JOHN LAMB
FINANCIAL PLANNING

INSIGHTS

TECHNICAL BULLETIN
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HMRC's LATEST AGENT UPDATE

HMRC produces regular Agent Updates which, whilst they are aimed mainly at accountants and tax advisers, can also provide helpful insights into issues clients may be talking about to their financial advisers. Here's a selection from what's covered in HMRC's latest Agent Update:

HELP CLIENTS PROTECT THEIR STATE PENSION

Making a claim to Child Benefit can help protect entitlement to the State Pension. It is paid to a person who is responsible for a child under 16 (or under 20 and in approved education or training). In addition to the payments, until the child is 12 years old a Child Benefit award also provides National Insurance Credits to the person who made the claim. These National Insurance Credits can help protect entitlement to the State Pension.

Only one person can claim Child Benefit for a child. For couples with one partner not working or paying National Insurance contributions, making the claim in their name will help protect their State Pension. Even where the working partner claims Child Benefit, there is scope to transfer the National Insurance Credits and change who gets Child Benefit to protect the non-working parent's State Pension.

If a client receives Child Benefit payments, and they or their partner's income is over £50,000, they may have to pay the High Income Child Benefit Income Tax Charge. However, individuals may claim Child Benefit and choose not to receive the payments, which means they do not have to pay the charge but still receive the associated National Insurance Credits and so protect their State Pension.

EXTENSION OF NON-UK RESIDENT CAPITAL GAINS TAX (CGT) ON UK PROPERTY OR LAND

From April 2019, more disposals of interests in UK property or land by non-UK residents have been brought into the charge to UK tax. Residential property disposals by non-UK residents have been liable to CGT since April 2015. Disposals of non-residential property or land have now become liable to CGT on gains from 6 April 2019, and corporation tax from 1 April 2019.

The clients listed below need to complete a non-resident CGT return when they sell or dispose of UK property or land. HMRC must be notified within 30 days of the conveyance date using HMRC's online form:

- a non-resident individual or a non-resident who is in a partnership;
- personal representative of a non-resident who has died;
- a non-resident landlord or trustee but not a non-resident corporate landlord;
- a UK resident individual meeting split year conditions and the disposal is made in the overseas part of the tax year.

A new charge also applies for non-UK residents' gains on indirect disposals of interests in UK property, such as selling the shares in a company that derives 75% or more of its gross asset value from UK land.

THE DISGUISED REMUNERATION LOAN CHARGE

The disguised remuneration loan charge came into effect on 5 April 2019. If a client used a disguised remuneration scheme to avoid paying tax and National Insurance contributions, and they did not settle by 5 April 2019, or they are not in the settlement process, there will be a loan charge to pay.

Where all necessary settlement information was provided to HMRC by 5 April 2019, and any actions HMRC require are satisfied by the dates that they give in correspondence, the current settlement terms will remain available and the loan charge reporting and accounting requirements will not apply. For anyone who will have difficulty paying their settlement liability HMRC can agree to spread payments over a number of years. Where settlement is not reached, any outstanding loans must be reported as employment income arising on 5 April 2019.

TRUST REGISTRATION SERVICE UPDATE

The Treasury has issued its consultation paper seeking views on the Fifth Money Laundering Directive (5MLD) through which the scope of the UK Trust Register is being extended. The 4MLD placed a requirement on the UK to create a register for all express trusts that incur a UK tax consequence which resulted in HMRC setting up the Trust Registration Service (TRS) in 2017. The 5MLD expands the scope of this Register by requiring all UK express trusts to register whether or not they incur a UK tax consequence.

The Government has not specified the definition of express trust. However, we believe that the following will likely fall within the definition of an express trust and therefore will have to be registered:

- discretionary trusts;
- interest in possession trusts;
- many types of bare trust;
- charitable trusts;
- employee ownership trusts.

For those unregistered trusts already in existence on 10 March 2020, the Government proposes a deadline of 31 March 2021 for them to register on TRS. This gives a long lead in time given the greater number of trusts that will need to be registered.

For trusts created on or after 1 April 2020, the Government proposes that the trust should be registered within 30 days of its creation. The Government envisages that this approach would be the most straightforward as registration can occur, as part of the set-up process, when the required details should be readily available to trustees/agents.

In addition, under 5MLD, the Government will be required to disclose specific data about a trust and the beneficial owners of it held on the Register to law enforcement agencies in line with existing requirements under 4MLD. Data on specific trusts will be shared under three circumstances:

- with ‘obliged entities’ that enter a business relationship with a trust;
- with persons who can demonstrate a ‘legitimate interest’ in access to information on the beneficial ownership of a specified trust;
- with persons who want to know about trusts with a controlling interest in a non-EEA company.

‘Obliged entities’ are those individuals or businesses that are supervised by a UK supervisory authority for compliance with obligations established by 4MLD or 5MLD.
The Government considers someone who has a ‘legitimate interest’ in this data will:

- have active involvement in anti-money laundering or counter-terrorist financing activity;
- have reason to believe that the trust or person that is the subject of the legitimate interest enquiry is involved with money laundering or terrorist financing: in other words, speculative enquiries into all or multiple trusts on TRS will not be deemed legitimate;
- have evidence underpinning that belief.

The closing date for comments to be submitted is 10 June 2019.

COMMENT

A more detailed technical consultation run by HMRC will be published later this year. This will include additional information on the proposals for data collection, data sharing and penalties, taking into account responses to this consultation.

LONG-TERM CARE CAPITAL CHARGING THRESHOLD FOR WALES RAISED

The Deputy Minister for Health and Social Services in Wales has announced an immediately effective £10,000 rise in the capital limit used by local authorities in Wales for assessing eligibility for financial assistance with residential care costs. The increase, which comes two years earlier than originally planned, means that residents in Wales will now be able to have up to £50,000 in savings, investments and/or other non-disregarded assets before they will be asked to contribute towards their care costs from their own capital. Those with non-disregarded capital above this threshold will be required to pay for all of their own care home fees.

The Welsh system was already more generous than the system in the rest of the UK where a two-tier capital limit system operates so that claimants with capital between the two limits must make a capital contribution towards their own care. In England and Northern Ireland, the lower capital limit is currently set at £14,250 while the higher capital limit is set at £23,250. In Scotland, the lower and upper capital limits were raised to £17,500 and £28,000 respectively from 8 April 2019.

SELF-ASSESSMENT PAYMENTS ON ACCOUNT

The due date for the first payment on account for the tax year 2018/19 was 31 January 2019. However, according to HMRC, there is an ongoing problem whereby payments on account for 2018/19, in some instances, have not been created by HMRC's systems from the 2017/18 tax return.

This means that some taxpayers were not informed of the amount of tax to pay on account by 31 January 2019. And, reportedly, this problem won't be fixed before 31 July 2019 (the due date for the next payment on account).

Payments on account are due where a taxpayer has less than 80% of their tax collected at source (eg under PAYE) and pays more than £1,000 in income tax per year. So, this is mostly likely to affect self-employed individuals. Company shareholder directors may also be affected if they extract the majority of their income from their company as dividends.

Affected clients could make a voluntary payment on account. However, there is a risk that such a payment could be automatically repaid by HMRC's computer, so it may be easier for clients to deposit all the tax due into a savings account and pay it all in January 2020. HMRC has confirmed that if the demands for payments on account have been omitted from the taxpayer's statement the taxpayer will not be charged interest as long as full payment of all the tax due for 2018/19 is made by 31 January 2020.

If the taxpayer had paid the correct amount of tax by 31 January 2019, including the payments on account due, but their statement did not show a demand for the 2018/19 tax, this can be fixed if they, or their accountant, ask HMRC to add the payment on account to their taxpayer record. This will ensure that the tax is not repaid. However, according to HMRC, this adjustment should only be requested if the taxpayer has, in fact, made the payment on account for 2018/19, otherwise interest will accrue until the payment is made.

THE LATEST PROPERTY TRANSACTION STATISTICS

HMRC issues monthly estimates of the number of residential and non-residential property transactions in the UK and its constituent countries with a value of more than £40,000.

Whilst the seasonally adjusted residential transactions for March 2019 have remained stable, seasonally adjusted non-residential transactions have risen for the second consecutive month. The headline figures:

- The provisional seasonally adjusted UK property transaction count for March 2019 was 101,830 residential and 11,210 non-residential transactions.
- The provisional seasonally adjusted count of residential property transactions increased by 1.4% between February 2019 and March 2019, and is 6.8% higher than in March 2018.
- The provisional seasonally adjusted count of non-residential property transactions increased by 8.9% between February 2019 and March 2019, and is 9.7% higher than in March 2018.

HMRC points out that SDLT transactions are presented by date of completion and because, from 1 March 2019, purchasers have only 14-days from completion to submit their return, (this deadline had previously been 30-days), estimates for the latest month are based on incomplete data, and are adjusted upwards to compensate. This adjustment is based upon the difference between initial and final estimates in previous months. A similar but smaller adjustment is also made to the penultimate month.

HMRC has also published its monthly tax receipt statistics, which show that capital gains tax (CGT) receipts hit a record £9.2bn in the 2018/19 financial year, up from £7.8bn in the previous 12 months. Whilst there may be a number of reasons for this, such as investors cashing in on stock market increases, it's possible that an increase in second property disposals is playing a part. The CGT rate on second property disposals is 18% for gains within any available basic rate tax band, and 28% for gains in the higher rate band or above. The gradual phasing out of mortgage interest relief at the higher and additional rates of tax has been making letting out properties less profitable for many buy-to-let investors and may be leading to an increase in disposals of second properties.

Conversely, SDLT receipts for April 2018 to March 2019 are 5.3% lower than in the same period last year. Receipts in 2016/17 increased by 10.4 per cent due to the introduction of higher duty rates on additional dwellings in April 2016 and this upward trend largely continued through 2017/18. HMRC's explanation for the 2018/19 dip is that this is in part due to the devolution of SDLT payments in Wales and the introduction of First-Time Buyers' relief, which started in November 2017. It will be interesting to see if this downturn continues.

LONG-TERM CARE – NEW THINK TANK PROPOSALS

In the Queen's Speech of June 2017, the Government said that it would "bring forward proposals for consultation" on the funding of social care in England. The promise followed on from a rapidly withdrawn proposal, made by Theresa May, during the 2017 election campaign. Dubbed a "dementia tax", Mrs May's suggestion was to allow an individual to retain £100,000 of assets, regardless of their total care costs.

Six months after the 2017 election, the Government scrapped a social care funding mechanism which had been legislated for by the coalition Government in the Care Act 2014, with a planned start date of April 2016 (subsequently deferred to 2020). This abandoned scheme was itself a reworking of proposals that first emerged in the Dilnot report back in July 2011.

The promised social care Green Paper was originally due in Summer 2018 but, in the best of Brexit traditions, has been kicked down the road several times. The Health and Social Care Secretary said in January 2019 that he "certainly intends for [publication] to happen before April". Now even the timetable has been dropped in favour of a vague statement that the Paper will appear "at the earliest opportunity".

Into the vacuum has now emerged a paper, "Fixing the Care Crisis", written by Damien Green for the Centre for Policy Studies (CPS). Green is Chair of the All Party Parliamentary Group on Longevity and was Secretary of State for Work and Pensions in 2016/17. The CPS is a right of centre think tank which has, in the past, been used to kite-fly policies subsequently adopted by the Conservatives. The combination of Green and the CPS therefore means the paper's ideas are worth a careful look. Its main points are:

- Replacement of the existing system, under which the state provides care via local authorities, to a nationally funded model – a Universal Care Entitlement (UCE) – where the state pays a set amount for each week or month that an elderly person needs support. The aim would be to mirror the state pension system structure.
- The paper estimates that the UK currently spends £18.4bn on social care of the elderly, of which £8.4bn comes from the state, with the balance made up by private funding (£7.4bn) and user-charges levied for public sector services (£2.6bn). In terms of the residential and nursing care home sector, private expenditure is estimated at £8-9bn, with the level of state spending around £6bn.
- The estimated funding gap in 2019/20 is put at £1.55bn-£1.85bn, despite an extra £650m being injected in last Autumn's Budget.
- Subject to a local authority administered (care) needs assessment, the paper warily proposes UCE figures for consultation would be for nursing care £2,500 a month, for full-time residential care, £2,000 a month to cover the core costs, and for those who required domiciliary care, £800 a month.

Interestingly, the paper places the average cost of each of these services much higher - £3,709, £2,674 and £1,092 respectively. The payments would be made as of right, with claimants able to top-up as they wish, including via a new Care Supplement (see below). Herein could be the explanation for deliberate undershooting of current costs.

- "To avoid introducing too much complexity", the UCE would apply only to those who were entering the social care system; existing patients would maintain their current arrangements. However, given the median time spent in a home is 1.6 years, the transition to UCE would be rapid.

- The paper estimates that to fund UCE would cost an extra £2.5bn a year over current expenditure, based on costings for free care in Scotland plus an addition (a doubling in effect) to cover the cost of basic accommodation.

- There are three funding proposals, in decreasing order of preference:
  - Removing the winter fuel allowance from higher and additional rate taxpayers (saving £100m a year) and making it taxable for other recipients (producing another £250m);
  - Making savings elsewhere as part of the forthcoming Spending Review, which could be read as a robbing Peter to pay Paul exercise. This looks an optimistic notion given the strong hints that austerity is coming to an end; and
  - "A possible 1% National Insurance Contribution Charge" for those between age 50 and state pension age. This is described as "very much the last resort", but it would – on what look like somewhat optimistic CPS estimates – raise £2.4bn a year, ie. virtually the entire cost of the system.

- In addition, the paper proposes an optional Care Supplement, described as "a new form of insurance [with no underwriting] designed specifically to fund more extensive care costs in old age, such as larger rooms, better food, more trips, additional entertainment and so on". This would be a single premium product (the paper suggests premiums of £10,000, £20,000 and £30,000), funded at or close to retirement age, possibly by some form of equity withdrawal.

COMMENT

The paper is at the least a starting point for a debate that – rather like several other areas of Government policy – should have been resolved a long while ago. Inevitably, the extra National Insurance Contribution (NIC) charge will be the focus, as may be the fact that baby boomers could be winning again, by paying little if any extra NICs before ultimately benefiting from the new pay-as-you-go system.

GROWTH IN DIVIDEND PAYMENTS JUMPS AT THE START OF 2019

UK dividend payments in the first quarter of 2019 were over 15% higher than a year ago. But that headline number is not all that it seems.
Link Asset Services (LAS) has published its latest quarterly dividend monitor, revealing some surprising numbers for dividends in the first three months of 2019. The figures confirm the picture contained in data from the last year that the growth of underlying dividends is slowing down, but that one-off payments are causing significant distortions:

- In the first quarter of 2019, total dividend payouts were 15.7% higher than in Q1 2018 at £19.7bn.
- However, the increase was primarily down to a £1.7bn special dividend from BHP, which distributed the proceeds of the sale of its US shale oil interests. Overall special dividends in Q1 amounted to £2.1bn (10.7% of the total payout) whereas in Q1 2018 they amounted to £330m (2.0% of the total).
- Strip out the special dividends and underlying dividend growth was 5.5% year-on-year, still more than double the rate of inflation, but about 1.5% lower than LAS expected.
- LAS attributes the underperformance in particular to weakness in telecoms and retail, but notes that "growth from top 100 and midcap companies alike was a little lower than we expected".
- Despite the slight rise in sterling over Q1, exchange rate factors boosted the payout by just over 3% on LAS's calculations. This reflects the fact that sterling was stronger a year ago (around $1.40 rather than $1.30, for example).
- Shell remained the top dividend payer although, as LAS observes, it was the 20th successive quarter in which its dividend had been fixed at 47c. BHP, with its bumper special dividend and a big increase in ordinary dividend, took second place. Along with Astra Zeneca, BP and Vodafone, those five companies accounted for 51% of total dividend payments. Tellingly, none declare their dividends in sterling – Vodafone accounts in euros, while the others favour the dollar.
- The top 15 companies accounted for 80% of all payouts, 4% up on Q1 2018.
- Underlying dividend payouts (i.e. excluding specials) from the Top 100 companies rose 6.3% year-on-year, but two thirds of this was due to exchange rate effects. The Top 100 accounted for 90.8% of total dividend payments in the quarter.
- The more UK-focused Mid 250 registered a 2.5% drop in underlying dividends, with LAS noting that "Earnings growth for companies outside the multinational superleague has slowed markedly recently".
- In terms of sectors, the bumper payment from BHP meant that Mining leapt to second position, behind the usual chart topper of Oil, Gas & Energy. Healthcare and Pharmaceuticals came in third, boosted by an unchanged final dollar-denominated dividend from Astra Zeneca equivalent to about 2.5% of the company's market value.
- LAS has reduced its expectations for 2019 dividend growth, which it now estimates will be 3.9% on an underlying basis and 6.3% if special dividends are included. It now sees the latter to be on track to reach £6.5bn in 2019 against £3.9bn in 2018.

INCOME WITHDRAWAL RATE FOR MAY 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 May 2019 is 1.5%.