Technical CONNECTION

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OTS IHT GENERAL SIMPLIFICATION REVIEW

Following on from the correspondence between the Chancellor and the Office of Tax Simplification (OTS) in January, the OTS has now published a letter setting out the scope of its 'IHT General Simplification Review', ahead of a call for evidence in the near future.

The OTS aims to publish a report in Autumn 2018 with 'specific simplification recommendations for government to consider', which will presumably feed into the Autumn 2018 Budget.

COMMENT

There are few surprises in the scope set out by the OTS, although some may raise a wry smile at the OTS's need to ask questions about 'The perception of the complexity of the IHT rules amongst taxpayers, practitioners and industry bodies'.

THE GOVERNMENT RESPONSE TO THE TAYLOR REVIEW OF MODERN WORKING PRACTICE

On 7 February the government published its response to the Matthew Taylor Review of Modern Working Practices and three other related consultations. The related consultations are:-

- Increasing transparency in the labour market
- Agency workers recommendations

- Enforcement of employment rights recommendations

The main thrust of the review was to examine (as the title would indicate) working practices. Taxation was certainly not a “main item” on the review’s agenda. However, the review does consider employment status and the rights and responsibilities associated with it, particularly in relation to the so–called ‘gig economy’. And it’s this aspect that could lead to a change that would have a direct or indirect impact on the financial planning advice sector. It could lead to status changes that have a resulting tax impact and consequential impact for financial planning – not least of all in relation to pension provision.

We are some way from that actually being a reality, but the Taylor review started it and the responses and the new consultations have done little to halt what may end up being a “direction of travel”.

The government’s response to July’s review incorporated the following statement on clarity in relation to employment status:

‘Clarity in the gig economy: Platform-based working offers welcome opportunities for genuine two-way flexibility and can provide opportunities for those who may not be able to work in more conventional ways. These should be protected while ensuring fairness for those who work through these platforms and those who compete with them. Worker (or ‘dependent contractor’ as the review suggested renaming it) status should be maintained but we should make it easier for individuals and businesses to distinguish workers from those who are legitimately self-employed.’

The changes proposed in the review relating to employment status would represent the single largest shift in employment status since the Employment Rights Act in 1996. As the review stated, they will require further consultation and examination if they are to be successful.

The government agrees that it should be easier for individuals and businesses to determine whether someone is an employee, a worker or self-employed, and is committed to improving clarity and certainty in this area. This will include consideration of legislative options. The government also acknowledges that it needs to ensure that any reforms achieve their aim, and would not have unintended consequences – such as damaging genuine flexibility or creating opportunities for less scrupulous employers to play the system and gain an unfair competitive advantage.

The government will therefore consult to explore the best way to improve clarity for those on the boundary between employment and self-employment, including options for legislative reform. This will help ensure that fewer ‘workers’ find themselves fighting for protections that they should already have. It should be clear to a person whether he or she is employed – with rights to time off for sickness and entitlement to sick pay, holiday pay and other rights – or whether he or she is a contractor in which case onerous contractual terms that an individual could not meet, such as protection for sickness, should not be enforceable.

The consultation will look at employment status for both employment rights and tax, including considering the review’s recommendation for greater alignment between the two, in order to tackle this issue holistically.

Agency workers in the UK play a vital role in supporting delivery in a number of sectors and many people choose this highly flexible approach to work. However, the government acknowledges that some agency workers can find themselves in positions of vulnerability and so it is important that they receive enhanced protections.

Through the Agency Workers Regulations and the Employment Agencies Act 1973, agency workers already receive greater protections than many other casual workers, with some protections enforced by the state through the Employment Agency Standards Inspectorate (EAS). However, it is clear that changes in the labour market have put pressure on the current framework of protections.

The government wants to ensure that rules that protect agency workers reflect the challenges of the modern labour market and will consult on how best to achieve this.

THE REGISTER OF FOREIGN COMPANIES THAT OWN UK PROPERTY

Following consultation on government proposals for a new beneficial ownership register of overseas companies that own UK property, which closed in May 2017, the government confirmed in December 2017 a timetable for the introduction of such a register.

The register is a part of the UK’s anti-corruption strategy for years 2017-2022. A draft Bill is expected to be published by Summer 2018 with the intention that a register will be operational by 2021. Overseas legal entities (including corporations as well as trusts) will then be required to provide information on the beneficial ownership of property that they own or purchase in the UK.

Beneficial owners of UK companies are already required to be disclosed under the Persons with Significant Control (PSC) Regulations. The government has estimated that more than £180 million worth of property in the UK has been investigated since 2004 on the grounds that the purchase proceeds came from suspected corruption. It is also estimated that around three quarters of properties currently investigated involve some form of offshore secrecy/tax avoidance/evasion. Therefore, the purpose of the register is to reduce opportunities for money laundering and the purchase of UK property with dirty money.

According to Land Registry data, some 97,000 properties in England and Wales were held by overseas firms as of January 2018, a quarter of them owned by entities registered in the British Virgin Islands (BVI).

Two-thirds of these properties are registered to firms in either the BVI or in Jersey, Guernsey or the Isle of Man, while a significant number are owned by companies in Hong Kong, Panama and Ireland, according to an analysis by the BBC.

Nearly half of all foreign-owned properties are in London, the Land Registry figures show. Its numbers are backed up by HMRC figures for the Annual Tax on Enveloped Dwellings. These show that nearly 80 per cent of the UK's corporately-owned residential property (whether foreign-owned or not) are in two London boroughs, Westminster and Kensington and Chelsea. About 6,000 properties in these boroughs are owned by foreign companies. Even Admiralty Arch is owned by a Guernsey company, it has emerged.

Apart from the money laundering/anti-avoidance aspects, the register would also potentially benefit tenants who would have the ability to obtain details of those with ultimate control of the property they occupy, rather than merely being told who is their “official landlord” on paper.

The new requirements will apply to freehold property and properties with leases of over 21 years; and registration information will be kept at Companies House in the same way as for the PSC regime.

COMMENT

Given that the register of Persons with Significant Control has been in use for some time, and given the above-mentioned statistics on the number of UK properties (in particular in London) being used in money laundering, it is surprising that it has taken so long to start this process and that it's not going to be fully operational for at least another 3 years. Nevertheless the progress in this area is welcome.

ON-LINE CONVEYANCING

Following public consultation in 2017 changes have been introduced to the land registration rules in England and Wales to come into effect from April 2018.

The government has approved new regulations allowing HM Land Registry to accept digital conveyancing documents, such as mortgages and transfers authenticated by electronic signatures. This, in effect, allows conveyancing transactions to be carried out entirely on-line. To enable this to take place some changes were necessary to the Land Registration Rules 2003 and these have now been approved. As with all on-line transactions, the difficulty lay in the combination of the overall objective to use digital technology to make transactions simpler, faster and cheaper with the enhancement of the integrity and security of the registration process against threat from cyber-attacks and digital fraud.

Under the new system e-signatures will be provided through the Gov.uk Verify service. Conveyancing practitioners should be receiving, if they have not already done so, communications from HM Land Registry about the changes that affect the way applications to register land are submitted.

COMMENT

There is no escaping the progress of technology. The legal bases for electronic signatures do, of course, exist in the UK. The Electronic Communications Act 2000 confirms that electronic signatures are admissible in evidence although it does not go as far as providing that they have equivalent legal effect as wet ink signatures. The latter provision is in fact included in the EU legislative framework, namely Regulation (EU) No 910/2014, effective from July 2016, which provides that a qualified electronic signature has the equivalent legal effect as a handwritten signature. However, the EU Regulation also states that it is for national law to define the legal effect of electronic signatures.

The effect of this is that at present in the UK, save where there are specific regulations dealing with this matter, such as the above-mentioned provisions for e-conveyancing, there is no general acceptance of e-signatures in place of wet ink signatures.

The question of electronic execution of documents frequently arises when discussing the process of setting up a trust, especially in the context of life policy trusts.

Generally speaking, it is fairly common practice now for trust requests to be accepted by life offices during an on-line application process (ie. where the applicant proposes for life assurance cover using an on-line application process and at the same time requests that the policy be issued subject to a specified trust). Under English law the problem is in the context of the execution of deeds, given that special requirements, such as the requirement for a deed to be signed and delivered in the presence of another person. In the context of trusts, where an existing life assurance policy is transferred into a trust it would normally be done by way of a deed. Similarly, if additional trustees are appointed, this would be done by way of a deed.

While there are some guidelines on the electronic execution of deeds issued by the Law Society, these are generally only followed where a solicitor is involved and the parties sign in the presence of a solicitor. In all other cases, especially when using standard trust documents provided by life offices, electronic execution of such documents is yet to be implemented.

POWERS OF ATTORNEY AND FEE REFUNDS

The Office of the Public Guardian (OPG) has revised the process for dealing with refunds where the donor of a power of attorney has died.

We noted recently that the OPG had announced that it would refund part of the fee levied for registering a lasting power of attorney or an enduring power of attorney between 1 April 2013 and 31 March 2017.

At the time the OPG website stated that if the donor had died then it would not be possible to claim online and that a claim had to be made by phone. By coincidence we had occasion to try the phone route. The predictable happened: a long queue, then cut off. A second call shortly afterwards generated a message to send in details by email, although the paperwork required was not specified.

The OPG has since changed its approach where the donor has died (which is probably quite a common situation). The OPG website now states that in such circumstances it will only accept a claim from the executor/administrator, who must supply photocopies of both the:

- death certificate; and
- Will or the grant of representation (for example, a grant of probate or letters of administration).

The claimant must also supply their name, contact number, email address and postal address along with the donor’s name and, if known, case reference number.

COMMENT

A Freedom of Information request from Old Mutual Wealth revealed that there is potentially a total of 1.8m applications for refunds due, which begs the question of how the OPG ever thought a phone service was going to cope with demand.

SCOTLAND'S INCOME TAX CHANGES CONFIRMED

The move by the Scottish government in its December Budget to create five tiers of income tax hit an obstacle in the form of resistance from the Green Party. A compromise was reached and on 20 February, Holyrood confirmed, by 67 votes to 50, the new tax structure. As a reminder, for 2018/19 Scottish taxpayers will face the following tax bands:

Taxable Income £	Band Name	Tax Rate %
0-2,000	Starter	19
2,001-12,150	Basic	20
12,151-31,580	Intermediate	21
31,581-150,000	Higher	41
Over 150,000	Top	46

Note that:

- These rates apply to non-dividend, non-savings income only (so broadly earnings and property income);
- UK rates apply to dividend and savings income;
- UK tax bands apply for capital gains tax purposes; and
- Scotland does not set NIC rates or limits, so there is now a £2,920 gap (£46,350 - £43,430) between the UK-wide Upper Earnings/Profits Limit (set in line with the UK ex-Scotland higher rate threshold) and the starting point for Scottish higher rate tax. The result is a marginal rate in that band for Scottish residents of up to 53% (41% + 12%).

One fascinating problem which has emerged is the transferable tax allowance for married couples and civil partners. Section 55B(2)(b) of the Income Tax Act 2007 makes it a requirement for eligibility for the transferee that 'the individual is not, for the tax year, liable to tax at a rate other than the basic rate… the Scottish basic rate, the dividend ordinary …' While Scotland kept a 20% basic rate (which solves relief at source issues), it has slotted in a 21% intermediate rate above, starting at £12,151 of taxable income. How a Scottish intermediate taxpayer (rates set in Scotland) will be able to claim the transferable allowance (allowances set UK-wide) is furrowing a few brows in Holyrood and Westminster, according to recent press reports.

Pension tax relief is still 20% at source and 21% taxpayers can claim an extra 1% in relief. Higher rate taxpayers will obtain tax relief at 41% and top rate taxpayers at 46%.

MENTAL CAPACITY, MARRIAGE AND WILLS

A recent decision of the Court of Protection confirms that there are different tests for mental capacity depending on the matter under consideration.

It is not always appreciated that there are different tests for mental capacity depending on the matter in question. Thus, the test for making a Will may be different from that applying to a lifetime gift or to the general capacity to do other things, e.g. to get married. Indeed, a recent decision illustrates the problems in this area and how one test may have unexpected and possibly detrimental consequences to third parties, in this case the possibly unintended consequences of a parent's capacity to marry for the second time.

In England and Wales marriage automatically revokes a Will (that is, unless it meets the requirements of a Will that has been made ‘in contemplation of marriage’). If an individual’s Will is revoked upon marriage, and they do not get around to replacing it with another valid Will prior to their death, then their estate passes under the rules of intestacy.

The England and Wales Court of Protection has recently published its judgment in the case of DMM, *(Re DMM, 2017 EWCOP 33)* concerning an elderly man with dementia who desired to marry his long-term cohabitant against the wishes of his daughters from his first marriage.

The facts of the case were as follows:

DMM was married and divorced many years ago, and has three daughters from that marriage. Now in his mid-eighties, he has cohabited with another woman for more than twenty years. In 2013, he made a Will giving his cohabitant most of his pension benefits, a £300,000 cash legacy and the right to live in his house for two years after his death. His daughters were his residuary beneficiaries and would ultimately inherit most of his estate.

In late 2016, DMM announced his intention to marry his cohabitant. At this stage he suffered from Alzheimer's disease. One of his daughters then sought and obtained a medical opinion to the effect that DMM did not have the mental capacity to marry.

The father's marriage would automatically revoke his Will and his advancing dementia would probably leave him legally incapable of making a new Will after the marriage. If intestacy applied his new wife would receive £250,000, his chattels and half of the balance of his estate. The daughters would only receive half of the balance of his estate.

The Court of Protection instructed an assessment of DMM's capacity to consent to marriage, being not just his understanding of the strictly personal aspects of marriage, but also the affect on his daughters' finances. The conclusion was that DMM did indeed understand that his children might receive less than before and the cohabitant might receive more, and so the decision was that DMM had the capacity to marry.

Comment

It is not yet known whether the decision will be appealed. It is, however, a good example of the complexities surrounding the issues of mental capacity. Cases like this may be a good topic for starting a conversation with a client about powers of attorney, Will revision and estate planning in general.

THE HELP TO SAVE SCHEME

HMRC has recently updated its policy paper on the Help to Save scheme. The scheme is a new government saving scheme to assist working people on low incomes to build their savings.

Basically, it enables regular savers to deposit up to £50 a month, over 4 years (so there is a maximum investment of £2,400), and receive up to £1,200 in tax-free bonuses.

At the end of 2 years, savers will receive a 50% bonus based on the highest balance achieved.

Customers can carry on saving for another 2 years and receive another 50% bonus on their additional savings.

The Help to Save scheme will be open to UK residents who are:

- entitled to Working Tax Credit and receiving Working Tax Credit or Child Tax Credit payments; or

- claiming Universal Credit and have a household or individual income of at least £542.88 for their last monthly assessment period

Those living overseas who meet either of the above eligibility conditions can apply for an account if they are:

- a Crown servant - or their spouse or civil partner
- a member of the British armed forces - or their spouse or civil partner

The Help to Save scheme started with a trial in January 2018. It will be rolled out in stages and be available to all those eligible from October 2018.

UPDATED FUEL RATES FOR COMPANY CARS

HMRC has recently announced the new fuel rates for company cars applicable to all journeys from 1 March 2018 until further notice. The rates per mile are based on fuel prices and adjusted miles per gallon figures, and 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	8p	1,601cc to 2,000cc	11p
Over 2,000cc	22p	13p	Over 2,000cc	13p

INCOME WITHDRAWAL RATE FOR MARCH 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 March 2018 is 1.75%.