Technical Connection

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FORM IHT 200 REPLACED

Form IHT 200 has been replaced by Form IHT 400

Form IHT400 inheritance tax account has been introduced to replace the existing Form IHT200. The Form 400 is the account to be used when somebody dies on or after 18 March 1986. The supplementary forms have been redesignated and the main ones are numbered from 401 to 420.

Completed IHT 400 Forms have been acceptable by HMRC since 17 November 2008.
From 9 December 2008 IHT200 is no longer available to be downloaded from HMRC`s website but will still be accepted by HMRC until 8 June 2009. From 9 June 2009 Form IHT400 must be used for deaths occurring on or after 18 March 1986 where a full account is required.

No change has been made to the Form IHT 100 which is used to report certain lifetime transfers.

BONDS HELD IN BARE TRUST

Revised HMRC interpretation of chargeable events on bonds held under a bare trust

Under a bare trust, the beneficiary is absolutely entitled to the trust assets and, once they attain the age of legal majority (age 18 in England), the beneficiary can demand that the trustees transfer the trust property to them. Therefore, when this legal right exists, the arrangement is similar to the beneficiary owning the bond outright.

To reflect the legal position, for many years HM Revenue and Customs (HMRC) have had a clear practice on the taxation of chargeable event gains that arise under a life assurance policy held subject to a bare trust. This is as follows:

(i) If the beneficiary is an adult, chargeable event gains are taxed on the adult beneficiary (as the beneficiary cannot be legally prevented from accessing the policy).

(ii) If the beneficiary is a minor, chargeable event gains are taxed on

- the settlor (if alive and UK resident in that tax year) or
- the trustees (if the settlor is not alive or is not UK resident in that tax year)

However, following the receipt of legal advice, HMRC have now changed their view on the taxation implications. This is explained in their Brief 51/08 which states that they now take the view that chargeable event gains will be taxed as the income of the beneficiary, ***irrespective of the beneficiary's age***, in all cases except those where the parental settlement provisions for general income tax purposes will apply. These provisions, which are in section 629 ITTOIA 2005, apply where:-

- the beneficiary is a minor who is unmarried and not in a civil partnership; and
- the settlor is a parent of the beneficiary; and
- the chargeable event gains (including all other income arising from gifts made by the same parent) exceed in total £100 in the tax year in question.

In such circumstances, because chargeable event gains will be treated as income, the £100 parental settlor rule will apply and all income that arises during the settlor's lifetime will be taxed on the parental settlor if the £100 limit is breached.

Since the Brief was published, we have received confirmation from HMRC that chargeable event gains that arise after the settlor’s death (irrespective of tax year) will be taxed on a beneficiary who is a minor unmarried child of the settlor.

PADA LAUNCHES DECUMULATION CONSULTATION

PADA has launched its consultation paper on decumulation - “Securing a retirement income” - which considers how members of personal accounts can be provided with retirement benefits from their accumulated fund. Any comments on the consultation should be made by 4 March 2009. The main proposals are as follows:

- The personal accounts scheme will set a nominal retirement age, which will be set initially at 65 as this is the date at which PADA anticipates most members will retire. This date may change in the future in tandem with the rise in State Pension Age above 65.

- The member will be able to use his/her accumulated fund to purchase a lifetime annuity, or alternatively to transfer out to access other types of retirement income such as drawdown. Although there will be an initial ban on transferring between a personal account and other registered pension schemes, the Government has decided that personal account members will be able to transfer their funds to another registered scheme to provide retirement benefits from age 55 (or earlier where benefits are taken on ill-health grounds).

- Up to 25% of the retirement fund may be taken as a PCLS.

- Where a member has accumulated small retirement savings he/she may be able to take advantage of the trivial commutation rules and/or the ability to commute funds held in an individual occupational scheme (a personal account is an occupational scheme) valued at less than £2,000.

FSA ISSUES CONSULTATION PAPER ON THE REGULATION OF RETAIL BANKING

Introduction

On 4 November 2008 the FSA issued a consultation document entitled "Regulating retail banking conduct of business" following its review of the self-regulatory arrangements for banking. Comments are requested by 16 February 2009 following which a Policy Statement will be issued based on the comments together with a final text for the Handbook if it is decided to make or amend any rules or guidance.

The current position

Retail banking involves the sale of current and savings accounts and credit products. Responsibility for statutory regulation is split between the FSA (for deposit taking) and the Office of Fair Trading (for credit products).

Banking conduct of business (COB) is self-regulated on a voluntary basis with the Banking Code Standards Board (BCSB) monitoring and enforcing compliance with the Banking Codes, and monitoring applicable FSA COB rules. One Banking Code covers personal customers and the other business customers, and the Codes are reviewed every 3 years to ensure they remain "fit for purpose".

The future position

The Payment Services Directive (PSD) will come into force in November 2009 and will introduce its own COB rules affecting the majority of bank accounts. The responsibility for enforcing these COB rules will lie with the FSA and prompted the review on which the consultation document is based. The consultation document considers whether it would be more effective to extend the FSA's regulatory function across all banks' relationships with retail customers, except in relation to credit products which would continue to be regulated by the Office of Fair Trading.

As a result of the review the FSA has proposed a new framework to replace self-regulation in respect of deposit-taking activities. The FSA explains the four main reasons for the changes as follows:-

- it is increasingly anomalous that the FSA does not regulate retail consumers' core financial services relationships especially now that it is to regulate payments services;
- this anomaly potentially restricts the FSA's regulatory effectiveness because it is unable to look comprehensively across all risks affecting firms' retail market activities within its scope;

- there may be scope for consumer detriment because in this key sector the FSA is not enforcing Principle 6 (a firm must pay due regard to the interests of its customers and treat them fairly), the cornerstone of its regulatory approach; and
- the FSA's risk-based approach has affected the cost benefit case for voluntary self-regulation of retail banking services.

Although the FSA's review confirmed that the Banking Codes' scope is broadly correct and the BCSB monitors and enforces them quite effectively, its regulatory approach is less principles-based and transparent than its own. Deterrence may also be limited by the fact that the BCSB does not have the power to fine. There are some gaps in the Banking Codes' content, including no overarching fairness objective equal to Principle 6.

Based on these conclusions the FSA has proposed the following new framework:-

- full application of the FSA's Principles for Businesses to the regulated activities of accepting deposits and issuing electronic-money;
- new high-level rules applying to retail banking services outside PSD scope in a Banking Conduct of Business sourcebook (BCOBS);
- transfer of existing CBO rules and guidance applying to deposit taking to BCOBS;
- monitoring and enforcement by the FSA, integrated into the wider risk-based approach to the supervision of the relevant firms and groups.

PENSIONS MISCELLANY

- The Pensions Act received Royal Assent on 26 November.
- The DWP are consulting on the Occupational, Personal and Stakeholder Pensions (Miscellaneous Amendments) Regulations 2009. The intention is that most of the amended regulations will come into effect from 6 April 2009. The main changes included in these draft regulations relate to:-
  - trivial commutation payments
  - early leaver revaluation and pension increases in payment
  - surrendering a contracting out certificate on wind up
  - contracting out rebate
  - pension credit rights under occupational schemes
  - investment regulations
  - employer consultation requirements

- The November PPF 7800 index has been released. This index is an estimate of the funding position of almost 7,800 mainly private sector defined benefit pension schemes in the UK. It assumes that liabilities are limited to the amounts which would have to be paid under the PPF, were the employer to fail; and these liabilities would be funded via an insurance company buy out.

  The PPF said that at the end of November 2008, there was a £136bn deficit between the total value of scheme assets and the overall PPF buy out cost. The October 2008 deficit was £97.3bn (28.5% less) while in November 2007 there was a £26.1bn surplus.

  The proportion of schemes in deficit last month was 86%, 2% higher than in October. The combined deficit of those deficit schemes was £155bn. The lower overall figure of £136bn reflects the surplus in the other 14% of schemes covered.

- As a result of meetings between HMRC and the Guernsey Income Tax authorities, new rules have been introduced for Guernsey schemes seeking UK QROPS status with effect from 27 October 2008. New requirements will also be imposed on members joining existing (i.e. pre 27 October 2008) Guernsey QROPS on or after 27 October 2008.

- The Board for Actuarial Standards, which is now responsible for setting actuarial technical standards, has issued a consultation paper on changes to the paper which sets the basis for Statutory Money Purchase Illustrations (SMPIs). The proposed amendments are prompted by changes introduced by the Pensions Act 2007 and the National Insurance Contributions Act 2008.

- The DWP has confirmed that the start date for the new statutory cap on occupational defined benefit scheme revaluation in respect of non-GMP benefits, included in the Pensions Act 2008, will be 6 April 2009. This will mean that the revaluation of early leavers' benefits accrued in respect of service on or after 6 April 2009 will be by the lesser of 2.5% and the RPI each year. Benefits accrued in respect of service prior to 6 April 2009 will continue to be revalued by the lesser of 5% and the RPI in deferment.

- The decision in the case of Foster Wheeler Ltd v Hanley and Others [EWHC/Ch/2008/2926] has been handed down and could result in significant additional liabilities for some defined benefit schemes.

NICs - JOINT ELECTIONS BY EMPLOYEE AND EMPLOYER

The exercise of an unapproved share option gives rise to an income tax charge based on the difference between the market value of the shares at the time of exercise and the price payable under the option. In addition, if the shares are "readily convertible assets" a liability to NICs will arise calculated by reference to the amount subject to income tax. Shares are "readily convertible assets" where, broadly, they are capable of being sold or otherwise realised on a recognised stock exchange or trading arrangements exist in respect of them.

It is possible under a joint election for an employee to meet the employer's liability to pay secondary NICs in connection with a share option scheme. Such an election transfers the legal liability for the payment of employer's secondary NICs to the employee and has to be approved by HMRC. Before such an election can be approved it must satisfy certain legal requirements e.g. the option grant must be clearly specified together with the relevant legislation and relevant employment income.

It seems that recently elections have been submitted for approval which included elements that are not required under the legislation and which do not need approval. From 1 December 2008, when unnecessary elements are included approval will not be given. An example of such an element is an indemnity in favour of the company against any expense incurred if the employee fails to satisfy their liability for the employer's secondary NICs.

HMRC ISA BULLETIN NO 5

Matters of general interest – transfers and applications not in writing

ISA transfers

When an ISA is transferred from one manager to another the new manager may allow the transfer to be cancelled during a specified period. In this situation the investor has 3 options:

- the ISA can be closed
- the ISA can be transferred back to the "old" manager if the "old" manager agrees to this
- the ISA can be transferred to another manager

Since 6 April 2008, as well as being able to transfer one type of ISA to the same type of ISA with another manager, it has been possible to transfer a cash ISA to a stocks and shares ISA. In the event of cancellation of a transfer of a cash ISA to a stocks and shares ISA, if the investor wishes to retain his cash ISA then his only option is to transfer back to the "old" manager. If the "old" manager will not accept the transfer back then it is not possible to transfer to a cash ISA as the ISA now being transferred is a stocks and shares ISA.
In clarifying the position in ISA Bulletin 5, HMRC has stated that in these circumstances the investor's options are to:

- leave the funds with the new manager
- transfer to a stocks and shares ISA of another manager
- close the ISA

Applications not in writing

When an application for an ISA is made other than in writing, eg by fax or orally, the ISA manager is obliged to issue a written declaration of the facts to the investor. The investor then has 30 days within which to notify any corrections to the ISA manager. The ISA manager will then issue a revised declaration.

HMRC has confirmed that where an ISA manager becomes aware that information provided is incorrect more than 30 days after the written declaration has been issued the ISA should remain in force and not be voided. The only action required of the ISA manager is for him to update his records. However, there is one exception to this rule and this is where in the original application the investor stated he did not have a National Insurance number. In this case the ISA has to be voided and a new declaration issued. The effect of the new declaration is to re-validate the ISA from the date of the new declaration.

FSA REVIEW HIGHLIGHTS FAILINGS IN PENSION TRANSFER ADVICE

The FSA review of pension transfers into personal pensions and SIPPs has highlighted concerns about the quality of advice given in such cases and has resulted in regulatory action from the FSA.

There were two parts to the review:

- one assessed the quality of advice given to customers since pensions A-day to switch their existing pensions into a personal pension plan (PPP) or self-invested personal pension (SIPP), and firms' systems and controls relating to this advice; and

- the other assessed whether the actions of pension providers/operators were affecting the quality of this advice (based mainly on the regulatory guide: The responsibilities of providers and distributors for the fair treatment of customers).

The FSA visited 30 firms and assessed 500 of their files. These firms represented a broad cross-section of the market, accounting for around 10% of pension-switching sales since A-day and included small, medium and large firms; national and network organisations; and tied, multi-tied and independent financial advisers. The review related to post April 2006 advice on switching from any occupational or individual pension scheme to an individual personal pension or SIPP. Most of the transfers reviewed related to transfers from personal pensions.

Unsuitable advice was found in 16% of the 500 transfer cases reviewed. However, this was unevenly spread across the firms reviewed: some were giving suitable advice consistently; but some were found to be giving unsuitable advice at significant levels. In a quarter of firms, all cases reviewed were assessed as suitable; but in another quarter a third or more of the cases reviewed were assessed as unsuitable.

SHARE PURCHASE FOR COMPANY SHAREHOLDERS

Implementation of the Companies Act 2006 – provisions introduced from 1 October 2008

The Companies Act 2006 is being implemented in stages. Whilst the Government previously announced that the parts of the Companies Act dealing with the share capital of private companies were not to come into force until 1 October 2009, in fact two of the relevant provisions have been brought forward and came into force on 1 October 2008.

These are:-

- The repeal of the restrictions on financial assistance for the acquisition of shares in private companies – sections 151 to 153 and 155-158 of the 1985 Companies Act.

- Share capital reduction through the solvency statement route – sections 641-644 of Companies Act 2006.

In both cases the Government's explanation for bringing forward these changes has been that it was "a simple matter" and that business supported the introduction of these changes at the earliest opportunity.

COMMENT

The Companies Act 1985 prohibits a company from granting financial assistance (for example by means of a non-commercial loan) for the acquisition of shares in itself or its holding company. One exception to this is that private companies may grant such assistance by going through a complex and expensive procedure generally referred to as "whitewash". Under the revised rules the prohibition on granting financial assistance is wholly lifted for private companies but remains in place for public companies.

With regard to the new provisions on share capital reduction, a private company can normally do this by passing a special resolution and obtaining court approval. Under the new rules private companies also have the option of reducing the amount of their share capital by a special resolution supported by a solvency statement made by the directors. This in effect provides a simpler and cheaper means for a company to reduce its share capital.

Whilst questions have been raised because of the concern that in the absence of the court overview there will be no safeguards against abuse of the solvency statement route, the Government's response is that if company directors make a solvency statement without having reasonable grounds for the opinions expressed in it, and the statement is delivered to the Registrar, an offence is committed by every director who is in default . Given that such an offence is punishable by a fine or maximum period of imprisonment of 2 years this should provide the necessary safeguard.

CORPORATION TAX AND FOREIGN PROFITS

HMRC has produced a set of draft clauses on the taxation of foreign profits of companies.

HMRC has published draft clauses for consultation, along with accompanying explanatory notes and draft guidance on the taxation of the foreign profits of companies.

The draft legislation confirms that large and medium-sized companies will be exempt from paying tax on foreign dividends and marks a decisive shift towards a territorial tax system where the Treasury only taxes profits made in the UK.

It also proposes restrictions in the deductibility of interest payments, preventing groups putting a greater amount of debt into the UK than the group as a whole has borrowed.

However, the clauses do not clarify the current uncertainty over the Government's approach to the taxation of profits made by overseas subsidiaries.

Consultation on the draft legislation ends on 3rd March 2009.