LEGISLATION DAY: IHT, TRUSTS & ESTATES

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Introduction

Since 2010, it has become the norm for draft tax legislation to be published late in the calendar year for eventual inclusion in the following year's Finance Bill. This is published one week or two after the Chancellor's Autumn Statement, and the publication date has generally become known amongst tax practitioners as 'Legislation Day'. This year, Legislation Day was on 9 December.

We have divided our commentary on the draft legislation amongst seven subject areas: Income tax & NICs, Corporation tax, Inheritance tax, VAT, Stamp taxes, Pensions & Compliance, avoidance and evasion. Our commentary does not attempt to cover everything for which legislation was published. Instead, we have opted to cover about 25 significant topics on which there is now more detail available than on Autumn Statement day (25 November).

Draft legislation is always subject to amendment of course, both before and after it is introduced to the House of Commons.

See Simon's Taxes Binder 1 for information about recent New Developments which are to be incorporated into the commentary.

Residential nil-rate band – downsizing addition

Following the introduction of the residential nil-rate band by F(No 2)A 2015, the 2016 Finance Bill will include the provisions proposed in July to extend the availability of the band to cases where, on or after 8 July 2015, the individual downsizes from a higher value residence to a lower value one or ceases to own a residence and other assets are left on death to direct descendants. The extension will come into effect at the same time as the main provisions, for deaths on or after 6 April 2017.

The downsizing addition may be available where:

(a) there is a residence in the estate at death which qualifies for the residential nil-rate band but the full amount is not due because the value of the residence, or the proportion inherited by direct descendants is below the maximum residential nil-rate band; or

(b) there is a residence in the estate on death which does not qualify for the residential nil-rate band because it is not inherited by direct descendants, and the value is less than the maximum residential nil-rate band; or

(c) there is no residence in the estate on death.

There must previously have been a residence that could have qualified for the residential nil-rate band and at least some of the other assets in the estate must be left to direct descendants. A claim is required.

The addition is calculated by reference to the value of the previous residence at the time of its disposal. The amount is limited to the value of other assets which are inherited by direct descendants and cannot result in a total residential nil-rate band higher than the maximum limit.

Inheritance tax for non-UK domiciles

With effect on and after 6 April 2017, the provisions which deem long-term UK-resident individuals to be UK domiciled for IHT purposes will be amended to align them with the proposed new deemed domicile rules for income tax and capital gains tax. The changes also include a new rule deeming UK-resident individuals born in the UK who have acquired a non-UK domicile of choice to be UK-domiciled.

As a result of the changes, a non-UK domiciled individual will be deemed to be UK-domiciled for IHT purposes at a particular time, and therefore subject to IHT on his worldwide assets, if:

a) he was domiciled in the UK within the three years immediately preceding the time in question;

b) he is a ‘formerly domiciled resident’ for the tax year in which that time falls; or

c) he was resident in the UK for at least 15 of the 20 tax years immediately preceding the tax year in which the time in question falls.

For this purpose, an individual is a 'formerly domiciled resident' for a tax year if he was born in the UK, his domicile of origin was in the UK and he was resident in the UK for the tax year and for at least one of the two previous tax years.

The facility for an individual to elect for deemed UK domicile is unaffected by these changes except that such an election will cease to apply after a period of non-UK residence of six successive tax years rather than the current four-year period.

Additionally, settled property situated outside the UK which would otherwise be excluded property because the settlor was non-UK domiciled at the time the settlement was made will no longer be excluded property for any tax year for which the settlor is a formerly domiciled resident. Such property will therefore be subject to the IHT trust regime for events occurring in 2017/18 or a later tax year for which the settlor is a formerly domiciled resident. If the settlor subsequently becomes non-UK resident the property will again be excluded property; if the property is subject to the relevant property trusts regime no charge to IHT will arise as a result.

IHT treatment of pension scheme drawdown funds on death

Provisions are to be included in Finance Bill 2016, with retrospective effect, to ensure that an unintended IHT charge cannot arise as a result of the changes to pension tax law which allow people flexible access to their money purchase pension funds.

An IHT charge can arise where a person elects to draw down all or part of their pension but has not exercised their rights over the drawn down funds before death. With effect for deaths on or after 6 April 2011, the charge will no longer apply to funds in a member's or dependent's drawdown pension fund. With effect for deaths on or after 6 April 2015, the charge will no longer apply to funds in a member's, dependent's, nominee's or successor's flexi-access drawdown fund under a registered pension scheme. The charge will also not apply, with effect for deaths on or after the same dates, to funds under certain schemes which would fall within each category if the scheme were a registered pension scheme.

Where IHT has been paid in circumstances which will fall within the new exemption, the time limit for making claims for repayment of the IHT and any interest on it is extended to 5 April 2020 (where that date is later than the normal time limit).