Technical Connection

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MANAGING ACCESS TO CASH: FINALISED FCA GUIDANCE

The Financial Conduct Authority (FCA) has now published its finalised guidance, which applies from 21 September 2020, in which it makes it clear that banks, building societies and credit unions are now expected to keep the FCA informed of any plans for branch or ATM closures, or conversions of a free-to-use ATM to a pay-to-use ATM, in good time before any final decision is made. The FCA says that this will enable it to monitor whether customers are being treated fairly.

Before making a final decision, the FCA will expect firms to provide a clear summary of their analysis of the needs of customers currently using the sites, the impact of the proposals on those customers, and alternatives that are, or could reasonably be, put in place if they implement the proposals.

If a firm decides to implement its closure or conversion proposals, it will be expected to clearly communicate information about this to its customers no less than 12 weeks before the proposals are implemented. This should include making customers aware of alternatives they can use. This will give customers time to take action, such as changing banking provider.

This guidance applies to FCA-regulated firms that operate physical sites such as bank branches, building society branches, credit union offices or cashpoints.

CONSUMER INVESTMENT MARKET REVIEW

The FCA has launched a Call for Input to help shape its work on improving the consumer investment market and is seeking views on the following key questions:

- What more can it do to help the market offer a range of products that meet straightforward investment needs?
- How can it better ensure that those who have the financial resources to accept the risks of higher risk investments can do so if they wish, but in a way that ensures they understand the risks they are taking?
- How can it use the regulation of financial promotions to make it easier for people to understand the level of regulatory protections afforded to them when they invest?
- What more can it do to ensure that when people lose money because of an act or omission of a regulated firm, they are appropriately compensated and that it is paid for fairly by those who cause the loss?
- How can people be better protected from scams?
- How does the FCA help this market to be competitive, with firms striving to offer better products and services?

IFS DEBATE: THE FUTURE OF CAPITAL GAINS TAX

The Institute for Fiscal Studies (IFS) and Chartered Institute of Taxation (CIOT) recently held a debate about the future of capital gains tax (CGT).

The Office of Tax Simplification (OTS) is in the process of carrying out a review of CGT for individuals and small businesses, commissioned by the Chancellor in July. The unexpected request from the Chancellor has been seen as an indication that CGT is one area where he will seek extra revenue.

On Thursday 17 September, the IFS and CIOT ran a virtual debate on the topic with four speakers, all with different CGT-related backgrounds. The discussion covered many familiar areas, although a few interesting new nuggets emerged:

- ***Taxing gains as income.*** Three of the four speakers were broadly in favour of this approach, as have been a number of think tanks. A couple of speakers reminded listeners that the idea was originally put into practice by a Conservative Chancellor (Nigel Lawson) and survived for 20 years. It has the twin advantages of removing the current avoidance incentive to transform income into capital gains, and potentially raising more tax. However, behavioural effects could limit just how much extra revenue comes to HMRC – just 10,000 individuals accounted for over half the CGT paid in 2018/19 according to the latest HMRC statistics. The IFS wanted to see gains subject to National Insurance contributions (NICs) as well as income tax, a view which echoes its long-held wish to integrate the two.

The idea of taxing the wealthy more found favour with 61% of the public but surprisingly, among Conservatives, this figure rose to 67%. Tax rises are surprisingly popular, but that may be because those in favour think they will not be affected – probably a fair assumption for CGT.

- ***The CGT uplift on death.*** Scrapping the automatic rebasing of asset values on death also found favour. It was noted that if CGT rates were increased, leaving the automatic uplift in place would further discourage sales of assets. There was a plea for some coherence to be introduced at the interface between CGT and IHT – some assets can end up suffering both taxes while others are untouched by either. Given that CGT and IHT are both on the Chancellor's and OTS's reform list, there could even be a new overall capital taxes framework introduced.

- ***The annual exemption.*** Several speakers made the point that there seemed little logic in having both an income tax personal allowance and a CGT annual exemption of about the same amount, especially if gains were to be taxed at income tax rates. Instead, it was suggested that the current £12,300 annual CGT exemption could be replaced with a *de minimis* figure of around £1,000. Nobody commented on how many more people this would drag into self-assessment.

- ***Taxing private residences.*** The tax exemption for main residences was felt to be wrong in principle, but politically suicidal to do anything about. Even creating a rollover relief system for those moving home, which some other countries have, was thought to be too incendiary. The IFS speaker suggested that a viable alternative – albeit with its own political toxicity – would be to reform council tax so that it was more closely related to a property's current value (as opposed to its 1991 value, the last valuation date in England).

- ***Investment incentives.*** The IFS speaker expressed the view that the lesson of entrepreneurs' relief using CGT rates to incentivise investment was tackling the issue from the wrong end. His suggestion was that the incentive should be at the beginning of the investment, e.g. allowing the initial investment to be set against income, but then taxing *all* of the proceeds.

COMMENT

CGT looks a prime candidate for a revenue-raising revamp. However, it is only the start of any tax raising by the Treasury. Even if the CGT tax take were doubled, it would only produce about an additional £10bn.

Residential property profits notwithstanding, CGT is generally paid in arrears – the tax received in 2020/21 is almost entirely based on gains made in 2018/19 (with tax payable on 31 January 2020). Thus, any reform that does not alter the tax due date will make little difference to the Treasury's coffers until 2023/24. For 2021/22 the Office for Budget Responsibility (OBR) is currently forecasting CGT receipts of £7.6bn, down from a projected £10.5bn for the current financial year, because of the pandemic.

The debate did not consider the question of when any changes to CGT might take effect, a question which we are regularly asked. If there are increases in rates and/or reductions in allowances, we would expect that they would take effect from the start of the day of announcement, like many other past Budget measures. Our logic for this is based on three main factors:

- ***Precedent.*** *When George Osborne increased the rate of CGT from 18% to 28% for higher and additional rate taxpayers in his June 2010 Budget, the change was effective from the end of Budget Day. When Entrepreneurs' Relief (ER) was cut from £10m to £1m (and changed to Business Asset Disposal Relief (BADR)) in the March 2020 Budget, this took effect from the start of Budget Day. Notably the ER-to-BADR change also included a set of anti-forestalling measures, something that might reappear in the future.*

- ***Behavioural aspects.*** *If there is a gap between announcement and implementation, then this would encourage a flood of pre-emptive disposals and realisations. While this would boost tax revenue in the short term, it would reduce the overall CGT take. For an example of the potential behavioural reaction, think back to the consequences of the dividend tax changes announced in July 2015, but effective from April 2016.*

- ***Tax timing.*** *With the exception of tax on residential property gains, CGT is generally payable on 31 January in the tax year after the tax year of disposal. Thus, there is not the administrative problem in dealing with an instant change to CGT rules that there can be with other measures.*

NS&I SLASHES RATES

NS&I has announced wide-ranging interest rate cuts, moving from the top of the table to the bottom in a single bound.

Back in mid-April, National Savings & Investments (NS&I) had a change of mind on interest rates. It had previously announced a cut in rates but, as the lockdown ground on, NS&I said the proposed cuts to variable rate products would not be implemented "To support savers at this difficult time".

Wind forward five months and NS&I has made a radical change of tack, announcing cuts across the board that wipe as much as 1.75% off existing rates from 24 November:

Product	Current rate	Rate from 24/11/20
Direct Saver	1.00% gross/AER	0.15% gross/AER
Income Bonds	1.15% gross/1.16% AER	0.01% gross/AER
Investment A/C	0.80% gross/AER	0.01% gross/AER
Direct ISA	0.90% gross/AER	0.10% gross/AER
Junior ISA	3.25% gross/AER	1.50% gross/AER
Premium Bonds*	1.40% 24,500:1 monthly odds	1.00% 34,500:1 monthly odds

* Change effective from December prize draw

In July, the Chancellor increased NS&I's Net Financing target for 2020/21 from £6bn (± £3bn) to £35bn (± £5bn) in response to the costs of the Covid-19 pandemic. In the three months from April 2020, NS&I received inflows of £14.5bn. Demand for NS&I products has remained at similarly high levels since (NS&I do not give a figure). Thus, it seems likely that its year-end target has near enough been met at the half-way stage – hardly surprising given it was paying just about the best rates available.

NS&I say that the cuts 'will see NS&I align the rates offered on its savings products against the rates offered by the banks and building societies.' That is a somewhat creative interpretation of

what is currently available – the instant access universe is not dominated by accounts paying 0.15% or less. Indeed, very recently Skipton (briefly) offered 1.20% for instant access.

For fixed rate products (only available for reinvestment of maturing monies) rates have also been cut by between 0.90% and 1.15%, again effective from 24 November.

NS&I's variable rate cuts catch up with two reductions in base rate, from 0.75% in early March to 0.25% on 11 March and 0.10% from 19 March. Although the dramatic decreases will produce some kickback at a time the Government is not enjoying great popularity, from a financial viewpoint NS&I's move is not only justified, but woefully late. At the time of writing, gilt yields for terms of up to seven years were in negative territory, so paying 1.15% for instant access money (the current rate on Income Bonds) makes no sense.

COMMENT

The NS&I moves leave Premiums Bonds the only relatively interesting (sic) option, particularly for taxpayers (albeit the maximum investment is £50,000 per person).

STAMP DUTY LAND TAX: NEW RATES FOR NON-UK RESIDENTS

The Society of Trust and Estate Practitioners (STEP) and the Chartered Institute of Taxation (CIOT) have said that the new SDLT legislation needs further clarification as follows:-

(1) STEP

STEP recently produced an article in relation to the new 2% stamp duty land tax (SDLT) surcharge for non-UK resident purchasers of residential property in England and Northern Ireland, which will apply from 1 April 2021. In appropriate places, it will be payable in addition to the SDLT liability including the 3% surcharge for additional homes.

Broadly, an individual will be treated as UK resident if they have spent 183 days in the UK during a continuous period of 365 days that falls within the relevant period. The 'relevant period' starts 364 days before the purchase and ends 365 days after. So, for example, a non-UK resident moving to the UK may have to pay the surcharge initially as they have not been in the UK long enough to be regarded as UK resident, but if they then spend sufficient time in the UK over the next year they could become UK resident and be entitled to a refund of the 2% surcharge.

STEP has said that the draft legislation needs further clarification in relation to the residency rules because at present there is a discrepancy in the way the legislation is drafted as it carves out certain circumstances under which the 'relevant period' is not in line with that stated above.

STEP has asked for detailed guidance prior to 1 April 2021 to ensure that taxpayers and their advisers are fully aware of the new rules.

(2) CIOT

The CIOT has raised concerns when providing responses to the consultation regarding the residency rules applicable to companies which have a number of complexities. Broadly, a non-UK company which is not managed and controlled in the UK will generally be a non-UK resident company for the purposes of the surcharge. However, in some cases a company that is UK resident

for corporation tax purposes, so a UK incorporated company which is managed in the UK, can also be deemed to be a non-UK resident company if it is controlled by non-UK residents. To complicate matters, under the control test, a non-UK resident may be deemed to hold control rights that are held by a UK resident connected person, for example a spouse, or child. This may then lead to the company being treated as though it is controlled by non-UK residents even though it is not. Again, the CIOT has asked for clarification of these rules prior to 1 April 2021.

PENSIONS TAX RELIEF – SAFE FOR NOW?

The Government has rejected the Public Accounts Committee (PAC)'s proposal that HMRC should, within 12 months, evaluate the impact of pensions tax relief. The PAC were concerned that HRMC did not understand the impact of some of the UK's largest tax reliefs, which includes pensions tax relief, and called for a formal review.

The Government disagreed with this recommendation and pointed to several recent consultations on pensions tax relief over the last few years. It stated that these investigations included gathering views and evidence from stakeholders to understand the regime's impacts and the impacts of possible changes.

It referred to the responses to the 2015 wide-ranging consultation on pensions tax relief and noted that this indicated there was no clear consensus for reform at that time, and so at Budget 2016 the then Government announced it would not make fundamental reform to pensions tax relief at that stage.

The Government stated it would continue to engage with stakeholders and gather evidence through consultation, but it did not think that now was the right time for a formal evaluation.

The Government did, however, back the PAC's other pension-related recommendations, including one stating that HMRC should publish data showing who is benefiting from pensions tax relief and that they should split this data by income; groups with protected characteristics, such as gender, age and ethnicity; people working in the public and private sectors; and people in defined contribution and defined benefit schemes.

At first glance this could be seen as suggesting there is currently no immediate appetite for fundamental pensions tax reforms; and given that the Government specifically refers back to the lack of clear consensus for change in 2015/16 this may well be the case.

However, unfortunately this doesn't rule out changes – the Government may feel it has already gathered sufficient evidence, or it may feel this could be done via other consultations. Of course, tweaks to the annual allowance or lifetime allowance could also be made which, whilst these may not be considered fundamental, may have a significant impact on the benefits to an individual.

Clearly, savings will need to be made at some point and any significant tax break is going to be within the sights of the Chancellor. As ever, where pension planning is suitable, and clients have the funds and allowances available to make contributions now, clients should consider making contributions sooner rather than later especially if they are higher rate taxpayers.

CONSUMER CREDIT AND OVERDRAFT CUSTOMERS: NEXT STAGE OF SUPPORT

In September the Financial Conduct Authority (FCA) published proposals to update the guidance on support for those who face payment difficulties due to coronavirus. This guidance covers users of credit cards and other revolving credit (store card and catalogue credit), personal loans, overdrafts, motor finance, buy-now pay-later (BNPL), rent-to-own (RTO), pawnbroking and high-cost short-term credit (HCSTC) products.

The FCA has confirmed that the new guidance came into force, as of 2 October.

The measures apply both to consumers who have benefited from support under the previous guidance and continue to face financial difficulties, as well as those whose financial situation may be newly affected by coronavirus after the previous guidance ends on 31 October.

The FCA’s previous guidance, published in July, will continue to ensure temporary support for those impacted by coronavirus until 31 October 2020. The new guidance should ensure consumers will still be able to obtain the support they need from their lenders after 31 October.

The FCA says that the guidance will be kept under review and, if circumstances change significantly, consideration will be given to any further measures that may be needed to support consumers during the ongoing pandemic. The FCA will also review this guidance within six months of it coming into effect to determine whether it remains relevant given the coronavirus crisis or whether it needs to be amended, withdrawn or replaced.

SECOND HOME DISPOSALS: HMRC CAMPAIGNS TO COLLECT UNPAID CGT

HMRC is planning to send 14,000 'nudge' letters to individuals that it believes made a taxable residential property disposal in the 2018/19 tax year without declaring it on their tax return.

The letter gives details of the information HMRC is attempting to check and asks recipients to consider whether they should have paid capital gains tax on the disposal. It advises them to either amend their return or use HMRC's digital disclosure service, if necessary.

A similar campaign last year has reportedly produced a 15% success rate regarding disposals in the 2017/18 tax year. The number of letters being sent out this year indicates that HMRC believes that up to 2,000 taxpayers have a liability to disclose for 2018/19.

Taxpayers and their advisers will need to carefully consider the best response to any ‘nudge’ letter, especially if a disclosure is required, as HMRC will almost certainly be looking to charge penalties.

PENSION WISE APPOINTMENTS SEE 23% INCREASE IN 2019/20

More people are accessing guidance offered by Pension Wise according to its latest evaluation report published by the Money & Pensions Service in a press release. The 2019/20 report reveals that 160,000 face-to-face or telephone appointments were arranged, compared with 130,000 in 2018/19 – a 23% increase. Those accessing guidance digitally increased to 45,000.

A raft of other statistics demonstrates the high levels of satisfaction those who engage with Pension Wise have, along with greater confidence in taking decisions on how to access their pension savings. The main statistics are that:

- 97% of appointment customers have already recommended the service to others or say they would do so
- 91% of appointment customers said Pension Wise helped them consider their options more thoroughly
- A more than threefold increase in overall Pension Wise transactions since the service began.

COMMENT

This positive news follows on from similar news contained within the 2018/19 evaluation report published in January. However, despite the signposting by providers, many choose not to access guidance before making retirement decisions. Greater encouragement to do so is likely to be contained within the DWP consultation to shortly come on the nature of the "appropriate pensions guidance" in relation to DC benefits, required as a result of the Financial Guidance and Claims Act 2018.

INCOME WITHDRAWAL RATE FOR OCTOBER 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 October 2020 is 0.5%.