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Inheritance Tax: The Phizackerley Case

Thousands of families are panicking after a recent court ruling appeared to have thrown inheritance tax planning (IHT) into disarray.

The case of Phizackerley v HMRC was heard by the Special Commissioners, who settle disputes between tax payers and HM Revenue and Customs. The decision against the taxpayer was announced on Friday 13 April.

Since the decision, up to 500,000 families who have set up nil-rate band discretionary trusts to avoid IHT liability after their death, have been concerned that their IHT planning may now be void.

Dr Phizackerley and his wife purchased a house in 1992 as joint tenants, and in 1996 transformed this into a tenancy in common in equal shares. When Mrs Phizackerley died in 2000, her half share of the home passed into a nil rate band discretionary trust for her husband and children. Dr Phizackerley gave the trustees an IOU for £150,000, the value of the half share, and the entire ownership of the house was transferred to him.

After Dr Phizackerley's death in 2002 the family was not expecting to pay any IHT on their mother's former share of the house, as they expected the debt of £150,000 would be deducted from their father's estate before inheritance tax was calculated. However, HM Revenue and Customs contested the amount of IHT paid on the estate and the Special Commissioners ruled that the children must pay tax at 40 per cent on £150,000 as the debt could not be deducted.

This was because Dr Phizackerley was treated as having funded the whole of the purchase price in 1992. He was treated as having made a gift in 1996 of a one-half share of the property to his wife, because she did not work during their marriage and it was assumed all the purchase price was provided by Dr Phizackerley.

Despite widespread media coverage suggesting that this case will affect the thousands of people already having or intending to set up nil-rate band discretionary trusts through their wills, Barry Glazier, Partner and Head of the Tax and Trusts team at Lester Aldridge believes otherwise.

Barry comments,

“The facts of the Phizackerley case are very specific, and the case will not have the widespread impact suggested by some of the recent media coverage. In the long term the recent decision will only affect cases

- where one spouse makes no financial contribution to the assets of the married couple, and
- where it is that spouse who has died first.

The only people who need be immediately concerned with the decision are those who have had a debt scheme implemented following the death of a non-earning spouse.”

Barry continues,

“In cases where the specifics of the Phizackerley case may apply, there are other ways of setting up a nil rate band trust, which do not involve the arrangements used in the Phizackerley case. I would advise people to seek the advice of a tax and trust specialist solicitor if they would like to check whether their particular IHT arrangements will be affected.”

For further information on any Tax, Trust and Wills matters, please contact Barry Glazier or a member of his team at Lester Aldridge.

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