

...UK and US family and tax issues

with... more information

Introduction

We have over 100 lawyers specialising in tax and trusts, including US tax, and those lawyers are available to help structure any financial settlement on divorce in a tax-effective manner.

With 20 lawyers specialising in divorce and family law, Withers' Family Department is one of the premier departments in London. Three of our eight principals are members of the International Academy of Matrimonial Lawyers and have access to an established network of specialist international divorce lawyers in other countries.

Pre-nuptial agreements

- In England, increasing weight is placed by the courts on pre-nuptial agreements if full disclosure has been given, assuming there has been independent legal advice and the agreement has been entered into at least, say, one month before the wedding.
- Although in England pre-nuptials are not completely binding on the courts on divorce, since wives may receive 50% of assets generated during the marriage, a pre-nuptial may be a worthwhile investment.
- Pre-nuptials are helpful in short, childless marriages and in second marriages and can ensure the divorce takes place in a particular country.
- In many American States, in particular New York and California, pre-nuptial agreements are binding subject to certain safeguards.

US Gift Tax and other taxes

- A US citizen is liable to pay Gift Tax in excess of 45% on gifts over approximately \$100,000 per year to a non-US citizen spouse.
- UK/US couples purchasing homes in joint names need to be particularly careful in structuring the purchase so as to avoid substantial US Gift Tax issues.

- In the same way, if a financial settlement on divorce is not structured correctly, that also may trigger US tax consequences. If the person paying spousal maintenance (alimony) is a US tax payer, that is normally deductible against tax in the US, but not in the UK.

Asset division on divorce

There are many misconceptions about how English law treats finances on divorce. Its treatment can be far removed from the American experience. Examples of the English approach include:

- In cases involving substantial assets built up during the marriage a 50/50 division of all net assets is common.
- The roles of bread-winner and home-maker are not treated differently. The source of assets (whether by inheritance, gift or acquisition prior to the marriage) can be important, especially if assets exceed housing and lifetime income needs.
- Spousal maintenance (alimony) can be payable for life - this is less likely in substantial asset cases.
- Child support is payable as a percentage of the payer's net income subject to an earnings cap. Child contact and any other children residing with the payer are also taken into account. The payee's financial circumstances are not taken into account at all.

Cohabitation/living together

- This is still the best option for clients if concerned about minimising financial claims on divorce.
- Cohabitants have no claims against each other for maintenance or property division on relationship breakdown. The law may change in the future.
- Unmarried mothers have limited claims for provision of capital for re-housing, reverting to the father when the child is 18 or 21.

Child relocation

- In most cases the permission of the English Courts or the child's other parent is required to relocate a child abroad.
- Well researched plans (showing accommodation, daily child care, education, health care and contact arrangements) will often lead to a successful child relocation application.

Property and Wills

- An English Will is preferable to administer English assets and property but a US Will may suffice.

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