Technical CONNECTION

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TAXPAYER NUMBERS

Just before the General Election HMRC published the latest data on taxpayer numbers in its update of its income tax statistics.

- The latest estimate for 2017/18 is that there will be 30.3m taxpayers, of which 4.16m (13.7%) are higher rate taxpayers and 0.364m (1.2%) are additional rate taxpayers. So, 14.9% of taxpayers pay more than basic rate. In 2007/08 the corresponding proportion was 11.9%. However, ten years ago there were 2.2m more taxpayers – the major hikes in the personal allowance (£5,225 in 2007/08) explain the falling taxpaying population.

- The total income tax raised in 2017/18 is projected to be £173bn. Of this, higher rate taxpayers account for £63bn (36.4%) while additional rate taxpayers contribute £51.3bn (29.7%). Viewed another way, the 14.9% who pay tax above basic rate provide just short of two-thirds of all income tax receipts.

COMMENT

The HMRC numbers highlight how the income tax burden is already heavily weighted towards those with substantial income. As the Institute for Fiscal Studies (IFS) has said, trying to extract more from this sector runs the risk of producing nothing. As the IFS points out, what tends to be forgotten is that the additional rate taxpayer who decides to cut their income by £1 in response to a 50% tax rate is not denying the Government 5p revenue, but 50p.

CHANGES TO HOW TRUSTS ARE REPORTED TO HMRC

Form 41G (Trust) has been withdrawn and will be replaced during Summer 2017 by a new registration service.

HMRC has now confirmed that the trust registration Form 41G (Trust) has been officially withdrawn in readiness for the launch of HMRC's online registration service for all trusts with a tax liability. This is despite the fact that the online register is not yet up and running - the new system will be introduced in two tranches in June and September.

Taxpayers who were about to submit the Form 41G(Trust) to HMRC have been asked to wait until the online register is ready and the Form will no longer be accepted from the end of April 2007.

COMMENT

This is all part of the new reporting procedures being introduced to implement the EU Fourth Anti-Money Laundering Directive (4AML).

SSASs CAUGHT BY THE MASTER TRUST LEGISLATION

The Pension Schemes Act 2017 introduces a definition of 'master trust' and those schemes deemed a master trust have onerous reporting requirements and need to be registered with The Pensions Regulator by October 2017.

A master trust is defined as an occupational pension scheme that:

- provides money purchase benefits;
- is used, or intended to be used, by two or more employers;
- is not used, or intended to be used, only by employers which are connected with each other; and
- is not a public service pension scheme

In most cases a SSAS cannot be classified as a master trust but where a SSAS has more than one sponsoring employer it may inadvertently become a master trust if the employers do not meet the 'connected' definition. This is where the issue really lies. The definition of 'connected' only covers employers who are subsidiary employers and not ones that share the same board members. This inadvertently means where the two employers are running separate companies but those running the company are actually the same people they would be deemed unconnected and hence caught by the master trust definition.

The majority of the reporting requirements will be irrelevant for SSASs so, if possible, those with a multi-employer SSAS may wish to disassociate one of the employers from the scheme.

COMMENT

Representations have been made to the Pensions Regulator to see what can be done to avoid any unintended consequences of the legislation.

LAW OF LIFE ASSURANCE-ASSESSING THE INVESTOR'S ATTITUDE TO RISK

The High Court has upheld the decision of the Financial Ombudsman Service (FOS) about unsuitable investment advice.

This follows on from a High Court challenge to a decision of the FOS in the case of R (Aviva Life and Pensions) v Financial Ombudsman Service (2017) when the Court confirmed that the Ombudsman was free to depart from the relevant law but if he does he should explain his reasons.

We have now had yet another challenge in the High Court following the Ombudsman's decision in favour of an investor complaining about alleged unsuitable investment advice. The case is that of R (On the application of Full Circle Asset Management Ltd) v FOS and the facts of the case were as follows:

Full Circle provided a model discretionary portfolio investment service to Mrs King. She complained first to Full Circle, and then to the FOS, that the investment advice she received was unsuitable because the portfolio was more risky than her medium attitude to risk and had caused her a loss of around £90,000.

In support of its defence that Mrs King was only exposed to a medium level of risk, Full Circle obtained an independent assessment of the model portfolio. This assessment concluded that the model portfolio was indeed medium risk and this assessment was accepted by the Financial Conduct Authority (FCA). However, despite this, the Ombudsman upheld Mrs King's complaint, finding that Full Circle had given a personal recommendation and that the portfolio recommended was not suitable for a retired woman in her 60s, requiring an income of £1,200 per month.

Full Circle applied for judicial review of the Ombudsman's decision on the basis that, by departing from the standard approved by the FCA, he was under a duty to explain his reasons for the departure, which he failed to do.

Despite the fact that the FOS did not give any reasons for this departure, the Judge upheld the Ombudsman's decision and dismissed the judicial review application. The Judge said that the Ombudsman was entitled to make findings on the issues before him. Full Circle had personally recommended the investment portfolio to Mrs King and this required a more sophisticated investigation into her circumstances than crudely determining she was a “medium risk investor”. The Ombudsman had looked at Mrs King's requirements (noting her age and monthly income requirements) and decided that the portfolio was not suitable for her.

The Judge did not accept that there was a conflict between the Ombudsman's decision and the wider regulatory standards of the FCA. Also, he did not accept that the "failure to give reasons" argument was a proper characterisation of the dispute, and dismissed the suggestion that the decision was unfair or breached human rights.

COMMENT

This is another case which highlights some of the difficulties in understanding some decisions of the FOS.

Whilst it seemed that it had been established that the FOS was not bound to follow the law and regulations when deciding what is fair and reasonable, as long as it provided detailed reasons for any departure from the said law and regulations, in this case the Court was apparently not bothered that the Ombudsman did not give reasons for not strictly applying the FCA requirements. Given the importance of risk rating, this departure may be of concern to advisers.

PENSION SCHEMES NEWSLETTER 87

HMRC has recently published Newsletter 87 which covers:

- The pension advice allowance
- Relief at source
- The Scottish rate of income tax
- The pension scheme return (PSR) and the SA970 tax return
- Changes to the scheduled publication of the ROPS listing

Of notable interest:

The pension advice allowance

HMRC has received enquiries from pension scheme administrators asking if their members can request the pension advice allowance from their scheme by email. The Registered Pension Schemes (Authorised Payments) (Amendment) Regulations 2017 state that the request must be made in writing by the member. HMRC has confirmed that the member can make this request by email. However, it's down to the pension scheme administrator to decide whether to accept requests by email.

The pension scheme return (PSR) and the SA970 tax return for trustees of registered pension schemes

HMRC has received a 'number of queries from pension scheme administrators confusing the PSR with the SA970 tax return for trustees of registered pension schemes.'

These are two different information returns; the PSR and the SA970 tax return for trustees of registered pension schemes. A pension scheme administrator/pension scheme trustee may have to complete both the PSR and the SA970 tax return for trustees of registered pension schemes.

The PSR is a return that provides HMRC with information about the scheme, including information on contributions to the scheme, pension scheme investments and investment income. A PSR has to be submitted if HMRC issues a notice to do so, even if an SA970 tax return has already been submitted.

HMRC may ask scheme trustees to complete an SA970 tax return if the scheme has previously paid tax or claimed a repayment. An SA970 tax return must be completed even if no tax or repayment is due or a PSR has already been submitted.

Changes to the scheduled publication of the Recognised Overseas Pension Schemes (ROPS) notification list

A reminder that there are planned changes to the scheduled publication of the ROPS notification list as follows:

- 2 June 2017 - suspension of the ROPS notifications list
- 5 June 2017 – new list to be published
- 15 June 2017 - routine publication of the ROPS listing

SHOULD CLIENTS STILL CONSIDER NIL RATE BAND PLANNING IN THEIR WILLS?

With the ability to transfer the nil rate band and, now, the residence nil rate band, is nil rate band planning in a Will totally redundant?

6 April 2017 saw the introduction of the residence nil rate band, which is broadly available when a 'qualifying' residential interest is 'closely inherited' by lineal descendants on death.

It is, however, important to note that, as with the standard nil rate band (currently £325,000), the residence nil rate band will also be available for transfer on second death subject to the tapering rules that apply for estates valued in excess of £2 million.

Since the transferable nil rate band rules came into force in 2007 many married couples have chosen not to make use of the nil rate band on first death. This, we believe, is primarily because if it is available for transfer (note the transferable nil rate band applies to the nil rate band applying on the second death) then it can be used on second death subject, of course, to a claim being made by the personal representatives within two years of the second death. For other cases, especially those which involve more complicated family affairs, use of the nil rate band was still made on first death.

Now, with the introduction of a residence nil rate band, is there a further argument to possibly make use of the nil rate band on first death? Well, as in all cases, client circumstances would need to be fully considered. Below we provide an overview of circumstances in which clients may wish to consider such planning.

To make use of a previously deceased spouse's nil rate band

If a widow/er remarries having inherited everything from their first spouse, then they may wish to draft their own Will to make use of their own nil rate band plus that of a former spouse. This is primarily because if they die first leaving all their assets to their 'new' spouse they will have lost the ability to claim their deceased spouse's nil rate band and possibly the residence nil rate band (RNRB).

In second/subsequent relationship situations

Modern day families come in all shapes and sizes. Therefore, for some, they may require the certainty that assets are left to particular people, for example children and/or grandchildren from a previous relationship/marriage.

To hold a high growth value asset

If assets have a high growth potential (for example, land with potential planning permission) then it may be better placing such assets into trust on first death to prevent increasing the estate of a surviving spouse for inheritance tax purposes.

To capture IHT BPR/APR assets relief

If, say, all assets are left to a surviving spouse on first death then the availability of IHT business property relief (BPR) or agricultural property relief (APR) could be wasted as the assets will pass to the surviving spouse exempt from IHT. In these cases it may be worth executing a Will to pass such assets into trust or in favour of a particular (non-exempt) beneficiary to prevent losing out on the relief.

To keep the estate of the survivor under the RNRB taper threshold

In cases where the estate, on either first or second death, is in excess of the £2m (taper threshold), the amount of the RNRB that would otherwise be available will be restricted by £1 for every £2 by which the estate exceeds £2m. So, for example, if on first death the estate is worth £2.2m the RNRB will be reduced by £100,000. If, however, the Will was drafted to, say, leave the nil rate band of £325,000 into trust, then the total estate on first death would be £1,875,000 which would then not be affected by the taper threshold.

COMMENT

These are just a few points to be aware of when advising clients – of course, in reality all will depend on overall objectives and circumstances. However, as always, Wills should be reviewed regularly (say, every 5 years) to ensure that they continue to meet the desired outcome.

IN SPECIE TRANSFERS OF SCOTTISH PROPERTY BETWEEN PENSION PROVIDERS

The devolution of taxation in the United Kingdom continues to cause issues with pensions. HMRC does not levy Stamp Duty Land Tax (SDLT) charges on in specie transfers between pension providers meaning should a client want to move providers they are not hit by an additional unfair tax charge.

However, Revenue Scotland does not provide a similar exemption for the equivalent tax charge for properties in Scotland. This charge, the Land and Buildings Transaction Tax (LBTT), came into being in 2015 but it was only last year that the impact of the change on pensions has become apparent.

Revenue Scotland issued a Technical Bulletin in October 2016 which states:

'We have considered the application of LBTT legislation to pension fund in specie transfers and have concluded that generally such transfers give rise to an LBTT liability, on the basis that
(a) such a transfer is a land transaction and
(b) the assumption of the liability by the receiving pension fund is debt as consideration.

We are aware that HMRC has longstanding guidance that land transactions involving in specie transfers between pension funds are not chargeable to SDLT. We understand that there is concern, because of the HMRC position.

If you are unsure about the application of the legislation to the circumstances of a specific transaction, you may wish to ask for a Revenue Scotland Opinion.'

Unfortunately, multiple representations to Revenue Scotland have not convinced Revenue Scotland that this is an unfair tax even where the underlying beneficiary isn't changing. There is hope on the horizon that bare trusts may be exempt from this charge but not many pension schemes would fall into this category because of the discretionary nature of the underlying trusts.

Further clarification is expected from Revenue Scotland soon although it isn't expected to provide any real changes.

POST-ELECTION THOUGHTS FOR FINANCIAL ADVISERS

The current uncertainty over future taxation policy reminds us of the importance of informed, balanced financial advice. Regardless of the complexion of the next Government:

- Taxation (broadly at the levels we are currently experiencing – or higher) will remain high on the political and economic agenda.
- Clients will continue to be interested in legitimately reducing it.
- Aggressive tax avoidance will continue to be attacked.
- It will remain possible to save and invest tax effectively in ways that are permitted by the legislation. No party is suggesting that there is any fundamental objection to this basic principle.
- Choices will exist and they are likely to continue to be relatively complex.
- Advice will remain essential and the "alpha" that can be secured from well-informed advice will continue to be valued and in high demand.

FUEL RATES FOR COMPANY CARS

HMRC has recently announced the new fuel rates for company cars applicable to all journeys from 1 June 2017 until further notice.

The rates per mile are based on fuel prices and adjusted miles per gallon figures.

For one month from the date of the change, employers may use either the previous or the latest rates. They may make or require supplementary payments, but are under no obligation to do either. Hybrid cars are treated as either petrol or diesel cars for this purpose. The rates are as follows:

Engine size	***Petrol***	***LPG***	***Engine size***	***Diesel***
1,400 cc or less	11p	7p	1,600 or less	9p
1,401cc to 2,000cc	14p	9p	1,601cc to 2,000cc	11p
Over 2,000cc	21p	14p	Over 2,000cc	13p

INFORMATION PROMPTS IN THE ANNUITY MARKET

In November 2016 the FCA published a consultation paper (CP16/37) requiring annuity providers to show customers the best rates in the market. The FCA requested views on proposed amendments to the rules in relation to the purchase of products that provide consumers with guaranteed income in retirement (pension annuities). The changes would require firms to inform consumers how much they could gain from shopping around and switching provider before a potential annuity purchase.

The FCA have now released the feedback on CP16/37 and the final rules in implementing information prompts in the annuity market, PS17/12.

Based on the feedback to the consultation, the following changes have been made to the final rules compared to those consulted upon:

- inclusion of a clear and prominent warning about enhanced annuities;
- firms engaging with consumers over the telephone will only have to provide the information prompt in relation to the specific guaranteed quote that a consumer has indicated they would like to proceed with; and
- the implementation date has been moved from 1 September 2017 to 1 March 2018.

INCOME WITHDRAWAL RATE FOR JUNE 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 June 2017 is 2.0%.