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

THE 2020 SUMMER STATEMENT

Introduction

Not many Chancellors begin their tenure in the way that Rishi Sunak has. His first Budget arrived within a month of his appointment. Ever since he has been in the unusual position for an occupant of 11 Downing Street of handing out seemingly limitless amounts of cash – 'whatever it takes', to use his (borrowed) term. Just consider where he - and we - are now:

- Government borrowing in the first two months of 2020/21 has already exceeded £100bn and, on most estimates, is heading towards £300bn by the end of the financial year. Look back to the March Budget and the estimate for the current financial year was under £55bn.

- Total Government debt has jumped to over 100% of GDP for the first time since 1963. As the Office for National Statistics (ONS) recently put it, public sector net debt is 'just under £2.0 trillion'.

- The UK economy contracted by 2.2% in the first quarter months of 2020. The ONS reckons that in April alone it fell by a further 20%.

- So far, the ONS unemployment numbers show only a minimal increase, although the Claimant Count (which principally covers unemployment benefits) rose to 2.8m in May from 1.6m in March. The Bank of England forecasts that unemployment could rise to 10% this year while the OECD has said UK unemployment could hit 15% in the event of a second wave of infections.

- One reason the ONS unemployment numbers have moved little to date is the Coronavirus Job Retention Scheme (CJRS) which, at 5 July, was covering 9.4m jobs offered by 1.1m employers. Total claims made under the CJRS are already £27.4bn, with about 3½ months of the scheme left to run. However, from August a growing proportion of the scheme's cost will be passed onto employers. As a result, announcements of large scale redundancies have started to appear, such as those at Rolls Royce, Jaguar Land Rover and Centrica.

  The corresponding figures for the Self-Employment Income Support Scheme (SEISS) were 2.7m claims totalling £7.7bn.

The Summer Statement marked the beginning of a transition for the Chancellor from spending on survival support for businesses and individuals to a more traditional Treasury role of encouraging employment and economic growth. The measures announced still involve a significant outlay of Government money – up to £30bn – and cover a wide range of areas as follows:-

(i) Job Retention Bonus

In his speech Mr Sunak underlined his intention not to extend the CJRS for a third time beyond October. However, as a bridge to work, a new incentive for employers, the Job Retention Bonus, will be introduced.

This will pay £1,000 to UK employers for every furloughed employee who remains continuously employed from the closure of the CJRS until the end of January 2021. Employees must earn on average more than the Lower Earnings Limit (£520 per month) in that period, with payments made to employers from February 2021. More information will emerge by the end of July.

(ii) Kickstart Scheme

This is a new scheme, which covers England, Wales and Scotland, but not Northern Ireland. Its goal is to create 'hundreds of thousands' of six-month work placements to be offered to anyone aged 16-24 who is on Universal Credit and deemed to be at risk of long-term unemployment.

The Government will provide funding for each job at the level of 100% of the relevant National Minimum Wage for 25 hours a week plus the associated employer National Insurance contributions and employer minimum automatic enrolment contributions. For a 21-24 year old, whose National Minimum Wage rate is £8.20 an hour, that equates to a payment of around £6,500.

(iii) Traineeships

Employers will receive a payment of £1,000 for each 16-24 year old trainee to whom they provide work experience. The Government says that it will improve provision and expand eligibility for traineeships to those with Level 3 qualifications and below, ensuring more young people will have access to training.

(iv) Temporary VAT cut for food, non-alcoholic drinks, accommodation and attractions

A 5% rate of VAT will apply to supplies of food and non-alcoholic drinks from UK restaurants, pubs, etc; and accommodation and admission to attractions across the UK.

In both instances the temporary rate will operate from 15 July 2020 through to 12 January 2021.

It will be interesting to see the extent to which the saving (worth 12.5% off the without-alcohol bill) will be passed on to customers, given that some businesses have just finished working out a set of increased prices prior to re-opening.

(v) Temporary Stamp Duty Land Tax cut

Stamp Duty Land Tax receipts have dropped sharply in the wake of Covid-19: in the month of May 2020 they were 46% of the previous year's level. As had been widely trailed, the Chancellor announced that the nil rate band threshold for residential SDLT will increase from £125,000 to £500,000 with immediate effect until 31 March 2021. That offers a maximum saving of £15,000. For second homes, the 3% additional rate will continue to apply. The new rate table is shown below:

Slice of Residential Property Value	SDLT Rate %
Up to £500,000	0
£500,001 - £925,000	5
£925,001 - £1,500,000	10
Over £1,500,000	12

The Scottish government has announced it would increase the Land and Buildings Transaction Tax (LBTT) nil rate band threshold from £145,000 to £250,000 from 15 July for all purchasers. The Welsh government has also announced an increase in its Land Taxation Tax (LTT) nil rate band threshold to £250,000 (from £180,000) from 27 July, but this will not apply to those buying second homes or buy-to-let investors.

(vi) Green Homes Grant

A £2 billion Green Homes Grant is to be introduced. This will provide at least £2 for every £1 spent up to £5,000 per household to homeowners and landlords making their properties more energy efficient. For those on the lowest incomes, the scheme will fully fund energy efficiency measures of up to £10,000 per household.

(vii) Financial projections

There were no financial projections from the Office for Budget Responsibility (OBR) published alongside the Chancellor's statement. However, the Treasury did provide broad costings for its measures, set out below:

Policy decision	£bn
Job Retention Bonus	Up to 9.4
Kickstart Scheme	2.1
Boosting work search, skills and apprenticeships	1.6
Reduced rate of VAT for hospitality, etc	4.1
Eat Out to Help Out	0.5

Infrastructure package	5.6
Public sector and social housing decarbonisation	1.1
Green Homes Grant	2.0
SDLT temporary cut	3.8
Total	**Up to 30.0**

And next…

The Chancellor confirmed that there will be a Budget and a Spending Review in the Autumn. In his speech he also remarked that "Over the medium-term, we must, and we will, put our public finances back on a sustainable footing".

OTS CGT REVIEW

On 14 July it emerged that the Chancellor had written a letter to the Office of Tax Simplification (OTS) requesting it 'undertake a review of Capital Gains Tax'. Curiously, there was no announcement of the letter on the Treasury website. The tone of the correspondence is distinctly different from Mr Hammond's letter requesting a simplification review of IHT. Although Mr Sunak gives a nod to 'opportunities to simplify the taxation of chargeable gains' his letter also refers to:

- 'areas where the present rules can distort behaviour or do not meet their policy intent'; and

- 'any proposals from the OTS on the regime of allowances, exemptions, reliefs and the treatment of losses within CGT, and the interactions of how gains are taxed compared to other types of income'.

The OTS has already responded with a scoping document, a call for evidence and, as it did with inheritance tax (IHT), an online survey for individual taxpayers. Together these make clear that the review will be wide-ranging, covering areas including:

- 'the overall scope of the tax and the various rates which can apply';
- 'stand-alone owner-managed trading or investment companies';
- 'interactions with other parts of the tax system';
- 'the practical operation of principal private residence relief'; and
- 'consideration of the issues arising from the boundary between income tax and capital gains tax in relation to employees'.

As was the case with IHT, the OTS has access to HMRC data that is not publicly available.

The issue of how to treat capital gains for tax purposes has been rattling around almost since the tax was originally introduced in April 1965. Of late a number of think tanks, such as the Institute for Public Policy Research and the Resolution Foundation, have called for gains to be taxed as income. Ironically, that idea was originally put into practice by a Conservative Chancellor (Nigel Lawson) in 1988 and survived for 20 years, albeit with various complicating tweaks along the way (remember taper relief?).

At the last Election, both the Liberal Democrats and Labour called for gains to be taxed as income and for the annual exemption to be reduced to £1,000 (Liberal Democrats) or scrapped completely (Labour). The Conservative manifesto made no comment on capital gains tax. Doubtless the

Government could argue that, to the extent it has any post-Coronavirus relevance, the Conservative manifesto pledge not to increase income tax rates did not stretch to gains taxed as income.

Capital gains tax 'is a modest source of revenue for the Exchequer', to quote the OTS. The latest Office for Budget Responsibility (OBR) projections are that it will raise £10.5bn in 2020/21 (on gains realised in 2019/20) and £7.6bn in 2021/22. Set against a 2020/21 deficit heading above £350bn, doubling capital gains tax revenue would make only a minor dent. However, from a political viewpoint capital gains tax has similar advantages to a wealth tax in that capital gains tax is perceived as a tax on the rich which will not affect most people (fewer than 300,000 taxpayers paid capital gains tax in 2017/18). It also has the benefit of being an existing tax, so would not require new infrastructure. Having said that, there is an argument that with IHT already in the simplification pot, a case could be made for some rationalisation of capital gains tax and IHT into a single capital tax.

COMMENT

The call for evidence is divided into two parts: 'principles of CGT' with a response deadline of 10 August and 'technical details and practical operation' with a deadline of 12 October. Those dates leave a short timescale for any feed into the Autumn Budget. Interestingly, the OTS says that it 'may publish more than one report on its findings'. It is worth remembering that capital gains tax rates have been changed mid-year in the past (June 2010 by George Osborne).

CHARGEABLE EVENT GAINS, TOP-SLICING RELIEF AND THE PERSONAL ALLOWANCE – AN IMPORTANT UPDATE

The position on chargeable events that arose before 11 March 2020 was still far from clear following HMRC's decision to withdraw its appeal in the Silver case. However, HMRC has now confirmed the position for the whole of the 2019/20 tax year.

The Budget 2020 confirmed that, when calculating top-slicing relief on chargeable event gains on life policies arising after 10 March 2020, only the top-sliced gain will be included as part of adjusted net income for the purposes of determining entitlement to the personal allowance in the second part of the top-slicing relief calculation. The position on all chargeable events gains arising in 2019/20 has now been clarified.

As is generally well known for income tax purposes, when a person's adjusted net income exceeds £100,000, the personal allowance is gradually eroded by £1 for every £2 of excess income. So, on the basis of a personal allowance of £12,500, entitlement to the personal allowance is totally lost when adjusted net income is £125,000 or more.

In the past, in calculating top-slicing relief under a life policy (say an investment bond) HMRC has always taken the view that it is the full chargeable event gain that is included in adjusted net income – and not the top-sliced gain. This view was challenged in the Silver case where Mrs Silver maintained that only the top-sliced gain should be taken into account for the purposes of determining whether the personal allowance applies in calculating the tax on the top-sliced gain, in the second part of the top-slicing relief calculation. The First-tier Tribunal (FTT) upheld her claim and HMRC appealed this decision to the Upper Tribunal but subsequently withdrew its appeal.

Proposals in the Budget, in effect, brought in provisions that mean that in future it will be only the top-sliced gain that is taken into account as adjusted net income (ANI) for the purposes of entitlement to a personal allowance in the second part of the top-slicing relief calculation. Originally, in general terms, this only applied to chargeable event gains that arise on or after 11

March 2020. However, HMRC has now said that this will apply to all gains arising in the 2019/20 tax year.

Here's what HMRC has said in its Agent Update for June and July:

> "…These new rules will apply to gains arising on or after 11 March 2020, however, we will also apply these new rules to all gains arising in 2019-20 as a concessionary treatment. …The Insurance Policyholder Taxation Manual (IPTM) chapters 3820-3850 will be updated to reflect these changes and provide additional examples of how the relief is calculated in practice.
>
> An exclusion will be included on the e-filing exclusion list for 2019-20 to reflect these changes. This means that for 2019-20, affected customers will receive a correction calculation from HMRC applying the new basis. No customer will receive less relief than was previously calculated by HMRC.
>
> For returns submitted for 2020-21 onwards, the calculation for Top Slicing Relief will be calculated automatically as part of the self-assessment process.
>
> We are aware that the calculation for TSR has created some uncertainty for you and your customers, and we thank you for your patience and ongoing support."

Those gains realised before the 2019/20 tax year will still be dealt with on the "old" basis. Had the HMRC appeal gone ahead, and the Upper Tribunal had found in favour of the taxpayer, that decision would have been binding on other taxpayers. This would have meant that other taxpayers who had overpaid tax under the previous HMRC interpretation could have recovered tax from HMRC.

People who may be in this position would have been individuals whose adjusted net income, with inclusion of the full chargeable event gain, took them over £100,000, but with inclusion of the top-sliced gain kept their ANI below £100,000.

Without further HMRC guidance on those cases where the chargeable event gains arose before 6 April 2019, those policyholders who are affected will need to lodge their own appeal against HMRC if they believe they have overpaid tax. This will inevitably involve expense.

According to HMRC's latest update, those submitting (or who have already submitted) a tax return that includes a chargeable event gain arising in the tax year 2019/20 should receive a correction calculation from HMRC applying the new basis.

As regards those people who have chargeable event gains that arose in 2018/19 and earlier tax years back to 2016/17, they could make a repayment claim. However, there is no guarantee that HMRC will accept such claims on the basis that the FTT decision in Silver is not binding on all other cases and each case has its own individual circumstances and facts.

UK HIGH COURT INHERITANCE DISPUTES HIT ALL-TIME HIGH

More people are trying to claim a bigger share of estates in UK High Court disputes. According to Ministry of Justice data, the High Court saw 188 cases issued in 2019 by individuals claiming to be entitled to a share, or a larger share, of a deceased's estate.

Due to high profile cases reported in the press and the fact that the average size of estates has increased over recent years, challenging the size of an inheritance is now more appealing.

Some of the most common factors which add to the rise in the number of disputes are:

- The complexity of modern family structures – the increase in cohabitation, civil partnerships and multiple marriages, for example – is thought to be a contributing factor to the increase in the number of claims. For instance, with multiple marriages, it's suggested tensions may arise among the children the deceased has left behind, especially between children who are from different marriages.

  Moreover, with the increase in cohabitation, a problem arises when one of the individuals dies without leaving a Will. At this point the intestacy rules apply which means that the cohabitee won't benefit from the estate. It's argued this problem will not be overcome until the intestacy rules are updated to meet the changes in the wider society.

- Property prices - It has also been suggested that the increase in property prices has contributed to the rise in the number of claims. This has the effect of increasing the value of the average net estate.

- Increased knowledge and accessibility to the law are also possible factors.

- Post-coronavirus rise - people have been facing unprecedented difficulties and some decisions may have been made in haste due to COVID-19. This means that there may be future increases in disputes due to decisions being made in a rush where they have not been thought through properly, for example, homemade Wills being created which could be challenged.

COMMENT

COVID-19 may add to the number of disputes that will arise in the future. Homemade Wills and hasty decisions taken may lead to disappointed family members challenging these in Court. Clients should review any measures put in place in haste as soon as possible to ensure their Will properly reflects their wishes and to determine whether or not trust planning should be considered.

PROBATE APPLICATIONS SURGE

According to an article recently published by the Law Society, HM Courts & Tribunals Service (HMCTS) confirmed that while there was a decrease in probate applications in June, it is now receiving more applications per week than it is issuing. This is partly down to the easing of restrictions due to the current pandemic as more solicitors are now able to go into their offices to collect Wills and other necessary paperwork. As a result, applications are currently being turned around within five to six weeks.

Around 4,000 to 5,000 probate applications are being processed weekly. HMCTS said it has capacity for 7,000, although did warn that waiting times could vary in the coming weeks if applications continue to increase.

While the Government has hired new staff and retrained existing employees, who previously dealt with Court hearings, to keep on top of the increasing number of applications as the lockdown is lifted, it is encouraging solicitors to apply for probate online to speed up the process.

HM LAND REGISTRY TO ACCEPT E-SIGNATURES ON DEEDS

On 9 July there was an announcement that HM Land Registry (HMLR) "will soon start accepting witnessed electronic signatures on things like a deed transferring land".

Although digital signatures in land transactions have been enabled since the Land Registration Act 2002 and were endorsed by the Law Commission last year. The Land Registry has held back from accepting the technology, i.e. it has required wet ink signed documents up until now. This meant that hard copy documents had to be circulated for registrable dispositions (primarily transfers, registrable leases and charges). HMLR also recently started accepting scanned copies of a wet ink signature in limited circumstances.

For the new development no particular signing platform is preferred as long as HMLR's requirements are met. Essentially these are:

- The parties have agreed to use electronic signatures.
- All parties have a conveyancer acting for them.
- A specific process is followed when setting up the document for signature (including witness details being entered **before** the document is circulated for signature and the witness being physically present to witness the electronic signature).

Two factor authentication must be used when signing (through the use of a one-time password issued by the signature platform). Draft practice guidance has been issued and comments from conveyancers were invited by 18 July.

HMLR's announcement also confirms future adoption of "qualified electronic signatures" - essentially signing without a witness, where the signatory's identity is verified electronically at the point of signing. This is considered more secure (particularly for individuals) but is likely to take longer to implement.

COMMENT

Undoubtedly, completion of house purchases could be significantly speeded-up with this development. The move will be most welcome by the real estate market although it has to be said there are some concerns amongst conveyancers about the risk of fraudulent transactions.

INCOME WITHDRAWAL RATE FOR JULY 2020

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 July 2020 is 0.5%.