vase in order to meet the IHT bill, ensuring that other assets remained in the estate to distribute to the other 31 beneficiaries. Although initially Jennifer Watson strongly objected to a sale, a settlement was later reached allowing the vase to be sold in November 2011 for £9 million.

This case raises some interesting points for those thinking of passing on chattels.

1. Gifts on death
   Consideration should be given as to whether an outright legacy under the will, or a non-binding flexible gift, is most appropriate. If a specific legacy had been included in Mrs Rodger’s will, Mrs Rodger could have had greater certainty that the vase would pass to her chosen beneficiary.

   However, it would have been far more difficult for the executors to mitigate the tax bill. Additionally, a flexible gift can be preferable as it allows the testator to update his wishes as to the distribution of chattels simply by writing a new letter of wishes, rather than going to the expense of amending his will. Although letters of wishes are not legally binding, they are usually followed unless there is a good reason, as there was here, not to do so.

2. Gifts during the donor’s lifetime
   If the donor is confident that he will have no use for the personal item during his lifetime, he may wish to give the item to his chosen beneficiary while he is alive, and have the pleasure of seeing the chosen beneficiary enjoying the item.

   However, there can be IHT and capital gains tax (CGT) implications to such gifts, and potential donors should always seek to ascertain the market value of the item in question before making the gift.

(a) IHT

An outright gift to another individual will (provided the donor survives seven full years from the gift) attract no IHT charge. However, if the donor fails to survive seven full years, unless the conditions of the gift specify otherwise, the donor’s nil rate band (being the value of an estate allowed to pass tax free on death) will be reduced by the value of the gift – and the liability of any IHT charge payable will fall on the chosen beneficiary.

Particular caution should be taken where the donor intends to make a gift of a personal item but still benefit from the item gifted in some way as, even where such gifts are made more than seven years before death, they can still be caught by the “reservation of benefit”
rules for IHT purposes. An example of this would be if Mrs Rodger had given the vase to Jennifer Watson by formal deed of gift but then retained the vase on her own mantelpiece during her lifetime.

Essentially, if the donor continues to receive some benefit from the asset in question in the seven years immediately before his death, the value of the asset is taken into account for IHT purposes on his death, increasing the value of the donor’s estate for IHT purposes long after the donor thought that he had dealt with this problem.

While it is possible for a donor to continue to benefit from an item gifted in certain circumstances, the exemptions available are complex and advice should always be sought on such gifts.

(b) CGT
Although no information is available on the value of the vase when Mrs Rodger inherited it (its “base cost” for CGT purposes), if we assume for the sake of argument that it was worth £2 million on acquisition, then, to put it simply, a gift to an individual during her lifetime would have triggered a “deemed gain” of £7 million, charged to CGT at 28 per cent, i.e., a £1.96 million CGT bill.

In some cases, where an asset has built up significant value during its period of ownership, it may be worth considering keeping it in the potential donor’s estate until death, as there will be an uplift in the base cost for CGT purposes on death. For example, if Jennifer Watson had received the vase from Mrs Rodger’s estate, her base cost for CGT purposes would have been £9 million and, if she had subsequently disposed of the vase for £10 million, there would only have been CGT to pay on the £1 million gain in the value of the vase since Mrs Rodger’s death.

Keeping an asset in an individual’s estate could, of course, have unpleasant IHT implications. However, if IHT charges can be avoided on the owner’s death, for example, by providing for the asset to pass to the individual’s surviving spouse (securing the spouse exemption), the spouse can then give the asset to the chosen beneficiary shortly afterwards, with little or no CGT to pay.

The spouse needs to live at least seven years from the date of their gift to avoid the asset being taken into account as part of his or her own estate for IHT purposes. It may be appropriate for the spouse to take out term insurance against this risk.

Making a gift of a personal item to a person can be straightforward, depending on the gift and its value.

However, complications can arise, and it is prudent:

1. to make sure that the donor has an up-to-date market value of any such personal items he may wish to give to another person, either during his lifetime or by will; and

2. to obtain proper advice on the tax implications of gifts of such personal items.

It is particularly important to obtain proper advice where the donor wishes to retain any use or enjoyment of the asset gifted after the gift is made, as such a reservation of benefit may render all the inheritance tax planning in relation to such a gift pointless.

Some individuals with valuable chattels may wish to obtain advice on the availability of the conditional exemption for inheritance tax purposes. More information on this can be found in Julia Rangecroft’s article on page 3.
As part of a comprehensive estate planning exercise, many landowners are reviewing the way in which land is held and this can be particularly worthwhile in the case of tenanted land, where old-style Agricultural Holdings Act 1986 (AHA 1986) tenancies are in place.

The starting point is that for inheritance tax (IHT) purposes, land subject to an AHA 1986 tenancy granted before 1 September 1995 will usually only qualify for 50 per cent agricultural property relief (APR). Admittedly, 50 per cent APR on let values is better than nothing but in some circumstances, it is possible to preserve security of tenure, and where applicable succession rights, under the AHA regime but secure 100 per cent APR.

### Agricultural Property Relief – availability

APR is available when there is a transfer of value of agricultural property, provided that property has either:

1. been occupied by the transferor for the purposes of agriculture throughout the period of two years ending with the date of the transfer; or
2. it has been owned by the transferor throughout the period of seven years ending with that date and it has throughout that period been occupied by any person for the purposes of agriculture.

In the case of land let to third parties the seven year ownership period will apply. APR operates to reduce the agricultural value of the agricultural property transferred for IHT purposes, thus reducing the amount of IHT payable. It is important to remember, however, that APR will not be available on non-agricultural value, for example amenity or development value.

Where the land is tenanted, different rates of relief are applicable depending on the type of tenancy in place. In crude terms, if the land is subject to a tenancy which began on or after 1 September 1995, or the owner is entitled to obtain vacant possession within 24 months, then APR is available at the rate of 100 per cent.

In most cases, an AHA 1986 tenancy would have been put in place before 1 September 1995, and there may not have been a succession since that date. This means APR is usually only available at the rate of 50 per cent. Therefore, from an estate planning perspective, it can make good sense for a landowner to implement a surrender and re-grant of the tenancy under section 4 (1) (g) of the Agricultural Tenancies Act 1995, so as to secure APR at the rate of 100 per cent.

It is important to remember that APR is applied before business property relief (BPR) and so where land only qualifies for 50 per cent APR, BPR cannot be applied to reduce the remaining 50 per cent of the agricultural value to nil.

**Why should the tenant reorganise his tenancy?**

An obvious question at this point is why would a tenant agree to a surrender and re-grant of his existing tenancy? After all, an AHA 1986 tenancy has significant advantages for a tenant. The key benefit is lifetime security of tenure. It is also possible, in some cases, for a succession tenancy to provide for succession for a further two generations.

In inter-family situations, where, for example, land is let to the family farming partnership by the trustees of a family settlement, security of tenure and succession rights are likely to be less important. However, the family will often want to preserve the depreciating effect of an AHA 1986 tenancy on land values, in case legislative changes impact on the availability of APR.

However, where security of tenure is an issue, it is possible to create a new tenancy which affords the tenant all of the protection that he currently enjoys under the AHA 1986, but which still constitutes a post 1 September 1995 tenancy for the purposes of APR, with the result that the higher rate of the relief is available.
If a tenant, once approached and with his fears about the loss of security put to rest, is willing to discuss surrendering his tenancy and taking a new tenancy, there are still a number of issues to address, both for the tenant and the landowner.

Commercial issues can often be resolved following negotiation between the landowner and the tenant, most often with the assistance of their respective land agents. However, proper legal advice on the documents effecting the surrender and re-grant, and the tax implications, will be needed as well, since the tax situation is far from straightforward.

**Tax implications of surrender and re-grant**

The surrender of the AHA 1986 tenancy is a disposal by the tenant for capital gains tax (CGT) purposes. However, it is possible to bring the reorganisation within the scope of an Extra Statutory Concession, which takes the disposal outside the tax net.

For the concession to apply, the transaction must be on terms equivalent to those that would have been made between unconnected parties bargaining at arm’s length. Only the terms relating to rent and duration can be varied and there must be an extension of the lease. No capital sum must be received by the tenant and this can make it difficult to persuade a third party tenant to agree to a surrender and re-grant. In addition, the grant of the new tenancy will be a part disposal for CGT purposes by the landowner, but provided the concessionary treatment applies, no CGT will be payable.

Stamp duty land tax (SDLT) may be payable on the grant of the new tenancy, or it may become payable at some point during the term of the tenancy. Once SDLT becomes payable, an SDLT return and tax payment will need to be submitted every year by the tenant.

Finally, if the tenant has elected for VAT in respect of the land subject to the tenancy, there may also be VAT to pay in relation to the transaction. It is very important that this is checked, and proper advice obtained as to how to proceed and avoid any unnecessary VAT charge.

**Structure of the tenancy**

If the old tenancy is a tenancy from year to year then the new tenancy should be granted for a minimum term of three years. The landowner must realise that this starts a new rent review cycle, so part of the landlord and tenant negotiations may involve foregoing an impending rent review. However, the potential IHT benefit may be worth that sacrifice.

**Summary**

It is important not to overlook the possibility of granting a succession tenancy, which should secure 100 per cent APR as a tenancy granted after 1 September 1995. The landlord may also want to consider bringing the tenancy to an end by serving a notice to quit on the tenant, and taking the land back in hand. This could open up the possibility of securing BPR on the non-agricultural value and also securing entrepreneurs’ relief (see article in *Private Affairs* Spring 2011).

In other circumstances, a surrender and re-grant will be the most attractive option. Section 4 (1) (g) surrenders and re-grants can involve some lengthy negotiations where third party tenants are involved. For that reason, this type of reorganisation may be suitable for inter-family arrangements. However with appropriate support during the negotiation process and the right tax advice, the reward for the landowner of APR at the rate of 100 per cent can be well worth the effort.
A marital agreement is an agreement negotiated between a couple either before (a pre-marital/pre-nuptial) or during (post-marital) the course of their marriage, which sets out the arrangements for the family’s finances on separation or divorce.

The law in relation to marital agreements changed significantly following the decision of the Supreme Court in case of *Radmacher v Granatino* on 20 October 2010. This decision has significantly strengthened the legal effect of marital agreements and the role they play in wealth protection. The court held that the marital agreement should be upheld if “freely entered into by each party with a full appreciation of its implications, unless in the circumstances prevailing it would not be fair to hold the parties to their agreement”. In effect, therefore, there is a presumption (although we are not allowed to call it a presumption) that marital agreements should be binding unless unfair.

The importance of married couples having a marital agreement cannot be overemphasised! Married couples often spend time and money making investment and wealth protection decisions where the amounts at stake are relatively small in percentage terms, and yet with an alarmingly high divorce rate, take no steps to protect wealth against the possibility (verging on probability) that a divorce may decimate their wealth.

For the financially stronger spouse the benefits are obvious. However, there are also benefits for the financially weaker spouse. Often wealth is tied up in trust or business assets, which can be inherited, and in relation to which emotions of the spouse and their wider family can run high. The security of certain provision contained within a marital agreement may be attractive to the financially weaker spouse. In fact, the relative certainty of knowing what is likely to happen if things go wrong can actually assist couples to focus on trying to resolve their differences when the going gets tough in relationships, rather than worrying about financial implications.

The Supreme Court in *Radmacher* introduced a three step approach to assessing whether a couple should be held to the terms of a marital agreement:

1. Are there circumstances attending the making of the agreement that detract from the weight that should be accorded to it? The following factors are relevant:

   (i) the parties need to enter into the agreement of their own free will, without undue influence or pressure and need to be informed of its implications;

   (ii) the court recommended material financial disclosure of the financial circumstances at the time of the making of the agreement, together with both parties having what they described as “sound” legal advice on the implications of it; and

   (iii) each party should intend that the agreement should be effective (and those entering into an agreement after 20 October 2010 will be taken as having intended that they would be bound by the agreement).

2. Are there circumstances attending the making of the agreement that enhance the weight that should be accorded to it? What the court had in mind when considering this question was whether there was a foreign element ie, whether the parties to the agreement came from a jurisdiction in which pre-marital agreements were common and were generally upheld. In the *Radmacher* case, the wife was German and the husband was French and they were both therefore from jurisdictions in which pre-marital
agreements would be upheld, indeed, their German pre-marital agreement would have been upheld if they had chosen to get divorced in Germany.

3. Do the circumstances at the time that the court is making the order make it fair or just to depart from the agreement? While the court made clear that this would have to be approached on a case by case basis, the judges did give the following indication that:

(i) a marital agreement would not be allowed to prejudice the reasonable requirements of any children;

(ii) it is a legitimate aspiration to want to protect non-matrimonial property (that is, assets built up before the marriage, or kept separate during the marriage); and

(iii) as long as the agreement provides for the needs of the parties (and any children), a court is unlikely to interfere with the terms of the agreement, even if the parties were, in effect, contracting out of the “sharing” principle. It is this sharing principle that often leads to higher financial awards in favour of the financially weaker party.

Since Radmacher family lawyers have been pondering on the effect of the case and how it will be applied by the courts in practice. One tricky question remains (among others): what is “fair”? There has been one reported High Court decision following Radmacher, involving a French marriage contract and a subsequent English divorce, in Z v Z (No 2) (2011). The court upheld the provisions of the French marriage contract, which provided for “separation de biens”, while making additional provision for the wife to meet her needs and those of the children who lived with her. This meant that the wife received £6 million of total assets of £15 million, where it was accepted that without that agreement equal division would have been inevitable.

From a family lawyer’s perspective this illustrates very effectively the benefit of investment in a marital agreement. Even if the couple’s circumstances are complex and so require a significant investment in legal fees to finalise a marital agreement (and sometimes other experts’ fees, for example accountants and counsel), a 20 per cent differential in outcome on divorce (quantified as £3 million in Z v Z) makes that investment a “no-brainer”.

Although still dismissed without much consideration by many, on the basis that such agreements are “unromantic”, on closer consideration the benefits are clear. Marital agreements are commonplace in continental Europe, and are becoming more culturally acceptable in the UK. The number of couples considering entering into a pre-marital agreement, or being prompted to consider entering into a pre-marital agreement by their families concerned to protect substantial family wealth, which may be put at risk in the event of divorce, has been increasing steadily over the last few years. Anecdotally, there has been a sharp increase in both interest in such agreements and in the number of couples seeking them following Radmacher. This is likely to continue.

At Mills & Reeve, we have a wealth of experience of advising clients and their other advisers on these sort of wealth protection issues (as well as lecturing and producing various publications on the subject). Many of the members of our national family team are trained in collaborative law and/or mediation processes, and both processes can be ideally suited for couples who are getting married, or who are already married, to negotiate the terms of a marital agreement without unnecessary additional stress arising.
In these straitened economic times, many trustees are worried about preserving their trust funds, and are concerned to reduce their liabilities.

They can also come under pressure from a beneficiary with a life interest (ie, the right to the income from the trust) to pay fewer expenses from income, on the basis that this will leave more income for the beneficiary to enjoy, and despite the fact that the proper payment of trust expenses from income can have income tax advantages.

A query from trustees reviewing the expenses of the trust is frequently: what kind of expenses, and what proportion of such expenses, should we be paying from income or capital?

**Basic rule**

Expenses incurred for the benefit of the whole trust are payable from capital, and expenses relating exclusively to the income of a trust are payable from income. Expenses can be apportioned where it can be shown that part of the expenses related exclusively to income.

**Deductions for tax**

Trust expenses are the administrative expenses of a trust (ie, costs which the trustees incur in running the trust). It is the duty of the trustees to determine whether an expense should be deducted from capital or income.

This is significant for trustees as it can result in income tax liability being reduced. Trustees must consider:

- the provisions of the trust deed;
- legislation;
- case law; and
- specific court orders.

Only trust expenses which the general law allows to be charged to income (not capital) are deductible for tax purposes.

**Capital or income?**

The Revenue contend that few expenses will be allowable against income as most expenses are incurred for the benefit of the trust as a whole.

A case from 2007 (Trustees of Peter Clay Discretionary Trust) found that most expenses are capital expenses. Only recurrent expenses incurred exclusively for the benefit of income beneficiaries (ie, life tenants) can be charged against income. When an expense is incurred to confer benefit on both income and capital beneficiaries then it is incurred “for the benefit of the whole trust fund” and is therefore a capital expense.

Where an expense relates to both capital and income, a part of the item that relates exclusively to income can be allocated to income. The onus is on trustees to demonstrate that part of a trust expense relates exclusively to income.

**Finding cash to meet expenses**

If the trustees do not have enough cash to pay expenses or they have income but no capital cash or vice versa, then subject to the terms of the trust and the duty to maintain a balance between beneficiaries, they can:

- allocate capital expenses to income using an express power;
- pay capital expenses from income but allocate them to capital in the accounts to be repaid when capital cash is available;
- borrow money to pay the expenses; or
- exercise a dispositive power.

**Conclusion**

A trust expense that includes costs incurred exclusively for the benefit of income beneficiaries can be apportioned between income and capital. A trust expense which does not include such costs benefits the whole trust fund and cannot therefore be apportioned, so it is a capital expense.

It is for the trustees to demonstrate that part of a trust expense relates exclusively to income, if this is the case. Trust can no longer adopt a “rule of thumb” approach, but should try to keep detailed records to demonstrate the apportionment eg, itemised invoices, separate fees for income/capital, time records or “realistic” estimates.
Many people are no doubt aware that a cash gift or a part of the residue of an estate given to an organisation recognised as charitable in England & Wales is exempt from Inheritance Tax.

However, from April 2012, there will be an additional incentive for an individual making a will to give a part of the residue of his estate to a charitable organisation – specifically, ten per cent of the net residue of his estate.

Such a gift will result in a reduction in the rate of inheritance tax (IHT) applicable to his free estate from 40 per cent to 36 per cent. What is more, the cost to other non-charitable beneficiaries may be less than first appears.

For example, let us consider Mr X, who is widowed and has a free estate valued at £1,000,000. He wishes his children to receive his assets on his death. He still has his own nil rate band (currently £325,000), but his late wife made gifts under her will, which mean that there will be no transferable nil rate band from his late wife’s estate to boost the inheritance tax free sum available to his estate on his death.

If Mr X gives the entirety of his estate to his children, there will be no IHT to pay on the first £325,000 of his estate, assuming he has not used up his nil rate band in the seven years before his death. There will be IHT to pay at the rate of 40 per cent on the remainder of his estate. This will result in an IHT bill of £270,000. His children will receive £730,000 between them.

However, if Mr X makes a gift of ten per cent of his net estate to one or more charitable organisations and the remaining 90 per cent of his estate to his children:

- the charitable organisation(s) will receive £67,500;
- IHT will be chargeable at 36 per cent, so that £218,700 is payable; and
- his children will receive £713,800 between them.

There will be an IHT saving of £51,300 at a cost of £16,200 to his children.

Mr X’s estate is relatively straightforward, containing no assets held on trust (“settled property”), or assets which were jointly owned and would pass automatically by right of survivorship on his death (“survivorship assets”). However, if his estate should include such assets, the 10 per cent test will be applied to each type of asset (or “component” of his estate), and the reduction in Inheritance Tax will apply to each component where the 10 per cent test was passed.

In addition, if, for example, Mr X’s estate includes his free estate and settled property, and there was a charitable legacy of 12 per cent of his free estate but only 8 per cent of his settled property, it will be possible to aggregate the components, by election, and to apply the 10 per cent test and reduced rate to the combined components of his estate.

Finally, it is always difficult to tell at the point a making a will what the testator’s estate might comprise at the date of death. The good news for Mr X is that, if his estate should change in such a way that any component of his estate should fail the 10 per cent test, it will be possible for his beneficiaries to vary the disposition of Mr X’s estate, by a deed of variation, so as to increase the percentage of Mr X’s estate comprised in the charitable legacy. In order for such a deed of variation to obtain the reduced rate of inheritance tax, the executors will have to demonstrate to HMRC that the charitable beneficiary is aware of the legacy given by the deed of variation.

While Mr X may not initially consider that the gift of 10 per cent of his estate to charity to be appropriate, with the introduction of this new incentive by the Government, Mr X effectively has a choice to make: does he want the taxman to take his money, or would he rather benefit a charitable organisation?

Whether or not Mr X is feeling very charitable, there is no doubt that some testators will find this new incentive a useful weapon in the battle to reduce inheritance tax on their estates.
We have just been named by legal directory *Chambers UK*, as one of the top 5 law firms in the UK. Our team has also been named as one of Private Client Practitioners’ Top 25 Law Firms 2011 and the team is now the largest team outside of London.

**Private tax, trusts and probate**
- We have established a tax and trust presence in Leeds, with the arrival of Julia Rangecroft as partner in our Leeds office, together with Helena Jones as a newly qualified solicitor.
- Our Manchester office has welcomed Kathryn Graham, formerly a partner at Cobbetts LLP, as a consultant in our private tax, trusts and probate team.

**Family and matrimonial**
- Our family and matrimonial team is one of the largest teams in Europe and was the first to offer a fixed price service for the full range of family law advice, including financial court proceedings on divorce, mediation and financial settlements.
- On 18 October 2011, Roger Bamber, Joint Head of the Family Law team, was named “Most Innovative Family Lawyer of the Year” at the prestigious Family Law Awards.
- The team has recently launched the Divorce UK iPhone app, which offers clients and the general public free advice and guidance on dealing with the emotional, financial and legal implications of divorce and separation, and which works alongside the divorce.co.uk website, itself launched in 1998 to provide individuals with free information and practical advice to help them take control of the divorce process.
- They also launched the “Divorce Calculator”, which offers free information on the cost of divorce and separation, and can be accessed via the www.moneyadviceservice.org.uk website.

**Agriculture and estates**
- Our agriculture and estates team are quoted in legal directory *Legal 500* as “good at coming up with different ways to tackle a problem”. Michael Aubrey (“excellent on acquisitions, land law and strategy”), Sally Graham and Amanda Tagg (“very good on difficult issues”) are supported by others including Chris Belcher (in our Cambridge private tax team) who “excels on tax issues for landed estates.”
- We held our first landed estates conference titled “A Changing Climate” at Ickworth House on 20 October, in collaboration with Savills, Handelsbanken and Grant Thornton.