

Damages claim for 13-year-old IHT advice is not time-barred

Synopsis: The England and Wales High Court (EWHC) has ruled that a damages claim for negligent tax advice given by a law firm in September 2009 is not time-barred and can proceed.

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The case

Stephen Etroy set up a Jersey interest in possession trust in 2002 with assets worth more than £1 million. Being non-UK domiciled, an excluded property trust was used for inheritance tax (IHT) purposes and trust and company services provider RBC Trust Company (Jersey) Ltd were used.

However, Finance Act 2006 significantly changed the tax regime for trusts and, by 2009, non-doms were expected to be brought further within the UK tax regime. Etroy therefore sought advice from Speechly Bircham on the creation of a new discretionary trust, into which his interests could be transferred during the time he was still non-UK domiciled. This would avoid his interests in possession under the Jersey trust terminating if he became deemed-UK-domiciled and, therefore, subject to IHT at 40% on his or his wife's death.

Etroy followed Speechly Bircham's advice and the assets held within the Jersey trust were transferred to a new discretionary trust governed by the law of the Cayman Islands, with RBC as the trustee.

However, the advice was flawed, because it failed to take into account that the Jersey trust held UK-situs assets that would attract IHT charges. In due course, when Etroy and RBC consulted their tax accountants, they discovered that this had resulted in a tax liability of over £1 million.

The outcome

A claim was made in 2021 due to the time taken by the accountants to investigate the issue. The law firm stated that it was time-barred due to the six-year time-bar rule.

However, the judge has now upheld the claim. She concluded that it was not until September 2018 that Etroy had sufficient knowledge of the damage attributable to the negligent advice, as this was the first time that his accountants firmly indicated that there was likely to be a significant IHT charge attributable to the advice. She accordingly ruled that the claim was not out of time and could go ahead.

Comment

It was clear that Stephen Etroy could not reasonably have been expected to have acquired the knowledge required for bringing an action for damages in respect of the damage alleged prior to 28 September 2018.

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