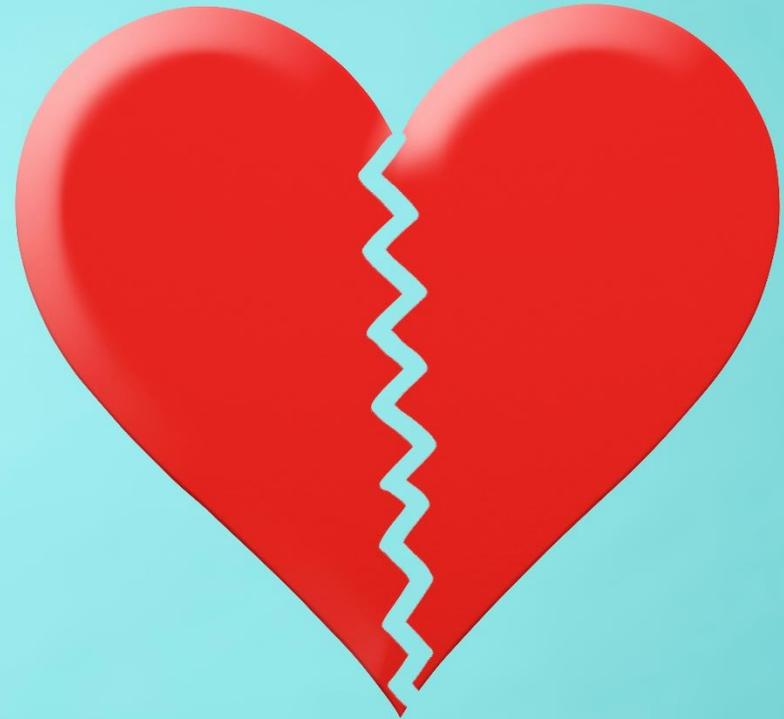




Tax and financial considerations when getting divorced

Ann Bibby – Tax Partner

Chris Slatter – Independent Financial Adviser



**Ann Bibby**

Tax Partner

t: 01295 250401**e:** abibby@ellacotts.co.uk

Ann is a Chartered Tax Adviser, a qualified accountant and a member of the Society of Trust and Estate Practitioners (STEP) and has over 25 years' experience advising on a range of business and personal tax issues.

Ann specialises in the areas of corporate, employment and business tax along with associated tax solutions and advises on all areas of business taxation, including Corporate Tax, Transaction Tax, R & D Tax Relief, Management Equity and Share Options, Restructuring, Capital Allowances and Employment tax issues.

Ann joined Ellacotts to lead and enhance the tax services provided by the firm and to provide support to the rest of the firm. Ann is a member of the UK200 Group Tax Panel.

**Chris Slatter**

Ellacotts Wealth Planning

t: 01295 250401**e:** cslatter@ellacottswalth.co.uk

Chris joined Ellacotts Wealth Planning in June 2016 with over 20 years' experience of providing independent financial advice to both personal and corporate clients. As an Independent Financial Adviser (IFA) he looks to build long term relationships with clients and have a number of clients he still deals with now that came to him when he first started his career.

Chris's role involves all aspects of financial planning except for mortgages. He enjoys being an IFA because every person he meets has a different advice need, which means every day brings a different challenge. Over the years he has gained extensive knowledge of pre and post retirement planning, including using both pensions and investments to achieve the desired results.

- 1. Tax and divorce**
- 2. Financial planning considerations**

Income Tax

- Independent taxation but some exceptions
- Settlements legislation
- Jointly-owned property

Capital Gains Tax

- S. 58 TCGA 1992 will apply, otherwise the market value rule
- Potential uses of s. 58 TCGA 1992

Inheritance Tax

- Spouse exemption
- Transferable nil rate band



Capital Gains Tax

- Date of disposal crucial
- No automatic CGT roll-over or exemption on divorce
- Either s 58 or s 17 TCGA 1992 will apply
- Were the spouses “living together” in the year of disposal?



Capital Gains Tax – Holdover Election

- Available under TCGA 1992 s 165 (business assets) and s 260 (chargeable transfers for IHT purposes e.g. gifts to discretionary trusts)
- HMRC's long-standing view was that relief under s 165 would be available on a disposal of assets under a court order or court-ratified agreement.
- View changed last year: HMRC's CGT Manual at CG66886.



Income Tax

- No UK income tax liability for maintenance payments
- Limited UK income tax relief for maintenance payments
- Tax treatment may be different in other jurisdictions
- Settlement provisions do not apply (s 627 ITTOIA 2005) but could apply to a settlement on divorce for benefit of children



Inheritance Tax

- HMRC accept that the s 10 IHTA 1984 exemption normally applies
- S 11 IHTA 1984 may also apply but this exemption is more limited
- If neither exemption applies, the transfer will most likely be a PET

SDLT

- Usually no charge to SDLT



Recent research by Legal and General has shown that although divorce rates in the UK are falling, later life divorce is on the rise with one in four divorces occurring after the age of 50.

- This can have a serious impact on both parties future wealth, as generally there is not long to replenish assets such as pensions and ISAs.
- It can also have an impact on family protection.
- So what should you be considering?



- Other than the family home, pensions can be the next biggest financial asset.
- Research has shown that the average divorced woman has less than 1/3 the pension wealth of the average divorced man and 25% of women have waived the right to a pension split.
- Shockingly, when going through a divorce, people aged over 50 are more than four-times as likely to take advice from their friends as they are from a financial adviser. While divorce can have a significant impact on future finances, **just 3% seek financial advice.**
- Pension splitting orders have been available since 1999 and offer a clean split financially.
- The steps are:
 - Find the pensions
 - Value them
 - Decide how to split them



- Defined contribution pensions are straightforward unless there are guaranteed annuity rates involved
- Look at the benefits provided as this will guide how to split
- Defined benefit (final salary) pensions are not as straightforward
- Pension splitting order reduces the value of policyholders pot



- Most people take out joint life plans
- On death benefits are paid to the survivor
- Considerations
 - Can the insurance be re-brokered?
 - Put the benefits into a trust
 - If you get maintenance, do you need to insure this
- Ensure your will is amended post divorce





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Cambodian couple cut home in half

An estranged couple in a rural village in Cambodia have sawn their house in half to avoid the country's convoluted divorce process.

Moeun Rim and his wife, Nhanh, split the building last week following an argument, local officials said.

Mr Rim has removed his share of the property and the couple have also divided their land into four parts; two for their children, and two for them.

Divorce cases in Cambodia can be costly and may take a long time to settle.

The house - or one half of the house - is located in Prey Veng province, about 90km (56 miles) from the capital, Phnom Penh.



Mr Rim's half of the house has been moved to an undisclosed location

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Divorce man 'wants kidney back'

A US man divorcing his wife is demanding that she return the kidney he donated to her or pay him \$1.5m (£1m) in compensation.

Dr Richard Batista told reporters that he decided to go public because he was frustrated at the slow pace of divorce negotiations with his estranged wife.

He said he had not only given his heart to his wife, Dawnell, but donated his kidney to save her life.

But divorce lawyers say a donated organ is not a marital asset to be divided.

Dr Batista married Dawnell in 1990 and donated the kidney to her in 2001. She filed for divorce in 2005 and a settlement has still not been reached.



Some divorce lawyers say a kidney is not a marital asset to be divided

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Any questions?

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Ellacotts

Banbury

Countrywide House
23 West Bar Street
Banbury
Oxfordshire
OX16 9SA
T: +44 (0)1295 250401
F: +44 (0)1295 271375

Kettering

Vantage House
2700 Kettering Parkway
Kettering Venture Park
Kettering
Northamptonshire
NN15 6XR
T: +44 (0)1536 646000
F: +44 (0)1536 738934

London

Suite 100
99 Bishopsgate
London
EC2M 3XD
T: +44 (0)203 693 7315