

## **206. Setting Aside Trustees' Actions Taken Based on Incorrect Tax Advice**

The recent case of *Smith v Stanley* [2019] 2 WLUK 174 highlights the ability for trustees/personal representatives (PRs) to have incorrect or 'tax expensive' decisions by trustees adjusted in court. The case concerned a deed of appointment that triggered an unexpected 20% IHT liability.

It is interesting for tax advisers or those ICAEW members who act as trustees/PRs to firstly be reminded that this facility exists. Second, that the facility can be used to correct bad tax advice but not, according to the judgement in this case, tax avoidance that has gone wrong.

Therefore, as tax advisers are presented with new clients where there is an unnecessary tax liability, correction of trustees' mistakes is obviously a good route to take. The lawyers would say that the case highlights the need for PRs and trustees and those advising them to fully understand which role they are undertaking when a decision is made (eg, PR or trustee) and to always ensure the correct tax advice is taken.

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