Technical Connection

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RESTRICTED REFERRALS FROM SOLICITORS

In November 2012 the Solicitor's Regulation Authority (SRA) ruled that solicitors should no longer be limited to only referring to independent financial advisers as the Financial Services Authority's definition of independence had changed under the retail distribution review.

It now appears that a solicitor's ability to make referrals to restricted advisers has been thrown into doubt after the Law Society said it was reviewing whether the practice clashed with financial services legislation.

The Law Society and SRA are in discussions over whether the ruling breaks a clause in the Financial Services and Markets Act Regulated Activities Order 2001.

The Order states that 'arranging' investments is a regulated activity and professionals [solicitors] cannot refer a client, with the intention of arranging investments, to an adviser who is not independent of a product provider.

Elliott Vigar, Head of Regulation at the Law Society, said: 'We're taking advice internally in terms of our own legal team. We're talking to SIFA to clarify its position and we've put it to the SRA because effectively it was the one to consult on this. It's the SRA's handbook and this issue might have repercussions for the code it has put into place. It's a priority because we can't ignore the possibility this [discrepancy with the relevant Financial Services and Markets Act clause] is correct to some extent and there is potential that our members are inadvertently committing an offence.'

A SRA spokesman said: 'We have received correspondence from the Law Society on this matter, and are in discussions with it to clarify the points it has made. However, as yet, nothing has made us change our position. We do not believe there is an issue.'

THE GOVERNMENT DECIDES NOT TO REGULATE WILL WRITING

In February, the Legal Services Board (LSB) recommended to the Lord Chancellor, Chris Grayling, that Will writing should be regulated and this decision was backed by the Law Society.

The Lord Chancellor had 90 days to decide whether or not to accept these recommendations following which a statement has been issued to the effect that he has decided to not regulate Will writing. This means that the Legal Services Act will not be amended in accordance with the LSB's suggestion. While this decision has been made, the Lord Chancellor did acknowledge that there appears to be evidence to support the fact that some Wills have been poorly drafted and that if Will writing were left to regulated professionals some of these issues may be solved.

Turning to the LSB's research, he said that it "did not adequately demonstrate that reservation is the best solution or that alternative measures have been sufficiently exhausted. The alternatives could include voluntary regulation, extra guidance, codes of practice and education of consumers. Further efforts should be made to see if such measures can be made more effective before resorting to reservation."

Chairman of the Legal Services Board, David Edmonds, said "Naturally we are disappointed by the Government's decision. However, it is their decision alone to make and we will study the details and respond in due course. In the meantime the LSB will work with Ministry of Justice officials, consumer groups, providers and other stakeholders to ensure that the issues are tackled and that consumers' confidence in the market for Will writing services is increased. The onus is now on both regulated and unregulated providers of Will writing services to improve standards and thereby earn consumer and public confidence."

Elisabeth Davies, Chair of the Legal Services Consumer Panel – which has been a strong advocate of reservation - found the decision "extremely disappointing" and said it "made no sense given the sheer weight of evidence of consumer detriment and the wide consensus backing regulation".

This decision has not been well received by some of the professional bodies who feel that Will writing should be regulated to provide customers with the confidence that their Will has been drafted by someone who is qualified for the job. Further, a professionally drafted Will would be prepared in a tax effective way whilst also taking account of what the client wishes to achieve. Someone who is not qualified and has little understanding of the tax effect will be unaware of the problems that can arise after death.

So has the Lord Chancellor missed an opportunity by rejecting the LBS's recommendation – only time will tell!

TREASURY CONSULTATION LAUNCHED ON ALLOWING THE TRANSFER OF CHILD TRUST FUNDS TO JUNIOR ISAs

In the Budget 2013 the Chancellor announced that the Government would consult on allowing the transfer of savings from a Child Trust Fund (CTF) account into a Junior ISA.

The consultation, which was launched on 14 May, is about whether such transfers should be allowed and sets out the Government's proposal for how such transfers could take place, should it decide to proceed with any change.

While the favoured option is to allow the voluntary transfer of a CTF to the Junior ISA (with the ability to retain the CTF if a transfer is not required), the Government has not ruled out a whole-scale merging of CTFs into Junior ISAs, so just one tax-free savings product is available for all children.

The Government is seeking views on the matters set out in the consultation which closes on 6 August 2013.

COMMENT

Most children living in the UK, who were born between 1 September 2002 and 2 January 2011, hold a CTF which contains funds contributed by the Government. Currently, these children are ineligible to also hold a Junior ISA. Allowing voluntary transfers would increase choice over which account a child holds but could mean that Junior ISA providers gain new accounts whilst CTF providers, who do not also offer Junior ISAs, lose out. That said, three-quarters of CTFs are stakeholder accounts offering caps on charges and other features that are not routinely available on Junior ISAs and many parents may therefore choose to leave the funds where they are even if the option to transfer becomes available.

NATIONAL INSURANCE CONTRIBUTIONS BILL

Employment allowance proposed
The GAAR to be extended to NICs

A National Insurance Contributions Bill, designed in part to reduce the cost to small businesses of employing people, was announced in the Queen's Speech which was made on 8 May 2013. If the Bill, which will apply throughout the UK, is passed, from April 2014 every business and charity will be entitled to a £2,000 employment allowance, as a deduction from their employer's NIC bill each year.

This Bill also contains measures designed to tackle avoidance. It brings NICs under the new General Anti-Abuse Rule (GAAR); contains measures to stop the use of offshore companies that are sometimes used to avoid NICs; and removes the presumption of self-employment for limited liability partnership members.

As originally drafted, the GAAR covers corporation tax, income tax, capital gains tax, inheritance tax, stamp duty land tax and the new annual tax on enveloped dwellings. However, it was always intended that the GAAR would also apply to NICs, but this required separate legislation. The National Insurance Contributions Bill is likely to be enacted after the GAAR has been introduced.

CARE BILL BROUGHT FORWARD INTO PARLIAMENT

It was confirmed in the Queen's speech that the Care Bill will be brought forward into Parliament.

It was intended that the Government's proposals for the reform of long-term care, as recommended by the Dilnot Commission, would take effect from April 2017. However, the Queen's speech has confirmed that the Care Bill will be brought forward into this Parliament. The Care Bill takes account of the previous consultation and pre-legislative scrutiny on the draft Care and Support Bill. The draft Care and Support Bill was published on 11 July 2012. It proposed a single, modern law for adult care and support that replaces existing outdated and complex legislation.

Many of the measures from the draft Bill are expected to be included in the new legislation, such as a standardised national threshold for determining whether an individual is eligible for support from a local authority, portability of assessments when people move, and a duty for councils to inform residents about care provision. There will also be a new right for carers to receive support from local authorities. The measures are part of a package that Ministers say will join up health and social care to boost protections for patients and simplify the system.

The main benefits of the Bill are to help people understand what care and support is on offer together with ensuring that they know where to go for such help. In addition, it will reform care and support funding by creating a cap on care costs, extending the means test threshold for financial assistance and ensuring the elderly do not have to sell their homes to meet their care costs.

From April 2016, the Government will introduce a £72,000 limit on the total lifetime care costs for older people needing social care, so they will not face unlimited costs. This was originally planned to be set at £75,000 and to be introduced in 2017.

Anyone with assets (including their home) of less than £118,000 will start to receive help from the state with their social care costs. That's up from the current means-tested threshold of £23,250 in England.

The Government says these measures will help to end the scenario where many elderly people are forced to sell their homes to pay for the costs of residential or nursing care.

However, the care cap does not mean that individuals should only expect to spend a maximum of £72,000 on their care costs. They will still be expected to pay their "hotel costs", such as board and lodgings, which could run into thousands of pounds extra a year. Furthermore, the cap will only start once needs are assessed as "substantial" and not "moderate".

As the new system does not come into effect until 2016, individuals going into care before then will still pay bills themselves if their assets are above £23,250.

Elderly and disabled adults needing care will be able to transfer their support packages if they move to another part of the country and a legal entitlement to personal care budgets, which can be paid directly, will be introduced.

COMMENT

These reforms should lead to a better future. However, the position still remains that many people may not be in residential care long enough to spend up to the lifetime limit. This should make planning easier as it provides individuals with the certainty about the maximum bill they could face. In addition, individuals could consider buying insurance to protect themselves against the possibility of high care costs.

FINANCIAL OMBUDSMAN SERVICE CASES DOUBLE

The Financial Ombudsman Service (FOS) has revealed it tackled a record half a million new cases in the 12 months to the end of March. This is nearly double the number which it took on in the previous year.

Based on the FOS annual review of 2012/13, it said the number of new cases during the 12 months reached 508,881, this was up 92% on the 206,121 cases in 2011/12.

When looking at the cases involved, the bulk of the rise was due to payment protection insurance (PPI) cases, with claims related to those products representing 74% of all cases. The number of PPI claims rose to 378,699. This is more than double the number reported in 2011/12.

It appeared that four of the UK's largest banking groups accounted for 62% of all complaints the FOS received, which is a 10% increase from 2011/12.

Chief ombudsman Natalie Ceeney said, “the sharp rise in complaints had presented the FOS with a 'challenging year'. As levels of confidence in financial services have eroded, it is disappointing that we still haven't seen any significant improvement in complaints handling. Too many financial businesses still seem unable to sort out problems themselves, without the ombudsman having to get involved.”

COMPANY CAR ADVISORY FUEL RATES

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

For one month from the date of change, employers may use either the previous or new current rates as they choose. Employers may therefore make or require supplementary payments if they so wish, but are under no obligation to do either.

Engine Size	Petrol	LPG
1400cc or less	15p	10p
1401cc – 2000 cc	17p	12p
Over 2000 cc	25p	18p

Engine Size	Diesel
1600cc or less	12p
1601cc – 2000 cc	14p
Over 2000 cc	18p

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

CHARITY TRUSTEES TO CHASE MISAPPROPRIATED FUNDS

The Charity Commission, the independent regulator of charities in England and Wales, has issued new policy guidance warning trustees that they have a duty to try to recover charity funds lost through misconduct.

It appears that there have been a number of cases in recent years in England and Wales in which a charity's funds have been distributed or squandered by its officials. In some cases, lost money isn't recoverable. But it has been found that often the charity does not even attempt to recover it – either because its trustees feel the losses were caused by honest mistakes or because they may be closely connected with the loss.

The new guidance recognises that trustees should not be penalised where mistakes are made as a result of them acting honestly. However, trustees are under a duty of care towards their charity and its property and, as such, the Commission expects them to respond appropriately and where justified act to recover funds lost to the charity caused by deliberate or reckless behaviour.

The guidance makes clear that where serious losses occur, trustees should consider obtaining legal advice when considering questions of recovery. They will need to take into account a range of factors including the extent of funds lost, the evidence of individual misconduct, the likelihood of success and the ultimate recovery of the loss, and the wider impact on the charity. The Charity Commission is also able to give advice or consents about taking action.

In appropriate cases where the trustees fail to act, the Charity Commission will consider taking regulatory action to ensure that trustees do pursue the matter. In very exceptional cases where trustees will not or cannot act, the Commission will consider whether to bring enforcement action in the public interest, including legal proceedings, to recover losses to the charity.

COMMENT:

The statutory duty of care imposed by the Trustee Act 2000 applies to all trustees including charity trustees. Trustees must exercise such care and skill as is reasonable in the circumstances when exercising certain powers, including their power of investment. This guidance essentially reiterates this very point and recognises the duty that trustees are bound by. Further, it comes as good news as it helps to ensure that the charity's property is protected and not misused thereby increasing public confidence when making charitable donations.

DATE SET FOR "RANGERS" APPEAL

In Murray Group Holdings and others v HMRC (the 'Rangers' case), the corporate entity that formerly housed Rangers Football Club used employee benefit trusts (EBTs) between 2001 and 2010 to channel payments of £47.65m to players and staff.

HMRC raised assessments to income tax and national insurance on the basis that the payments from the EBTs constituted disguised remuneration. The club argued that the payments were loans rather than actual earnings and were not therefore subject to tax on the employees.

By a 2:1 majority the First-tier Tribunal found that the principal trust and its sub-trusts were valid and continued in existence. They were 'genuine legal events with real legal effects'. The majority of the cash loans made to the players were discretionary and could be recovered, and so they did not represent taxable earnings.

The Tribunal also rejected HMRC's argument that the Ramsay principle applied i.e. that an artificial transaction conducted only for tax-planning purposes should be regarded as ineffective.

HMRC appealed the verdict to the Upper-tier Tribunal and that hearing has been set for July 19 at the Edinburgh Tribunal Centre.

COMMENT

Now that the 'disguised remuneration' legislation has been enacted, the decision will only have a bearing on the tax treatment of historical payments made from EBTs (i.e. those made before 6 April 2011). Nonetheless, the outcome of the appeal will be important for HMRC in view of the stance it has taken on the use of EBTs as set out in their Spotlight 5 publication and the 'EBT Settlement Opportunity', details of which were published in 2010.

HMRC ISSUES DRAFT QROPS AMENDMENT REGULATIONS

HMRC has issued a draft of The Registered Pension Schemes and Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2013. This is accompanied by a draft explanatory memorandum, a draft guidance note, a Tax Information and Impact Note and updated draft QROPS forms.

These Regulations are designed to implement the further changes to the QROPS rules, announced in the 2012 Budget, and to supplement the changes that took effect from 6 April 2012.
The main changes introduced by these new Regulations are:

1. There will be a change to the conditions that public service pension schemes or schemes set up by international organisations have to meet to be a recognised overseas pension scheme (ROPS). The effective date of this change will be:

- For schemes that were already QROPS on 5 April 2012, the change will apply from 6 April 2012

- For all other schemes the change will apply from the date the proposed regulations come into force.

2. The circumstances in which HMRC can remove the QROPS status from a scheme (a process called exclusion) are being extended. This change takes effect from the date of Royal Assent to the Finance Bill 2013.

3. A system to renew QROPS status is being introduced. The QROPS scheme manager will have to re-notify the ROPS status of their scheme to HMRC. Renewal will normally be every five years. If a scheme manager fails to renew their scheme's status HMRC will take the scheme's QROPS status away (through the exclusion process). This renewal process will start from 1 April 2015. Schemes which received HMRC QROPS reference letters before 1 April 2010 will be subject to a phased timetable for their first renewal, running from 30 April 2015 to 31 March 2017.

4. The reporting requirements for QROPS are being amended. These changes will take effect from the date the proposed regulations come into force. HMRC says that "in practical terms the changes to the reporting requirements for QROPS scheme managers are minimal."

5. Reporting requirements are being introduced for former QROPS with effect from the date the regulations come into force. These requirements will only apply to QROPS that lose or give up their QROPS status on or after that date. There will be penalties if a scheme manager of a former QROPS fails to comply with these reporting requirements.

6. HMRC will be able to issue a notice for information to a third party in respect of a QROPS without needing either the consent of the taxpayer or the Tribunal. This change takes effect from the date of Royal Assent to the Finance Bill 2013. A notice requires someone to provide information or produce documents for HMRC to check the tax position of a taxpayer.

7. In addition to these legislative changes, a new online service is being introduced. Scheme managers will be able to send in notifications and other reports to HMRC using QROPS Online. This will be an optional process; paper forms will still be acceptable.

INCOME WITHDRAWAL RATE FOR JUNE 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 June 2013 is 2.25%, unchanged on May.