Technical CONNECTION

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THE GENERAL ELECTION

The announcement, on 17 April, of a General Election to take place on 8 June threw some interesting spanners into the process of government:

- Parliament was dissolved on 3 May.

- In the interim, there was a "wash-up" period during which the many Bills currently going through Parliament were rushed to Royal Assent or dropped – see also the final paragraph of this article.

- One very large piece of legislation caught in this limbo was the Finance (No 2) Bill 2017. The Election has meant an abbreviated Finance Act 2017 was passed on 28 April. This is likely to be followed by another Finance Bill once the new government is chosen – a repeat of what happened in 2010 and 2015. See also the final paragraph of this article.

- The Pensions Schemes Bill 2016/17 has been enacted as the Pension Schemes Act 2017.

- An Election will mean a new set of manifestos for the political parties. The Conservatives' 2015 manifesto, prepared under David Cameron, was causing Theresa May's government problems – witness the Class 4 NICs U-turn.

- A new manifesto will allow the Conservative party to regain the tax flexibility it lost with George Osborne's 'triple lock' on VAT, income tax and NICs. It could also see the widely-expected demise of the other triple lock – on state pension increases – brought forward.

Below is a list of the main clauses in Finance (No2) Bill 2017, which are of relevance to financial services and which **were not** included in the Finance Act 2017. The original Finance (No2) Bill 20017 started life with 776 pages. The Finance Act 2017 is just 155 pages long, which gives a good indication of how much is likely to reappear later this year. In due course the new government will decide which of the measures put on hold are introduced and from which date(s).

(i) *The dividend allowance for tax year 2018/19*
(ii) *Pensions advice*
(iii) *Money purchase annual allowance*
(iv) *Personal portfolio bonds*
(v) *Recalculating gains on life policy part surrenders*
(vi) *Deemed domicile – all taxes*

COMMENT

Ironically, Mr Hammond may end up having a Summer Budget, having killed off Spring Budgets in favour of Autumn.

STATE PENSION AGE REVIEW

The government published the final report of the state pension age review, undertaken by John Cridland, at the end of March.

One of the legacies of Mr Osborne's spell as Chancellor was the establishment of a system for regular re-assessment of state pension age (SPA). This was legislated for in the Pensions Act 2014, which requires the DWP, at least every six years, to 'review whether the rules about pensionable age are appropriate, having regard to life expectancy and other factors that the Secretary of State considers relevant' and then publish a report.

The first such DWP report was due by 6 May 2017, but this deadline has been missed, and in October 2016 John Cridland published an interim report examining the "other factors" surrounding the SPA decision. Mr Cridland has now issued his final report, "Smoothing the Transition", which focuses on the future of SPA after 2028, by which time SPA will have reached 67 under current legislation. At present that same legislation has SPA rising to 68 between 2044 and 2046.

Predictably, the report brings forward those dates. However, that is only one of a series of recommendations:

- SPA should rise to age 68 over a two-year period starting in 2037 and ending in 2039, ie seven years earlier than originally envisaged by the Pensions Act 2007;

- Thereafter SPA should not increase more than one year in any ten-year period, assuming that there are no exceptional changes to the data. In theory that could mean anyone born in 1989 or later faces an SPA of at least 70;

- The triple lock pension increase regime should be ended in the next Parliament. The report says that this would reduce state pension spending in 2066/67 from 6.7% of GDP to 5.9%, against an OBR-calculated figure of 5% currently;

- The report dismisses the idea of a flexible SPA, despite the variances that exist in different areas of the UK and amongst different socio-economic groups. Instead it proposes that 'the main means-tested benefit for pensioners' is set one year below SPA from 2039, for 'a defined group of people who are unable to work through ill health or because of caring responsibilities'. This would effectively bring Pension Credit into play from age 67. In a similar vein the report says that Universal Credit, which in theory will be the main working age benefit by 2028, should have its working conditionality rules eased to a requirement for only part-time working in the five years running up to SPA;

- For those who work beyond SPA (currently about 1.2m people), new deferral options are proposed. These would permit payment of a lump sum at the end of deferral, an option only recently abandoned, and the possibility of a partial state pension payment combined with deferral to aid phased retirement. The report states these changes 'should be introduced as soon as possible, but at least by 2029';

- A similar timescale applies to the report's suggestion of a system of Statutory Carers' Leave for people with caring responsibilities, echoing the Statutory Sick Pay model, but with a payment period of up to five days;

- A 'Mid-life MoT' is proposed as 'a useful trigger point to encourage people to take stock, and make realistic choices about work, health and retirement'. This should be facilitated by employers and by the government using online support and through the National Careers Service, with the necessary preparatory work beginning 'immediately';

- The government 'needs a clear strategy to communicate … future changes, particularly because they will be defining working age in a completely different way to that of the past'. The report says that there is also an onus on the government to 'take steps to ensure that people can build as much State Pension as they can' by take up of National Insurance credits' (viz the recent publicity for adult childcare credits);

- Somewhat outside its strict remit, the report says that tackling the issue of how the self-employed 'can be helped to save for their retirement…should be a priority'. It also looks to the Automatic Enrolment Review to 'prioritise improving pension coverage for women'. The Swiss system, which allows couples to combine their private pension savings into a joint pot, is thought an idea worthy of consideration, although arguably flexi-access drawdown offers a similar flexibility.

Alongside the 130-page Cridland Report, the Government Actuary's Department issued a 57-page periodic review of the rules about SPA. The key part of this is a table, based on 2014 ONS principal population projections, which considers when pension ages should rise to provide for a retirement period that is either 32.0% or 33.3% of adult life (taken as starting at age 20), both targets set by government:

SPA changes	**Current legislation**	**33.3% scenario**	**32.0% scenario**
67 to 68	2044-46	2039-41	2028-30
68 to 69	n/a	2053-55	2040-42
69 to 70	n/a	n/a	2054-56

The government will now consider these two reports and issue its own report to Parliament in early May 2017 but, as mentioned earlier, this deadline has been missed. The recommendations in the Cridland final report will provide useful political cover for what is unlikely to be a popular set of decisions.

TAX-FREE CHILDCARE

In previous Budgets there has been mention of rolling out another childcare scheme – commonly referred to as 'tax-free childcare' – which is different from the current facility to provide childcare vouchers.

Broadly, under the 'new' tax-free childcare scheme, which is scheduled to begin being rolled out at the end of April 2017, eligible parents will be able to put money into an NS&I account – for every 80p put in by parents, the government will add 20p up to a total of £8,000. This means parents can potentially have up to £2,000 from the government per child per year.

In order to benefit from this, both parents have to be working more than 16 hours a week and neither of them can earn more than £100,000 a year. Unlike the childcare voucher scheme, this scheme is not administered via an employer so would be open to the self-employed.

As it is not possible to claim for both childcare vouchers and tax-free childcare, which is the better option?

Below we provide a short summary of the two schemes:

	Childcare vouchers	**Tax-free childcare**
Who can benefit	Employees if offered by the employer	Both parents provided they both work more than 16 hours a week and both do not earn more than £100,000
Availability	Until April 2018	From April 2017
Maximum benefit from the government	Between £600 and £900 per parent assuming maximum amount claimed	£2,000 per child
Overall gain	Between 32% and 47% depending on tax status	20%

COMMENT

If childcare costs are relatively high then tax-free childcare would, on the face of it, seem like the better option. However, it is important to note that both parents have to be working so the decision may not be that simple. In the meantime HMRC has launched its Childcare Choices website which enables parents to find out what support they are eligible for and compare their choices.

PROBATE FEES

It was reported on 20 April that the Ministry of Justice had abandoned plans to push through the legislation increasing probate fees in England & Wales. The draft regulations have fallen foul of the time lost due to the dissolution of Parliament.

Given the controversy surrounding the increase and the questioning of its legality by the Parliamentary Joint Committee on Statutory Instruments the measure looked under threat as soon as the Election was called.

Whether the legislation will reappear after the Election is unclear. The BBC has said "a senior Conservative" has declined to say whether this would happen – perhaps understandably. The Ministry of Justice is likely to adopt the stance that "it is for the next government to decide".

COMMENT

A promise to reinstate this measure is unlikely to make any party's manifesto, but it would be unwise to assume it has gone away for good given that it was anticipated that it would raise £300m.

COLLECTIVE INVESTMENTS - GROSS INTEREST PAYMENTS

A reminder that from 6 April 2017 (tax year 2017/18) the requirement to deduct basic rate tax at source from interest payments made by open-ended investment companies, authorised unit trusts, investment trust companies and peer-to-peer loan arrangements is abolished.

This brings the tax treatment of these interest payments into line with those made by banks, building societies and National Savings and Investments which have paid interest gross from tax year 2016/17 following the introduction of the Personal Savings Allowance.

IHT RECEIPTS PREDICTED TO LEAP BY £1.5BN IN FIVE YEARS

Included in the Office for Budget Responsibility's (OBR) Economic and Fiscal Outlook report, which was published alongside the Spring Budget 2017, was the Public Finances Databank (PFD). In connection with the PFD, the OBR noted that

'IHT receipts were unusually high in 2015-16, reflecting more deaths in 2014-15 (the majority of IHT receipts are received with a 6 to 12-month lag) and a number of payments from very high value estates. Receipts have been revised up over the forecast period due to slightly higher equity and house prices'

This has led to the statement that 'receipts from inheritance tax (IHT) are expected to rise by just 1.0 per cent to £4.7 billion in 2016-17'.

Tax year	Inheritance tax £bn
2012-13	3.1
2013-14	3.4
2014-15	3.8
2015-16	4.7
2016-17 Forecast	4.7
2017-18 Forecast	5.0
2018-19 Forecast	5.2
2019-20 Forecast	5.5
2020-21 Forecast	5.8
2021-22 Forecast	6.2

The OBR also factored in the UK government's earlier plans to change the fees payable for an application for a grant of probate. This reduced the OBR's inheritance tax forecast by around £30m a year to 'reflect the incentive for individuals with estates worth close to the thresholds in the new probate fee structure to reduce the value of their estates to remain within a lower fee band'. The new rates were to have come into effect in May and range between £300 and £20,000, depending on the value of the estate. These have now been dropped – at least for the time being.

ILOTT FAMILY PROVISION AWARD REJECTED BY THE SUPREME COURT

The Supreme Court has overturned the Court of Appeal and ruled in favour of the charities in the landmark succession case of Ilott v The Blue Cross and others [2017] UKSC 17.

By way of background, in 2007 Heather Ilott brought a claim against the estate of her mother, Melita Jackson, after discovering the entire estate, worth approximately £486,000, had all been left to charities. Ilott and her mother had been estranged for 26 years and the mother's 2002 Will had made no provision for her daughter – this decision was reflected in an earlier Will dated 1984.

A District Judge originally awarded Ilott £50,000 as he found the Will did not make reasonable provision for her as Mrs Jackson's daughter. Subsequently, the Court of Appeal increased the award to around £164,000. The charities then challenged the decision, with the case being heard by the Supreme Court in December.

The daughter initially brought a claim under the Inheritance (Provision for Family and Dependants) Act 1975. However, in the judgment, Judge Lord Hughes said *"The key features of the operation of the 1975 Act are four.*

First, it stipulates no automatic provision; rather the will (or the intestacy rules) apply unless a specific application is made to, and acceded to by, the court and a specific order for provision is made.

Second, only a limited class of persons may make such an application; they are confined to spouses and partners (civil or de facto), former spouses and partners, children, and those who were actually being maintained by the deceased at the time of death.

Third, all but spouses and civil partners who were in that relationship at the time of death can claim only what is needed for their maintenance; they cannot make a claim on the general basis that it was unfair that they did not receive any, or a larger, slice of the estate. Those three features are laid down expressly in the 1975 Act.

The fourth feature is well established by case law both under this Act and its predecessor of 1938. The test of reasonable financial provision is objective; it is not simply whether the deceased behaved reasonably or otherwise in leaving the will he did, or in choosing to leave none."

So, although the Law Lords raised the possibility that a surviving spouse might have automatic inheritance rights, they rejected the idea that a surviving child might too. In their view, the moral obligation to provide for children was as great as that to provide for a spouse. But children play less part in building up the family assets than do spouses; are more likely to be self-supporting adults independent of their parents and it would be difficult for a fixed rights system to distinguish between dependent and independent adult children.

In handing down the ruling, the Law Lords said Mrs Ilott's sum should be reduced to the original £50,000 and the remaining residual sum should be left to the charities.

COMMENT

We have followed this case with great interest and the outcome clearly shows the limitations of the Inheritance (Provision for Family and Dependants) Act 1975. In practice, this could mean that adult children will be less inclined to challenge their parents' Wills and, in turn, given the specific facts in this case, the testator's/testatrix's overall wishes and intentions should always be considered.

LPA REGISTRATION FEES FALL IN APRIL

From 1 April 2017 the registration fee for a lasting power of attorney (LPA) or enduring power of attorney in England and Wales reduced from £110 to £82. The fee for a repeat application to register an LPA fell from £55 to £41. According to the Office of the Public Guardian, the increasing volume of applications means the income it receives in registration fees now exceeds the cost of the service.

AN EXECUTOR FAILS TO MEET THE BURDEN OF PROOF TEST ON THE DECEASED'S ALLEGED JOINT ESTATE

The case of Baldev Singh Lidher v HMRC [2017] UFTT 0153 (TC) highlights the important distinction between legal and beneficial ownership as well as the implications that joint ownership can have on a taxpayer's estate. The facts of this recent case were broadly as follows:

Mrs Karam Kaur Lidher, the mother, was married to Mr Bahall Singh Lidher, the father. They had a son, Mr Baldhav Singh Lidher. In August 2006 the mother died intestate and the father became the administrator of her estate. In October 2006 he prepared forms showing the net value of the mother's estate as being £72,000, which was well below the nil rate band of £285,000 applicable at that time. Then, in March 2007, the father died and his son, Baldhav, became the executor of his estate.

Some years later, after HMRC had contacted the son on a number of occasions, the son returned the full IHT400 form on 15 October 2012 showing the net value of his father's estate as £307,408. This included the sale proceeds of a property which was purportedly held 50:50 between the father and son. However, only the father's name was on the title deeds to the property. Neither the mother nor the son had ever been named on the title deeds. Subsequently, HMRC issued a determination in August 2013 with the entire proceeds of the property sale now included in the father's estate on the basis that he was the sole owner before his death.

The representatives of the family asserted that the property was held in the father's name for "family reasons" and that the mother was beneficially entitled to half the property even though she was never a legal owner.

They went on to claim that the mother had always wanted her share to pass to her son on her death and asked the Tribunal to apply "commonsense". HMRC contended that an intention to transfer was not sufficient and that transactions in land must be evidenced in writing (a well-established legal principle). Therefore, the father retained full legal and beneficial ownership of the property.

In this case, the Tribunal reiterated the established legal principle that where property is in the sole name of one person, there is no presumption that any part of it is owned by another. Therefore, to prove a beneficial interest without legal ownership, it is necessary for a claimant to provide evidence of intention, in other words it must be shown that the legal owner is holding the beneficial owner's share on their behalf.

The Tribunal noted that no such evidence had been supplied and that the father had not included the property in the estate of the mother after her death and consequently upheld HMRC's determination and found that the property was owned both beneficially and legally by the father before his death.

COMMENT

This case is interesting, not because of its facts alone, but because the family genuinely believed they could rely on, and also submit an IHT return based on, what they believed the father's overall intentions were. It goes to show that 'things have to be documented properly' in order to achieve the desired outcome, both from a tax and inheritance perspective.

INCOME WITHDRAWAL RATE FOR MAY 2017

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 May 2017 is 2.0%.