Technical
CONNECTION

CONTENTS

Published by Technical Connection Ltd,
7 Staple Inn, London, WC1V 7QH.
Tel: 020 7405 1600 Fax: 020 7405 1601
E-mail: enquiries@technicalconnection.co.uk
www.techlink.co.uk

HELP TO BUY SCHEMES PROVING TO BE SUCCESSFUL

According to a news story published by HMRC almost half a million completions have taken place since 2013 using one or more of the Government's Help to Buy schemes. What's more, 430,000 of these completions were made by first-time buyers, who benefited from the £3,000 Government top up to their savings in Help to Buy ISAs.

The quarterly Help to Buy statistics show that:

- 494,108 completions have taken place using one or more Help to Buy schemes, over 93% of which took place outside of London;
- the average price of houses purchased through the schemes is £202,815;
- first-time buyers have now opened 1.4 million Help to Buy ISAs, offering Government bonuses of up to £3,000 on top of their savings.

COMMENT

It is evident that during recent years it has become increasingly more difficult for many to get onto the property ladder, primarily due to the rapid increase in property prices. Despite this, the introduction of specific schemes/products for first-time home buyers, like the Help to Buy ISA, are, as the statistics show, proving to be successful in helping to tackle the issue.

The Help to Buy ISA scheme is due to be withdrawn for new entrants on 30 November 2019, after which point only existing Help to Buy ISA account holders will be able to continue saving into the scheme. These existing Help to Buy ISA account holders can continue saving into their account until 30 November 2029 and must claim the Government bonus by 1 December 2030. Of course, the Lifetime ISA (LISA) will remain available for new entrants and there is a facility to transfer from a Help to Buy ISA Scheme to a LISA.

Considering its apparent success, it will be interesting to see if the Government announces an extension to the 30 November 2019 deadline for opening a Help to Buy ISA account.

THE FCA HAS PUBLISHED TWO PIECES OF RESEARCH LOOKING AT UK CONSUMER ATTITUDES TO CRYPTOASSETS

The Financial Conduct Authority (FCA) published research on 7 March looking at UK consumer attitudes to cryptoassets, such as Bitcoin and Ether. The research includes qualitative interviews with UK consumers and a national survey.

It probably does not come as a huge surprise that many consumers do not fully understand what they are purchasing when it comes to cryptoassets thereby indicating potential harm for such investors – those most aware of cryptoassets are likely to be men aged between 20 and 44.

Both the survey and qualitative research found that some cryptoasset owners made their purchases without undertaking any research beforehand.

Those who were interviewed were basically looking for ways to ‘get rich quick’ and were mainly influenced by friends, acquaintances and social media. The FCA found that 73% of UK consumers that were surveyed didn’t know what a ‘cryptocurrency’ was so could not really define it.

Further, the FCA estimates that only 3% of those surveyed had bought cryptoassets and, of the small sample of consumers who had bought cryptoassets, around half spent less than £200. Most consumers who haven’t bought cryptoassets to date aren’t likely to do so. So, despite the general lack of understanding of cryptoassets amongst UK consumers, findings from the survey suggest that currently the overall scale of harm may not be as high as previously thought.

MAKING TAX DIGITAL – GOVERNMENT UPDATE

The 2019 Spring Statement included a brief update from the Government about the introduction of Making Tax Digital (MTD).

In November last year, the House of Lords called for a general delay to the introduction of MTD for all businesses. Unfortunately, the written ministerial statement, published after the 2019 Spring Statement, confirms that the Government will not be delaying MTD for VAT (apart from the previously announced deferral by six months for certain businesses, trusts, charitable trusts and ‘not for profit’ organisations that are not set up as a company.)

But it’s not all bad news for VAT.

The Government has advised that there will be a light touch approach to penalties in the first year of implementation, saying "Where businesses are doing their best to comply, no filing or record keeping penalties will be issued."

And MTD for other taxes has been deferred, with the Government saying: "The focus will be on supporting businesses to transition and the Government will therefore not be mandating MTD for any new taxes or businesses in 2020."

The Lords had suggested a delay until April 2022 at the earliest - allowing two years to learn and act on lessons from the implementation of MTD for VAT, with a further year required for the software industry and taxpayers to prepare.

THE FCA CONFIRMS AN INCREASE IN THE FINANCIAL OMBUDSMAN SERVICE AWARD LIMIT

The Financial Conduct Authority (FCA) has published a policy statement confirming that the Financial Ombudsman Service (FOS) will soon be able to require financial services firms to pay significantly more compensation to consumers and businesses.

From 1 April 2019, the current £150,000 limit will increase to £350,000 for complaints about actions by firms made on or after that date. For complaints about actions before 1 April that are referred to the FOS after that date, the limit will rise to £160,000. The FCA has also confirmed that both award limits will be automatically adjusted every year to ensure they keep pace with inflation as measured by the Consumer Prices Index.

The FCA has said that it estimates there could be up to 500 complaints upheld by the FOS each year where the amount of compensation that it determines is due is above the previous award limit of £150,000.

130 responses were received to the FCA's consultation on this increase. Most responses on the £350,000 limit proposals came from personal investment firms (PIFs), particularly small independent financial advisers (IFAs), and insurers providing professional indemnity insurance (PII) to these firms. According to the FCA, these respondents did not support any increase to the current limit, mainly due to the potential impact on the PII market.

The FCA said it accepted respondents' views that there could be a material impact on the price and availability of PII cover for activities carried out by PIFs that are subject to the £350,000 award limit. The example it gave was DB transfer advice provided on or after the in-force date of 1 April 2019. The FCA has stressed that whilst it does not expect it to materialise, it has modelled a 'worst-case' scenario, based on PII premium increases of between 200% and 500% forecast by insurers, although the FCA's own estimate is 140%.

The new award limit will come into force at the same time as the extension of the OBS to more small and medium-sized enterprises (SMEs). These are firms that the FCA describes as having 'an annual turnover below £6.5m and fewer than 50 employees, or an annual balance sheet below £5m'. The FCA news update says that this means an additional 210,000 SMEs will be in a position to complain to the FOS.

TRUST LAW REFORM IN SCOTLAND

The Scottish Law Commission has been working on the reform of trust law in Scotland for a number of years and it issued a comprehensive set of proposals and a draft Bill in 2014.

Unfortunately, since then the proposals have not been taken any further due to the lack of Parliamentary time.

A revised and improved version of the proposed Trusts (Scotland) Bill was published by the Scottish Law Commission in December 2018. The new law is to replace the current legislation, namely the Trusts (Scotland) Act 1921, described by the Chairman of the Scottish Law Commission as “archaic and difficult to work with”. It is hoped that this time the proposals are taken forward in the not too distant future.

The Bill includes 83 sections and a Schedule. It contains comprehensive provisions on the appointment of new trustees, resignation and removal of trustees (including provisions for the removal of trustees by co-trustees and the removal of trustees by beneficiaries). It also contains a set of provisions relating to decision making by trustees, including specific provisions dealing with trustees’ powers of investment, delegation, and appointment of nominees, as well as a power to advance capital to beneficiaries and make other payments.

It also deals with trustees’ duties to provide information, trustees’ personal liability for beneficiaries’ losses and numerous other minor specific provisions.

Very importantly, the Bill also includes a provision to abolish the restriction on accumulations of income (currently in Scotland there is a restriction to 21 years as opposed to the position in England where income can be accumulated throughout the duration of the trust, ie. 125 years).

COMMENT

At the time of writing the Scottish Government is still considering its response to the original report which was published by the Scottish Law Commission in 2014.

While the revised Bill is an improved and more comprehensive version of the 2014 draft, the original recommendations from the report remain unaltered, the key of those being that the Trusts (Scotland) Act 1921 needs to be repealed and replaced with legislation fit for the 21st century.

THE REFORM OF SUCCESSION LAW IN SCOTLAND

The latest consultation on the law of succession issued by the Scottish government on 17 February 2019 focuses on the intestacy provisions where there is a surviving spouse/civil partner and children.

The reform of succession law in Scotland has been going on since 2009. After the first set of consultations, the Succession (Scotland) Act 2016 introduced certain technical changes to the law and clarified certain provisions in the light of the then recent case law. However, the major areas of reform, such as intestate succession and dealing with cohabitants, had been left until later.

Last October, the Scottish government announced the programme of reform to the laws of intestacy. What apparently has already been agreed is one major change, namely that when an individual dies intestate and is survived by either a spouse/civil partner only, or children only, then the whole estate will be inherited by that surviving spouse/civil partner or issue. This change is to be implemented in future legislation.

This will be a significant change from the current rules where, for example, if there is only a surviving spouse/civil partner, their claim is restricted to prior rights and legal rights. After these rights are claimed the remaining estate would pass to the surviving parents or siblings.
Also at that time the Scottish government announced that it had decided to retain the distinction between heritable and moveable property. This decision was considered important as the previously expressed views had been in favour of removing the distinction. The decision to keep the distinction was particularly welcomed by Scottish farmers, the reason being that claims of legal rights only apply to moveable property and therefore land, (ie. heritable property), can be left in accordance with the testator's wishes.

At the same time, it was also announced that it was proving difficult to obtain a consensus on what to do when there were both a surviving spouse/civil partner and children, which is why we have a new consultation now.

In considering a possible new approach the Scottish government looked at the legal position in Washington State law and in British Columbia.

The main identified problem is where a couple divorce and remarry a new partner. This is because, under the current system in Scotland, if one party to the new marriage dies intestate, all the property will pass to the new spouse/civil partner and then, perhaps, that spouse's/civil partner's children, effectively cutting out the children of the first marriage from succeeding to their parent's property.

Both the British Columbia and Washington State systems appear to provide for a more equal division of wealth between the surviving spouse/civil partner and the children, in particular that the children common to both spouses/civil partners are not treated more favourably than those who are only children of the deceased.

The Washington State model applies a split of the assets into community property, which is property acquired during marriage, and separate property, ie. that acquired before marriage or during marriage but through a gift or inheritance. There are then different provisions as to who benefits from which part of the property depending on who survives.

In the British Columbia model, the assets up to a specified threshold pass to the spouse/civil partner, but a threshold depends on whether there are children and whether the children are of both spouses/civil partners or just the deceased.

Either of these models would provide a fairer division than the current Scottish system. However, clearly what is likely to be adopted, if indeed any one of those systems is, will depend on the result of the consultation.

Two other matters are included in the consultation. These are: the treatment of succession rights of cohabitants, namely whether there should be an automatic right of succession for cohabitants; and, secondly, whether step children should have the same succession rights as biological or adopted children.

In total there are 41 questions in this consultation and responses must be submitted by 10 May this year.

COMMENT

While legal professionals continue to consult and discuss with the government it should be noted that the length of time that these reforms have already been going on for, and the fact that there is no set timeline for the introduction of legislation dealing with the issues, merely confirms that the only sensible way to avoid the full rigour of an intestacy under Scots law is to have a valid Will.

Of course, a summary of all the possibilities mentioned above and the consultation document itself may be a useful topic for discussion with a client and, for those who have not yet made a Will, a good reminder of why they should do so without delay.

THE SALE OF A BUSINESS BY A PROFESSIONAL PERSON

The decision in the First-tier Tribunal (FTT) case of Richard Villar v HMRC [2019] UKFTT 0117 (TC) has recently been published. It considered the tax implications of a sale of goodwill by a professional person and is very helpful in clarifying the law in this area.

Mr. Villar had a successful medical practice and sold the business as a going concern to Spire Healthcare Diagnostics Limited for £1 million. On his tax return Mr. Villar reported the sale as giving rise to a capital gain, entitled to benefit from entrepreneurs' relief, and paid capital gains tax (CGT) of around £80,000 on the gain.

However, HMRC argued that it wasn't a sale of a business, and that Mr. Villar had effectively attempted to avoid income tax on an advance payment from Spire for his future professional services.

The sale of a business usually gives rise to a capital receipt chargeable to CGT, which is then potentially relievable by entrepreneurs' relief. However, HMRC said that the payment from Spire was mainly attributable to goodwill that could not be transferred to Spire because the goodwill was personal to Mr. Villar, and so Mr. Villar did not have a business to sell.

HMRC tried to apply section 773 ITA 2007, which brings into charge to income tax a capital sum, which is received to exploit the earning capacity of an individual in an occupation, where one of the main objects of the arrangement is the avoidance of income tax.

On this point, HMRC argued that if Mr. Villar had continued to receive the profits of his practice, those profits would have been chargeable to income tax whereas, having sold the practice, he received £1 million which was chargeable to CGT and eligible for entrepreneurs' relief, which resulted in him avoiding all of the income tax, so section 773 should apply.

Instead of a CGT bill of around £80,000, HMRC charged Mr. Villar income tax, plus penalties and interest, adding up to a bill of more than £800,000.

However, Mr. Villar had sold his patient list, his brand name and his domain. His particular method of carrying on the business resulted in a book of customers which provided repeat business. The name 'Richard Villar' was capable of attracting customers notwithstanding the fact that not all medical services were provided by Mr. Villar himself. He no longer managed the practice after the disposal and was not a director.

That the practice did constitute a business capable of sale was demonstrated by the valuation which was carried out independently when Mr. Villar began to contemplate retirement. The fact that the business had to date been so dependent on Mr. Villar and his name and reputation, and the risk that represented to a purchaser, were taken into account by the valuer and, to reflect these factors, the valuer applied a conservative multiplier of two in calculating the value of the business on the earnings basis.

Following the sale, only the purchaser was entitled to use the name 'Richard Villar' in connection with the business. It did so, changing its name from Spire after completion. And Mr. Villar, in accordance with the agreement, did not carry on a business under that name.

Both parties agreed that the sale of a business is a capital transaction. The dispute was as to whether the arrangements Mr. Villar entered into with Spire amounted to the sale of a business.

Taking all of those points into account, the Tribunal did not take long to conclude that, as a matter of fact, the sale by Mr. Villar was a sale of his business and that the amount received was capital, subject to CGT.

On the income tax point, the Tribunal found that there was no fixed intention or obligation for Mr. Villar to continue to work for Spire, and said that on that basis it was difficult to conclude that the purchaser was exploiting Mr. Villar's earning capacity. However, if there were (and it is fairly common for a vendor to work for the purchaser for a period after a sale to help with a smooth handover), the next question would be whether one of the main objects of the arrangements was the avoidance or reduction of any liability to income tax. In reality (and in fact) Spire were exploiting the practice (and the goodwill) that Mr. Villar had sold to them. And the Tribunal found that there was no intention or desire to avoid or reduce income tax. Indeed, they saw no evidence that income tax was a matter which had been considered at all. The Tribunal therefore decided that section 773 did not apply.

COMMENT

This case is important because it clarifies the tax position on the disposal of the goodwill of a professional practice which has often been the subject of controversy in the past. The judge in this case made a point of clarifying what counts as a sale of goodwill and what counts as a payment for advance services. Reportedly, HMRC has said it will not appeal, so this should be a helpful decision – even though decisions of the FTT have no precedent.

NS&I GUARANTEED GROWTH AND INCOME BONDS: CHANGES TO TERMS

National Savings & Investments (NS&I) has announced changes to its 1-year and 3-year Guaranteed Growth Bonds (GGBs) and Guaranteed Income Bonds (GIBs), effective for investments made from 1 May 2019.

At present, these Bonds offer instant access, subject to a 90-day interest penalty and a minimum remaining balance of £500. As the rates on these Bonds are so low – the highest is 1.95% for the 3-year GGB – this option was cheap at less than a 0.5% cost. In theory, it meant that if rates increased (historically, it can happen), it could be worth cashing in, accepting the small penalty and then immediately reinvesting.

NS&I has announced it will issue a new series of GGBs and GIBs that replace the 90-day escape route with:

- A 30-day cooling off period; and
- No access thereafter until maturity (other than on death).

The maximum holding of £10,000 for both GGBs and GIBs will remain unchanged as will the interest rates. The rates will be 1.5% gross and 1.95% gross for 1-year and 3-year GGBs respectively, and 1.45% gross and 1.9% gross for the 1-year and 3-year GIBs respectively.

Existing Bonds are unaffected, but any maturity reinvestment after 30 April 2019 will be under the new terms.

NS&I justifies the move by saying it is “making this change to align with most similar products”. That is a fair statement of fact, as fixed rate bonds from banks and building societies generally have no pre-maturity access. However, given its public profile, NS&I playing hardball with a bond investor needing their cash early could make for some awkward headlines.

COMMENT

NS&I’s fundraising remit for the coming year is unchanged at £11bn, a figure it looks likely to achieve in 2018/19 (at Q3 it had reached £8.9bn). That target is modest enough to allow NS&I to be about 0.5% below the market leaders on both the 1-year and 3-year Bonds.

PROBATE FEES INCREASE DEFERRED

It has been reported that due to the current pressure on Parliamentary time the increase in probate fees, which was due to take place from 1 April 2019, has been deferred.

INCOME WITHDRAWAL RATE FOR APRIL 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 April 2019 is 1.5%.