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Published by Technical Connection Ltd,
7 Staple Inn, London, WC1V 7QH.
Tel: 020 7405 1600 Fax: 020 7405 1601
E-mail: host@technicalconnection.co.uk
www.techlink.co.uk

ISA CASH TRANSFERS

Guidelines issued to speed up the transfer of cash ISAs between providers

On August 26 the British Bankers Association, the Building Societies Association and the Tax Incentivised Savings Association published new guidelines to speed up the transfer of cash ISAs between providers and to improve the efficiency of the process.

The transfer guidelines are recommendations and not prescriptive; they apply to managers of cash ISAs and managers of stocks and shares ISAs to which cash in an existing ISA is being transferred.

Under the guidelines an investor making a transfer will need to complete a one-page cash ISA transfer authority form. The transfer process is split into 5 steps and is based on the new ISA manager being approached to effect the transfer.

A time limit applies to each step and it is anticipated that normally the whole process will be completed within 23 working days. On some occasions the transfer may take longer – for example when a cooling-off period or notice period is involved. Under the new guidelines an investor should be informed of any delay and any complaint could ultimately end up with the Financial Ombudsman Service.

A database is to be established dedicated entirely to ISA managers for the purpose of escalating and resolving protracted transfer issues.

A working party has been convened to put in place a system to enable transfers to be made electronically. The alternative of issuing an ISA certificate on the closure of an account has been discounted for a number of reasons and because "the potential for complications is great". It is acknowledged that the introduction of electronic transfers will be gradually phased in over a period.

HMRC & DWP CLARIFICATION ON PROTECTED RIGHTS USP TO USP DRAWDOWN TRANSFERS

The DWP had previously provided answers to some practitioners that could have been interpreted that a transfer of protected rights unsecured income from one provider to another would not be possible without it being treated as an unauthorised payment. HMRC has confirmed that this is not the case.

The DWP's standard reply to enquiries about the possibility of protected rights benefits being transferred during USP was as follows:

A "member of a personal pension scheme, with Protected Rights, who is taking income drawdown can transfer to another pension scheme and continue taking income drawdown.

There is however a slight difference in the way the DWP and HMRC rules work on these transfers. HMRC legislation seems to allow a transfer while drawdown is in progress. DWP rules, governing Protected Rights, indicate that a transfer to another scheme can take place once drawdown has ceased, and drawdown is then an option in the new scheme. However the policy intention is clear - we are quite happy for drawdown to be taken from Protected Rights in both the old and new schemes. It will be up to schemes how they manage the transfers".

Our concern was in the highlighting by the DWP of there being a difference between their rules and those of HMRC. Specifically we were concerned over the DWP's requirement for USP to cease prior to a transfer being made. It would seem that under the tax rules, once USP ceases, a member has two options:

- Secure benefits by means of a lifetime annuity
- Secure benefits by means of a scheme pension

If the cessation of drawdown meant a scheme pension/lifetime annuity had to be purchased it would not then have been possible to transfer the benefits to a drawdown arrangement with a new provider without resulting in an unauthorised payment charge in accordance with the provisions in the Transfer of Sums and Assets Regulations.

We raised this point with HMRC and they have now replied as follows:

"We take the view that the statement attributed to DWP does not need to be inconsistent with the tax rules. DWP seems to require drawdown to cease on a transfer, and this fits with our view that the whole of an unsecured pension fund should be transferred with nothing remaining behind in the transferring scheme. The requirement in the tax rules for an

unsecured pension fund to operate in the receiving scheme using the same review dates as before does not infringe DWP rules as described."

HMRC's reply is reassuring but it is important to note that on a transfer, USP must continue in the new scheme using the same review dates etc as applied in the old scheme.

TAX DEADLINE LOOMS

For those individuals who wish HMRC to calculate their tax they had to return their self assessment tax return by 30 September.

For those who calculate their own tax liability they have longer. Until this year it was possible to self assess online or by submitting a paper return by 31 January. From this year, ie for returns relating to the tax year 2007/08, the return date has been brought forward. If a taxpayer is to self assess using a paper return then this return has now to be filed by 31 October. Paper returns submitted after the October deadline may incur a £100 penalty. The 31 January deadline remains for online returns.

THE PENSIONS REGULATOR ISSUES GUIDANCE ON MEMBER COMMUNICATIONS

The Pensions Regulator (TPR) has issued guidelines aimed primarily at trustees and administrators of smaller DC occupational pension schemes. These guidelines cover the issue of communication with members, which TPR believes is poor due to the fact that smaller schemes do not have the communication budgets available to larger schemes. In a separate document, they have produced a PDF help sheet that schemes can use to explain investment choices to members.

The 'Effective member communications' guidance is for use by trustees, managers and employers and contains principles and guidelines on following good practice in written communications to members. TPR's focus is on the schemes that appear to be in most need of support; smaller schemes may have less to spend on communications experts and advice, though schemes of all sizes can benefit from the guidance. TRP chose to focus on written communications because these are the most widely used.

A common issue identified in TPR's research was that people did not have a communications plan or take any steps to see how successful their communications had been. This guidance emphasises the importance of these considerations and the key messages contained in the guidance include:

- identify your objectives and have a clear communications plan;
- identify the best ways to communicate;
- tailor communications to the audience;
- remember the needs of all groups, not just active members;
- be open and honest;
- avoid jargon; and
- try to get members to engage.

As an additional tool, TPR has also published a separate investment guide which trustees and employers can issue, if they so choose, to help members understand the DC fund choices available to them. This is a five page PDF document which sets out to explain the different types of fund link likely to be available and some of the associated investment risks. It helps them to give members adequate support in this important area that impacts directly on the level of member benefits.

TPR has received reports that trustees and employers are reluctant to communicate with members about investments. TPR has received assistance from their stakeholders in drafting this straightforward guide.

NATIONAL MINIMUM WAGE

The national minimum wage (NMW) is the legal minimum amount that an employer must pay to workers.

Regulations, which amend the National Minimum Wage Regulations 1999, come into force on 1 October 2008. They increase the minimum hourly rate of the NMW from that date as follows:-

- The adult ("main") rate rises from £5.52 to £5.73 per hour for workers aged 22 years and over.

- The development rate rises from £4.60 to £4.77 per hour for workers aged 18 to 21 years inclusive. This rate also applies to workers aged 22 and over who are starting a new job with a new employer and doing accredited training.

- The rate for workers under age 18 who are no longer of compulsory school age rises from £3.40 to £3.53 per hour.

THE GOVERNMENT RESPONDS TO CONSULTATION ON DRAFT PENSION CREDIT AMENDMENT REGULATIONS

Although it had initially been intended to introduce the changes to the pension credit from 1 October 2008, the Government has now decided that the necessary regulations should be introduced at the same time as safeguarded rights are abolished. As the latter benefits are not expected to be abolished until 6 April 2009 this will also be the date for the implementation of these regulations, which will allow pension credit rights held under occupational pension schemes to be paid before "normal benefit age".

Once these changes are implemented and safeguarded rights are abolished, subject to the rules of the scheme, concerned members with pension credit rights under occupational or personal pension schemes should be able to draw these at the earliest date permitted by the simplified pensions legislation.

THE SALE OF QUOTED STOCKS AND SHARES AFTER DEATH IN THE CURRENT ECONOMIC CLIMATE

Sale of quoted stocks and shares within 12 months of death
IHT relief may be available

When someone dies any quoted stocks and shares in their estate are valued for inheritance tax purposes at their value at the date of death, ie their probate value.

In the current volatile investment conditions it is quite possible that if the personal representatives come to sell those shares they will be selling them at a lower price than they were at the date of death.

It is worth noting that under sections 178 – 189 IHT Act 1984 relief may be available if the shares are sold within a year of death at a lower than probate value, with the sale price of the shares sold to be substituted for their value at the date of death.

There is no time limit for claiming the relief but there are four conditions that must be satisfied for relief to be secured. These are:-

(1) The shares must be 'qualifying investments' - ie quoted shares and securities (including those quoted on a recognised foreign stock exchange), unit trusts, OEICs and USM shares. AIM shares and unquoted shares are NOT deemed to be qualifying investments.

(2) The sale must take place within 12 months of death.

(3) The shares must be sold by the 'appropriate person' and relief claimed by that person. The appropriate person is the person who is liable for the inheritance tax. This will usually be the personal representatives or trustees.

(4) There must be an 'overall loss' on the sale of the qualifying investments. This means that relief is only available if the gross sale proceeds of **all** shares sold by the 'appropriate person' within 12 months of death, including those sold at a profit, is less than the value of all of those shares at the date of death. All shares sold (which does not have to be all the shares owned at death) and not merely those sold at a loss must be included in the claim for relief.

The relief reduces the estate chargeable to IHT and a refund is obtained. The relief also applies to the trustees of a Will trust that has come to an end on the death of a life tenant.

It should be noted that relief is restricted if any purchases of quoted securities take place in the period from the date of death to the end of two months after the last sale within the twelve month period after death.

COMMENT

This relief is worth noting for deaths that have occurred recently during the current stock market volatility. It is, of course, advisable to ensure that the IHT saving is greater that the costs involved.

REPRESENTATIVE BODIES PROPOSE REVISED DEFINITION OF "QUALIFYING EARNINGS"

Where an employer wishes to use an existing pension scheme to exempt him from having to auto enrol his employees in a Personal Account, the existing scheme has to at least comply with minimum requirements. For a money purchase scheme these requirements include the payment of a minimum percentage contribution based on "qualifying earnings".

A joint proposal has now been made by the Association of British Insurers, National Association of Pension Funds, Institute of Chartered Accountants in England and Wales and the Society of Pension Consultants to amend the definition of "qualifying earnings" as included in the current Pensions Bill. These proposed amendments are as follows:

First amendment – Qualifying Earnings

The purpose of the draft clause below is to ensure that workplace pension arrangements already in existence can qualify as automatic enrolment schemes (qualifying schemes) from 2012, without having to change the way they calculate pension contributions, provided the minimum contribution is at least 8% (with a minimum 3% from the employer) of Basic Pay or of Basic Pay plus any additional earnings on which contributions are paid. The amendment would apply to pension arrangements in operation from a date set by Government (for example shortly after Royal Assent) and apply to any existing or future members of those pension arrangements.

"Clause 12 new subsection (4)
12(4) For the purposes of a qualifying scheme that on (date to be set in Regulation) is registered under the Finance Act 2004 , a person's earnings as referred to in this section instead means the part of the person's pay on which pensions contributions or benefits are payable as the scheme stood as at that date."

Second amendment – Quality Test / Reconciliation

The draft amendment below would provide employers with the opportunity of conducting an annual audit and reconciliation of contributions made into schemes. This would apply for all employers, whether running Personal Accounts or any other qualifying schemes. An annual reconciliation (or part thereof for people leaving employment) would allow the vast majority of qualifying schemes to demonstrate that contributions over a longer period of time are typically higher than that which would be achieved for Personal Accounts, preventing the need for administering one-off reconciliations in the vast majority of cases.

Staging a reconciliation on this basis would also mirror existing practice, where schemes submit an annual return to HMRC and the Pensions Regulator. In the small number of cases where reconciliations would need to be made, employers would have the option of spreading any shortfall over contributions to be made in the next financial year or, depending on individual scheme rules, making good the shortfall themselves.

The Pensions Regulator has already indicated to the representative bodies that it will adopt a risk-based approach to monitoring compliance with the new 'quality test', which will be based on annual data returns to Government.

"Insert new subsection 33 (2) (a)
'Subsection 2 should be disapplied if contribution reconciliations are made on an annual basis as (defined in scheme rules), or at the termination of a period of employment.'"

DEATHS OCCURRING BEFORE 13 NOVEMBER 1974 – TWO TRAPS FOR THE UNWARY

(1) The transferable nil rate band

When a person dies on or after 9 October 2007, it is possible for that deceased person's personal representatives to make a claim to transfer any proportion of the nil rate band not used on that person's spouse's previous death. "Spouse" in this connection includes registered civil partner.

It is immaterial when the first spouse died. The replacement of estate duty by capital transfer tax from March 1975 saw the introduction of the spouse exemption, as we now know it, whereby transfers between UK domiciled spouses during lifetime or on death are exempt without limit. Therefore, if a spouse leaves the whole of his/her estate to his/her surviving spouse, none of the nil rate band will be used and there will be a whole transferable nil rate band available to that surviving spouse.

The position under estate duty though was different. First, there was no spouse exemption until 22 March 1972 when an exemption of £15,000 was introduced. This applied until 12 November 1974. Second, there was no nil rate band as such. Instead there was a small estates exemption, which was the threshold below which estate duty was not payable and which rose from £100 in 1894 to £15,000 in 1972. It is the small estates threshold which is to be taken as the nil rate for the purposes of the transferable nil rate band.

With the unlimited spouse exemption applying only from 13 November 1974, if a spouse died before 13 November 1974 with an estate in excess of the nil rate band (the small estates threshold referred to above) then there will be no transferable nil rate band available - even if the whole of his/her estate passed to his/her surviving spouse. This would not be the case in the unlikely circumstances of somebody dying between 22 March 1972 and 12 November 1974 having left an estate of less than £15,000 that passed entirely to his/her surviving spouse.

(2) Interest in possession trusts

A special relief applied under estate duty. If a spouse died leaving property in a trust under which his/her surviving spouse had the interest in possession, then estate duty would have been payable or deemed to be payable on the property passing into trust on the death of the first spouse to die. However, on the surviving spouse's death the value of the trust property in which the interest in possession subsisted was left out of account for estate duty.

Under capital transfer tax and inheritance tax, the value of trust property supporting an interest in possession is treated as part of the beneficiary's estate. Therefore, if one spouse died before 13 November 1974 and the surviving spouse with the interest in possession died on or after 13 March 1975, the same property would have borne tax twice rather than only on the first death. To prevent this the value of the trust property on the second death is left out of account for capital transfer/tax inheritance tax purposes.

For deaths occurring between 13 November 1974 and 13 March 1975 estate duty was charged under amended rules which included the new unlimited capital transfer tax spouse exemption so no relief is due for deaths during this period.

COMMENT

When assessing the potential liability of a widow/widower it is very important to determine whether any transferable nil rate band arises from the estate of the first spouse to die. Extreme care needs to be exercised when the first death occurred before 22 March 1972 because no spouse exemption existed and so it is more likely that the nil rate band would have been fully utilised.

FSA ISSUES WARNING ON PROTECTED RIGHTS TRANSFERS

From 1 October 2008 all SIPPs that obtain a contracting out certificate will be able to hold protected rights benefits. This change has resulted in many advisers recommending that clients should consider transferring their protected rights benefits to a SIPP.

The FSA is already conducting a review to assess the quality of advice given to individuals who have transferred their benefits to a personal pension (including a SIPP) since April 2006, and the results of this are due to be announced before the end of this year.

In view of the potential volume of protected rights transfers, the FSA has now seen fit to issue a further warning to advisers that such advice must be suitable in the client's circumstances.

Andrew Sykes, head of retail policy and unfair contract terms at the FSA, said "Decisions relating to contracting out of the state second pension or transferring pots of protected rights are important and can have a significant impact on people's retirement income. We expect firms to ensure they make suitable recommendations based on what is best for their customers – including, from 1 October, when these transfers are made into a SIPP."

In addition, following consultation, the FSA has published a policy statement in Handbook Notice 81 confirming that when advising on contracting out into a SIPP, firms will also need to provide a comparison of projected retirement income from the SIPP versus potential benefits from the state second pension. This requirement already exists in relation to contracting out into ordinary personal pensions.

COMMENT

Great care must be taken on advising an individual to invest in a SIPP to ensure that it meets the individual's objectives and needs and, where the charges of such a scheme are higher than other registered schemes, that these are justified by the additional benefits provided.