Technical Connection

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SIMPLIFICATION OF IHT FOR TRUSTS – WHAT'S CHANGING?

A simplification of the IHT regime for relevant property trusts would be almost universally welcome and to this end there have so far been two HMRC consultations on the subject. However, while it was widely speculated that major changes would be announced in the Autumn Statement, it would seem that we have a further waiting period in store before the new regime is unveiled and the implications for Rysaffe planning become clear.

But some tinkering has taken place and measures that will align the inheritance tax filing and payment dates for relevant property trust charges will take effect from April 2014. In addition, draft legislation has been published to clarify the treatment of undistributed income for the purposes of calculating the ten-year anniversary charge.

IHT payment and filing dates

Under current rules the time limit **for reporting** IHT periodic and exit charges on the form IHT100 is 12 months after the end of the month in which the event takes place (or, if later, three months from the date when the trustees first become liable for the tax). In contrast, the time limit **for paying** the IHT depends on when precisely the chargeable event occurs. For chargeable events occurring between 1 October and 5 April, the deadline is six months after the end of the month in which the chargeable event took place; while for chargeable events occurring between 6 April and

30 September, the tax must be paid by 30 April in the following year. This anomaly places an undue administrative burden on trustees and practitioners.

Amendments to section 216(6) IHTA1984 (time for delivery of accounts) and section 226 IHTA 1984 (payment of tax) will be included in Finance Bill 2014 aligning the filing and payment dates. These will bring forward the deadline for delivery of the IHT account (reporting the charge) to six months after the end of the month in which the chargeable event occurs and require that any tax due is paid by the end of the same period.

Accumulated trust income

Most trustees of discretionary trusts will have a power to accumulate income as well as a power to distribute it. Once income is accumulated it is treated as an addition to the trust's capital and must be taken into account when calculating the ten-year or exit charges.

Where income is regularly or formally accumulated there is little doubt about the correct treatment of the accumulations within the calculation of relevant property charges. But the position is less clear where income remains undistributed for long periods and no formal accumulation has taken place.

A new statutory rule will be introduced by Finance Bill 2014 (in the form of a new section 64(1A) IHTA 1984) to treat income that has remained undistributed for more than five years as if it was part of the trust capital for the purposes of the ten-year anniversary charge. To avoid the need for trustees to keep very detailed records, there will be no proportionate reduction in the rate charged to reflect the period during which the income has been retained. Note that because the income retains its nature as income and is only treated as capital for the purposes of the ten-year anniversary charge, if this income is later paid out of the trust it would not be subject to an exit charge and would presumably be taxed as income in the hands of the beneficiary.

The new rule will have effect in relation to ten-year anniversaries occurring on or after 6 April 2014.

Other changes

HMRC has announced that having considered responses to the most recent of its consultations on the simplification of trust IHT charges, it has decided to 'put the simplification of the calculations on a slightly slower track' while it consults further on alternative proposals to split the nil-rate band that will 'meet trustees' concerns whilst maintaining tax revenues'.

A summary of responses to the consultation, published on 10 December, shows that most respondents generally welcomed the consultation's key themes of simplification and alignment. However, many were (unsurprisingly) strongly opposed to the proposals for dividing the nil rate band on the grounds that this would make it an onerous task for trustees to try and gather details of all the trusts the settlor had set up. Furthermore the retrospective effect of the proposals was unfair. Certainly, a straight division of the nil rate band among all trusts ever created by the same settlor could unfairly penalise sensible and moderate estate planning which, up until now, has been acceptable to HMRC (including simple bypass trusts for pension death benefits and non-contentious trusts of life policies effected to provide cash to pay inheritance tax on the life assured's death).

The further consultation, which is likely to be launched early next year, will explore alternative ways in which the calculations can be simplified fairly, without loss to the Exchequer and without the risk of fragmentation of settlements. Possible approaches could include:

- Allowing settlors to elect to pro-rate their available nil rate band between trusts according to the trusts' values;
- The introduction of a de minimis limit so that trusts with an asset value of less than £1000 are ignored when dividing the nil rate band;
- An anti-fragmentation rule which would ensure that the nil rate band was never split across more than, say, five trusts;
- Provisions ensuring that the new rules do not apply to existing settlements - either indefinitely or for a transitional period.

Legislation on the nil rate band and simplification of calculations is planned for Finance Bill 2015.

COMMENT

It will be interesting to see how HMRC refines its proposals for splitting the nil rate band and we will eagerly await the next consultation document. Regardless, it seems likely that there will be an impact on Rysaffe planning. Indeed, HMRC has already voiced concerns that restricting the application of the rules to new trusts only would create an additional tax regime that would be against the principle of simplification. A Targeted Anti-Avoidance Rule (TAAR) might be a fairer way of achieving the objective.

In the meantime, the alignment of payment and filing dates will be a welcome administrative simplification and the new statutory rule on the treatment of undistributed income will provide clarity.

PENSIONS – THE AUTUMN STATEMENT

Major pension announcements were made relating to the bringing forward of the increase in State Pension Age and the retention of the current drawdown tables. However, the overriding pension issues for most advisers are likely to be on planning in the run up to the reduction in the annual and lifetime allowances from 6 April 2014 and dealing with the increasing automatic enrolment market.

The main pension announcements in the Autumn Statement were as follows:

- A new guiding principle that people should, on average, expect to spend one-third of their adult life in receipt of state pension, will underpin future reviews of State Pension Age (SPA). The Pensions Bill 2013 already makes provision for the increase in the SPA to 67 to be brought forward to between 2026 and 2028. Under the Pensions Act 2007 the SPA is scheduled to be increased to 68 between 2044 and 2046. Applying the new guiding principle the Government expects that the increase in SPA to 68 will now take effect from the mid 2030s, while a further increase to age 69 will apply from the late 2040s.

  In the January 2013 White Paper on the new single-tier state pension, the Government had already indicated that SPA would be reviewed at least every 5 years, with the first review being in the next Parliament and with its results issued no later than 7 May 2017. These reviews will take account of the latest demographic data available at the time and be informed by an independently led report on wider factors.

DWP will be publishing further details of how this principle will work in practice.

- The Government confirms that Individual Protection will be introduced as a transitional protection option in conjunction with the reduction in the standard lifetime allowance to £1.25 million from tax year 2014/15.

- At the 2013 Budget the Government Actuary's Department (GAD) were commissioned to review the drawdown tables to determine whether they were a reasonable match for annuity rates. It is now confirmed that following that review the Government will not be changing the basis on which the drawdown tables are formulated.

- The Basic State Pension and the Additional State Pension will be exempt from the Government's cap on welfare spending.

- The Basic State Pension from April 2014 will be increased by 2.7% in accordance with the triple lock (i.e. the higher of average earnings growth, CPI inflation and 2.5%). This is an increase of £2.95 per week in the Basic State Pension for a single person, bringing this up to £110.15 per week.

  The standard minimum income guarantee in Pension Credit will be increased by £2.95 per week, while the Savings Credit threshold will be increased by 4.4%.
  The Government will remove the Assessed Income Period in Pension Credit awards. This means that from April 2016 households on Pension Credit will now need to report all changes in their circumstances that will affect their benefit as they happen. Pensioners aged 75 and over who have an indefinite assessed income period in place will be exempt unless the assessed income period would end under current rules.

- In October 2015 the Government will introduce a new class (3A) of voluntary NICs to allow pensioners who reach SPA before 6 April 2016 a time limited opportunity to top up their State Additional Pension entitlements. The details of the scheme will be set out closer to the time of implementation, with the price of the new class of National Insurance being set at a broadly actuarially fair rate. The Government will legislate for this scheme at the earliest available opportunity.

- The Budget 2013 announced that payments of £5,000 would be made to people who bought With-Profits Annuities from Equitable Life before September 1992, with a further £5,000 going to those on Pension Credit. The Autumn Statement 2013 confirms that the bulk of these payments will be made through direct payment into policyholders' bank accounts in December 2013.

CHILD TRUST FUNDS – ABILITY TO TRANSFER TO JISAs

The Autumn Statement made no mention as to whether or not it would be possible to transfer an existing Child Trust Fund (CTF) account to a Junior ISA (JISA) and this raised some disappointment in the industry. However, just before Christmas the Chancellor, George Osborne, announced that, from April 2015, parents whose children have a CTF account will be able to convert it into a Junior ISA.

CTFs were offered to those born between 1 September 2002 and 2 January 2011. However, since the introduction of the JISA in 2011, the benefit of a CTF has decreased due to its high charges and more restrictive investment choice. Those who contribute to CTFs have long been frustrated that JISAs offer better interest rates, a wider investment choice and more competitive charges. Further, children have not been eligible for JISAs because they qualified for CTFs, and conversion or transfers between the two have not to date been allowed.

While parents will have to wait until April 2015 to benefit from this announcement, they will no doubt welcome this news as it will mean that the investment options available will be wider and the account could benefit from higher interest rates.

AUTOMATIC ENROLMENT EARNINGS THRESHOLDS FOR 2014/15 ANNOUNCED

In a written ministerial statement on 17 December 2013, Steve Webb, the Minister for Pensions, has announced the following proposed automatic enrolment earnings thresholds for 2014/15 (the current thresholds for 2013/14 are shown in brackets):

- Automatic enrolment eligibility earnings trigger £10,000 (£9,440), in line with next tax year's personal allowance.

- Lower qualifying earnings band limit £5,772 (£5,668), in line with next year's lower earnings limit for NI contribution purposes.

- Upper qualifying earnings band limit £41,865 (£41,450), in line with next tax year's upper earnings limit and higher rate threshold.

The Government intends to lay a draft Revision Order before Parliament in the New Year which specifies the above rates. The Order will require approval from both Houses before the regulations can be made. The regulations are intended to be effective from 6 April 2014.

COMMENT

The Government's decision to continue to link the automatic enrolment eligibility earnings trigger to the personal allowance threshold will mean that there will be many more employees who will not qualify for auto enrolment. At present, once an employee falls within the threshold, they stay enrolled while they remain with the same employer, even if the threshold subsequently rises above their earnings. The result is that those employees of large employers who were auto-enrolled in 2012/13, when the earnings trigger was £8,105, will still be enrolled and benefiting from employer contributions in 2014/15, even if their earnings have not grown to match the new threshold.

The linking of the trigger threshold to the personal allowance is another example of the law of unintended consequences. In theory it looks sensible, but the politics of driving up the personal allowance is pulling in the opposite direction to that of improving private pension provision. With the personal allowance likely to be £10,500 in 2015/16 if Mr Clegg has his way, the extension of auto enrolment to smaller employers – where there is far less existing pension provision – will be reaching a shrinking audience.

STRICTER ANTI-AVOIDANCE POWERS FOR SCOTLAND

It has recently emerged that Scotland's devolved tax collection agency is to have even more wide-ranging anti-avoidance powers than HMRC.

The powers are described in the Revenue Scotland and Tax Powers Bill, allowing Scotland to administer two new devolved taxes from April 2015 – Land and Buildings Transaction Tax (LBTT) and the Landfill Tax.

The Bill also includes a Scottish general anti-avoidance rule (GAAR) which gives Revenue Scotland powers to deal with artificial tax avoidance schemes. The Scottish Government has indicated that it intends the GAAR to be more vigorous and have wider criteria in determining tax avoidance than the equivalent UK rule - being worded to catch tax-planning schemes that are merely 'artificial', rather than 'abusive' as the UK GAAR requires.

Other specifically Scottish procedures to be introduced by the new Bill include a self-assessment regime and tax tribunals.

The following year will see the introduction of the Scottish rate of income tax (SRIT), modifying the basic, higher and top rates of income tax charged by HMRC.

COMMENT

Tax avoidance is on the radar to a greater extent than ever before and Scotland's vigorous approach only goes to show that it is also committed to clamping down in this area.

STATUTORY RESIDENCE INDICATOR NOW UPDATED

HMRC has now updated its Tax Residence Indicator tool to help people determine their tax residence status, from tax year 2013/14 onwards, for the purposes of:

- Income tax
- Capital gains tax

The result will depend on the client providing accurate information and the tool enables the client to print the results for their records in case of enquiry by HMRC.

VENTURE CAPITAL TRUSTS AND NOMINEES

The draft 2014 Finance Bill contains a proposal to allow investment in VCTs via nominees. The following provision which, it is understood, will take effect from the date of Royal Assent to the Finance Bill next year, was included in the draft clauses.

"Nominees
2 (1) After section 330 of ITA 2007 insert

…Nominees
330A Nominees

Shares subscribed for, issued to, held by or disposed of for an individual by a nominee are treated for the purposes of this Part as subscribed for, issued to, held by or disposed of by the individual.. (2) In section 284 of that Act (power to make regulations as to procedure), in subsection (1)(d), after persons include (including nominees).."

As a result VCT shares bought via nominees will deliver the tax benefits to the beneficial owner that they would have been entitled to had they invested directly.

The main impact it seems will be to permit VCTs to be offered by and bought through Platforms and Wraps where investments are bought via the Platform or Wrap nominee.

COMMENT

Given the limitations on pensions input through the annual and lifetime allowances the role that VCTs (and EISs) are playing as part of a more broadly spread portfolio of investments (ie beyond registered pensions) will mean that this change, if enacted, will be welcomed - especially because the number of a client's investments which are managed through one or (usually) more Platforms is increasing.

HMRC LAUNCHES ONLINE QROPS REPORTING SERVICE

HMRC has launched an online service for Qualifying Overseas Registered Pension Scheme (QROPS) managers and UK-based scheme administrators to help them meet their reporting requirements.

Overseas scheme managers can use the online service to:

- notify HMRC that the scheme is a recognised overseas pension scheme
- re-notify HMRC that the scheme is a recognised overseas pension scheme
- report payments made out of funds received from a UK pension scheme
- report change of details
- report change in status and notification of fund value
- report any additional information required for schemes that were formerly QROPS

UK scheme administrators can use the QROPS online service to notify HMRC that a UK registered pension scheme has transferred sums or assets to a QROPS. Paper versions of the forms are still acceptable to HMRC.

ACCOUNTANTS AND LEGAL EXECUTIVES APPLYING FOR PROBATE

The Legal Services Board has advised that accountants and legal executives in England and Wales should be allowed to apply for a grant of probate on behalf of clients.

Accountancy firms wishing to provide probate, or to become alternative business structures (ABSs), will have to obtain a licence from the Institute of Chartered Accountants in England and Wales (ICAEW). ABSs were introduced under the Legal Services Act 2007, as part of opening up the legal services market. ABSs (also known as multi-disciplinary practices) can be made up of a mix of lawyers and non-lawyers who work together in client-facing roles. Legal executives – i.e. members of the Chartered Institute of Legal Executives – will be licensed through ILEX Professional Standards, both for probate and for conveyancing work.

It is yet to be seen whether this will be authorised by the Lord Chancellor, Chris Grayling, although he is expected to make a quick decision so that the first applications can be considered by next Spring.

COMMENT

Accountants and legal executives will no doubt welcome authorisation in this area because this will mean they will be able to offer probate alongside other related services, for example trust planning and estate administration.

MINIMUM QUALIFYING PERIOD FOR THE NEW SINGLE-TIER STATE PENSION

The Pensions Bill 2013 confirms that the minimum qualifying period (MQP) to be eligible for a single-tier State Pension cannot exceed 10 years. In its May 2013 response to the recommendations made by the Work and Pensions Select Committee following its pre-legislative scrutiny of the draft Pensions Bill clauses, the Government indicated that the actual qualification period would be set in regulations and was expected to be between 7 and 10 years.

In a written parliamentary statement issued on 3 December 2013, Steve Webb, the Pensions Minister, has now confirmed that the MQP will be set at 10 years and that regulations will be laid in due course to confirm this.

PRINCIPAL PRIVATE RESIDENCE RELIEF

Property which has been an individual’s only or main residence at some time is exempt from capital gains tax for the final 36 months of ownership – known as the “final period exemption”. This rule applies regardless of whether the individual is occupying the property at the time of sale. From 6 April 2014 the final period exemption will be reduced from 36 months to 18 months.

INCOME WITHDRAWAL RATE FOR JANUARY 2014

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 January 2014 is 3.25%.