Technical Connection

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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

SPENDING ROUND 2020/21

Sajid Javid presented his promised Spending Round for 2020/21 on 4 September. It didn't contain any announcements on legislative change – those will come in the next Budget.

With an Election looming, the Chancellor's speech was sufficiently political to have the official transcript littered with "[political content redacted]". Early on, Mr Javid spoke of "turning the page on austerity" and there was certainly a different stance on expenditure, at least (theoretically) for the next financial year.

The main points to note from the Spending Round are:

- There will be a real increase in day-to-day (i.e. departmental) spending of £13.8bn. That equates to a 4.1% real terms increase, the fastest rate of growth for 15 years. According to the Institute for Fiscal Studies, this represents an £11.7bn top up on previous 2020/21 spending plans.

- The Home Office, Mr Javid's previous department, will see a 6.3% increase. £750m of this will go to the first year of the planned recruitment of 20,000 new police officers.

- English schools will enjoy a £1.8bn real increase, with £400m going to further education.

- A 5% real terms increase is promised for the Ministry of Justice, which might mean there is some leeway on the introduction of the

the delayed higher English probate fees.

- The Chancellor announced that "…councils will have access to new funding of £1.5 billion for social care". This is a sticking plaster while the Government's long-deferred social care Green Paper is awaited.

- The Chancellor noted in his speech that Government borrowing was 1.1% of GDP and said that "…even with the extra spending we are still meeting the current fiscal rules". This was a somewhat creative interpretation as the 1.1% referred to 2018/19 and on current performance 2019/20 borrowing is set to exceed the OBR's 1.3% projection made in March. There were no new OBR numbers; if there had been, then Mr Javid may not have been able to keep within the fiscal rules without some tax increases.

COMMENT

The Chancellor has effectively spent the fiscal headroom created by his predecessor, leaving himself – or his successor – without a buffer in the event of additional spending arising from a no-deal Brexit.

PROBATE DELAYS AND HMRC

HM Courts and Tribunals Service (HMCTS) issued a blog in late August apologising for the probate delays that have occurred since March. That blog explained that in measuring average delays, HMCTS exclude any time it spent waiting for further information or documentation it had requested ("stops"). The blog quoted the example of having to query names on the Will that did not match precisely with those on the application or the death certificate.

One area the blog did not cover was the involvement of HMRC. The process of obtaining probate where completion of a full IHT return (IHT400) is necessary requires:

1. The executors/administrators to submit form IHT421 as part of the IHT return paperwork to HMRC; and

2. HMRC to put its stamp on form IHT421 and send it to the appropriate probate office once it has completed its work.

The problem this can create was shown in another case which we saw recently:

- Probate documentation was received by the (Winchester) Probate Registry on 19 June.

- IHT paperwork was received by HMRC on the same day.

- All then went silent until a chase was issued to Winchester on 30 August.

- Winchester replied promptly saying that they were awaiting IHT421 from HMRC and suggested the executors should contact HMRC (0300 123 1072) to check what was happening.

- After the usual battle with the telephone menu system and a ten minute wait, an HMRC official answered the phone and, having first said the relevant papers had not been received, found the file. In his words it had been "overlooked".

- A discussion revealed that the same Spring surge which had created the backlog at Probate Registries had also hit HMRC, leading to delays. In this case, the official flicked through the paperwork during a pause in the telephone conversation and announced that the case did not need any referral upwards and that he would issue the necessary paperwork to Winchester.

COMMENT

HMCTS has been widely criticised for delays because it is the body which issues grants of probate. However, it may be that not all the blame rests with them. If there are weeks of silence on a case involving an IHT 400, a call to HMRC may be a wise move.

PROPOSED REFORMS TO INCOME TAX AND CAPITAL GAINS TAX

The Institute for Public Policy Research (IPPR) describes itself as the "the UK's leading progressive think tank". It has in the past had considerable influence on the Labour Party and is often seen as a sounding board for policy ideas. As we start the conference season (the TUC's began on Sunday), the IPPR has published a new report, "Just tax: Reforming the taxation of income from wealth and work". Although we say new, part of it draws heavily on proposals published a year ago in the final report of the IPPR's "Commission on Economic Justice".

The IPPR report focuses on two areas, capital gains tax and income tax:

Capital gains tax

The IPPR effectively wants to abolish the separate tax regime that exists for capital gains. This would mean:

- The current £12,000 annual exemption would disappear. In its place would be "a *de minimis* allowance, such as £1,000, to prevent an overly burdensome tax declaration process".

- Gains above the *de minimis* level would be taxed as income, implying rates of 20%, 40% and 45% (but see below for the IPPR's income tax proposals). The IPPR also suggests that at a later stage, National Insurance contributions (NICs) could also be applied, either directly or through its proposed income tax changes.

- The IPPR acknowledges that "There is a risk that taxing capital gains unadjusted for inflation could reduce the real value of gains, discouraging saving". It therefore examines – without recommending – either indexation allowance or a rate of return allowance (RRA), based on 10-year gilt yields. The latter was also proposed in the Mirrlees Review in 2011. Back then 10-year gilts yielded 2.4% against 0.6% today. The IPPR explicitly does not recommend that losses created by indexation/RRA can be offset against other gains.

- Capital gains tax would be applied to all fixed interest bonds, removing the current exemption for qualifying corporate bonds and presumably gilts (although gilts are not specifically mentioned).

- The capital gains tax exemption on death would be removed.

- Entrepreneurs' relief would be abolished, along with a number of other "miscellaneous reliefs', such as the Enterprise Investment Scheme. However, main residence relief would stay.

- The IPPR gives the following estimates for additional tax raised, after an attempted adjustment for the inevitable and likely substantial behavioural effects:

		2020/21	2021/22	2022/23	2023/24	2024/25	Total (£bn)
Tax capital gains at the same rates as income		0	+8	+10	+9	+9	+36
Remove the annual exempt amount		0	+4	+4	+4	+4	+15
Remove entrepreneur's relief		0	+2	+3	+2	+2	+9
Introduce an allowance	RRA based on bond yields	0	-5	-5	-6	-6	-22
	Indexation allowance	0	-3	-3	-4	-4	-14
Remove death relief		0	+1	+1	+1	+1	+5

Income tax

This section is a reworking of last year's plan, with wider-ranging proposals:

- The IPPR's starting point is "a fundamental reform of the income tax system, taxing all sources of income (earnings, dividends and savings) together and equally under a single tax schedule, with a gradually rising marginal tax rate as income rises". Goodbye dividend allowance, personal savings allowance, starting rate band…

- The inconsistences between the income tax and NIC rules would be removed by scrapping both regimes and creating a single new regime with one set of allowances and rates which is applied to *all* income. The subtext is that investment income, capital gains and (unmentioned) pension income would all become subject indirectly to NICs.

- The equivalent of the current personal allowance would be fixed at the primary NIC threshold (£8,632 in 2019/20).

- The current schedule of flat marginal tax bands should be replaced with a marginal tax rate that rises gradually for the whole of the income distribution, between lower and upper thresholds, structured in three distinct zones:

  - The first zone would see the marginal rate of tax start at 2% and rise to 32% for annual incomes of £21,000;

  - For incomes between £21,000 and £50,000, the marginal rate rises from 32% (equivalent to the current 20% income tax and 12% NICs for basic rate taxpayers) to 44%; and

  - The third zone would run from 44% at £50,000 to 50% at £100,000. The same 50% marginal rate of tax would then apply to any excess income.

- Under this proposed structure, which yields no additional tax revenue, 80% of income tax payers (income up to £44,800) would be better off, according to the IPPR calculation. The unspoken corollary is that 20% would be worse off, with those receiving investment income worst hit.

- The IPPR models two different zone structures to raise extra revenue. In the higher version, bringing in an extra £15bn a year, over half of income tax payers would be worse off – a reminder that to obtain a meaningful amount of revenue means more than simply squeezing the top 5%.

COMMENT

At the end of August the Financial Times (FT) ran a series looking at the costs of Labour's plans, based on the Party's 2017 manifesto with updated numbers and allowing for promises made since. The FT concluded that Labour would need to find at least £26bn a year in new taxes, over and above the increases proposed in 2017. The IPPR paper might explain why John McDonnell has not so far contested the FT's calculations…

INTEREST IN COHABITATION IN THE UK CONTINUES TO RISE, BUT MARRIAGE REMAINS THE NORM

Cohabitation has continued its rapid growth in the UK, with the numbers of cohabiting couples growing by 25 per cent to 3.4 million families over a period of 10 years from 2008-2018.

A cohabitant is described as a person who is, or was living with another person, as if they were husband and wife, or two persons of the same sex who are, or were living together, as if they were civil partners.

According to the Office of National Statistics the number of families and households in the UK has continued to rise in line with the growth of the UK population over the past decade. However, the ways that people live together have been changing.

While married couple families remain the most common, cohabiting couples are the fastest growing family type as people increasingly choose to live together before, or without, getting married.

There are also more people living alone than ever before, an increasing number of same-sex couple families and more young adults living with their parents.

However, only marriage and civil partnerships grant legal rights and responsibilities to partners, at least in England, Wales and Northern Ireland. Scotland updated its law to reflect the number of unmarried cohabiting couples with the Family Law (Scotland) Act 2006, but it does not provide the same matrimonial rights as married persons have.

By way of illustration, for deaths occurring on or after 1 October 2014 in England or Wales, if the deceased died intestate leaving a spouse or civil partner, the survivor will take:

i. The personal chattels.
ii. A fixed net sum (called the statutory legacy) which is currently £250,000.
iii. An absolute interest in one half of the residue.

iv. The issue (natural or adopted children) take the other half of the residue absolutely if age 18 or over, or under the statutory trust if under age 18 and unmarried or not in a civil partnership.

If there is no issue then the whole estate passes to the surviving spouse/civil partner.

In contrast, when the first of a couple cohabiting dies intestate the survivor has no entitlement to any part of the estate of the deceased under the intestacy rules. However, the survivor may be able to apply to Court for financial provision from the estate.

COMMENT

It is really important that individuals who are not married, or in a civil partnership, put their affairs in order before they die so that they cater for the needs of their partners. It would be prudent to either draw up a will or create a trust to ensure their partners are taken care of after their death.

NEW FUEL RATES FOR COMPANY CARS FROM 1 SEPTEMBER 2019

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

Engine size	**Petrol**	**LPG**	**Engine size**	**Diesel**
1,400 cc or less	12p	8p	1,600 or less	10p
1,401cc to 2,000cc	14p	10p	1,601cc to 2,000cc	11p
Over 2,000cc	21p	14p	Over 2,000cc	14p

HMRC TRUSTS AND ESTATES NEWSLETTER

The August 2019 edition of HMRC's Trusts and Estates Newsletter includes some interesting updates as well as a couple of reminders of relevance to financial advisers.

Trust Registration Service

HMRC has recently deployed the first feature for the Trust Registration Service (TRS) that allows users to register a Will Trust that contains:

- A lead trustee (can include multiple UK-based trustees).
- Multiple named individual beneficiaries (will only require Name, Date of Birth, National Insurance Number or Address).
- Classes of beneficiary.
- Assets (money, property and land).

Further features will be delivered between now and the end of the year.

Consultation on the Fifth Anti-Money Laundering Directive

The consultation closed on 10th June and HM Treasury and HMRC are now analysing the responses.

Trust and Estates Allowance

The interim arrangements that allow trustees or personal representatives not to have to submit returns, or make payments under informal arrangements, where the only source of income is savings interest and the tax liability is below £100, have been extended until 2020/21.

Lifetime Gifting Research

HMRC recently published a report about lifetime gifting which explores the nature of gifting and motives behind the gifts. This is an interesting study into why individuals make gifts and their awareness of the inheritance tax rules and exemptions.

Office of Tax Simplification Review into IHT Part 2

This is the second of two reports, published in July, focusing on broader policy and technical issues. Now that both reports have been published, the Government will consider the recommendations.

Inheritance Tax – IHT421 Agent Update

HMRC has recently updated the Inheritance Tax (IHT) process surrounding the Probate Summary form IHT421. It has simplified and shortened the process aligning it with what is already in place for personal representatives.

Administration Period of a Deceased’s estate: Income tax and capital gains tax

The Trusts & Estates newsletter of August 2018 provided guidance for using informal arrangements for non-complex estates which HMRC are re-affirming in this newsletter together with the process for complex estates.

HOW TO ENSURE A POWER OF ATTORNEY IS ACCEPTABLE TO A FINANCIAL INSTITUTION

It has been reported that several banks and building societies now appear to insist that certified copies of a property and finance lasting power of attorney must be dated on every page, as well as certified. This will be relevant where the attorney is seeking to use a certified copy in managing the financial affairs of a donor who has since lost capacity. This demand appears to originate in online Government guidance, so it is useful to reproduce its main points.

A donor can confirm that a copy of their lasting power of attorney (LPA) is genuine by ‘certifying’ it if they are still able to make their own decisions.

A donor or their attorney can use a certified copy to register the LPA if they do not have the original form.

The attorney can also use the certified copy to prove they have permission to make decisions on the donor's behalf, for example to manage their bank account.

The guidance includes the appropriate wording to use in order to certify. This needs to be written on the bottom of every page of the copy, namely:

‘I certify this is a true and complete copy of the corresponding page of the original lasting power of attorney.’

On the final page of the copy, it must also be written:

‘I certify this is a true and complete copy of the lasting power of attorney.’

The donor needs to sign and date every page.

COMMENT

Obviously, once the donor has lost capacity, they will not be able to certify anything. In such a case copies of an LPA can be certified by a solicitor or a person authorised to carry out notarial activities. As the latter is likely to incur a fee, it may be sensible to advise donors, who still have capacity, but have not made certified copies, to do so sooner rather than later.

INCOME WITHDRAWAL RATE FOR SEPTEMBER 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 September 2019 is 0.75%.