Newsletter

BURGES SALMON

Private Client Briefing

Issue 21

Welcome

Welcome to Issue 21 of **Private Client Briefing**, our periodical aimed at keeping you informed of current issues and news.

For further information on any issues raised in **Private Client Briefing** or individual legal advice generally please email **tom.hewitt@burges-salmon.com.**

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Politics as usual?

In the lead up to the general election, a steady flow of speculation surrounded the likely impact of party tax pledges. Changes to the rules for non-domiciled persons, a new mansion tax and a review on deeds of variation all featured in the campaign materials amongst the major parties, but with a Conservative majority and a mixed Queen's Speech, what might we expect from the next five years?

Ahead of the budget on 8 July, we look at some of the key issues for individuals raised in the party's election campaign.

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Crackdown

One thing which is clear is that the Conservatives – like all other main parties in the build up to the election – promised more pressure on "tax evasion, and aggressive tax avoidance and tax planning".

However, what this will mean in practice is as yet unknown: do HMRC intend to focus on corporates operating in the international arena, or will they flex their General Anti-Abuse Rule ("GAAR") powers across all strata of taxpayers?

To raise the additional £5bn from tax avoidance and evasion pledged by the new government, HMRC will clearly need to do a lot more, which has led some to speculate that they may be changing existing rules to bring in more cash. However, what these changes might be (if any) remains to be seen.

What they said

Inheritance Tax & Wills

- Raise the nil-rate band for married couples by giving a main residence allowance of £175,000 on top of the £325,000 already available; effectively a nil-rate band of £1m on the second death
- Proposed consultation on the use of deeds of variation in tax planning

We heard a similar song in 2010 with no change to the nil-rate band, so perhaps hopes should not be raised right away. However, if these new rules come in, arrangements should be reviewed, including making sure that Wills are still drafted in the best way to optimise the relief.

The impact of the proposed consultation on deeds of variation is unknown: its objectives and aims are yet to be revealed, if indeed it goes ahead. However, reliance on deeds of variation to rearrange legacies under Wills in a tax efficient manner should be treated with caution in case there are rule changes, and this places even more emphasis on having a Will to get it right first time.

Income tax & Pensions

- Increase personal allowance to £12,500
- Increase higher rate tax threshold to £50,000
- Pensions lifetime allowance to fall to £1 million from £1.25 million
- Increased remittance basis charge for non-domiciled persons

These pledges are very likely to become law in the next Finance Act. The Conservatives have not yet followed Labour in calling for any significant overhaul of the non-dom rules, though they have raised changing the rules on inheriting non-dom status, so a tougher line may be seen.

Overview

For estate planning purposes, there could be some good to come from changes to the nil-rate band, but an environment of greater scrutiny on "tax planning" may make life harder for more some clients. The message is, as so often, wait and see, but in the meantime there is an opportunity to take stock of existing arrangements.

Checklist

- Is my Will up to date, and does it rely on post death variations for tax efficiency?
- Do I need to review my pension arrangements?
- Am I making efficient use of ISAs *(see article below)*?

Insurance Bonds: ticking the right boxes

Insurance bonds are a fairly common investment for people in the UK, offering a steady stream of return without upfront tax, and possible IHT efficiency in the long run. What is less straightforward is what happens when the investor needs to get more money out sooner than they anticipated.

The tax consequences of taking cash out in the wrong way can be huge, as shown in the recent case of *Joost Lobler*, an unlucky taxpayer who nearly found himself with a $560,000 tax bill.

What is a bond?

The "bond" is often made up of a cluster of insurance policies (usually called "segments"), which are made up of underlying investments. The investor often pays a lump sum premium to buy the policy: it is this premium which (broadly) sets the base cost of each segment.

In each tax year, the investor can withdraw up to 5% of the value of the premium on each segment: this usually means withdrawing 5% of the total premium paid. Withdrawals of up to 5% do not trigger a tax charge, and tax is deferred until a whole segment is surrendered.

Taxing the "gains"

When funds above the 5% allowance come out of the bond, the investor pays income tax as part of their top slice of income for the year up front.

If whole segments are sold to raise cash, income tax is only charged on any gains the underlying investments have made since they were bought.

However, if only part of a segment is sold, then the whole amount received (less the 5% allowance) is treated as chargeable to income tax. So, even though this is in effect a return of capital, income tax is charged on it.

The Luck of Lobler

Mr Lobler's case arose from ticking a box on an instruction form, which could have landed him with an effective income tax rate of 779% on what was his original capital coming back to him.

He wanted to raise a specific amount of cash, and selected an option which he thought would do that in the best way. His choice meant that rather than whole segments being sold to raise the cash, around 97% of each segment was sold. Thus all the cash, less his 5% allowance, was chargeable to income tax – a tax bill that would have bankrupted him.

Luckily, the Upper Tax Tribunal decided that Mr Lobler had made a sufficiently grave mistake in his instruction to justify rectifying the instruction: whole segments were liquidated instead and the tax adjusted.

What to do

Not all investors can hope to be as lucky as Mr Lobler, and no one wants to have to go to court to remedy a tick in the wrong box. The main lesson to be learned is that, unlike Mr Lobler, investors should always seek advice at the time on what method of withdrawal is right for them.

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Immigration: review your right to work checks

Employers have grown used to checking a new employee's immigration status before they start work, not least because of the threat of a £20,000 fine per illegal employee and the threat of being named and shamed by the Home Office. However, recent changes in the immigration rules now mean that employers may have to conduct a second 'right to work' check after an employee has started work.

Since March this year, the Home Office has been gradually introducing Biometric Residence Permits ("BRPs") for all visa applicants applying to enter the UK for a period of six months or more, and this is compulsory for all visa applicants from 1 July 2015.

Under the new system, migrants are given a temporary visa in their passports which expires 30 days after their intended date of travel, and must then collect their BRP within 10 days of arrival.

Migrants can, however, begin working under their temporary visa before they collect their BRP. If they do, an initial right to work check will need to be carried out against the temporary visa, and a further check against the BRP once the migrant has collected it: the BRP check must be carried out before the 30-day visa expires.

What to do

To avoid the administrative burden of carrying out two checks, migrants should be encouraged to collect their BRPs before they begin work. In addition, employers should ensure that they revise existing practices and procedures to comply with the new rules.

Details can be found in the May 2015 version of "An employer's guide to right to work checks" on the gov.uk website.

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Lasting Powers of Attorney – the dangers of joint appointments

Where a person appoints more than one attorney under a Lasting Power of Attorney (LPA) jointly - rather than joint and severally - then if one of the attorneys dies, or becomes incapable of managing their affairs, the entire LPA fails.

If the person who made the LPA (known as the "donor") still has the capacity to make another, then this is easily remedied. It is much more serious if the donor has lost capacity and the attorneys were already using the LPA to administer their affairs.

In that situation, the donor cannot make a new LPA and will be left without anyone to deal with their property, or to make decisions on their behalf about their health and welfare. The surviving attorney no longer has any authority to act on their behalf, despite the LPA being valid in all other respects.

In a case we have recently dealt with, an application to the Court of Protection was needed to appoint deputies to administer the donor's affairs, even though one of the attorneys was still alive and well. This is a lengthy and costly process, which leaves the donor with no one able to administer their affairs in the interim.

What to do

Our advice is to check whether your LPA makes only a joint appointment, and if so to consider making a new LPA making a joint and several appointment while this is still possible.

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Death and ISAs

Until now, though the funds in the ISA would have been free of inheritance tax when passing to a surviving spouse or civil partner, the benefits of tax free income on the funds ceased on death. For deaths after 3 December 2014, the survivor can continue to benefit from the beneficial treatment of any ISA funds, in addition to their own ISA allowance.

For example, Christopher dies with ISA accounts of £70,000, which pass to his wife Faith. Faith can then invest that £70,000 in an ISA of her own, in addition to using her own ISA allowance: she can put a total of £85,240 into her ISA account in the current tax year.

For a cash ISA, Faith would have three years from Christopher's death to make the new investment, or in the case of stocks and shares ISAs, 180 days from when she receives the shares.

No special provision needs to be made in a Will to take the benefit of these measures, provided the surviving spouse inherits the ISA. Where ISA accounts are left otherwise than to the surviving spouse on the first death, thought should be given to changing this to take advantage of the new rule and making up the legacy with alternative cash.

So, this change is good news. However, do note that the ISA isn't simply shifted over: under the draft rules, cash must come out to the survivor to be reinvested and the relief claimed, or stocks sold and the proceeds reinvested in a new ISA claiming the relied. This can mean complication for the survivor in setting up the new accounts, unless the rules are amended to allow the ISA to be carried across wholesale.

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Burges Salmon news

Burges Salmon partner wins Lawyer of the Year

Beatrice Puoti, a partner in our international team, was named Lawyer of the Year at the Citywealth Magic Circle Awards 2015. The awards are held annually to find the best advisers and managers in the global industry.

Beatrice said: *"I was honoured to have been shortlisted for Lawyer of the Year at these prestigious awards and I am absolutely thrilled to have won. I was up against some extremely stiff competition and to come through with a win is testament to the high quality of work that our international team at Burges Salmon regularly undertakes for the firm's clients. Many thanks to all our clients for continuing to give us the opportunity to advise on such interesting work."*

The team was also shortlisted for Law Firm of the Year (London) at the Citywealth Magic Circle Awards and Private Client Team of the Year at the recent Legal Business Awards.

Family Law partner invited to become a Fellow of the International Academy of Matrimonial Lawyers

Sarah Woodsford, a partner in the Family Law team from Burges Salmon, has been invited to become a Fellow of the International Academy of Matrimonial Lawyers (IAML).

IAML is a worldwide association of practising lawyers who are recognised by their peers as the most experienced and skilled family law specialists in their respective countries. Individuals who secure membership are only able to do so by invitation only. The process is a rigorous one, designed to ensure that the high level of expertise within IAML is maintained.

Sarah commented: *"I'm delighted to have received this invitation – it is a real honour and extends opportunities to work on complex family law cases, particularly those with an international element."*

Catherine Hallam, also a partner in the Family Law team and Head of Private Client, is also a Fellow of IAML and comments that *"IAML Fellows are recognised internationally as experts in resolving family legal issues for international families. It is a testament to the firm's reputation in international law that we have two Fellows in this specialised area of practice".*

Family business seminar

We recently hosted *"Out with the old, in with the new – fresh thoughts on family business"* at both our London and Bristol offices. The seminar explored the key issues our family business clients come across, highlighting areas in which new planning options are opening up. Of particular interest were family charters and governance, family investment companies and using equity to incentivise non-family employees.

If you missed the seminars and would like further information, please contact Jim Aveline on +44 (0) 117 939 2283 or jim.aveline@burges-salmon.com.

Burges Salmon shortlisted at STEP Private Client Awards 2015/16

Burges Salmon has been named as a finalist in the *'Legal Team of the Year – Large Firm'* category at the STEP Private Client Awards 2015/16.

The firm's Private Client team has received the shortlist for the continued advice it has provided to clients on ground-breaking transactions, as well as the breadth and depth of its private wealth practice in general.

The awards, now in their 10th year, recognise outstanding and complex work by solicitors, lawyers, accountants, trust managers and financial advisers across the private wealth sector.

John Barnett, a partner in Burges Salmon's Private Client team, said: *"The STEP Awards are widely seen as the leading such ceremony in the wider private-wealth sector. We are therefore proud that we have again been recognised in this way, against some stiff competition."*

The winners will be announced at a dinner and awards ceremony on 8 September 2015.

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