Technical
CONNECTION

CONTENTS

ESTATE ADMINISTRATION NOT TO BE RESTRICTED

COMPANY CAR ADVISORY FUEL RATES

FSA LAUNCHES THEMATIC REVIEW OF ANNUITIES

HMRC TARGETS CGT AVOIDANCE ON SECOND HOMES

HMRC CONTINUES TO CLAMP DOWN ON STAMP DUTY MITIGATION SCHEMES

A PROFESSIONALLY DRAFTED WILL HAS BEEN HELD TO BE INVALID

REGULATOR LAUNCHES CAMPAIGN AGAINST "PENSION LIBERATION"

ISLE OF MAN TO COMBAT TAX EVASION

PLATFORMS – ISA TRANSFERS AND RE-REGISTRATION

HMRC CHANGES IHT RULES ON SPECIALTY DEBTS

GOVERNMENT TO CONSULT ON AUTO ENROLMENT CHANGES

INCOME WITHDRAWAL RATE FOR MARCH 2013

This document is strictly for general consideration only. Consequently Technical Connection Ltd cannot accept responsibility for any loss occasioned as a result of any action taken or refrained from as a result of the information contained in it. Each case must be considered on its own facts after full discussion with the client's professional advisers.

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

ESTATE ADMINISTRATION NOT TO BE RESTRICTED

The Legal Services Board has decided that estate administration in England and Wales should not be restricted to qualified professionals.

The Legal Services Board investigated the Wills and estates industry for two years before making its recommendations to the Lord Chancellor that estate administration in England and Wales should not be restricted to qualified professionals. Several organisations had supplied evidence that criminality occurs in estate administration services, leading to serious financial loss by beneficiaries.

Initially, the Legal Services Board had suggested that both Will writing and estate administration should be regulated. Its change of mind on regulating estate administration is based on two factors. First, it considers that there is no compelling evidence of systemic fraudulent or dishonest practices causing significant consumer detriment within the unregulated sector. Second, it doesn't believe that statutory regulation would, in practice, prevent estate fraud by dishonest practitioners - some level of fraud and theft will continue in the market regardless of whether regulation is introduced or not. It also concluded that the cost of regulation could not be justified against the risks involved.

The Legal Services Board also notes that unregulated estate administration companies only have a small market share at the moment. Further, that share is likely to decrease when the Will-writing business becomes restricted to licensed providers only.

Therefore, it is recommending a range of policy initiatives to raise standards overall. Major providers of estate services should produce industry-wide voluntary schemes to promote standards and provide minimum protections for consumers. In addition, they should also provide more information to consumers when marketing their services.

COMMENT

This change will no doubt be welcomed by a number of firms who provide a wide range of services – including estate administration - to the general public as they will be able to continue doing so.

COMPANY CAR ADVISORY FUEL RATES

HMRC has published revised advisory fuel rates which took effect from 1 March 2013. The new rates may be used to negotiate dispensations for mileage payments for business travel in company cars or in situations where employees are required to repay the cost of fuel used for private travel.

For one month from the date of change, employers may choose to use either the previous or new current rates, as they choose.

Engine Size	Petrol	LPG
1400cc or less	15p	10p
1401cc – 2000 cc	18p	12p
Over 2000 cc	26p	18p

Engine Size	Diesel
1600cc or less	13p
1601cc – 2000 cc	15p
Over 2000 cc	18p

Hybrid cars are treated as either petrol or diesel cars for this purpose.

FSA LAUNCHES THEMATIC REVIEW OF ANNUITIES

The FSA has confirmed the commencement of its thematic review on annuities in Issue 1 of its insurance conduct supervision newsletter.

In that newsletter the FSA indicates that its review began in January this year and is likely to continue through to the second half of this year. The review is exploring the risk of detriment that consumers may face as a result of not shopping around when purchasing an annuity.

The first phase of the review will consider the level of detriment suffered by consumers by not shopping around, and whether there are firms or particular groups of consumers where this detriment is more likely to occur.

The FSA describes this as follows:-

"This will involve a pricing survey of all annuity providers, and will compare the rates available to consumers through a range of distribution channels, including rates available through the Open Market Option and those only available to existing pension policyholders."

The second phase will depend on the outcome of the first phase and will consider whether firms' processes for providing annuities facilitate or inhibit shopping around. The timing of this phase will also take account of the implementation of the ABI's Code of Conduct on 1 March 2013.

With annuity rates currently at or near all-time low levels it is important that individuals converting their money purchase funds to an annuity are able to obtain the best rate consistent with their circumstances.

HMRC TARGETS CGT AVOIDANCE ON SECOND HOMES

HMRC's 'Property Sales Campaign', which launched this month, targets those who have sold, or disposed of, second or additional residential properties either in the UK or abroad, and who have not told HMRC about any profits they have made as a result. The campaign can also be used where someone has sold their main residence in circumstances where principal private residence relief should have been restricted (for example, because the property was let out or used for business purposes).

People who wish to take part in the campaign will have until 9 August to notify HMRC, while any tax owed will need to be disclosed and paid by 6 September. HMRC says people who come forward voluntarily will receive lower penalties but warns that after 6 September a harsher stance will be taken.

HMRC has provided a calculator that will help calculate how much tax, interest and penalties are owed for each year of the disclosure between 2007/08 and 2011/12. Gains or income arising in the tax year 2012/13 should be reported via self-assessment in the usual way, while income or gains arising in tax years prior to 2007/08 will need to be calculated manually.

After the opportunity closes on 6 September, HMRC will use information it holds about property sales in the UK and abroad to identify people who have not paid what they owe. Penalties – or even criminal prosecution – could follow.

Those taking part in the campaign must also tell HMRC about any other income or gains that haven't previously been disclosed, such as:

- income from property or land rental (less the expenses relating to that income); and
- capital gains on the sale of other assets or properties

COMMENT

Where a holiday home or second property has been properly nominated as the main residence of the taxpayer, it is possible to legitimately reduce or even avoid CGT on disposal. Likewise, the sale of a main residence that does not wholly qualify for relief (because, for example, it has been let or it has not been the taxpayer's only home or main residence throughout the period of ownership) may nonetheless qualify for other exemptions or reliefs that can reduce the amount of chargeable gain.

Earlier HMRC campaigns have raised a total of £547m from so-called voluntary disclosures and nearly £140m from follow-up activity, including 20,000 completed investigations.

HMRC CONTINUES TO CLAMP DOWN ON STAMP DUTY MITIGATION SCHEMES

Over recent years HMRC has been more than willing to target stamp duty mitigation schemes, both through changes in legislation and court action, although this is apparently not preventing these schemes from being mass-marketed in the industry.

Stamp duty mitigation schemes have been typically directed towards high-end buyers of property who could save substantial amounts of tax depending on the value of their property. However, it is now the case that those with properties valued at £250,000 are also being targeted by solicitors and conveyancers.

A relatively common way in which purchasers may seek to reduce their stamp duty land tax (SDLT) payment is by paying for fixtures and fittings separately, thereby reducing the purchase price of the property itself and consequently the amount of SDLT payable. If HMRC decides to review the transaction and finds that inflated values have been attributed to the fixtures and fittings, it may be viewed as a fraudulent attempt to avoid paying tax. It is therefore essential that actual values are used.

There are also other more complex methods in which specialist companies may claim that they can reduce the SDLT burden. However, these are high risk schemes and given HMRC's' recent challenges it is unlikely that such schemes will be successful. This may result in higher tax payments for clients who could then be liable to pay not only the full stamp duty amount but also incur penalties and interest.

COMMENT

It would seem that these schemes appeal to clients who are looking to save some money because they may already have incurred substantial moving costs. However, anyone who is considering taking part in such a scheme ought to be aware that HMRC has been clamping down on these schemes. In August 2012, HMRC claimed to have saved £200m by closing three tax avoidance schemes and in September 2012 HMRC won a case against stamp duty avoidance resulting in a saving of £170m. This alone shows that HMRC is prepared to challenge these transactions. In addition, these schemes are likely to, in any event, be caught by the GAAR provisions which will be taking effect later this year.

A PROFESSIONALLY DRAFTED WILL HAS BEEN HELD TO BE INVALID

The England and Wales Court of Appeal has refused to validate a Will whereby the late Daphne Burgess cut her son out of her £200,000 estate, even though the Will was drafted and executed by an independent and experienced solicitor who had explained its contents to her.

The deceased had made a Will in 1996 splitting her residuary estate equally among her three children, Julia (who was a former magistrate), Peter and Libby. In December 2006, Julia arranged an interview with a solicitor that resulted in the drafting of a different Will - one that split Daphne's estate equally between her two daughters, thereby disinheriting her son, Peter (aside from personal items). Daphne was 78 at that time.

Peter and Libby were completely unaware that this had happened. Their mother died in May 2009 after which they realised what had happened. They decided to contest the Will on the grounds of both testamentary capacity and want of ‘knowledge and approval.’

The Court of Appeal found in favour of Peter and Libby, ruling that their mother had lacked 'knowledge and approval' of the Will's contents. It was decided that Julia had been the controlling force behind the rewriting of Daphne’s Will, and as a result the 1996 Will would take precedence.

While a victory was achieved, it was said that this case should never had gone as far as it did as the entire estate has been consumed by legal costs.

Peter said, ‘This was never about money. I simply could not let the assertion stand that my mother, to whom I was very close, would cut me out of her Will, and certainly not without talking to me.’

COMMENT

This case illustrates that a Will, when contested, may not be as legally binding as one might think. Although individuals have testamentary freedom to leave assets to whoever they wish, a Will can be challenged on a number of grounds. Two of the most common are on the basis that undue influence has been exerted on the testator or a challenge is made under the Inheritance (Provision for Family and Dependants) Act 1975. This will enable an adult child to challenge a Will if it does not make “reasonable financial provision” for them. What is reasonable financial provision depends on the circumstances of each case.

REGULATOR LAUNCHES CAMPAIGN AGAINST ‘PENSION LIBERATION’

Pension liberation, also known as ‘pension loans’ and ‘pension scams’, is the transfer of a member's pension savings to an arrangement that will allow them to access their funds before they can legitimately claim them. This activity can be fraudulent where members are not informed, or are misled, about the consequences of these schemes.

The perpetrators often work alongside ‘introducers’ or ‘advisers’ who try to entice the public, with spam text messages, cold calls or website promotions, into transferring their existing workplace or private pension with the promise of being able to release a portion as cash before age 55.

People may be misled or not properly informed that tax charges and fees can erode their pension pot by more than half, leaving them with little to live on in retirement. The remainder of their funds are likely to be invested in highly dubious and risky, unregulated investment structures, often based overseas. The amount that has been ‘liberated’ from pension schemes in this way is known to be in the hundreds of millions of pounds, with thousands of members affected.

To combat this, The Pensions Regulator has worked with other agencies to produce information illustrating the threat to people's pensions if they are taken in by such offers. The new information includes:

- a warning (which will be available on the Pensions Advisory Service website), that administrators and pension providers will be asked to include in the information they provide to members who request a transfer of their pension

- a more detailed information leaflet for members looking to understand the consequences of these offers, which will also be available on the Pensions Advisory Service website

- an action pack for pension professionals, including a checklist and examples of what to look out for.

Where administrators receive a transfer request and detect the warning signs of liberation, such as pension money being passed back to the member before age 55, they may wish to consider whether to make the transfer, and report their concerns to Action Fraud. The action pack includes more information to help them with this decision.

ISLE OF MAN TO COMBAT TAX EVASION

As part of the offshore anti-evasion strategy which will be published later this year, the Government has now agreed to take action with the Isle of Man to target those who are holding money offshore. It is looking at setting up a disclosure facility as well as an automatic tax information exchange.
The disclosure facility will enable investors with offshore accounts in the Isle of Man to come forward and settle their past affairs before information on their accounts is automatically shared.

Under the automatic exchange agreement, a wide range of financial information on UK taxpayers with accounts in the Isle of Man will automatically be reported to HMRC on an annual basis.

Chancellor of the Exchequer, George Osborne, said 'Today's agreement builds on the groundbreaking work we have already carried out – the UK Government has signed agreements with the US and Switzerland so far and we are in discussions with Jersey and Guernsey as part of our common commitment to combat tax evasion."

PLATFORMS - ISA TRANSFERS AND RE-REGISTRATION

For many years it has been possible to change an ISA manager. For a stocks and shares ISA some managers would allow a transfer of stocks and shares in specie for re-registration. In this case there would be no need to realise the stocks and shares and repurchase stocks and shares within the replacement ISA.

Some managers, though, would not permit a transfer in specie which meant that stocks and shares had to be realised, with attendant dealing costs etc. Cash transferred to the new manager would need to be invested, again subject to charges, and there was a risk attached to "being out of the market" albeit it may only have been for a short period. Of course, the sale had no tax implications as the assets sold were held within the protective shell of an ISA.

With the introduction of the Retail Distribution Review (RDR) regime from 31 December 2012, it is now compulsory for all platform providers to allow 'assets to be re-registered off their platforms' to give effect to ISA transfers. This means that a great many ISAs can now be transferred in specie. However, this change, introduced by the Financial Services Authority, does not override the regulations which govern ISAs which may mean that an ISA manager in their terms and conditions will not permit an investment by way of an in specie transfer.

It is important to note that as far as in specie transfers of non-ISA assets into an ISA are concerned, it remains the case they are not permitted except in the limited circumstances of share transfers from certain employee share schemes.

HMRC CHANGES IHT RULES ON SPECIALITY DEBTS

Potential implications for life assurance policies

Broadly speaking, a specialty debt is a debt recorded in a deed. Historically, HMRC's view was that a speciality debt was situated in the foreign jurisdiction where the deed is held. But, following an amendment to its IHT manual, HMRC now contends that its previous understanding is "unlikely to be correct", meaning that it will treat speciality debts as situated where the debtor resides. This being the case, speciality debts (like any other debt) could now potentially be brought into the scope of UK IHT. At the time of writing it is not known whether this revised view will be applied only to new debts or to all debts which would include existing debts.

As far as the application of this rule to life assurance policies is concerned, a life assurance policy is a debt with the debtor being the life office who undertakes to settle a claim when an insured event occurs.

When a life assurance policy is issued under hand, i.e. with no additional formalities, it is a simple contract debt and, for IHT purposes, treated as located where the debtor (ie. the life office) resides. The residence of an insurance company is generally determined by the location of its head office. For example, a policy issued under hand by X company, who has its head office in Luton, would be a UK asset for IHT purposes. Therefore, where such a policy is owned by an individual (P) who is non-UK domiciled for IHT purposes, it would be an asset of P within the UK IHT net.

In contrast, policies issued as a deed under seal, or since 1989 as a deed without a seal, are known as "speciality debts" and located where they are physically situated at the time of the relevant IHT event. For example, in the example above, if company X had issued the policy as a deed or under seal as a deed and the policy was kept by P in their overseas country of residence and P is non-UK domiciled for IHT purposes, then the policy **would not have been** within the UK IHT net under HMRC's previous interpretation. It seems that it could now be within the IHT net because the location will now depend (as it always has done for policies issued under hand), on the location of the debtor (company X) which is the UK.

This change is particularly relevant for life assurance policies issued as an asset of an excluded property trust because for such a trust to be IHT effective its assets must be non-UK situs (unless they are UK authorised unit trusts or OEICs).

There is doubt about HMRC's legal justification for its new position. 'This change took place without consultation or clear guidance as to why they reached a different conclusion from centuries of accepted legal practice and case law,' said George Bull TEP of Baker Tilly.

COMMENT

Although this change is only likely to affect a small number of people, it would appear to not have a great deal of certainty at present. Further, it is not known whether HMRC will apply the new rules retrospectively (ie. to existing debts). In the meantime, it may be advisable for clients to seek advice on any pre-existing planning structures to ascertain whether any action may need to be taken, particularly if those structures involved the use of life assurance policies issued by a UK life office and not issued under hand.

GOVERNMENT TO CONSULT ON AUTO ENROLMENT CHANGES

Following the roll-out of auto enrolment to the largest employers, the Government has been listening to their feedback and will, as a result, be consulting in March 2013 on a number of changes to the auto enrolment process. The Government has drawn up a shortlist of areas that can benefit from practical or technical improvements, including:

- Making assessment of the workforce easier
- Making it easier for money purchase schemes to show they meet the scheme quality requirements
- Removing the duty to enrol particular groups, such as those who benefit from protection because they have already exceeded the lifetime allowance for tax purposes.

Any changes made as a result of the consultation will recognise that employers and providers will need to be given sufficient time to amend their systems.

INCOME WITHDRAWAL RATE FOR MARCH 2013

The appropriate gilt yield, used to determine the 'relevant annuity rate' from HMRC's tables for an adult member commencing income withdrawals (or reaching an income withdrawal review date), in March 2013 is has been increased to 2.75%.