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INCOME WITHDRAWAL RATE FOR MARCH 2019

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FINANCE ACT 2019

Finance (No.3) Bill 2017-19 received Royal Assent on 12 February as Finance Act 2019.

The Act includes measures announced in the October 2018 Budget and other changes which had been announced earlier.

NEW RECORD FOR THE COMPLETION OF SELF-ASSESSMENT TAX RETURNS

HMRC has reported that a total of 93.68% of self assessment tax returns – a new record – were completed by the 31 January 2019 deadline.

More than 11.5 million taxpayers were required to file their 2017/18 tax returns by 11.59pm on 31 January. While the majority filed on time, some 700,000 customers missed the deadline.

Interestingly, more than 700,000 returns were submitted on 31 January, with the peak hour for filing between 4pm and 5pm when 60,000 were filed. The number of taxpayers who filed online reached more than 10 million for the first time.

Anyone who has missed the deadline should contact HMRC as soon as possible especially where they can show they have a genuine excuse for late filing.

INTEREST IN POSSESSION TRUSTS – WHO IS TAXED ON TRUST INCOME?

It is generally well known that trustees of interest in possession trusts have a liability to income tax at the basic rate on any income they actually receive. Such income will, of course, be taxed on the beneficiary entitled to the income and, in effect, the trustees will be paying tax at the basic rate on behalf of the income beneficiary. It is also generally well known that the way to avoid the trustees having to pay tax at the basic rate is to mandate all the trust income to the beneficiary so that it cannot be said that the trustees actually received this income. However, we have come across a view from some practitioners that in order to avoid assessment on the trustees, it is essential that agreement from HMRC is sought in each case.

A recent decision from the First-tier Tax Tribunal (FTT) in the case of *Trustees of the Paul Hogarth Life Interest Trust 2008 v HMRC, [2018] UKFTT 595 TC* helpfully confirms that income will not be taxed on the trustees if the income is mandated to the beneficiary and paid to them directly from the source and not through the trust bank account. Clearly, it is essential to note that the income must not pass through the trust bank account. In practice, with many trusts where professional trustees are acting, and their fees are charged to trust income, the trustees will be unlikely to agree to mandate all the trust income to the beneficiary. In such a case the trustees will have a tax liability at the basic rate with a tax credit available to the beneficiary.

In the above case, all the income was mandated to the life tenant and the trust did not have any chargeable gains (so there were no other tax liabilities or reporting duties) for the tax years in question. Nevertheless, HMRC issued a notice to file a tax return. The trustees filed a late return and were served with late filing penalties totalling £1,300. At this point the trustees appealed and the FTT allowed their appeal.

The Tribunal confirmed that if there is no income chargeable on trustees and no chargeable gains arise then section 7 of the Taxes Management Act 1970 (requirement to notify chargeability) is of no effect and there is no obligation on anyone to notify HMRC. As a result, a notice to file a tax return cannot be issued to trustees where all income is mandated to a beneficiary and there are no chargeable gains in the year, and no one can be penalised for failing to deliver a return.

COMMENT

Given that there has been some confusion about the circumstances in which the trustees' duty to report can be avoided altogether, the above decision is very useful for all practitioners.

REVIEW OF THE MENTAL CAPACITY ACT 2005 CODE OF PRACTICE

The Ministry of Justice has launched a consultation on potential revisions to the Mental Capacity Act 2005 (MCA) Code of Practice.

The consultation was launched on 24 January and closed on 7th March this year. It asked practitioners in England and Wales to suggest potential revisions to the above Code of Practice (COP).

The COP (all 296 pages of it) is a key document supporting the MCA with practical guidance and examples of best practice for dealing with people who lack capacity to make their own decisions about their care and treatment, or who want to prepare for the loss of capacity.

The key reason for the consultation is the new system of "Liberty Protection Safeguards". These new safeguards are due to replace the current system of Deprivation of Liberty Safeguards which, following the Supreme Court's decision in 2014, all now have to be judicially approved. This has resulted in the system failing to work altogether given that hundreds of thousands of cases have had to be dealt with through the Courts.

In 2017 the Law Commission for England and Wales recommended the new Liberty Protection Safeguards model and this will be incorporated in a new Mental Health Act which the Government has promised following the publication of the final report from the Independent Review of the Mental Health Act 1983. The Mental Capacity Act itself is not being reviewed.

The Liberty Protection Safeguards recommended by the Law Commission are based in care planning and provide a simpler and streamlined system. There will be independent oversight of all authorisations and a strengthened role for, and consultation with, families and carers. A separate code of practice is being developed to support the Liberty Protection Safeguards and this will form a part of the revised MCA Code of Practice, hence the opportunity is being taken to review the COP in its entirety.

COMMENT

With the number of elderly persons suffering from dementia steadily increasing (it is estimated there are about 2 million people in England and Wales alone who have lost capacity through dementia, disability or injury), whilst financial advisers are unlikely to be involved in day-to-day practical issues of assessing capacity, it is important to be aware of what legislation exists and what codes of practice are in place to help those involved in this area.

HMRC ENCOURAGES MARRIED COUPLES AND CIVIL PARTNERS TO USE THE MARRIAGE ALLOWANCE

A spouse is entitled to transfer up to 10% of their personal allowance (£1,190 rounded for 2018/19 and £1,250 for 2019/20), which HMRC calls the "marriage allowance", to their spouse provided that after the transfer neither spouse pays tax at above the basic rate. This can save tax of up to £238 for 2018/19 and up to £250 for 2019/20. A claim can be backdated to include any tax year from 2015/16 in which a taxpayer was entitled to the allowance. If a claim is backdated now a lump sum of up to £900 could be received.

PROBATE FEES INCREASES NODDED THROUGH

Last November, the Parliamentary Under Secretary of State for Justice issued a written statement on increases to probate fees in England & Wales. The proposed new fees attracted considerable criticism, prompting one financial advice group to ask the Competition and Markets Authority whether it could intervene.

Despite the complaints, the government has moved ahead with secondary legislation. On 7 February the House of Commons Fourteenth Delegated Legislation Committee voted 9-8 in favour of the statutory instrument (SI). The SI is now due to go before the House of Commons where it will pass into law unless there is a formal objection and subsequent vote against it. At the time of writing some media sources have reported that the Labour Party will insist on a full House of Commons debate on the new scale of changes. The changes are set come into force in April – no specific date has been mentioned yet.

COMMENT

These increases are widely seen as a tax-raising measure – the Ministry of Justice needs the revenue as it has seen a 40% real terms cut in its day-to-day budget between 2010/11 and 2019/20. The Law Society is calling on its members to write to their MPs about what it regards as "a 'stealth tax' and a misuse of the Lord Chancellor's fee-levying powers".

TUC CALLS FOR GREATER CONTRIBUTIONS

The Trades Union Congress (TUC) has published an analysis calling on the government to review earnings thresholds for automatic enrolment.

Back in December 2017, the DWP issued a paper, 'Automatic Enrolment Review 2017: Maintaining the Momentum' which examined future developments for auto enrolment once the contribution level had reached 8% in April 2019. Two key proposals in the paper were:

- The lowering of the age threshold from 22 to 18; and

- The removal of the Lower Earnings Limit (LEL) so that contributions 'are calculated from the first pound earned'.

However, the paper was vague about when these reforms would be introduced, with the then Secretary of State (David Gauke) saying that "The government's ambition is to implement these changes to the automatic enrolment framework in the mid-2020s'. He also said that during 2018 the DWP would 'work to build a renewed consensus to deliver the detailed design and implementation of our proposals".

As has happened with much government policy, that timetable seems to have slipped in the wake of the Brexit travails. The TUC has decided to remind the government of its plans as part of its 'Fit for the future' pensions conference, which took place on 5 February. The TUC's arguments, which to an extent echo comments in the original DWP paper, are that:

- Lowest earners are hit the hardest by the LEL exclusion, which in 2019/20 will leave £6,136 of earnings un-pensioned.

- At the earnings trigger point of £10,000, in 2019/20 the effective contribution rate is 3.1% rather than the headline 8% figure because of the LEL floor – a £490 shortfall against a contribution based on full earnings.

- The government's own figures show that LEL abolition would mean an extra £2.6bn a year in contributions, including £1bn more from employers.

- A delay from 2022 to 2028 (extremes of mid-2020s) would mean a worker earning £10,000 and retiring in 40 years' time could have a pension pot of £62,387 in 2059 rather than £74,654.

> For a median earner, which the TUC puts at 'just over £24,000 a year', their final pension pot could amount to £177,390 if the LEL is abolished in 2028 against £189,660 if it were removed six years earlier.

The DWP response has been that it is wants to maintain the balance between increased pension savings and affordability. In this regard, the department will be watching the impact of April's contribution level rise from a 5% to 8%. No doubt the Treasury is also considering the effect of the extra tax relief (£0.5bn+) associated with a further £2.6bn of pension contributions.

The DWP's caution is understandable. For somebody with earnings not far above that £10,000 earnings trigger, an extra £20 a month in pension contributions is a significant additional deduction. And that £20 assumes the individual benefits from a full 20% tax relief – an estimated 1.2m members in 'net pay' schemes may not. The forthcoming 5.5% rise in the personal allowance to £12,500 will only exacerbate this missing relief problem, which needs addressing at the same time, if not before, as any scrappage of the LEL floor.

NEW FUEL RATES FOR COMPANY CARS

HMRC has announced the new fuel rates for company cars applicable to all journeys from 1 March 2019 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.

Rates from 1 March 2019:

Engine size	**Petrol**	**LPG**	**Engine size**	**Diesel**
1,400 cc or less	11p	7p	1,600 or less	10p
1,401cc to 2,000cc	14p	8p	1,601cc to 2,000cc	11p
Over 2,000cc	21p	13p	Over 2,000cc	13p

CONFIRMATION OF SCOTLAND'S 2019/20 INCOME TAX DIFFERENCES FROM THE REST OF THE UK

On 19 February the Scottish Parliament agreed that the income tax rates for 2019/20 on certain non-savings and non-dividend income of a Scottish taxpayer would be as follows:

(a) a starter rate of 19%, charged on income up to a limit of £2,049;

(b) the Scottish basic rate is 20%, charged on income above £2,049 and up to a limit of £12,444;

(c) an intermediate rate of 21%, charged on income above £12,444 and up to a limit of £30,930;

(d) a higher rate of 41%, charged on income above £30,930 and up to a limit of £150,000; and

(e) a top rate of 46%, charged on income above £150,000.

After debate, the motion was agreed (by division: For 61, Against 52, Abstentions 6).

INSOLVENCY CHANGES – NEW GOVERNMENT CONSULTATION

From 6 April 2020, when a business enters insolvency, more of the taxes paid by its employees and customers, and temporarily held in trust by the business, will go to HMRC rather than being distributed to other creditors.

This reform will only apply to taxes collected and held by businesses on behalf of other taxpayers (VAT, PAYE income tax, employee National Insurance contributions, and Construction Industry Scheme deductions). The rules will remain unchanged for taxes owed by businesses themselves, such as corporation tax and employer National Insurance contributions.

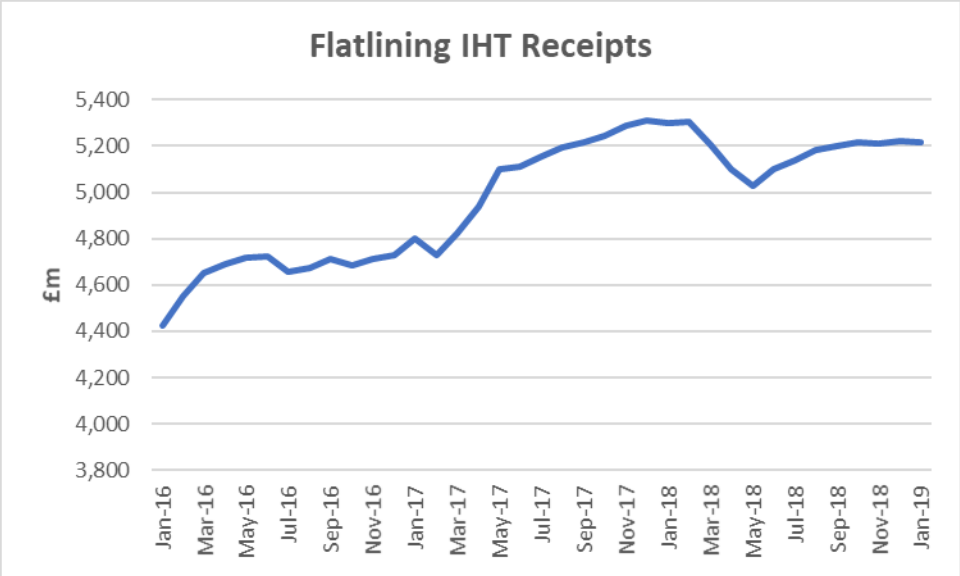
Legislation will be introduced in Finance Bill 2019/20 to make HMRC a secondary preferential creditor for certain tax debts paid by employees and customers on the insolvency of a business. This means HMRC will move ahead of holders of floating charges (mainly financial institutions) and other non-preferential unsecured creditors, but remain below holders of fixed charges (also primarily financial institutions) and higher ranking preferential creditors.

HMRC has now published a consultation document outlining how its new status will differ from existing rules when a business goes into insolvency. It is not proposed to introduce any time limit in respect of debts that are due and any penalties or interest arising from these taxes will also form part of HMRC's preferential claim.

This measure will have no effect in relation to any insolvency proceedings commencing before the implementation date of 6 April 2020.

IHT RECEIPTS LOOK TO HAVE STALLED AT AROUND £5.2BN

The latest HMRC statistics for tax receipts show an interesting picture for inheritance tax (IHT). In the 12 months to January 2019, IHT receipts amounted to £5.214bn, down 1.6% on the figure for the year to January 2018. As the graph below shows, the Government's IHT take has seemingly paused on its relentless climb and is now flatlining at around £5.2bn.



Last October the Office for Budget Responsibility (OBR) had projected 2018/19 IHT income of £5.5bn, noting that 'receipts were front-loaded in 2017/18 in anticipation of a probate fee rise that in the event was not implemented'. That bringing forward of receipts for the latest round of probate fee increases – due in April - has not yet appeared in the monthly figures. To hit the OBR target, IHT receipts will need to be nearly £1.47bn in the final three months, which looks highly unlikely. However, the recent monthly IHT receipts data is provisional so revisions may come to the OBR's rescue.

COMMENT

The flatlining may be a reflection of the residence nil rate band (RNRB), which came into being in April 2017 and will have taken some months to impact on tax receipts. That could account for the drop early in 2018. The step up from £100,000 to £125,000 for the RNRB from April 2018 will have had less effect because it marked a maximum 25% increase in IHT saving over the original RNRB level. The path of receipts could be giving the Treasury food for thought on any IHT restructuring while it awaits the next report on IHT simplification from the OTS, due imminently.

THE LATE FILING OF TAX RETURNS COULD CARRY EXTRA PENALTY RISK

Following the self assessment deadline in January, each February HMRC issues £100 penalty notices. However, due to Brexit-related pressures on HMRC resources, the issue of those notices will be delayed this year – possibly until near the end of April 2019.

The £100 fixed penalty notice is an important prompt for taxpayers that are yet to complete their return because not only does it remind them that their return is outstanding but also reminds them that they risk incurring an additional penalty of £10 per day, subject to a maximum of £900, if the return is still outstanding after three months from the self assessment due date.

However, if HMRC has not issued these notices then a number of taxpayers may fail to complete their returns sooner thereby facing significant penalties. As ever, it is vital clients are reminded that they should complete their return if they haven't already done so.

Finally, HMRC has produced a calculator to obtain an estimate of how much will be payable in penalties and interest for those who have missed the deadline for sending in their self assessment return and/or paying their self assessment tax bill.

NS&I HAS ANNOUNCED INCREASES TO THE VARIABLE INTEREST RATES ON THEIR ISAs

Last July, a few weeks before the Bank of England increased base rates by 0.25%, National Savings & Investments (NS&I) announced a 0.25% *cut* in the interest rate on its main ISA, the Direct ISA. We remarked at the time that the timing was strange, not least because the notice period requirement meant that the rate change would not take effect until well after the August Bank of England's interest rate decision, which was widely anticipated to deliver an increase. Subsequently, at the end of August, NS&I did increase *some* of its variable interest rates, but it left the Direct ISA and its Junior counterpart untouched.

On 4 March 2019, as the ISA season got into full swing, NS&I announced an increase in ISA rates, retrospectively effective from the beginning of the month. The new rates are:

Product	Old rate	New rate from 1/3/19	Increase
Direct ISA	0.75% gross/AER	0.90% gross/AER	0.15%
Junior ISA	2.50% gross/AER	3.25% gross/AER	0.75%

There are no other variable rate changes, although it is worth noting that only the old Investment Account (0.80%) pays less than the uplifted Direct ISA.

NS&I says that the increase to the Direct ISA "…follows the changes in the ISA market". Research by Moneyfacts last month revealed that the cash ISA market was becoming more competitive, with 24 providers having raised rates since the start of the year.

The top variable rate now is 1.45%, underlining how far adrift the NS&I Direct ISA remains. However, many cash ISAs opened in earlier years pay a much lower rate. For example, Halifax pays just 0.60% on their ISA Saver Variable. Existing ISA savers would seem an attractive market for NS&I, but the Direct ISA does not accept transfers in.

The NS&I Junior ISA is more competitive, with only two providers beating the 3.25% rate.

INCOME WITHDRAWAL RATE FOR MARCH 2019

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 2019 is 1.5%.