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ISAs AND AUTHORISED OPEN-ENDED PROPERTY FUNDS: NEW CONSULTATION

The Government is looking for views on the viability of retaining existing open-ended property funds in ISAs in the event that such property funds no longer meet the eligibility criteria.

The Financial Conduct Authority (FCA) is currently consulting on a proposal to introduce a requirement that investors must provide up to 180 days' notice before investments in open-ended property funds can be redeemed.

The FCA is seeking to reduce the potential for investor harm which comes about because the terms for dealing in units of some property funds are not aligned with the time that it takes to buy or sell the buildings that the funds invest in. This type of property fund needs to hold a significant cash balance otherwise it might not have time to sell properties to pay investors who can request their money back at short notice. If a fund runs out of cash, this can cause it to suspend dealing. As a result, this can cause investors to request their cash in anticipation of such suspensions, potentially increasing the problem further.

To address this, the FCA proposes a notice period of between 90 and 180 days.

However, this runs contrary to the ISA legislation which requires account holders to be able to access the funds or transfer them to another ISA within 30 days of making an instruction to their account manager.

Under current ISA legislation such property funds would no longer be eligible investments.
In order to mitigate the impact on ISA account holders and ISA managers, if the change is introduced, the Government is considering whether to allow existing investments in open-ended property funds to remain within the ISA, while prohibiting 'new' investments in such funds.

The aim of this consultation is to seek views on the potential implications for ISA managers of the FCA proposal and on the Government's possible alternative for retaining certain current investments within an ISA.

Consultation closes at 11:45pm on 13 December 2020, after which the Government will consider all responses and publish a 'summary of responses' document. This will review the responses received and set out the Government's decisions in response.

PRIVATE RESIDENCE RELIEF ALLOWED FOR A PROPERTY WITH A LARGE GARDEN

The First-tier Tribunal has voided HMRC's discovery assessments imposed on a couple on the sale of their home.

Private residence relief is a valuable relief for those who occupy their main home throughout the period of ownership as, in most cases, any capital gain on subsequent sale is exempt from capital gains tax. However, there are some restrictions. For example, the area of garden and grounds of a person's residence that qualifies for private residence relief is restricted and referred to in the legislation as the 'permitted area'.

The relevant provision is set out in section 222(3) of the Taxation of Chargeable Gains Act 1992 (TCGA) which states:

'Where the area required for the reasonable enjoyment of the dwelling-house...as a residence, having regard to the size and character of the dwelling-house is larger than 0.5 of a hectare that larger area shall be the permitted area'.

This broadly means that if the garden and grounds of the residence exceed 0.5 of a hectare then relief may be available for a larger area depending on the circumstances.

In the recent case of Leslie and Catherine Phillips v HMRC TC7859, at the time the couple bought their home it included five bedrooms, three bathrooms, a garage for three cars, a one-bedroom cottage and a swimming pool, with grounds which extended to 0.94 of a hectare. The couple decided to sell the property to a housing developer and claimed private residence relief.

HMRC decided that the property was not of a size and character that required gardens or grounds of more than 0.5 hectare. As a result, HMRC issued discovery assessments to both Mr and Mrs Phillips for £162,820 which represented the capital gains tax on the part of the purchase price attributable to the unrelieved 0.44 of a hectare.

Mr and Mrs Phillips appealed against the assessments on the basis that the whole 0.94 of a hectare was, having regard to the size and character of the property, required for the reasonable enjoyment of the property and therefore formed part of the permitted area to which private residence relief applies.

The expert witness for the taxpayers said that similar houses in the neighbourhood all had large gardens too and their house was proportionally bigger and so required more grounds.

The First-tier Tribunal (FTT) judges took all the relevant facts and evidence into account. This involved considering the size and value of the house and buildings themselves, and the nature of the property's location. The fact that the house was large and was set in a rural area implied that the property would more likely appeal to someone looking for a larger house with more space around it, for example, for privacy. As a result, the FTT agreed that the large garden was required for the reasonable enjoyment of the property and voided HMRC’s discovery assessments which reduced the capital gains tax bill to nil.

ESTIMATED COST OF TAX RELIEFS

Each year, around this time, HMRC issues its estimates for the costs of various tax reliefs. Following a substantial revamp in 2019, this year’s publication has been divided into two parts:

- ‘Structural’ tax reliefs, which HMRC defines as being ‘largely integral parts of the tax structure’. The category covers reliefs which have various purposes within the tax system, e.g. to define the scope of the tax, calculate income or profits correctly, make the tax progressive or to simplify. For instance, the personal allowance and the National Insurance (NIC) primary and secondary thresholds count as structural.

- ‘Non-structural’ tax reliefs are, by contrast, reliefs that HMRC says are designed ‘to help or encourage particular types of individuals, activities or products in order to achieve economic or social objectives’. Examples include the reliefs given for ISAs and pensions.

HMRC accepts that ‘the split between ‘structural tax reliefs’ and ‘non-structural tax reliefs’ is not always straightforward’ and says categorisations remain under continuous review. One obvious example of the vagaries of classification is that the dividend allowance falls into the structural category while the personal savings allowance remains (as last year) treated as non-structural.

Unfortunately, while the layout for the reliefs has been revised this year, HMRC has not updated any of the costs, which remain based on 2019/20 figures. It says that the absence of revised numbers is ‘due to the exceptional uncertainty caused by the pandemic’ and promises 2020/21 figures will be published ‘in 2021’.

The table of the most expensive tax reliefs for the Exchequer is therefore the same as last year, which we have reproduced below. Note that some of these figures are already known to be wrong for 2020/21, e.g.:

- the replacement of the £10m entrepreneurs’ relief ceiling with a £1m business assets disposal relief was projected to save £215m in 2020/21 and £1,120m in the following year, more than halving the cost to the Treasury; and

- the tweaks to the pension annual allowance tapering rules will add £180m to the cost of pension income tax reliefs in 2020/21 and £315m in 2021/21 – admittedly relatively small beer against the £21,200m total.

Relief	**2019/20 and 2020/21 Cost £bn**
Personal allowance	113.00
NICs - secondary threshold	31.50
NICs - primary threshold	27.40
Main residence CGT exemption	26.50
Pensions income tax reliefs	21.20
NICs - employer pension contributions	18.70
Capital allowances - Income and corporation tax	17.12
Inheritance tax - nil rate band	13.00
NICs - effective discount for self-employed	5.60
Corporation tax - double taxation relief	4.54
Annual Investment Allowance	4.00
Income/corporation tax exemption for non-resident gilt owners	3.80
ISAs	3.30
R&D relief small companies	2.46
NICs - lower profit threshold	2.44
R&D relief: large companies	2.33
Income tax and CGT - double taxation relief	2.20
NICs - Employment Allowance	2.20
Entrepreneurs' relief	2.10

COMMENT

When looking at the chart of relief costs, remember that, in its Green Budget, the Institute for Fiscal Studies said that in the medium term the Government would need to raise an extra £43bn a year in revenue to deal with the deficit.

LIVING WAGE WEEK: THE REAL LIVING WAGE INCREASES

The Living Wage Foundation has announced that the Real Living Wage will increase to £9.50 per hour in the UK and £10.85 per hour in London. The Real Living Wage is paid voluntarily by almost 7,000 UK employers. It is separate from the National Living Wage which is a legal minimum rate set by the Government.

The Real Living Wage is an hourly rate of pay calculated by the Living Wage Foundation charity based on what people need to live on. It is increasing by 20p from £9.30 to £9.50 per hour across the UK, and by 10p from £10.75 to £10.85 per hour in London.

Employers who are already part of the scheme will have six months to bring in pay rises. However, the increased Real Living Wage rates are effective from 9 November. So, an employee receiving the increased Real Living Wage rate now will earn 78p per hour more than someone earning the Government's current National Living Wage for the over-25s, while a worker in London will earn £2.13 per hour more.

The National Living Wage and National Minimum Wage rates usually rise in April. However, here's how the increased Real Living Wage rates compare with the current National Living Wage and the National Minimum Wage rates:

	Real Living Wage	**Real Living Wage (London)**	**National Living Wage**	**National Minimum Wage**			
	All ages	**All ages**	**Aged 25+**	**Aged 21-24**	**Aged 18-20**	**Aged under 18**	**Apprentices**
	£	**£**	**£**	**£**	**£**	**£**	**£**
Current rates	**9.50**	**10.85**	8.72	8.20	6.45	4.55	4.15
Potential annual salary*	**17,290**	**19,747**	15,870	14,924	11,739	8,281	7,553

*Based on 35 hours per week for 52 weeks.

Laura Gardiner, Living Wage Foundation Director, said:

“It’s an incredibly challenging time for us all, but today’s new Living Wage rates will give a boost to hundreds of thousands of UK workers, including thousands of key and essential workers like cleaners, care workers and delivery drivers who have kept our economy going. Since the start of the pandemic employers have continued to sign up to a real Living Wage. During Living Wage Week it’s right that we celebrate those employers that have done right by workers and families, providing them with much needed security and stability even when times are hard. These are the employers that will allow us to recover and rebuild from this crisis.”

TALK MONEY WEEK: 21 MILLION MONEY SECRETS KEPT FROM LOVED ONES

UK adults have kept at least 21 million financial products secret from their loved ones, according to a new study of people’s financial behaviours from the Money & Pensions Service (MaPS).
The research, which surveyed over 5,200 people across the UK, was being launched to mark Talk Money Week (9-13 November), a public awareness campaign run by MaPS to improve financial wellbeing by encouraging people to open up about their finances, from pocket money through to pensions.

The study revealed that people in a relationship tend to underestimate the extent of money secrets their partner keeps from them. While 23% of people in a relationship suspect their spouse/partner has kept a money secret, hidden products were found to be even more common, with nearly half of those in a relationship (45%) admitting to having an undisclosed money product.

According to MaPS, Millennials proved to be the most secretive generation, with 59% disclosing they have secret financial products, compared to just 26% of retirees (65+). Of 25-34-year-olds who'd kept a product secret, credit cards, personal loans and overdrafts were most commonly hidden (by 40%, 31% and 23% respectively).

Whilst much of the research focuses on debt and unpaid bills, it also suggests that people in relationships across the UK have significant knowledge gaps when it comes to their partner's financial situation. According to MaPS, almost a third (30%) said their partner does not know how much their annual income is approximately.

The MaPS research page includes links to press releases setting out which parts of the UK are the most secretive when it comes to money. The page also includes the following guides to talking about money - Talking to your partner about money and How to talk about money.

Talk Money Week also links to the UK Strategy for Financial Wellbeing, launched by MaPS in January 2020, which has ten-year goals to help everyone make the most of their money and pensions.

BUSINESS RELIEF DENIED FOR A FURNISHED HOLIDAY LETTING BUSINESS

The First-tier Tax Tribunal has denied IHT business relief for a furnished holiday letting business despite the taxpayer arguing that guests benefited from numerous services.

Generally, furnished holiday lets are treated as 'trading' businesses for income and capital gains tax purposes. However, this is not the same for inheritance tax purposes. So, should a furnished holiday letting business qualify for business relief?

HMRC takes the view that furnished holiday lettings will generally not qualify for inheritance tax business relief. However, in its IHT manual it is also stated that there may be cases where the level of additional services provided is so high that the activity can be considered as non-investment and, in light of this, each case will be decided upon based on the facts.

In the case of Cox (Executors) v HMRC [2020] UKFTT 442 TC the property in question was Crail House, a converted manor house on the Firth of Forth in eastern Scotland. The property was owned and operated by Sheriff Graham Cox as a holiday letting business. On his death, in 2014, it passed to his son and daughter, Sandra Turnbull.

Mrs Turnbull and her co-executors claimed that the property was eligible for business relief at a value of £562,040 thus resulting in a potential inheritance tax saving of £224,816.

HMRC challenged the claim on the basis that section 104 of the Inheritance Tax Act 1984 states that business relief is not due where the business *'consists wholly or mainly of...making or holding investments.'*

While HMRC has successfully used this phrase to deny business relief to many furnished holiday letting businesses, there have been cases where owners of holiday lets have argued that their provision of extensive services means that the business did not consist of *'making or holding investments'*.

In the Cox case, Mrs Turnbull lodged a three-page schedule to show the facilities used by guests. She argued that the occupants of Crail House benefited from numerous other services. These services included the use of gardens, facilities, sports equipment, such as tennis and badminton racquets, beach balls, crab lines, fishing nets, book and DVD lending, dog-sitting, baby-sitting, an arts festival, and specially arranged restaurant visits and picnics.

The picture she painted was of a holiday location that was more like a hotel describing the type of holiday Sheriff Cox offered as 'varied' and saying that it included things like a relaxing atmosphere - scenic views and well-maintained garden, a reading holiday - books provided, and a beach holiday - buckets and spades, crabbing lines, fishing nets provided.

However, HMRC did not agree and claimed that most activities mentioned were 'just normal holiday activities that are possible at most holiday accommodation and were not provided by the business.'
The First-tier Tax Tribunal agreed with HMRC.

The judge said there was nothing exceptional about the business to elevate it to the level of the business found in the *Graham* case where non-investment activities included the use of a swimming pool, games room, sauna, fresh produce from the herb garden, greenhouse and fruit trees, barbecues in each holiday season, receipt of grocery deliveries for guests, fresh seafood at cost price, etc. As such, the judge concluded that the Crail House letting business falls firmly on the investment side and accordingly dismissed the appeal.

COMMENT

The availability of business relief in the case of Graham was a welcomed decision and offered some hope to those owning furnished holiday lets. However, the Cox case clearly illustrates that each case must be considered, based on its specific facts and in line with the type of services offered by the business, to determine whether or not relief will be granted.

£1 MILLION ANNUAL INVESTMENT ALLOWANCE EXTENDED UNTIL 1 JANUARY 2022

The Government has extended the £1 million Annual Investment Allowance (AIA) to stimulate investment in UK manufacturing.

Since April 2008, companies, individuals and partnerships consisting only of individuals have been able to claim the AIA in respect of their qualifying expenditure on plant and machinery. The AIA is effectively a 100% upfront allowance that applies to most qualifying expenditure up to an annual limit or cap (with expenditure on cars being the most notable exception). Also, it is not possible to claim the AIA on assets which were owned and used for another reason (such as for personal use) before using them within the business. Where businesses spend more than the annual limit, any additional qualifying expenditure is dealt with in the normal capital allowances regime, attracting annual writing-down allowances.

The AIA is an incentive for businesses to invest because it accelerates the tax relief available, so it can all be claimed in the year of investment, rather than over a number of years, helping a business's cash flow.

The extension of the temporary £1 million cap was originally due to revert to £200,000 on 1 January 2021 and means that businesses, including manufacturing firms, can continue to claim up to £1 million tax relief through the AIA for capital investments in plant and machinery assets until 1 January 2022.

The amount of AIA available has changed frequently over the years:

Sole traders/partners	**Limited companies**	**AIA**
6 April 2008 - 5 April 2010	1 April 2008 - 31 March 2010	£50,000
6 April 2010 - 5 April 2012	1 April 2010 - 31 March 2012	£100,000
6 April 2012 - 31 December 2012	1 April 2012 - 31 December 2012	£25,000
1 January 2013 - 5 April 2014	1 January 2013 - 31 March 2014	£250,000
6 April 2014 - 31 December 2015	1 April 2014 - 31 December 2015	£500,000
1 January 2016 - 31 December 2018	1 January 2016 - 31 December 2018	£200.000
1 January 2019 - 31 December 2021	1 January 2019 - 31 December 2021	£1,000,000
From 1 January 2022	From 1 January 2022	£200,000

Where a business has an accounting period which spans either the 1 April/6 April or 31 December dates (where applicable), transitional relief is available on a time apportionment basis.

For example, take a company with an accounting period 1 April 2021 to 31 March 2022. The maximum AIA would be:

1 April 2021 to 31 December 2021 - £1,000,000 x 9/12 = £750,000.
1 January 2022 to 31 March 2022 - £200,000 x 3/12 = £50,000.

Total AIA = £800,000.

INCOME WITHDRAWAL RATE FOR NOVEMBER 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 November 2020 is 0.5%.