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NS&I LAUNCHES A JISA

National Savings & Investments (NS&I) have long offered cash ISAs. At times, their Direct ISA has been at or near the top of the league tables, mainly because NS&I tend to be slower than their commercial competitors in cutting interest rates. At present the Direct ISA is behind the pack, offering 0.75% interest when 1% is available from several big names.

On 15 August NS&I launched their new Junior ISA (JISA), filling the gap below age 16 at which the Direct ISA becomes available. The main features of the NS&I JISA are:

- An interest rate of 2% (variable);
- Minimum investment £1;
- Unlike the Direct ISA, the JISA accepts transfers in (from existing JISAs and Child Trust Fund Accounts);
- No penalty on transfer out;
- 100% capital security guarantee as NS&I is backed by HM Treasury; and
- Only available online.

While the interest rate is much more attractive than the Direct ISA, in the JISA market it is far from outstanding: several High Street names offer a 3.00% variable rate.

The launch of the JISA was accompanied by the announcement that Children's Bonds will be closed to new sales 'from September 2017' – at the time of writing the date had not been announced. The current issue (36) is paying 2.00% (tax-fee), fixed for 5 years, with a maximum investment limit of £3,000 (per issue). Existing issues will be allowed to run through to maturity, but it would appear that there will be no rollover opportunity to a fresh Children's Bond.

COMMENT

The latest HMRC statistics show that, in April 2016, £1,757m was invested in cash JISAs, 64% of the total JISA investment of £2,756m. Account numbers in 2015/16 had a similar split, with 67% going to cash. However, in terms of amounts contributed, cash represented 57%. It is arguable that many younger JISA holders have an investment timescale which would make stocks and shares JISAs a more appropriate selection.

THE YEAR END COMES EARLY?

Last December we commented on a potential tax year end shortage of venture capital trusts (VCTs). Many of the big names had revealed that they would either be seeking no new funds or limiting issues to non-prospectus levels (a €5m maximum). In the event 2016/17 saw £542m of VCT fund raising according to the Association of Investment Companies, the second highest level on record. This included a record £120m (22% of the total) for a single VCT.

One of the reasons for the reluctance to raise new money last year was that VCTs were getting to grips with the new investment rules legislated for in the Finance (No. 2) Act 2015. This had slowed down the rate of deals and left some trusts with more than enough cash looking for a home.

The trusts now seem to have adapted to the new investment regime, with many now having announced new share issues. Quite why there is such an early crop is unclear – it may be that trusts are trying to avoid a frenetic March scramble or it might reflect the introduction of an Autumn Budget.

COMMENT

It looks like early Autumn will be a busy time for VCT business. Advisers wanting to offer the pick of the crop – as opposed to what is left over in late March – should consider warning their clients now to be ready to act. Experience suggests that the best issues can disappear almost as soon as they are formally launched.

ISA TAX ADVANTAGES TO BE EXTENDED TO DECEASED ESTATE – AN UPDATE

On 13 February 2017 HMRC published draft regulations to allow ISAs to retain their tax-privileged status during the administration of a deceased ISA saver's estate. The relevant Statutory Instrument (SI) to give effect to the change was "put on hold" until after the General Election.

We have now received verbal confirmation from a spokesperson at HMRC that the Government intends that the SI – The Individual Savings Account (Amendment) Regulations 2017 – will be laid shortly after Parliament reassembles on 5 September subject to unforeseen changes in circumstances.

The SI will have effect in relation to deaths occurring on or after 6 April 2018.

RESPONSE TO PENSION SCAMS CONSULTATION PUBLISHED

- **Background**

The pension scams consultation response related to the consultation, which was launched in December 2016, and was looking at three potential interventions aimed at tackling different aspects of pension scams:

– a ban on cold calling in relation to pensions, to help stop fraudsters contacting individuals;

– limiting the statutory right to transfer to some occupational pension schemes; and

– making it harder for fraudsters to open pension schemes.

The consultation received 111 responses and the majority supported changes and the multi-pronged attack on pension scams; and some even suggested the government should go further.

- **The definition of pension scam**

The updated definition is as follows

'The marketing of products and arrangements and successful or unsuccessful attempts by a party (the "scammer") to:

– release funds from an HMRC-registered pension scheme, often resulting in a tax charge that is not anticipated by the member;

– persuade individuals over the normal minimum pension age to flexibly access their pension savings in order to invest in inappropriate investments;

– persuade individuals to transfer their pension savings in order to invest in inappropriate investments;

where the scammer has misled the individual about the nature of, or risks attached to, the purported investment(s), or their appropriateness for that individual investor.

- **Banning cold calling**

The government intends to work on the final and complex details of the ban on cold calling in relation to pensions during the course of this year, then bring forward legislation to deliver the ban when Parliamentary time allows. The ban will cover various types of call including:

– offers of a 'free pension review', or other free financial advice or guidance

– assessments of the performance of the individual's current pension funds

– inducements to hold certain investments within a pensions tax wrapper, including overseas investments

– promotions of retirement income products, such as drawdown and annuity products

– inducements to release pension funds early

– inducements to release funds from a pension and transfer them into a bank account

– inducements to transfer a pension fund

– introductions to a firm dealing in pensions investments

– offers to assess charges on the pension

In addition, the ban will be extended to cover electronic communications, such as emails and text messages, because they could otherwise be used to circumvent the cold calling ban.

However, legitimate contact will be excluded from these rules including:

– calls from advisers following referrals, such as a solicitor referring a customer to a financial adviser

– calls from a third party administrator of an individual's pension fund

– calls from a provider to the beneficiary of a deceased member's fund

– calls attempting to locate 'gone-aways'

- **Limiting the right to statutory transfer**

The government intends to work closely with industry, consumer groups and other stakeholders during the course of this year to help finalise the details of this proposal, in particular to determine the most effective way to implement the employment link. It will legislate to ensure that any changes follow the roll-out of the Master Trust authorisation regime.

In the consultation, the government proposed limiting the statutory right with regard to:

– transfers into personal pension schemes operated by firms authorised by the Financial Conduct Authority (FCA)

– transfers into authorised Master Trust schemes

– transfers where a genuine employment link to the receiving occupational pension scheme could be evidenced.

After looking at the alternatives, and taking account of concerns, the intention is to implement these restrictions in full.

- **Making it harder to open fraudulent schemes**

The government intends to introduce legislation in a Finance Bill later in 2017 aimed at ensuring that only active companies can register a pension scheme and will introduce additional changes to the scheme registration process. In addition, it will engage with industry, consumer groups and other stakeholders to consider feedback on options to professionalise small self-administered schemes.

One of the proposals suggested is that only active companies could register a pension scheme but the consultation established that this could cause issues because there are times that a dormant company may want to establish a new scheme; in addition it could have caused issues for sole traders and partnerships. The government therefore proposes to require all new pension scheme registrations to be made through an active company, except in legitimate circumstances where HMRC will be given discretion to register schemes with a dormant sponsoring employer.

This requirement will extend to existing pension schemes if they are registered with a dormant sponsoring employer with the same discretion so that HMRC can decide not to de-register a scheme in legitimate circumstances. This change will be legislated for in a Finance Bill in 2017. The existing right of appeal if HMRC rejects a scheme registration will apply to this new requirement.

It is planned to ensure that sponsoring employers of occupational pension schemes are aware that they are associated with a scheme and that HMRC can de-register a scheme if the appropriate consent it not given.

Small self-administered schemes (SSASs) were also discussed in the consultation and some respondents wanted the reintroduction of pensioneer trustees to help protect what some believe to be vulnerable types of scheme. However, others felt that the cost would be prohibitive.

The government agrees that pension scheme members with relevant knowledge should be free to choose their own investments. The government will not therefore pursue the option to require pensioneer trustees at this stage.

COMMENT

The proposed changes, especially to cold calling, should make a significant difference to those being targeted by scams, although not fully as it isn't possible to stop calls from overseas. The biggest part will be the education of the public to ensure that they are aware that they shouldn't be receiving this type of call and should therefore not engage with the fraudsters in the first place.

Time will tell if these changes will work fully but it is all a step in the right direction.

THE GAAR IS ACTIVATED – AT LAST

The General Anti-Avoidance Rule (GAAR) was introduced in the Finance Act 2013 and took effect from 17 July 2013. It is intended to counteract 'tax advantages arising from tax arrangements that are abusive'. 'Tax arrangements' exist where obtaining a tax advantage is 'one of the main purposes' of the transactions.

It has recently been reported that the GAAR was used to combat and render ineffective an income tax avoidance scheme founded, in effect, on the payment of gold bullion to directors. The case was referred to the GAAR Advisory Panel. The Panel said it was a clear case of an attempt to "frustrate the intent of Parliament" by using intricate and precise steps to exploit tax loopholes. This finding by the Panel will allow HMRC to use the GAAR to impose a "just and reasonable" tax liability……in effect, one that would have accorded with the intent of Parliament for such transactions.

Without going into detail it seems that the schemes were predicated on the payment in the form of gold bullion associated with a theoretical obligation to pay the value of the asset to a trust at some point in the future. The schemes and this obligation made the payment in bullion non-taxable. The recipient directors/employees then released cash in the form of a loan secured on the gold.

In a statement following the Panel's decision, HMRC said it had "wide-reaching impacts and reinforces the power of the GAAR in tackling abusive tax avoidance." It said: "We're delighted with the opinion of the GAAR Advisory Panel. HMRC has already made clear that gold bullion avoidance schemes don't work and that we will challenge these schemes."

COMMENT

While this news is interesting of itself it should also serve as a reminder that it pays to shun aggressive tax avoidance schemes and instead rely on tried and tested tax planning strategies. In this context, advisers have an important role to play in reassuring their clients that just because a strategy is tax efficient doesn't mean it is likely to be attacked.

OTS REPORT ON STAMP DUTY ON PAPER DOCUMENTS

The Office of Tax Simplification (OTS) has published a report proposing reform and simplification of stamp duty on paper documents.

The OTS considers that it is time to make stamp duty digital as well as to reform and simplify it. With this in mind, in its report, it highlights two aspects of the current system as being particularly out of date:

- The time-consuming process of physically stamping share transfer documents.
- The fact that the scope of stamp duty is significantly broader in principle than it is in practice. For example, transfers of non-UK shares are, in principle, subject to stamp duty but very often are not submitted for stamping.

The OTS report includes four key recommendations which it suggests should be introduced in a single package:

- Digitise the stamp duty process: replace the current system of physical stamping with an online one which provides taxpayers with a unique reference number confirming the transaction has been notified to HMRC.
- Amend company registrars' legal obligations so that they can update shareholder registers on receiving evidence that HMRC has been notified of a transfer or stamp duty has been paid.

- Make stamp duty an assessable tax, with HMRC powers and administrative procedures similar to those for stamp duty land tax.

- Amend the scope of stamp duty to reflect its current application in practice. This would include narrowing the territorial scope to exclude non-UK shares and considering the position of instruments granting options and transfers of partnership interests.

The OTS also makes a number of further recommendations to HMRC as to how stamp duty could be simplified, both from a technical and administrative perspective:

- Adopt the 'money or money's worth' concept of consideration, and the stamp duty land tax approach where consideration is contingent / uncertain or includes debt.

- Consider increasing the current £1,000 exemption threshold.

- Consider the potential for combining stamp duty and stamp duty reserve tax.

HMRC TAX RECEIPTS HIT A RECORD

HMRC's annual report and accounts for 2016/17 reveal that HMRC collected £566.8 billion in taxes in 2016/17, which is £33.1 billion more than in 2015/16.

These latest figures show that this is the seventh successive year in which HMRC has brought in record tax revenues.

It would appear that 9.6 million taxpayers submitted their self-assessment returns online by 31 January with 1.7 million filing through their personal tax account – and over time with making tax digital a further increase in these numbers should be seen.

In addition, according to HMRC's Annual Report and Accounts 2016/17, HMRC handled 91.7% of all customer calls during the last financial year – despite setting itself a target of just 85% the previous year.

THE RIGHT OF BENEFICIARIES TO SEE TRUST DOCUMENTS

In a recent case, the beneficiaries under an offshore trust used the Data Protection Act to obtain access to trust documents. The Court of Appeal ruled that the legal professional privilege exemption in England applied only to documents that would be subject to legal professional privilege as a matter of English law, regardless of the law governing the trust.

The case was *Dawson-Damer & Ors v Taylor Wessing LLP* [2017] EWCA Civ 4.

The case was brought by beneficiaries under certain offshore trusts established in the Bahamas. The defendant, Taylor Wessing LLP (TW), is a well-known firm of solicitors which advised the trustee of the trusts.

The beneficiaries first attempted to obtain certain documents from the trustee in the Bahamas but were not successful. They then made a "subject access request" (SAR), under the Data Protection Act 1998 (DPA), to TW.

Under the DPA, a data subject (here the beneficiaries) has a right to be informed where personal data (of which he or she is the data subject) is being processed by a data controller (here TW). The data subject is then entitled to certain further information and copies of the data. TW's initial response to the request was that the information requested was subject to legal professional privilege and therefore exempt from disclosure under the DPA.

The beneficiaries applied for a Court order that TW had failed to comply with the SAR but, in 2015, the High Court agreed with TW's position that (in summary) the legal professional privilege exemption relied on by the firm applied where the documents were not disclosable as between trustees and beneficiaries as a matter of Bahamian law.

The Court of Appeal decided that the legal professional privilege exemption applied only to documents that would be subject to legal professional privilege as a matter of English law. This means that a data controller in the UK cannot therefore rely on more restrictive foreign rules regarding privilege to avoid complying with a SAR. As such, TW, relying on the fact that it considered the information was covered by the legal professional privilege exemption, had failed to satisfy the Court that complying with the SAR would involve disproportionate effort on its part. Furthermore, there was no limitation in the DPA on the purposes for which a SAR might be made and no rule that a data controller could refuse to comply on the grounds of the requester's 'true motive'.

COMMENT

This case may be seen as a way around the established limitations on the ability of a beneficiary to compel the production of trust documents from a trustee as of right. Obviously this will only be relevant where the trustees or their advisers are in the UK. The law on what information a beneficiary is entitled to see is rather complex, the most recent case on this being RNLI and others v Headley and McCole (2016).

INCOME WITHDRAWAL RATE FOR SEPTEMBER 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 September 2017 is 1.5%.