

# Inform

SPRING 2009

## Welcome to the latest edition of **Inform**, HBJ Gateley Wareing's Private Client and Financial Services Newsletter.

We are all painfully aware of the economic climate. I would therefore not wish to take up your valuable time, asking you to read yet another article pointing out how bad things are. Accordingly, this publication will focus on proactive and positive measures, actions that can be taken to secure your interests and thereby provide a benefit to you in this otherwise duntrodden market. We have always felt both as a firm and as a private client department that our role is to add value where possible, while carrying out the legal or financial service.

The economic downturn aside, and with due respect to the serious implications of same, the period since our last newsletter has been somewhat of a success for the team. Only a few months ago, we were awarded 'Private Client Firm of the Year' at the 'Law Awards of Scotland 2008', decided upon by both the industry and as a result of client census. This, if I may say so, was a significant accolade for the department, recognising the hard work and commitment to client

service of the whole division. It marks a point in our development and identifies us as a leading private client and financial services provider. Significantly, we have had a number of new senior recruits join the department. Gordon Cunningham has joined as a Partner specialising in tax, trust and succession planning. Gordon is based in our Glasgow office, as indeed are Sara Matheson, Shona Templeton, both of whom have joined as Partners and Carolyn MacBride, who has joined as a Senior Associate. All of the ladies are accredited specialists in Family Law and trained in Collaborative Law. Sara is also an accredited specialist in Child Law. Sara, Shona and Carolyn join Cath Karlin and the rest of the family team, representing one of the largest and most technically accredited teams in Scotland.

In this edition, I talk about how to maximise your assets, considering some basic and practical measures. Carolyn MacBride discusses the need for Cohabitation Agreements, while Gregor Munro, our lead Financial Adviser, looks at how finances can be safeguarded and current investment opportunities. Gordon Cunningham discusses Powers of Attorney, a matter often overlooked yet of undoubtable importance. Also in this edition, Douglas Hunter highlights the benefits of a properly drafted Will, Catherine Taylor explains the current status of

and influences on the property market and Marion Bagley considers practical income tax issues.

It is by way of this publication that we shall endeavour to **Inform** you of pertinent issues, hopefully to your benefit and that of your family.



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# Maximising Your Assets

Millions of UK adults squandered more than £9bn in unnecessary tax in 2008 but 82% of UK taxpayers admit to doing nothing to reduce their overall tax burden. As more people feel the effects of the credit crunch, it is surprising that so many people are willing to throw away what money they have in wasted tax payments. As the economic climate continues to be challenging, you should be taking steps to ensure you do not contribute to the amount squandered in 2009. It is estimated that by doing so, each UK taxpayer could save, on average, almost £300 per year (more if you are a higher rate tax payer).

Inheritance tax is the main culprit. An extra £1.9bn could go to chosen beneficiaries by planning properly to avoid inheritance tax. However, spanning all the taxes, it is estimated that £474m will be wasted during the coming year through a failure to maximise the use of personal tax allowances.

Taking a few easy tax planning measures can dramatically cut the tax you pay, giving a healthy boost to the returns you and your family receive.

## 1. Plan for Inheritance Tax

Life policies that pay out on death, other than those that cater for an existing debt, e.g. a mortgage should be written in trust. It is estimated that almost £1bn is being needlessly thrown away by individuals who fail to write life policies in trust.

Ensure that you are maximising the use of the available nil rate band and plan accordingly.

Various measures, including lifetime gifting, transferring assets to a spouse, using trust arrangements etc can be taken during life to minimise the taxable value of your estate and these should be explored.

The use of tax-efficient investments should also be considered, as should arranging insurance cover specifically to meet your potential inheritance tax liability.

## 2. Make your savings tax efficient

It is estimated that £263m in tax could be avoided by sheltering investments in ISAs so it is vital to use your ISA allowances when saving/investing.

Also, consider the use of other tax-

efficient savings options and ensure that you claim your Child Trust Fund, if you are eligible. You should always seek professional financial advice when considering your savings.

## 3. Check your eligibility for tax credits

HMRC and the Department for Work and Pensions currently hold an estimated £3.7bn in unclaimed tax credits, in the form of Pension Credits, Child Tax Credits and Working Family Tax credits. Do not let your money sit in this pot.

## 4. Make appropriate pension contributions

Pensions are a particularly good product for the tax conscious as they boost the value of every £1 invested and allow for that investment to grow in a tax efficient environment. Every month you delay starting a pension plan or contribute less than you can afford increases the amount you will need to save in the future to provide yourself with a reasonable income in old age.

## 5. Capital Gains Tax v Income Tax – back the winner

Investments can produce income or capital growth and that income or growth can be taxable to either income tax or capital gains tax, sometimes both. For tax year 2008/2009, capital gains tax is charged at a flat rate of 18% on chargeable gains over £9,600. Given income tax rates vary up to a maximum of 40%, it may be very beneficial to structure investments with a view to attracting capital gains tax rather than income. Tax should never be the sole or main reason for making a particular investment but it is an important factor in the decision making process. Professional financial advice should be sought before making investment decisions. In addition, make sure that you do not waste and if possible maximise the use of your capital gains tax annual allowance.

## 6. Check your tax code

As highlighted in the piece by Marion Bagley, make sure you have the right tax code. Otherwise you could be paying tax at the wrong rate.

## 7. Don't pay income tax unless you have to

If you are under 65 and will earn less than £5,435 in the tax year 2008/2009, complete form R85 and claim back your overpaid income tax. Children also benefit from a personal tax allowance so consider taking steps to use this or reclaim overpaid tax.

## 8. Submit your accurate Tax Return on time

The deadline of 31 January has passed for 2007/2008 tax returns but resolving to meet the deadline for your 2008/2009 return and ensuring your return is correct will ensure that you do not contribute to the estimated £460m wasted on penalties and wrongly paid tax. Tax Freedom Day, the day on which the average UK taxpayer can begin earning money for him or herself instead of all earnings going to pay tax and other deductions, was 2nd June in 2008 and is expected to be 7th June in 2009.

If you follow these simple rules and get the right financial and legal advice, maybe you will start earning money for yourself slightly earlier. In these difficult economic times, you owe it to yourself to avoid waste and make savings where you can.



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# The Importance of Cohabitation Agreements

**If you and your partner have decided that 2009 is when you are going to take your relationship to the next level by moving in together or you are already living with your partner, you should have a Cohabitation Agreement.**

Living together, either before or instead of marriage, is more popular than ever, with 14% of all couples choosing to cohabit. In response to this, there is recognition and some legal protection for cohabitants in Scotland, but it remains sensible to have an Agreement in place that reflects your intentions should the relationship fail. Not only will this avoid the expense and unpleasantness of a court resolution but it will also give you and your partner control over the ultimate outcome.

It is understandable that you may feel uncomfortable about raising this matter with your partner. However, seeing this documentation as a kind of insurance that you hope to never need but which would be in both of your best interests, may make the conversation easier. Avoiding the issue may seem like the easy way out now but you could be storing up expensive and emotional problems for later.

The matter is particularly relevant if you and your partner are buying a property together but are contributing different amounts to the purchase price or the mortgage repayments. Rather than leaving a court to decide how the property should be split if the relationship should fail, you and your partner can agree this at the outset and ensure that any split accurately reflects your contributions.

A Cohabitation Agreement will generally create a distinction between certain types of property, for example, that which belonged to either of you prior to moving in together; that which you acquire once you are living together but

which should not become joint property; and any existing or future debts that should not be jointly shared.

The Cohabitation Agreement can also record the contributions to the purchase price of your home, your respective contributions to the mortgage and how you would want your home to be dealt with if you should decide to separate. The Cohabitation Agreement can also state how your children are to be cared for and by whom if you were to separate.

Cohabitation Agreements are completely individual documents and ultimately the final document will reflect the personal circumstances of you and your partner.

It is vitally important that both you and your partner are given the opportunity to obtain independent legal advice. A solicitor is only able to advise one of you, even if you have agreed all matters between you before visiting the solicitor.

Also, for cohabiting couples, having up-to-date Wills in place is as, if not more, important than a Cohabitation Agreement. This is particularly true if you have children either together or from a previous relationship or if either of you remain married to your previous partner. If both or either of you have Wills in place, these will determine who should receive your assets if you were to die. It is therefore essential that the Wills you have are up-to-date. A Will in favour of an ex-partner or spouse will remain binding, to the detriment and possibly exclusion of your new partner. If your partner were to die with no Will in place, you can apply to the court for financial provision or property from your partner's estate. The court will, however, have wide discretion as to how much you receive and financial provision will only be made from any estate left over after the claims of your partner's surviving spouse have been met. Having a Will in place will avoid this uncertainty.

The other reasons for having a Will as highlighted in the piece by Douglas Hunter later in the publication also apply.

Moving in together is a big decision and doubtless one that you will have given a lot of thought to. Make sure you also give some thought to the arrangement of your financial and personal affairs.



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## Investing in Tough Times

**We are all aware of the current economic difficulties, the credit crunch and the negativity that fill our newspapers and current affairs programmes.**

Many people will also have felt the impact on their investments and the value of their property. That notwithstanding, this is a time to be positive and proactive, to take stock and look to the future, to take advantage of the opportunities that do exist.

There are still investment opportunities but, as ever, which of these is most appropriate for each investor will depend on risk profile, personal circumstances and objectives. Historically equities have outperformed the majority of other investments over the long term.

Because of sharp stock market falls in 2008, there are now many strong companies across a variety of sectors that currently represent good value in terms of share price and current dividend yield when compared to interest rates on cash. Over a number of years, these could provide good returns.

Quality fixed interest and corporate bond funds may also be an option but will have to be carefully researched and monitored over time to ensure that appropriate returns continue and sudden depressions are avoided.

Investors could equally look beyond the UK for opportunities. There remains some optimism with specialists believing that in the long term the success story will continue in emerging markets and investment opportunities will continue to arise. However, the economic conditions will create winners and losers and specialist advice will be a must.

Structured products, which generally have a set maturity date and frequently an element of capital protection, could also be considered. They can provide a known return of either a regular income stream or accelerated capital growth tied to the performance of one or more indices. As ever, the credit strength of the company providing the guarantee must be taken into account. As these products have a fixed term they are not suitable for those who may need access to their capital in the short to medium term.

As with most tax breaks or incentives you have to be prepared to tie your funds up for a period of time. When it comes to pensions most of us now will not be able to access our pension fund until age 55, following the change in pension rules in 2006. However there is a window of opportunity for people who are not yet 55 to take their pension benefits prior to April 2010. So for those in their early 50's who might either be looking to replace lost investment or employment income and especially with annuity rates currently on a downward trend your pension options should be reviewed.

Investments which offer tax benefits such as Venture Capital Trusts are certainly worth considering. The up front 30% income tax relief, tax free dividends and gains are positive factors. However as with all high risk investments and especially in the current climate you have to consider liquidity and the ability to exit the investment. Specialist advice must be sought.

Investment into newly formed commercial property funds, positioned to buy assets at discounted rates, may also be a viable option for investors. With property prices having fallen dramatically, and with the emergence of distressed sellers and therefore discounts on perceived current

valuations, it may be the case that such investments represent the potential for strong returns over the longer term. Some clients may have existing commercial property investments and it is important to differentiate between the existing funds which might be in severe distress and newly formed funds. At HBJ GW we can provide an independent review service of existing investments.

The best solution is likely to be a combination of the above, a diversified portfolio of investments across a variety of asset classes, sectors and countries.

These portfolios should provide strong returns going forward provided they are structured specifically to reflect the individual circumstances of the investor and are flexible enough to respond to future volatility and external factors if required.

There are investment opportunities in 2009 but specialist financial advice is a must, as are patience and realistic expectations.



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## Powers of Attorney are for Everyone

**The most common response from clients to a suggestion that they should have a Power of Attorney is to ask why.**

There is an unfortunate misconception that only the elderly or those in poor health need to put such documentation in place. This is simply not the case. We advise all of our clients, whatever age they are, that they should have Powers of Attorney.

Life is unpredictable. Even while people are fully able to deal with their own financial and personal affairs, situations can arise where they are not physically able to. Someone may be abroad and need to pay a bill, may need to change a direct debit or standing order, may need to deal with a house or car insurance claim or may be unwell and feel unable to deal with a particular matter that has arisen and prefer someone else to deal with it on their behalf. In such circumstances, the bank, insurer or other institution/company is likely to refuse to speak to anyone other than the policy or account holder. The sudden onset of a debilitating illness or serious medical condition or a road accident engendering a temporary or indeed permanent loss of capacity could equally result in a need for the management of affairs. Without a Power of Attorney, it will likely be necessary to go to court for either an Intervention Order or a Guardianship Order. This is extremely expensive, frequently costing thousand of pounds. Powers of Attorney cost a fraction of this to put in place and once registered can be used at any time.

A Power of Attorney can be thought of as an insurance policy similar to that taken out for a car or house but with a single, really

very modest, upfront premium. There is always the hope that there will be no need to make a claim on car and house insurance policies and the majority of policyholders do not make a claim throughout the period of cover. However, the existence of the policy gives comfort and peace of mind that if the worst happens, contingencies are in place. Powers of Attorney are no different. Granters will hope that at some date, far in the future, they will have died without the Power of Attorney being required. However, as the Power of Attorney, once granted, will remain in force until withdrawn by the granter or until the granter dies, the same comfort and peace of mind will have existed over those years.

Powers of Attorney are highly flexible documents. They can include powers which deal with the granter's financial, business affairs, personal and medical affairs and circumstances. A party can grant either a Continuing Power of Attorney to deal with financial and business affairs, or a Welfare Power of Attorney for personal and medical matters, or a combined Continuing and Welfare Power of Attorney which confers both sets of powers. The document can contain a statement to the effect that any Continuing Powers contained in the document may only be exercised after the granter intimates separately that the powers may be so exercised, or a doctor certifies that the granter is no longer capable of looking after his or her own affairs.

Welfare powers may only be exercised after a doctor certifies the granter's incapacity. The powers contained in the deed, or any of them, may be withdrawn at any time.

The granting of a Power of Attorney in no sense restricts the ability of the granter to conduct their own affairs as

they have always done. It simply provides the facility for another party to conduct these affairs if the necessity arises, either on the authority of the granter or by force of circumstance.

It is important to dispel the misconception about Powers of Attorney. An understanding of how and why they operate should go some way to achieving this.



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## Wills All Round

**In the current economic climate, many people will feel that putting a Will in place or updating an existing Will is an unnecessary luxury. Unfortunately this is simply not true. The current economic situation makes it more important than ever that Wills should be in place and reviewed.**

Everyone should have a Will but ensuring your Will continues to accurately reflect your wishes is only part of the battle. Old Wills can cause major difficulties when it comes to administering an estate, in terms of both the interpretation of old drafting and unnecessary restrictions being placed on the discretion of the executors. Even if personal circumstances have not changed, it is likely that financial circumstances will have as a result of the current economic situation. As the values of property and investments continue to fall, so will the total value of the estate that the Will is specifically designed to distribute. As a result, legacies may form a larger than wished for percentage of the estate, reducing the residue to an unacceptable level and specific bequests, for example of a property or shares, may be worth less than when the Will was drafted.

Regardless of economic activity, once you have a Will in place, it should be reviewed regularly, ideally every 3 years, even if it continues to reflect your wishes, to ensure that it also reflects current principles, law and drafting best practice. Importantly, the wording must be kept up to date if the various tax and other benefits are to be available to you.

The impact of recent changes, specifically to the taxation of trusts and the introduction of the transferable nil rate band, cannot be underestimated and every existing Will will benefit from a review. In particular, you could reduce the tax payable by your estate by altering the trust arrangements for young beneficiaries and could facilitate other benefits by considering the inclusion of a discretionary nil rate band trust. Discretionary nil rate band trusts, which many of our clients will be familiar with, have regularly been included in professionally drafted

Wills and historically, were designed to ensure that the nil rate band of the first spouse to die was not wasted. The introduction of the transferable nil rate band in 2007 was originally thought to make these trusts worthless. In fact, quite the opposite is true. More people than ever could benefit from the inclusion of a discretionary nil rate band trust.

Flexibility and protection are the two main reasons for having such a trust in your Will. Your executors will have an opportunity to 'wait and see', to decide which of your named beneficiaries should receive what from your estate.

Also, if there is a chance or concern that your spouse might remarry, a discretionary nil rate band trust provides some measure of protection for any children from your marriage. The trust can equally provide some protection against the potential future bankruptcy or divorce of the beneficiaries of the trust or for your spouse if he/she should lose mental capacity.

Equally, if either you or your partner were married before and survived the partner from the previous marriage/civil partnership, the trust can enable more than two nil rate bands to be utilised on the death of the surviving partner. This could provide substantial inheritance tax savings.

A discretionary nil rate band trust can also provide a means to secure business property and/or agricultural property relief, can be useful where you have an asset which is likely to appreciate in value more quickly than the nil rate band and importantly, the trust can provide some measure of protection from care home fees.

The final reason for including the discretionary nil rate band trust is that it can be wound up very simply by distributing all the assets after three months but within two years of your death if it is decided that the trust is not useful or appropriate. Any unused nil rate band will then be available to be

transferred to your spouse/civil partner.

Given the benefits of flexibility, protection and importantly the protection from nursing care costs, discretionary nil rate band trusts are no longer a solution purely for the wealthy. Everyone could potentially benefit.

As important as reviewing an existing Will is putting one in place. If you do not have a Will, what you want to happen with your assets will not necessarily occur. Your assets will be distributed according to legal rules and given to people you might not want to benefit. If there is no Will, a surviving spouse will have certain rights to the matrimonial home and its contents, plus a set amount of money, but will only be fifth in line to inherit the remainder of the estate, ranking lower than children and various groups of relatives.

Having a Will means that you can be certain that your wishes will be carried out and those people you want to benefit will do so. Additional costs and delays in dealing with your estate will also be avoided. In particular, there should be no need to go to court to have executors appointed.

An up-to-date Will will ensure, not only that your wishes are effected, but also that maximum flexibility, asset protection and tax savings are secured.



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## Understanding the Property Market

Whether or not you have any intention of buying or selling a property in 2009, the topic of the Scottish housing market invariably comes up in conversation. It may be in the context of a story about a colleague or simply bemoaning the current depressing housing market, on which everyone has an opinion. Sadly this opinion is often the result of negative press, second hand anecdotes and a lack of factual knowledge. At some stage the housing market will affect us all, directly or indirectly, so it is worth understanding it.

Before 2008, there were only two main difficulties for a purchaser:-  
1. finding a suitable property; and  
2. being able to afford to buy in a bidding situation.

The reality is that now, to avoid considerable stress and financial difficulties, you must sell before you purchase a replacement property, unless of course, you have sufficient funds in a secure bank account.

The current market place is, in the main, made up of two different types of sellers. Firstly, there is the forced seller who is selling possibly following upon loss of employment and being unable to finance their mortgage or alternatively perhaps, the owner of a buy to let property who is unable to find a tenant to pay the mortgage. Forced sellers have little or no choice. They have to sell, otherwise they will lose control and indeed ownership of the property following upon legal proceedings which only result in further expense on top of the original unpaid debt.

It is widely believed that buying from a forced seller will give you a better deal. This may be the case but there is little point in buying a property simply because you can "get a deal". The property will frequently be in a bad state or left in a very poor condition by a bitter debtor who removes everything that can possibly be removed, including even kitchen and bathroom fittings.

The other category of seller is referred to as the "strong seller". This seller is in a comfortable position and will sell only if the right price is achieved and is quite happy to wait for their price.

Naturally, when a strong seller is selling, his idea of an acceptable

price for the property is likely to be markedly different from that which a prospective purchaser considers to be appropriate. The strong seller will undoubtedly be able to hold out for their price and this will make the market appear stronger as a higher price may ultimately be obtained. However, it may take some time for a willing purchaser to be found.

An abundance of strong sellers in the market can assist in the recovery but this is not aided by the continuing negativity about the market place. Data is appearing constantly that focuses on falling house prices, fewer successful mortgage applications and fewer sales. The reality is that properties are selling. The difficulty is that there are fewer good quality properties in the more popular locations currently available. People believe this is a bad time to sell so fewer quality properties are on the market to tempt purchasers. This reduces the number of interested buyers and has a knock-on effect on the number of sales.

Specifically on the issue of new build flats, it is probably unrealistic to believe that the majority of those on the market will sell in the next year or so unless, of course, the Government manages to successfully persuade the banks to lend more both to the first time purchasers and the buy to let landlords. The recovery for this sector of the market is, to a considerable extent, dependent on buyers being able to obtain mortgages more freely.

However, more widely, if the market is not allowed to improve as a result of necessary bank funding being unavailable, prices will remain low and possibly continue to fall. This scenario will result in confidence being reduced further and the negative spiral will continue.

We must all accept that we are now in a completely different market and that it may be months before a property will

sell. By accepting this, expectations will be more realistic and the worry and stress of selling will be eased until the market resumes its buoyant pre 2008 activity. Clearly, given the state of the market, properties should be sold first before embarking on a purchase, particularly as properties may take considerably longer to sell at an acceptable price. Certainly these are challenging and interesting times but if you need or want to move, for whatever reason, go ahead and put your property on the market. Whether you are a forced seller or strong seller will affect how the sale is managed but you can be confident that with proper and specialist advice, it can be managed successfully. Renting for a short period of time may be necessary but will allow you to buy when the right property becomes available and you can move on.

One day, when prices again begin to escalate, those who buy and sell in the current market will hopefully look back and feel they made the right decision at the right time.



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## Don't Drop the Income Tax Ball

Now that the January filing deadline for tax returns has passed, many will be heaving a sigh of relief and putting all thoughts of taxation to one side for another year. However, there are still some issues that should not be ignored and which, if addressed, should make things easier for the year ahead.

In these difficult economic times, many who had a tax liability to pay by 31st January 2009 will have been tempted to put off payment because of the relatively low rate of interest charged by Her Majesty's Revenue and Customs (HMRC). However, if you are one such taxpayer, it is important to remember that if you did not pay the amount due by 28th February 2009, you will be liable for a surcharge of 5% of any of the tax still outstanding. When added to the underlying tax liability and the interest applied, this can prove to be an unwelcome additional cost. In addition, you should be aware that from April 2009, HMRC will have new compliance powers to ensure that you pay the correct amount of tax. It looks likely that HMRC will enforce penalties and surcharges more rigorously after April, and the amounts demanded may be considerably higher than

those currently sought. Further, it is common for official correspondence to be ignored if there is no demand for payment attached and for people to simply trust that their own circumstances have been correctly dealt with. If you are a pensioner or employed, you may have received a revised Coding Notice from HMRC for the tax year beginning on 6th April 2009. Your 'PAYE Coding Notice' tells you what your tax code is and how it is worked out. The tax code tells your employer or pension payer what tax-free income you are entitled to (if any) over the tax year and, as a result, how much tax to deduct from your income before they pay you. HMRC recognise that they make mistakes and these Notices are frequently incorrect. Therefore, it is important that you check the Notice carefully to avoid paying too little or too much tax. If you think that any of the information on your Coding Notice is wrong, we would be happy to discuss this with you before you contact your

Tax Office.

If you have any concerns regarding the information that you are required to supply to HMRC, or have any other concerns about your Coding Notice or any other personal tax matters, please do not hesitate to contact our tax team.



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## A Year To Be Proud Of

Previous issues of *Inform* have highlighted the growth of Private Client and Financial Services in Scotland. Under the leadership of Glen Gilson, the team has gained a strong market position and a reputation for providing high quality and specialist advice to clients.

The firm was voted the National / Regional Law Firm of the Year at the 2008 Legal Business Awards and as mentioned by Glen in his introductory piece, won Private Client Firm of the Year at the Law Awards of Scotland 2008.

Particular recognition has been given to Glen who was awarded Up and Coming Lawyer of the Year at the Law Awards of Scotland 2008. When Glen joined the firm as Head of Private Client in 2004, the department comprised only one

and a half qualified staff. Private Client and Financial Services is now one of the largest practices of its type in the country, with 10 partners, operating from offices in both Edinburgh and Glasgow, advising over 10,000 clients. As such, it is one of the leading Private Client practices in the country. Glen's orchestration of this growth combined with his technical expertise in advising high net worth entrepreneurial clients, particularly on inheritance tax mitigation and business exit strategies, convinced the judges that Glen deserved this award.

We are in a difficult economic climate but Private Client and Financial Services at HBJ Gateley Wareing will continue to develop to ensure that our clients receive an optimal service, whatever advice they require and wherever they reside in Scotland, and indeed whether we win Awards for it or not!

We have taken great care to ensure the accuracy of this newsletter. The newsletter is written in general terms, however, and you are strongly advised to seek specific advice before taking any action based on the information. No responsibility can be taken for any loss arising from action taken or refrained from on the basis of this publication.

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