

WELCOME TO YOUR STEP IRELAND BRANCH NEWSLETTER

April 2018

MESSAGE FROM STEP IRELAND CHAIR

Welcome to the first STEP Ireland Branch Newsletter.

This newsletter will provide you with an update on the work of the STEP Ireland committee and will serve as a regional enhancement to your overall STEP membership.

Thanks to the STEP Ireland Branch Committee and in particular, the Newsletter Sub-Committee (Kevin Doughan, Sandra Meade, Tracey O'Donnell and Barry Kennelly) for their contributions to this newsletter.

If you would like to contribute to the STEP Ireland Branch Newsletter, please [email us](#).

Gráinne Duggan TEP
Branch Chair

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Annual Conference 2018

Friday 11th May 2018

Hilton Hotel, Charlemont Place, Dublin 2

SPEAKERS

Aileen Keogan, Aileen Keogan Solicitors
Trusts for Vulnerable Clients

Derek Ryan, Smith & Williamson
Death and Pensions

Finin O'Brien, Solicitor
GDPR issues for Fiduciaries

Marie Bradley, Bradley Tax Consulting
Tax issues for Private Clients

Mark O'Riordan B.L.
Probate & Succession Law Practice Update:
Contentious and Non-Contentious Business

Annette O'Connell, Probate Office
The Probate Dimension

**Essential Private
Client Update** 5 CPD hours apply

Please visit our website at www.step.ie for further details

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SEMINARS UPDATE



Last month we held a lunchtime presentation in the Merrion Hotel on the Tax Cuts and Jobs Act recently passed by the United States Congress.

[Alan W. Granwell](#) of Sharp Partners P.A, based in Washington, D.C., led the presentation. Alan is involved with STEP in the US and is a very accomplished US tax specialist, having previously worked in the US Department of the Treasury.

Alan and his colleagues, [William M. Sharp Sr](#) and [Robert G. Lorndale](#), presented a very interesting overview of the new legislation, focusing on its impact on individuals, their investments, their closely-held

businesses and their planning for wealth transfer to family members and others.

Next seminar

STEP Ireland is delighted to have [Finola O'Hanlon](#) of O'Hanlon Tax Limited to present a paper on Succession Planning for Businesses on Thursday 19 April in the Merrion Hotel.

Finola will provide an overview of effective retirement/estate planning for businesses covering wills, provisions in shareholder and partnership agreements, planning the exit using reliefs, insuring if relevant, and dealing with unexpected deaths.

An informal light lunch will be served from 12.30-1pm, with the seminar commencing at 1pm followed by a Q&A session.

This event is kindly sponsored by [Erisbeg](#) and is free to all our members. Please ensure to register your attendance with [Eventbrite](#). Erisbeg is particularly focused on acquiring, either outright or on a phased basis, small and medium sized businesses from entrepreneurial owners who require a succession plan that will enable them to realise the value of their business and to secure its successful future.

STEP/SLA Seminar

Following on from the success of last year's joint seminar, STEP Ireland are again delighted to partner with the [Southern Law Association](#) in hosting a Probate Seminar at the Imperial Hotel, Cork on Friday 13 April from 3pm to 5pm with refreshments served in advance from 2pm.

[Clare McGuinness](#) of Ronan Daly Jermyn will present a paper on 'Revenue interventions and tax appeals – an update from a capital taxes perspective', which will cover recent developments in Revenue's Code of Practice, Revenue interventions and the implications of offshore gifts and inheritances and will also provide an update in relation to the appeals process following the introduction of the Tax Appeals Commission. [Andrea McNamara](#) of O'Connell Brennan will present a paper on 'Taking care of the next generation', which will cover succession planning and wills, an overview of trusts and getting to grips with the reliefs from CAT.

The fee for this seminar is €40 and bookings can be made by posting a cheque made payable to the Southern Law Association to the SLA Library, Courthouse, Washington Street, Cork.

Online recordings of seminars

Recordings of all of our seminars are available [online](#) to all STEP members.

STEP DIPLOMA IN TRUST AND ESTATE PLANNING



Over 60 students graduated with Diplomas in Trust and Estate Planning in November 2017.

STEP awarded prizes for outstanding achievement in the diploma to Maeve Gleeson and Siobhan Corbett. The prizes were presented by The Hon. Ms. Justice O’Hanlon and Gráinne Duggan (STEP).

The committee is currently conducting a review of the STEP Diploma for 2018/2019. The Law Society is accepting applications for the next diploma, which will commence in September 2018. You can email the Law Society for further information [here](#). Other information on routes to STEP membership is available [here](#).



Captions

Top: Graduates of the STEP Diploma in Trust and Estate Planning

Left: The Hon. Ms. Justice O’Hanlon and Gráinne Duggan TEP present prizes for outstanding achievement to Siobhan Corbett (far left) and Maeve Gleeson (left).

RECENT TAX DEVELOPMENTS

The Revenue Commissioners have issued a number of e-briefs in relation to CAT since the start of the year, which are detailed below.

Agricultural Property (E-Brief 14/2018)

The Revenue CAT Manual was updated in [Part 11](#) (Agricultural Relief) to reflect amendments in last year's Finance Act which provided (subject to conditions) that land comprised in a gift or an inheritance on which solar panels have been installed is to be regarded as qualifying agricultural land for the purposes of the tax relief. In addition, subject to conditions, the 'active farmer' requirements can be met where a beneficiary leases land for the installation of solar panels.

Dwelling house exemption (E-Brief 23/2018)

The Revenue CAT Manual has been amended in [Part 24](#) (Dwelling house exemption) to reflect some technical changes introduced in last year's Finance Act. The changes pertain to gifts of dwelling houses taken by a dependent relative of the disponent. The changes are as follows:

- There is no requirement for the dwelling house to have been the principal private residence of the disponent at the date of his or her death; and
- A gift of a dwelling house that would usually be treated as an inheritance where a disponent dies within two years of making the gift can qualify for the exemption.

Secondary liability for CAT for non-resident beneficiaries

The Revenue CAT Manual [Part 02](#) has been amended to include steps that can be taken by a resident Personal Representative or solicitor to ensure that they are not personally liable to the CAT of a non-resident beneficiary.

Business Relief Forestry/Woodland

Revenue amended [Part 12](#) (Business Relief) of the CAT Manual to include new material in relation to forestry/woodland businesses. It now clarifies that such businesses are not regarded as the making or holding of investments for the purposes of eligibility for business relief.

Revenue CAT Strategy

Revenue also published a [CAT Strategy](#) for 2018 to 2020. The strategy focusses on a number of areas which include:

- Increasing customer awareness of their CAT obligations.
- Increasing levels of e-filing and e-paying of CAT through improved e-services.
- Confronting non-compliance through risk focused compliance interventions and increasing the use of case management around CAT taxable events.
- Expanding Revenue's capabilities on CAT, through training programmes.
- Deepening the focus on wealth management and tax planning risks.
- Considering legislative proposals to increase CAT compliance.
- Further developing risk profiling and data analytics.
- Liaising with the Courts services on e-Probate matters.

RECENT CASE LAW

[Davies v Hutchinson \[2017\] IEHC 693](#)

Action by plaintiff beneficiaries seeking to revoke or cancel grant of probate issued to defendant executrix (s26(2) of the Succession Act 1965) – order sought granting administration to a third party (s27(1) of the Succession Act 1965) – order also sought by plaintiffs requiring defendant to give a true and perfect inventory of estate management – alleged delay in administration of estate – assertion of issue re delay in settlement of s117 proceedings against estate by executrix and in particular, the costs of those proceedings – assertion that executrix had a conflict of interest – Court stated that test to remove an executor was a high one – *Dunne v Heffernan* [1997] 3 IR 431; *Dunne v Dunne* [2016] IECA 269 – test not met – alleged conflict speculative.

[Gibbons v Addington \[2017\] IEHC 758](#)

Action by personal representative to recover property on behalf of estate which was occupied by the defendant – defendant was the husband of the deceased's niece in whom the deceased had demised the premises for a fixed period of one year with an automatic renewal – lease determinable by one calendar month's notice in writing, and so done - niece agreed to leave the premises but her husband refused to do so – defendant claimed he had agreed with the deceased that he would maintain the property whilst he lived there – Court held that any claim against the estate of the deceased must have been brought within two years of the date of her death and no such application was made by the defendant – defendant ordered to vacate the property.

[In re Clohessy \[2017\] IEHC 797](#)

Successful application for grant of representation *pendente lite* of estate of a ward's late husband by the General Solicitor for minors and wards of court, as committee of a ward of court.

[Ripington v Cox \[2017\] IECA 331](#)

Appeal from High Court finding that will was valid – allegation of bias on part of Judge – costs - order for costs made against the appellants on a solicitor and own-client basis – whether there was a reasonable basis for the appellants instituting the proceedings – Court noted degree of personal invective directed towards the respondents – original costs order set aside – order made for the appellants pay the respondents costs, including all reserved costs, on a party and party basis.

[Naylor \(Otherwise Hoare\) v Maher \[2018\] IECA 32](#)

Validity of a will – duress and/or the undue influence – promissory estoppel – plaintiff had acted to his detriment and in reliance on promise made to him that he would inherit the lands – monetary compensation not sufficient in the circumstances – plaintiff had altered his life in returning to farm the lands – award of entire farm lands to plaintiff by the High Court was not excessive in the circumstances – issue as to costs and whether the plaintiff acted reasonably by including a claim based on undue influence in his proceedings at the time they were instituted – it was reasonable for plaintiff to initiate claim for undue influence but when the evidence no longer supported such a claim, it ought to have been abandoned prior to the commencement of the hearing – plaintiff awarded 75% of his costs in the High Court, discounted for failing to abandon the undue influence claim.

REGULATORY MATTERS

Update on 5th AML Directive and public access to trust register

The European Parliament is expected to soon adopt the EU's 5th Anti-Money Laundering Directive (5AMLD), as agreed by EU Member States on 13 December 2017. In particular Member States will have to grant public access to information held on each Member State's register of trusts, subject to a 'legitimate interest' test, the conditions for which must be defined in law by each individual Member State. STEP Ireland previously made a [submission](#) to the Department of Finance public request for submissions on this issue. It is hoped that the transposition of the directive domestically will recognise the concerns we have previously highlighted in relation to privacy and protecting vulnerable persons.

GDPR

The General Data Protection Regulation (the Regulation) will come into force on 25 May 2018. It is set to revolutionise compliance with data protection law in Ireland and throughout Europe. The Regulation essentially strengthens data subjects' rights as against data controllers and data processors and demands greater transparency, security and accountability of controllers and processors.

Three provisions in the Regulation are of particular interest. Firstly, there is a mandatory reporting obligation for data breaches in certain circumstances; secondly there is a new administrative fines regime that gives the Regulator power to impose fines of up to €20 million or 4% of worldwide annual turnover, whichever is the greater; and finally, the Regulation provides for a right to compensation for non-material loss arising from a data breach.

It is essential that all organisations prepare for the implementation of the Regulation to ensure that all current or envisaged processing of data will be done in line with the new requirements. It is likely that the Regulation will impact on STEP practitioners both in the operation of their own businesses, and to the advice that they may give in relation to trusts and their operation.

The concept of confidentiality and restricting access to trust information for discretionary beneficiaries has been fundamental to the use of a trust for legitimate succession planning, and in particular for the protection of vulnerable beneficiaries, for example in protecting young children from knowing the full extent of the family wealth until they are of an age appropriate to learn of such matters. The provisions of the new Regulation will necessitate a review of how particular trusts operate.

The Regulation requires data controllers, i.e. the person who determines the purposes for which the data is processed, to implement detailed rules on how they process an individual's personal data. Processing is broadly defined and includes collecting, using, consulting, storing and disseminating personal data. Personal data is very broadly defined as information that relates to an identified or identifiable person, such as their name, identifying details about them, their personal circumstances, their medical information, etc.

The Regulation enables a data subject (a person who is rendered identifiable by the information) to request personal data that a data controller holds about them. It provides them with a right to be informed when their personal data is being processed and, if so, for what purposes. It enables them to demand the data held be amended if it is inaccurate or incomplete, or be erased in certain circumstances.

In addition to the Regulation, the *Data Protection Bill 2018* is currently before the Houses of the Oireachtas to provide a legal mechanism to give effect to certain provisions of the Regulation, for example, to set out the procedure for the imposition of administrative fines and certain exemptions from complying with data subject requests. In its current form, this Bill does provide for some restrictions on the exercise of data subject rights.

Given the significance of this topic to STEP members, [Finín O'Brien](#), will be presenting on the Regulation at the STEP Annual Conference on Friday 11 May and those involved in advising on trusts are encouraged to attend.

BRANCH SURVEY OF MEMBERS

STEP Ireland recently conducted a survey to take the pulse of our members. The survey provided a useful insight into members' opinions and provided suggested areas for improvement in relation to the formulation of content, analysis and seminars so as to enhance our members' experience.

The survey comprised ten questions. Members believed that the areas of tax and legal issues and financial planning were a key focus for seminars. A variety of ideas for future seminars were posed, including litigation issues, retirement planning, discretionary trusts, practical issues for business and agricultural estates, and financial planning, to name a few.

There were positive comments in relation to the current website, and the suggestion of a chat forum was a worthwhile consideration. A specific LinkedIn page with an emphasis on Irish legal succession and tax issues was something that garnered a degree of support.

Members felt areas where STEP Ireland could make representations included CAT thresholds, aggregation rules, reform/improvement of probate office services and delays and reform of trust legislation.

There was strong support for STEP Ireland to provide technical guidance and 'checklist' or 'how-to' guidance notes for members, which they felt would provide significant support. Members were equally willing to participate in networks with local members and indeed a continued rollout of seminars on a national basis.

Other suggested areas of improvement included name badges for attendees to improve networking at events, STEP Ireland newsletters, regional seminars, online seminars, and greater engagement with members.

A number of members expressed a willingness to present to members, which is very welcome.

We are thankful to those who contributed to the survey and will take on board your comments and suggestions to be more informative and interactive with members.

Call for speakers

As part of our member's survey, we sought volunteers to speak at our seminars/annual conference. Unfortunately, the survey results did not identify individual names and so we would ask those who kindly volunteered to please [email us](#) with their details.

Those interested in speaking at STEP events generally are invited to register their interest via their [Online Profile](#).

STEP Journal student column

Student columns are featured in each issue of the *STEP Journal*. These are currently based on course material for the England and Wales and International STEP Diplomas, but STEP would like to widen the coverage to include STEP qualifications for other jurisdictions.

If you are interested in writing for this, please contact [Blathain Iqbal, Managing Editor – Publications](#)