Technical Connection
Volume 31 Issue 3 – December 2017

Technical Connection

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SPRING STATEMENT DATE ANNOUNCED

The Chancellor appeared before the Treasury Select Committee on 6 December. During his presentation he said that the Spring Statement would be on Tuesday 13 March. It will not be a major fiscal event, according to Mr Hammond. Instead, it will set out his response to the OBR's revised forecast and some longer term thinking, ahead of the Autumn Budget.

Coincidentally, on the same day the Treasury published a policy paper on the new Budget timetable and tax policy making process. This expands on the paper issued in 2016, but adds little new. The new cycle will mean that "most policies will be announced at least 16 months before they come into effect at the start of the next tax year", eg an initial policy announcement in the Autumn Budget 2018 will work its way through consultation to legislation in the Finance Bill 2019, published shortly after the Autumn Budget 2019, and then, as Finance Act 2019, take effect from the start of the 2020/21 tax year.

ISA TAX ADVANTAGES TO BE EXTENDED TO DECEASED ESTATES

The Individual Savings Account (Amendment No. 3) Regulations 2017 were made on 13 November 2017 and come into force from 6 April 2018. The Regulations apply to ISAs held by an individual **who dies on or after 6 April 2018** and make some changes to taxation and subscriptions as follows:

(1) TAXATION CHANGES

a) Taxation in general

Currently, any interest, dividends or gains accruing on investments held within an ISA arise free of tax until the death of the ISA investor. Such income and gains arising after the death of the investor cease to be exempt from tax and, instead, will be assessed to tax on the investor's personal representatives until the administration of the estate is completed.

Under the Amendment No. 3 Regulations, investments retained in an ISA after the death of the investor will be deemed to be 'administration-period investments' held in a 'continuing account of a deceased investor' until the earlier of:

- the completion of the administration of the deceased's estate;
- the third anniversary of the account holder's death; and
- closure of the account on the withdrawal of all assets out of the ISA.

This means that personal representatives and beneficiaries or legatees should not face income tax or capital gains tax on the investments during this 'administration period'. The Regulations confirm that no new subscriptions can be made to a continuing account of a deceased investor after the death of the investor, and the ISA cannot be transferred between ISA providers other than in specified circumstances.

b) Capital gains tax

The Regulations amend the capital gains tax (CGT) rules when the personal representatives of a deceased ISA investor transfer administration-period investments (ie investments which have remained in the ISA following the investor's death) to a legatee under the deceased's estate. In this situation the legatee will be treated as acquiring the investments at the market value at the date of transfer by the personal representatives. This will ensure that all capital gains accrued to the date that the investments cease to be in an ISA are extinguished and set the base value for a future disposal of that investment by the legatee.

In contrast, when an investment is transferred which has ceased to be an administration-period investment, for example because administration of the deceased's estate has been completed, personal representatives are deemed to have sold and reacquired the investments at the market value at the date the investment ceased to be an administration-period investment. Therefore, any gain to the point when the ISA is treated as closing escapes CGT.

However, because the base cost for the legatee is not the value at the date of the transfer to the legatees by the personal representatives, any capital gain accrued since the investment ceased to qualify as an administration - period investment will be assessed on the legatee when the investments are sold in the future.

(2) SUBSCRIPTIONS

As a consequence of the changes in taxation described above, the No. 3 Amendment Regulations allow for the maximum additional permitted subscription available to the surviving spouse/civil partner of an ISA investor (who dies on or after 6 April 2018) to be the higher of the value of investments held in a deceased's account at the date of the deceased's death and the value of the

continuing account of a deceased investor immediately before it ceases to be the continuing account of a deceased investor.

Before the change the maximum additional permitted subscription was the value of the investments in the ISA at the date of the deceased investor's death.

CHARGEABLE EVENT GAINS – RECALCULATING A WHOLLY DISPROPORTIONATE GAIN

Last year HMRC consulted on the taxation treatment of chargeable event gains. Following the consultation HMRC decided that policyholders with 'wholly disproportionate' gains could apply to HMRC for their gains to be recalculated on a 'just and reasonable' basis. The purpose of the consultation was to find a way of removing wholly disproportionate gains from taxation without widescale change to the tax legislation.

The relevant legislation is contained in sections 507A and 512A of the Income Tax (Trading and Other Income) Act 2005.

HMRC has now updated its Insurance Policyholder Taxation Manual (Reference IPTM 3596) setting out how individuals who are in this position can make an application to HMRC to consider their case. The guidance sets out what needs to be included in the application, for example, a copy of the chargeable event certificate, a copy of the withdrawal request, relevant correspondence between the interested person (this is the person who would be liable for all or part of the tax on the gain arising on a part surrender or part assignment) and their insurer, and an explanation why cash was taken from the policy in the way it was.

When deciding whether the gain is wholly disproportionate the HMRC officer will consider factors such as:

- the economic gain on the rights surrendered or assigned,
- the amount of the premiums paid under the policy or contract,
- the amount of tax that would be chargeable if the gain were not recalculated.

A wholly disproportionate gain is recalculated by the HMRC officer on a 'just and reasonable' basis which is normally determined by the underlying economic gain of the policy at the time of the part surrender or part assignment. In the HMRC manual at IPTM 3596, the CGT part disposal rule is applied as a way of calculating the economic gain but the HMRC officer is not bound to use this method of calculation. The overarching aim of such a calculation is that it is clear, simple and fair.

It is, however, important to note that there is no statutory right of appeal against a decision under s507A and s512A, although if the policyholder is the interested person and he/she is unhappy with the decision made they can ask HMRC to review the case. If the policyholder is unhappy with the outcome of the review, they can make a complaint. If the policyholder is still unhappy after their complaint has been reviewed, they can ask for a different adviser to take a fresh look at the complaint. If, following this review, the policyholder is still unhappy they can ask the Adjudicator to look into the complaint. If, after this review, the policyholder is still unhappy they can ask a Member of Parliament to refer the complaint to the Parliamentary and Health Service Ombudsman.

SCOTLAND REVAMPS INCOME TAX

The Scottish government has been mulling over a change to the structure of income tax, at least as far as it can do so within the constraints of its devolved powers. On 14 December Derek Mackay, the Cabinet Secretary for Finance and the Constitution, revealed the outcome of the government's review. He claimed his proposals "will make Scotland's tax system fairer and more progressive", words that could have come from his English Shadow Chancellor counterpart, John McDonnell.

Whether Mr Mackay is correct or not, he has certainly complicated the income tax system for Scotland, as his proposed 2018/19 tax bands show: but, first, a reminder that the figures in the table below apply only to non-dividend and non-savings income ie. broadly speaking earnings, pensions and property income.

Taxable Income £	Band Name	Tax Rate %
0-2,000	Starter	19
2,001-12,150	Basic	20
12,151-32,423	Intermediate	21
32,424-150,000*	Higher	41
Over 150,000*	Top	46

* *Those with adjusted net income of more than £100,000 will see their personal allowance reduced by £1 for every £2 earned over £100,000.*

When looking at this table, there are several factors to consider:

- Westminster sets the personal allowance (£11,850 for 2018/19), which Scotland adds in when setting out its tax bands. Thus, the basic rate (20%) band ends at £24,000 in the Scottish tables, an amount which matches the projected median earnings figure for Scotland in the coming tax year.

- The starting rate band provides just £20 of tax savings at most - £2,000 @ 1%. It hardly seems worth the effort, especially given the problems starting rate bands have caused in the past.

- By keeping the basic rate at 20%, any worries that pension providers had about the operation of relief at source have disappeared. On the other hand, the corollary of the new 21% band is that Scottish intermediate rate taxpayers will have to reclaim an extra 1% relief on their pension contributions – if they can be bothered.

- Nobody earning less than £33,000 will pay more income tax in 2018/19 than in 2017/18, according to the Cabinet Secretary. That covers 70% of Scottish taxpayers.

- The Scottish higher rate (41%) threshold will be £44,273 (indexed up to the nearest £1 from last year's frozen figure). The rest-of-the-UK (RoUK) figure is £46,350 for 2018/19 (with a 40% higher rate applying).

- The gap between the Scottish and RoUK higher rate thresholds mean that the band in which full National Insurance contributions *and* Scottish higher rate is payable (with an effective total marginal rate of up to 53% [41% +12%]) has widened marginally to £2,077.

- For somebody earning £50,000, the net result is that in 2018/19 their Scottish income tax bill will be £9,015 against £8,360 outside Scotland.

- The Scottish National Party does not have a majority in the Scottish government, so the proposals could change. This happened last year, when the Greens forced a freezing of the higher rate threshold.

PERSONAL PORTFOLIO BONDS: AMENDING THE PROPERTY CATEGORIES

A personal portfolio bond (PPB) is, broadly, a policy investing outside of permitted property that also allows the policyholder, directly or indirectly, control over the selection of property underlying the policy (the control test). Categories of permitted property are mainly the internal linked funds of an insurance company and collective investment schemes.

If a policy fails the control test and holds non-permitted property, and so is classified as a PPB, a penal annual tax charge on such policies is levied under the chargeable event rules.

The list of permitted property for personal portfolio bonds in section 520(2) Income Tax (Trading and Other Income) Act 2005 has been extended.

Regulations have now been made to add three property categories to the list of permitted property in Income Tax (Trading and Other Income) Act 2005 which can be held in a policy without it being a PPB. The changes apply in respect of policies issued from 1 January 2018.

- Real estate investment trusts
- Overseas equivalents of investment trust companies
- Authorised contractual schemes

The regulations also remove category 7(a) in section 520(2) Income Tax (Trading and Other Income) Act 2005 [an interest in a collective investment scheme constituted by a company which is resident outside the United Kingdom (other than an open-ended investment company)]. The removal is necessary because no property is capable of qualifying for inclusion in category 7(a).

RENT-A-ROOM RELIEF REVIEW

The small print of the Autumn Budget’s Red Book included a statement that the government would issue ‘a call for evidence to establish how rent-a-room relief is used and ensure it is better targeted at longer-term lettings’. At the beginning of December, the relevant paper emerged to no great fanfare.

As the consultation points out, rent-a-room relief was launched in 1992 since when ‘the housing market has changed significantly’. 25 years ago, the relief was introduced with the aim of stimulating the supply of low-cost rented accommodation – déjà vu anyone? There have only been

two adjustments in the level of relief over its quarter of a century of existence. The first was a rise from the initial £3,250 to £4,250 in 1997 and the second, a jump to the current £7,500, no less than 19 years later – an indication of how the relief had been neglected. In 2016 the £7,500 rate exceeded the *average* room rental cost in every region of the UK, according to HMRC.

The latest published estimates of the cost of the relief, which are four years old, suggest it reduces Treasury input by a little over £100m a year. However, the new paper notes that as the relief absolves many people from making a tax return, 'HMRC have incomplete data on users of the relief, what type of letting they are offering, or how much income is being relieved'. What HMRC does know is that the number of individuals who have to complete a self-assessment tax return and, in so doing, claim the relief rose by 38% between 2007/08 and 2014/15.

Although not mentioned in the paper, the raison d'être for the review can be summed up in one word: Airbnb. In 1992 the idea that rooms in private homes would be let regularly or continuously for brief periods seemed farcical: that was the job of the hotel industry. Thus, the legislation has no minimum period for letting. The £7,500 relief can cover a year's worth of rental income from one residential tenant or two weeks from a series of holidaying renters during some major sporting event.

In the style of these types of Treasury paper, there are no explicit proposals, but plenty of leading questions. For example:

- 'Do you have any evidence that suggests that there are increasing numbers of people letting out rooms in their main home? If so, do you have any evidence that suggests this relates specifically to holiday or guest accommodation rather than residential? Has there been a move towards one or the other over time?

- Do you think that all types of letting activity, regardless of the purpose or length, should be able to benefit equally from Rent a Room relief?

- Do you think the UK should look to restrict access to Rent a Room relief only to those homeowners letting out their rooms for residential purposes? What would be the pros and cons of such an approach?

- To what extent do you think the existence of Rent a Room relief provides an incentive for those using the relief to let out rooms in their home / take on a lodger? If Rent a Room relief did not exist, and only the £1,000 property allowance were available to use against this income, would current users of the relief still take in a lodger?

- Do you think that there should be differences in eligibility for Rent a Room relief according to type of letting activity, purpose or length? Do you think homeowners should only be eligible to claim Rent a Room relief where they are offering a room for let on a longer-term basis (e.g. 31 days or more)? What would be the pros and cons of such an approach?'

The consultation runs to 23 February, which suggests we are unlikely hear its results in the Spring Statement. Next year's Budget looks the more probable timing for an announcement of any change.

DOTAS AND INHERITANCE TAX

The Disclosure of Tax Avoidance Schemes (DOTAS) Regulations are an important weapon available to HMRC in its fight against tax avoidance schemes. In essence, if a scheme satisfies certain conditions, any person involved in the promotion of the scheme must disclose details of the scheme to HMRC. If they do not comply with this requirement, they risk incurring substantial penalties.

Revised DOTAS Regulations have been published in relation to schemes established to avoid inheritance tax. These Regulations are set out in Statutory Instrument 2017 No. 1172 entitled 'The Inheritance Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2017'. The rules come into force on 1 April 2018.

Under the revised rules, a scheme will be notifiable for IHT purposes if it falls within the description in Regulation 4. An arrangement will be covered by Regulation 4 'if it would be reasonable to expect an informed observer (having studied the arrangements and having regard to all relevant circumstances) to conclude that conditions 1 and 2 are met'.

In this respect:

Condition 1 is that the main purpose, or one of the main purposes, of the arrangement is to enable a person to obtain one or more of the following IHT advantages:

- the avoidance or reduction of an entry charge on a relevant property trust

- the avoidance or a reduction in specified IHT charges under certain sections of the IHT Act 1984 (mainly relating to relevant property trusts)

- the avoidance or a reduction in an IHT charge under the gift with reservation rules (in cases where the POAT charge does not apply)

- a reduction in a person's taxable estate with no corresponding lifetime transfer.

Condition 2 is that the arrangements involve one or more contrived or abnormal steps without which the tax advantage could not be obtained.

It is important to note that certain arrangements are excepted from the new provisions. Most notably if they:

- implement a proposal which has been implemented by related arrangements; and

- are substantially the same as the related arrangements

In this requirement "related arrangements" are defined as arrangements which

- were entered into before 1 April 2018; and

- at the time they were entered into, accorded with established practice of which HMRC had indicated its acceptance.

COMMENT

These new Regulations adopt a much broader approach to what was previously proposed. In particular, there is now no specific exclusion from the DOTAS Regulations for loan trusts, discounted gift trusts and reversionary interest trusts.

However, it is probably reasonable to take the view that all of these 3 types of scheme are examples of arrangements that were generally acceptable before 1 April 2018 and would have been acceptable under established HMRC practice.

This would be on the basis that HMRC is aware of these arrangements and, indeed, in the case of discounted gift trusts, has issued tables of discounted values.

It is hoped that the precise position will be clarified with HMRC in the near future.

THE REGISTRATION OF CLIENTS' TRUSTS OR ESTATES

HMRC has updated its guidance on how to register a trust. The guidance also explains more about classes of beneficiaries and states that you need an agent services account before being able to register.

Clients who have trusts with a new tax liability must register by 5 October of the tax year after either:

- the trust has been set up
- when it starts to make income and gains, if this is later.

The guidance outlines the information that is required to register a trust. For example, the name of the trust, the date it was set up, where it is resident, information on the assets held within the trust, information on individual beneficiaries and it also includes information on the process to follow. Once the trust has been registered, a unique self-assessment taxpayer reference will be issued which can then be used to complete any returns.

With regard to providing information on beneficiaries we understand that, according to HMRC, details of beneficiaries named in a letter of wishes have to be supplied. It is possible to use classes of beneficiary, provided they have not received any financial benefit from the trust, rather than naming them individually. However, once they receive a financial benefit they must be individually named.

HMRC has also updated it guidance in relation to the registration of estates, which is broadly similar.

INCOME WITHDRAWAL RATE FOR JANUARY 2018

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 2018 is 1.5%.