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A CONSERVATIVE VICTORY: NOW WHAT?

The Conservative Party's 2019 manifesto is now the starting point for the Government agenda for the next five years. The majority which the Party now has, with many new MPs, will mean a sea change from that of the hand-to-mouth Government of the past two and a half years.

In theory that majority allows Boris Johnson to flesh out what was a relatively thin manifesto in whatever way he wishes. A repeat of the forced U-turn, which marked the first Budget of the previous Government, looks nearly impossible: a majority of 80 allows the Prime Minister to face down not only the remnants of the official opposition, but also pockets of opposition (think ERG) within his own Party.

We can now look forward to a Budget in February. Sajid Javid, who has already been confirmed as Chancellor, may now choose to revert to the previous norm of giving the Office for Budget Responsibility ten weeks' notice to prepare an Economic and Financial Outlook. That means a Budget date towards the end of the month, possibly 26th. As a reminder, from a financial planning viewpoint, the Conservatives' main manifesto proposals were:

Personal Taxes

- No increases in income tax rates and National Insurance contribution (NIC) rates.
- NIC threshold to be raised to £9,500 for 2020/21.

- A review and reform of entrepreneurs' relief.

Businesses

- Corporation tax to remain at 19% rather than reduce to 17% as currently legislated for.
- Increase R&D tax credit rate to 13% and review the definition of R&D.
- Increase NIC Employment Allowance from £3,000 to £4,000.
- No increase in VAT rates.
- Reduce business rates "via a fundamental review of the system". Initially reduce business rates for retail businesses and extend the discount to grassroots music venues, small cinemas and pubs.
- Increase the straight line allowance for structures and buildings from 2% to 3%.

Social Care

- Additional funding of £1bn a year throughout the term of the Parliament.
- An effort to build a cross-party consensus on social care policy with a guarantee that no one needing care will have to sell their home to pay for it.

Social Security, Housing

- Continue the roll out of Universal Credit.
- End the working-age benefit freeze.
- 3% SDLT surcharge on non-UK resident buyers of residential property.
- End child benefit payments for children living overseas.
- Keep the state pension triple lock, the winter fuel payment, the older person's bus pass and other pensioner benefits.

Private Pensions

- Within the first 30 days, hold an urgent review on annual allowance taper issues. A pre-Election statement from the Conservatives suggested this would only deal with the NHS problem, but it is hard to see how any reform can be restricted to just one part of the public sector.
- Conduct a comprehensive review to fix the issue of net pay pension schemes for those with earnings between £10,000 and £12,500.
- Reintroduce the Pension Schemes Bill 2019-20, covering collective defined contribution (CDC), action against employer pension debt and pension dashboards.

- Unlock long-term capital in pension funds to invest in, and commercialise, scientific discoveries.

Tuition Fees

- Examine the interest rates on loan repayments with a view to reducing the burden of debt on students.

The February Budget is also likely to see changes to inheritance tax (IHT) stemming from the Office of Tax Simplification (OTS) review of earlier this year – there was no comment on IHT in the Conservative manifesto.

THE GATE SLAMS SHUT

M&G, in its capacity as a major retail property fund manager, has placed a block on fund redemptions.

Earlier this year the FCA increased monitoring of daily cash outflows from property funds. At the time the concern was the impact of Brexit – then theoretically due (for the first time) on 29 March. Two and a half years previously, the Referendum vote had prompted widespread 'gating' (dealing suspension) of the leading property funds for up to about six months.

On 4 December, M&G became the first fund manager to suspend dealings in its property fund as the latest Brexit deadline looms. In its press release, M&G blames three factors for its action:

1. "unusually high and sustained outflows";
2. "Brexit-related political uncertainty"; and
3. "ongoing structural shifts in the UK retail sector have made it difficult for us to sell commercial property"

The suspension took effect from midday on 3 December (11.00 for orders placed directly with M&G). M&G says that it will be monitored daily and, as FCA rules currently require, formally reviewed every 28 days. In response to the 2016 round of fund suspensions, the FCA eventually set out new standards for dealings in illiquid funds in PS/19/24 published in September 2019, but these are not due to take effect until 30 September 2020.

M&G is, to some extent, a special case as it has historically had a higher exposure to the retail property sector than many of its peers. Retail has been the worst performing of the three main property sectors, hard hit by Brexit uncertainty, the trend towards internet shopping and retailers seeking IVAs or simply going bust. M&G's latest factsheet shows that 41.7% of its property assets were retail-related, ranging from supermarkets to shopping centres. Tellingly, the same factsheet shows that at the end of October the fund held only 5% in cash.

In 2016, Standard Life led the way on suspending fund dealings and was rapidly followed by most of the other big players – Aviva, Threadneedle, Henderson, Aberdeen (now merged with Standard Life), Canada Life and M&G. While all these managers show more liquidity than M&G in their latest factsheets, some hold under 7% of their funds in cash. All must be concerned that M&G's

actions will trigger a rush to redeem, as will be the FCA. As a consequence, further suspensions appear likely.

COMMENT

The latest Investment Association statistics show that about £1,286m of retail monies have left the UK Direct Property fund sector in the first nine months of this year with the last month of inflow being October 2018. Across the last 12 months to September 2019 the value of the sector has shrunk 18.4%, from £20.1bn to £16.4bn.

NEW FUEL RATES FOR COMPANY CARS

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

Engine size	Petrol	LPG	Engine size	Diesel
1,400 cc or less	12p	8p	1,600 or less	9p
1,401cc to 2,000cc	14p	9p	1,601cc to 2,000cc	11p
Over 2,000cc	21p	14p	Over 2,000cc	14p

Advisory Electricity Rate

The Advisory Electricity Rate for fully electric cars is 4p per mile. Electricity is not a fuel for car fuel benefit purposes.

COURT OF APPEAL CONFIRMS THAT ‘OWNERSHIP’ OF PROPERTY COMMENCES ON COMPLETION OF PURCHASE FOLLOWING AN EARLIER EXCHANGE OF CONTRACTS FOR CGT PURPOSES

The England and Wales Court of Appeal (EWCA) has upheld Desmond Higgins' claim for principal private residence (PPR) relief on a flat he bought off-plan but was unable to occupy for four years because its construction was delayed.

Mr Higgins, who purchased a London apartment off-plan in 2006 but did not move in until 2010 due to development delays, was treated by HMRC as having incurred a capital gains tax (CGT) liability of £61,383 on the basis that his ownership commenced at the point of exchange of contracts.

Mr Higgins sold the apartment two years after moving in and claimed PPR for the full period of his ownership. If, however, HMRC was correct that his ownership commenced when contracts were exchanged in 2006, he would not be entitled to relief for the period of 39 months between 2006 and 2010 during which he owned the apartment but was not in occupation.

The First-tier Tax Tribunal agreed with the taxpayer that his chargeable period of ownership did not begin until completion of the purchase, and thus he was entitled to full PPR relief. However, the Upper Tax Tribunal reinstated the charge on appeal.

Mr Higgins has now won his appeal in the EWCA. The Court agreed with him that his period of ownership for CGT purposes started only when he completed the purchase, until which time he had no right to occupy the property.

The central point turned on the meaning of the words 'period of ownership' in s.223 of the Taxation of Chargeable Gains Act 1992, which sets out the conditions for PPR relief, and the assumed intention of Parliament in drafting the legislation. The EWCA reasoned that if ownership commenced at the point of exchange of contracts, then the provisions would rarely entitle ordinary home-owners to full relief from CGT. He agreed with the First-tier Tax Tribunal's conclusion that such an interpretation would be 'perverse'.

The other two judges agreed, and the Court duly allowed Mr Higgins' appeal, cancelling the CGT charge (Higgins v HMRC, 2019 EWCA Civ 1860).

COMMENT

While there is an Extra-Statutory Concession that allows a delay in taking up residence to be treated as a period of deemed occupation for the purposes of PPR relief, the Concession does not cover the situation where the delay occurs between exchange of contracts and completion. The EWCA's decision will therefore be welcomed by developers, whose potential customers might otherwise be deterred from making an off-plan purchase on tax grounds, as well as clients who have made a substantial profit by buying off-plan.

THE FTT CONFIRMS THAT EXPLICIT PERMISSION TO OCCUPY PROPERTY UNDISTURBED CONFERS AN INTEREST IN POSSESSION ON THE SURVIVING CO-OWNER

It is widely known that where a right to occupy property free of rent is conferred on an individual under the terms of a deceased's Will, this will constitute an interest in possession (known, since 2006, as an Immediate Post-Death Interest) for inheritance tax (IHT) purposes, so that the value of the underlying property forms part of the occupying beneficiary's estate. But what is the situation where the beneficiary already has a right to occupy the whole property by virtue of owning a tenant-in-common share?

This question was considered in the recent First-tier Tribunal (FTT) case of *Vincent* [2019] TC 07432. The deceased, Mrs Hadden, at the time of her death owned a property as tenants-in-common in unequal shares with her brother, Mr Thom.

On Mrs Hadden's death in 2001, Mrs Hadden left her three-eighths share of the property to 'my trustees upon trust to permit [Mr Thom] to reside therein for so long as he shall desire free of rent but he being responsible for general rates, water rates, insurance and maintenance repairs of an income nature' and, subject to that, to her daughter.

Mr Thom continued to occupy the property until his death in 2013, while Mrs Hadden's daughter (Mrs Vincent) left furniture that she had inherited from her parents at the property and frequently stayed in their former bedroom while Mr Thom was away travelling. Mr Thom continued to take responsibility for all the maintenance costs.

On Mr Thom's death, HMRC submitted that the three-eighths share disposed of by Mrs Hadden's Will was settled property in which Mr Thom had an interest in possession that should be included in his estate under IHTA 1984, s. 49(1) and subject to IHT. Mrs Vincent claimed that her mother's intention was to leave the property to her outright, subject to allowing Mr Thom to live there for the rest of his life, and that there had been no intention to create an interest in possession for his benefit.

The FTT took the view that Mrs Hadden's intention, in explicitly giving her brother the right to reside in the property for the remainder of his lifetime, must have been to give him greater protection than that which he would otherwise have had if she had left her share of the property to Mrs Vincent outright (where there would have been scope for either co-owner to attempt to enforce a sale in the event of a disagreement).

The FTT also had to consider whether Mr Thom could have disclaimed his interest by reason of his conduct or ignorance of its existence but found, by a majority, that this had not been the case. Indeed, by meeting 100% of the maintenance costs, Mr Thom had demonstrated and accepted the conditions of the Will and Mrs Vincent's appeal against the IHT determination was accordingly dismissed which means that the value of the whole property was included in Mr Thom's estate for IHT purposes as he had an interest in possession in the three-eighths share of the property he did not own.

COMMENT

It is widely recognised that a right to undisturbed, rent-free occupation constitutes an interest in possession and that, where such a right is conferred by Will, the underlying property value will form part of the beneficiary's estate for IHT purposes. This decision confirms our long-held understanding that the position is the same regardless of whether or not the beneficiary has a pre-existing right to rent-free occupation in any event by virtue of joint ownership. The decision also confirms that compliance with any conditions of a gift is evidence of acceptance rather than disclaimer of the gift.

FCA BANS MINI-BOND PROMOTIONS

The FCA has announced a ban on the promotion of the majority of mini-bonds to most retail investors from 1 January 2020.

'Mini-bonds' have been at the heart of several scandals recently, the most notable being the demise of London Capital & Finance (LCF) about a year ago. As the Financial Conduct Authority (FCA) notes in its consumer pages, there is no legal definition of a mini-bond. However, it is fair to say that most have been illiquid debt securities, targeted at retail investors. They have often been associated with property lending and/or lending to small unquoted companies.

Mini-bonds are very different from the offerings from the London Stock Exchange's (LSE's) Order Book for Retail Bonds (ORB). The LSE's ORB bonds are generally from high quality issuers (eg Government and UK-listed companies) and can be readily traded. In contrast mini-bonds are usually issued by unlisted companies and normally have no secondary market, meaning that investors are locked in until maturity. As in the case of LCF, where the issuing company is on-lending, it can have very close associations with the ultimate borrowers.

The appeal of mini-bonds is summed up in two words: interest rate. Many have offered yields of 8% and more, enough to blind some retail investors to the risks involved, most notably that the FSCS deposit protection scheme does not protect them. The FCA reckons that there are about 11,000 mini-bond investors, with an average of over £25,000 worth of these securities, an estimate supported by the facts that have emerged from the demise of LCF.

A business does not have to be FCA-regulated to issue mini-bonds. The FCA's role has so far been to regulate the promotion of mini-bonds (which usually need to be approved by an FCA-authorised person) and situations in which the mini-bonds form part of an investment service, eg a regulated firm recommends their purchase. The promotional aspect has created problems because retail investors have seen the letters 'FCA' in an advertisement and failed to appreciate its limited relevance.

The FCA has now announced a "temporary intervention" that will ban the promotion of what it describes as 'speculative mini-bonds' to retail investors (other than high net worth or sophisticated investors) for a period of a year, starting on 1 January 2020. Where promotions are made to high net worth or sophisticated investors, the FCA says that:

- the product must have been initially assessed as suitable for the investor;

- the promotion must have a specific risk warning clearly stating the risks to consumers of losing all their investment; and

- there must be disclosures of any costs/payments to third parties that are deducted from the money raised by the issuer (a move designed to highlight extravagant marketing costs).

The FCA defines 'speculative mini-bonds' as unlisted bonds and preference shares where the issuer uses the funds raised to:

- lend to a third party;
- invest in other companies; or
- purchase or develop property.

The definition specifically *excludes* companies using unlisted securities to buy or construct property used for their own commercial or industrial purpose and vehicles that only invest in a single UK-based property.

While the temporary intervention cannot be renewed, the FCA expects to consult on proposals to make permanent rule changes before the end of 2020.

COMMENT

There is likely to be criticism for the time that the FCA has taken to act – nearly a year after LCF – and the fact that it has still left open some opportunities to promote mini-bonds which might be exploited.

NHS TO COVER CLINICIANS' ANNUAL ALLOWANCE TAX CHARGES FOR 2019/20

Simon Stevens, the Chief Executive of the National Health Service, has announced a remedy for the NHS pension issues for the 2019/20 tax year.

The announcement was made in a letter from Mr Stevens to the British Medical Association (BMA) and the Royal Colleges. In the letter he acknowledged that the flexibilities that have already been put in place had not been enough to prevent senior clinicians from reducing their hours or not taking on additional commitments.

Mr Stevens stated that given the Election it was unlikely that the wider issues caused by tapering would be addressed before the next tax year and that, in the meantime, there was an "urgent operational requirement" to solve the problem.
The new measures will apply to doctors, nurses and other clinicians who are members of the NHS pension schemes and will cover all savings in the NHS schemes in 2019/20.

Where clinicians suffer an annual allowance charge, they will be able to choose scheme pays in the normal way, meaning there is no requirement to pay the charge directly themselves. This will lead to the usual reduction in pension benefits when they choose to take them.

The difference is that the NHS will now make a contractually binding commitment to pay members the corresponding amount at retirement, i.e. they are compensated with additional salary at retirement which is equivalent to the reduction. The additional salary at retirement will be subject to tax and National Insurance (NI). The NHS Q and A document states that the payments will be grossed up to cover any NI that wouldn't apply to pension income payments.

Whilst the measure is aimed at ensuring clinicians don't reduce their working hours and/or accept additional duties, it applies to all pension inputs to the NHS schemes in the 2019/20 tax year.

COMMENT

This is a significant step forward for clinicians and their representatives in their long-running fight over the impact of tapering on the NHS. With the NHS considered as one of the key Election issues it isn't surprising that drastic action has been taken in an attempt to avoid a pre-Election NHS winter crisis. The announcement only covers the current tax year. However, all the main political policies have included a commitment to review the impact of tapering on the NHS in their manifestos. The Conservative Party has stated they will hold a review with the BMA and Royal Colleges within the first 30 days to solve the problem.

INCOME WITHDRAWAL RATE FOR DECEMBER 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 December 2019 is 1.0%.

We would like to take this opportunity to wish all our readers a happy Christmas and a prosperous New Year