Inheriting your partner’s individual savings account

More details have emerged about how ISAs can be inherited.

One of the rabbit-out-the-hat features of December’s Autumn Statement was the announcement that if you outlived your spouse or civil partner you could ‘inherit’ their ISA. It sounded an attractive option, but the idea was far from developed when Mr Osborne made it public at the end of last year.

However it is a hugely beneficial change.

The Treasury and HMRC have now issued further information and a set of draft regulations. The effect of the regulations in their current form will be to:

• Permit a surviving spouse/civil partner to make an additional ISA subscription equal to the value of the deceased spouse’s/partner’s ISA at the date of their death;

• Allow non-cash holdings (e.g. unit trusts, OEICs and shares) in the deceased spouse’s/partner’s ISA to form part or all of the subscription; and

• Set a time limit for the subscriptions, broadly 180 days after administration of the estate is complete or, in the case of cash assets, three years from the date of death, if later.

The opportunity to transfer existing ISA investments is helpful – the Autumn Statement had appeared to suggest that investments would have to be realised and subscriptions could only be in cash. However, the current regulations leave unchanged what happens between the date of death and the new subscription being made. That will mean the ISA assets will be taxable as part of the estate between the date of death and the making of the subscription. To complicate matters further, because the subscription value is fixed at the date of death, a transfer of non-cash holdings will be affected by changes in value before the subscription is made.

The Treasury says the cost of this reform will be negligible in revenue terms – £10m in 2019/20 – but if both spouses/civil partners regularly take full advantage of ISA limits, it could prove a valuable benefit for the survivor to create a tax free fund and tax free income stream therefrom.

The value of tax reliefs depends on your individual circumstances. Tax laws can change. The value of investments can go down as well as up and you may not get back the full amount you invested. Past performance is not a reliable indicator of future performance. Investing in shares should be regarded as a long-term investment and should fit in with your overall attitude to risk and financial circumstances.
Many parents are keen to help get their children on the property ladder as rapid price growth means they cannot afford to do so on their own. However for many reasons parents are often reluctant to part with significant lumps of capital until their child is in a stable relationship/career which may be some years away.

Some parents own the property directly and allow the children to live there but this does nothing for the parent’s Inheritance Tax position where HMRC are looking for a 40% charge on estates worth more than £650,000 for a married couple where the first to die leaves everything to the survivor.

One method we have used in practice which has the virtue of simplicity is to provide a loan to the child to purchase their main residence. This means the child owns the property and obtains the capital gains main residence exemption. The parent’s secure their loan with a first charge on the property so that if anything goes badly wrong they are first in line to recover their loan when the property is sold. Further the loan may be written off in stages as the child’s position becomes more stable and provided the parents live for 7 years this is Inheritance Tax free.

An alternative that I keep seeing proposed is to set up a formal written trust, before you buy the property, with one or both parents named as the trustees. A solicitor can help you do this for a modest fee. This keeps the property out of the children’s ownership so offers asset protection if a child gets into any difficulty, financial or otherwise.

Rather than purchase the property privately, you loan the trust the deposit and the trust takes out the mortgage. You will usually need to guarantee any mortgage in your own name because banks are otherwise reluctant to lend to trustees.

A “life interest trust” allows you to name a single child as a beneficiary, and that child also has a right to the income from the property.

A “discretionary trust” allows you to name any number of children, or other friends or family members for that matter, as beneficiaries. With a discretionary trust there is no automatic right to the income but you can structure it in this way if you choose.

With both types of trust, the named beneficiaries can become what are called life tenants, which gives them the right to live in the property rent-free.

A discretionary trust is a more flexible arrangement because one child could occupy the property for three years – while they are at university, for example – then a younger sibling could take over the property at a later date. There is no limit to the number of times the occupier can change, as long as they have the right to occupy the property rent-free under the terms of the trust.

By naming your children as beneficiaries they effectively trigger their own main residence relief when they move into the property.

When you come to sell the property as trustees, you can claim the exemption for the whole period of ownership as long as it has been occupied by at least one of the named beneficiaries at all times.

Your own principle private residence relief on your home is not affected and there is no limit to the amount of gains you can take tax-free through this arrangement. There is also no income tax due on the sale.

If your children move out of the property, you have 18 months to sell it before a capital gains tax liability would start to accrue. Within this 18-month period you can let it out to any tenants you like and it will not affect the CGT exemption.

Outside of the 18-month period, if the property is not occupied by a named beneficiary, CGT may be due for that period.

What about inheritance tax?

If you loan the deposit for the property to the trust, as described above, there will be no upfront inheritance tax to pay. You will only incur an upfront IHT charge if you gift the asset to the trust and it is worth more than the IHT limit of £325,000. In this case a 20pc IHT charge would apply to the excess. But only settled assets – money you put into the trust – count. You need to put some money in when you set it up but this can be any amount you like, £100 is a good starting point, and this is what would count towards the limit. As it is unlikely that you would ever gift more than £325,000 to the trust, upfront IHT would very rarely apply.

Any trust that owns property must also pay inheritance tax every 10 years at 6pc on any value above the £325,000 threshold. But again, if the deposit is loaned rather than gifted to the trust, this will not usually trigger a charge.

If one or both parents as the trustees die, new trustees can be appointed and the trust can carry on as normal. Alternatively, if the trust is set up so the children inherit the property on death, the normal inheritance tax rules apply.
Material changes to the Spanish Tax Landscape

New legislation was enacted in Spain in Q4 2014 which takes effect in 2015. Through our International Alliance, i2AN, we now set out below a summary of the major changes:

**Personal Income Tax**
- Resident individuals are liable to individual income tax in respect of their worldwide income and capital gains.
- General progressive tax rates: 20%-47% and 2016: 19%-45% (regional surcharges could also be applicable).
- Savings income: progressive rate of 21%-24% and 2016: 19%-23%.

Savings income includes dividends, interest, capital gains and payments from investment in insurance policies.

A new optional regime applies to individuals when moving to Spain pursuant to an employment contract. The option for the new regime only applies to those individuals who have less than 25% shareholding in their employer company.

- Taxed effectively as non-resident taxpayers:
  - Employment income worldwide: flat rate of 24% up to 600,000 euros. 45% on income above 600,000 euros.
  - Interest, dividends and capital gains from Spanish source: fixed tax rate of 19% (2015: 20%). No tax on income or gains from non-Spanish assets, etc. even if remitted!
  - No taxation of foreign source income (except employment income).

**Capital Gains Tax**

There are wide reaching changes in connection with capital gains tax on individuals ceasing to be resident in Spain resulting in an exit charge.

- Individuals resident in Spain for 10 of the last 15 tax years that cease to be tax resident in Spain and hold:
  i. shares or interests in any type of collective investment institution or company or real estate assets, with a market value exceeding €4 million;
  OR
  ii. shares or interests in a company with a value exceeding €1 million and in which the taxpayer holds a stake of 25% or more.
- Taxation will apply on the unrealised capital gain (19%-23%).

There are other changes to the transparency and exchange of information provisions together with gift and inheritance tax. If any readers are interested in obtaining any more information please can they contact Richard Kleiner (rkleiner@geraldedelman.com) who will be able to put you in touch with our Spanish associates.

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**Selling a French Property**

Our French Associate reports a helpful change in the law such that the obligation for non-French residents to appoint a tax representative (and pay them a fee) in the case of disposal of a French real estate property has been cancelled in the last finance bill for all EU residents. As from 1 January 2015, the capital gains tax payable no longer needs to be paid by a tax representative, and will be just withheld from the sale price by the notary (a specific tax return still needs to be drafted). This is good news for our UK clients owning a French property in France as it simplifies the administration and cost of selling a property in that country.
There is a major change to the way in which the self-employed will pay the Class 2 National Insurance which older readers may fondly remember as the ‘Weekly Stamp’. Class 2 National Insurance is an important contribution because it counts towards entitlement to the state retirement pension (and some other state benefits such as maternity allowance) and for 2015/2016 the weekly rate will be £2.80 so a modest contribution for excellent benefits. From 6 April 2015 Class 2 National Insurance, like Class 4 National Insurance will be payable with income tax through self assessment Tax Returns. Therefore, the Class 2 NIC for the 2015/2016 tax year will be due on 31 January 2017. For clients with small earnings, Class 2 NIC will only be due on that date if their profits are above the small profits threshold which is set at £5,965 for 2015/2016. If anyone is in a situation of having profits below the small profits threshold and not having any employment income they should consider an option of making voluntary Class 2 National Insurance payments. This assumes those reaching state retirement pensions on or after 6 April 2016 have not already reached the 35 years’ contributions needed to earn the maximum new flat-rate state pension.

Among the items to review on the investment front are:

- Individual savings accounts (ISAs). The maximum ISA investment in 2014/15 is £15,000 and, following last year’s Budget changes, there are no restrictions on how much of this limit you can invest in cash (although currently available interest rates are something of a disincentive). Unused ISA allowances cannot be carried forward, so you should normally contribute as much as possible each tax year. A change of government might see some erosion of tax benefits of ISAs. In 2013 the Treasury examined the option of capping their value and the idea could be revisited by a new Chancellor.

- Capital gains tax (CGT). In the 2014/15 tax year you can realise gains of up to £11,000 with no capital gains tax liability. And once 2015/16 begins on 6 April you will have another £11,100 annual exemption to use. If you have the gains, then using both years’ exemptions could be a wise precaution: both Labour and the Liberal Democrats have floated the idea of CGT reform. You cannot simply sell and then immediately repurchase to crystallise a gain, but there are other options which have similar effect. For example you could sell your holding in an investment fund and then reinvest in the same fund via an ISA or a SIPP.

- Venture Capital Trusts (VCTs). These high risk investments can be an important element of year end planning because of the initial 30% income tax relief and other tax benefits they offer. This year two of the largest VCT managers have virtually withdrawn from the market for new monies, which could mean that if you leave investment until the last moment, your choice of VCTs may be limited. With an eye to the election, most VCTs will allow investments to be allocated between this and next tax year.

The value of your investment can go down as well as up and you may not get back the full amount you invested.

National insurance changes for the self employed

There is a major change to the way in which the self employed will pay the Class 2 National Insurance which older readers may fondly remember as the ‘Weekly Stamp’. Class 2 National Insurance is an important contribution because it counts towards entitlement to the state retirement pension (and some other state benefits such as maternity allowance) and for 2015/2016 the weekly rate will be £2.80 so a modest contribution for excellent benefits. From 6 April 2015 Class 2 National Insurance, like Class 4 National Insurance will be payable with income tax through self assessment Tax Returns. Therefore, the Class 2 NIC for the 2015/2016 tax year will be due on the 31 January 2017. For clients with small earnings, Class 2 NIC will only be due on that date if their profits are above the small profits threshold which is set at £5,965 for 2015/2016. If anyone is in a situation of having profits below the small profits threshold and not having any employment income they should consider an option of making voluntary Class 2 National Insurance payments. This assumes those reaching state retirement pensions on or after 6 April 2016 have not already reached the 35 years’ contributions needed to earn the maximum new flat-rate state pension.

Tax allowances for low emission cars

Up to 31 March 2005 the government allowed businesses to write off 100% of the cost of a brand new (not second hand) low emission car against taxable profits in the year of purchase. This useful tax break changes from 1 April 2015 such that to achieve the 100% write off the CO2 emissions have to be less than 75g/km which is reduced from the previous limit of 95g/km. This tax break is being extended now for the three years to 31 March 2018 rather than terminating at 31 March 2015. There are many cars available in the market with CO2 emissions up to 75g/km and we can provide a web link to a full list on request although popular car journals such as What Car? do show the CO2 figure in the specifications section for all new cars.
The expectations gap— the difference between the expected, and actual performance of an auditor— in part, may have been solved by shifts in technological innovation. Technology most recently adopted by KPMG in its alliance with McLaren Applied Technologies, will allow 100% of data to be analysed, reducing the need for samples to be chosen; in so reducing the gap between what the public expects, and the actual performance, of an auditor. Whilst this is a trend only likely to affect those that make up the Big Four with unmatched purchasing power, even by those who make up the remainder of the top 10, it provides an opportunity to highlight the expectations gap, inherent within the statutory audit.

Unfortunately we as auditors don’t have the time, but more importantly the need, to test every transaction that eventually make up a companies financial statements. This is in part what makes up the expectations gap, previously defined. Our objective is to evoke confidence in the numbers produced to aid economic activity and the allocation of capital. Levels of materiality are set to ensure that economic decisions are not made on misleading information presented in the accounts, in so protecting the end users of financial statements. It’s not a perfect system, I would challenge you to name a system that is, but it’s a system that works.

The new tax rules are due from 6 April, but there is still plenty to consider before then.

The current tax year has been a transitional one on the pension front. It has seen the annual allowance reduced by 20% to £40,000 and the lifetime allowance cut by a sixth to £1.25m. There has also been a raft of temporary transitional provisions introduced ahead of the new regime for 2015/16 onwards.

The key area to consider for both this and next tax year is whether to make some one-off contributions. There has been much political discussion about changing tax relief on contributions:

- The Labour Party has said that it will reduce higher rate tax relief on contributions to fund job creation. More details should soon emerge in their manifesto.
- The Liberal Democrats, and in particular the current Pensions Minister, Steve Webb, are considering a single flat rate of relief on pension contributions between 20% and 30%.
- The Conservatives have made no announcements, but a leading think tank closely associated with the party has also proposed moving to a flat rate relief system.

Income tax relief on pensions cost £27.9bn in 2012/13, with another £15.2bn cost for national insurance contribution relief on employer’s contributions, according to HMRC. Given the current state of government finances, any post-election Chancellor could be tempted by such low hanging fruit.

If you wish to make large pre-emptive pension contributions, please contact us as soon as possible. Maximising contributions can require a considerable amount of data to be collected, which takes time.

The value of your investment can go down as well as up and you may not get back the full amount you invested. Past performance is not a reliable indicator of future performance. The value of tax reliefs depends on your individual circumstances. Tax laws can change. The Financial Conduct Authority does not regulate tax advice.
Where were you on Friday 30 December 1999?

The chances are that, if you remember, you were preparing for a millennium party due the following day. It is most unlikely that you noticed the closing level of the FTSE 100 (Footsie) on that Friday, which in any case was a shortened trading day on the London Stock Exchange. Yet the day’s, year’s and for that matter decade’s final Footsie reading of 6930.2 marked an all-time high for the index which was only topped on 24 February 2015.

The 15+ years it has taken for the Footsie to regain its millennial peak prompted plenty of comment, some of which suggested the performance highlighted what poor returns investing in shares offered. Alas, not all of the coverage has been well informed:

• The FTSE 100 index does not measure total investment returns, only capital returns. If you allow for reinvested dividends (received net for basic rate taxpayers), an investor in the end-1999 Footsie would, by 24 February 2015, be showing an overall return of about 67%.

• In terms of dividend income, this would have increased by a virtually identical amount: at the end of 1999 the Footsie had a yield of 2.04%, whereas on 24 February its yield was 3.39%.

• The notion that inflation had trounced investment in the Footsie is wrong, because it ignores that all-important dividend income. Price inflation between December 1999 and January 2015 (the latest available figure) totalled 52.7% based on the Retail Prices Index and 36.7%, based on the Consumer Prices Index, both below the overall total Footsie return.

The value of your investment can go down as well as up and you may not get back the full amount you invested. Past performance is not a reliable indicator of future performance. Investing in shares should be regarded as a long-term investment and should fit in with your overall attitude to risk and financial circumstances.

Previously, the government announced an employer’s national insurance contribution exemption in respect of payments of salary to employees under the age of 21. This exemption will remain for the coming 2015/16 tax year. In addition, a further measure has been added.

From 6 April 2016 every employer with “apprentices” under the age of 25 will no longer be required to pay Class 1 secondary national insurance contributions on the employee’s earnings up to the upper earnings limit (UEL) for those employees which is £815 per week for 2015/16. Any employer’s national insurance contributions will be liable as normal on an under 25 apprentice’s salary in excess of the UEL. Any apprentice under the age of 25 will still have to pay in full their personal national insurance contributions on their salary (12% on salary within the band of £115 and £815 per week.

An interesting point to note however is that HMRC’s definition of the term apprentice, as identified on their website appears very wide. This is as follows:

“One who is bound by legal agreement to serve an employer for a period of years, with a view to learning some handicraft, trade or profession, in which the employer is reciprocally bound to instruct him.”

The above definition may well describe employees within your organisation and thus, if so, will give you the opportunity to save employer’s national insurance from 6 April 2016 on any so defined apprentice under the age of 25.
The conditions for zero-rating international sales of goods are different depending on where the goods end up.

**EXPORT**

Exports are where a trader sells goods to a customer based outside the European Union (EU). Goods can only be zero-rated as exports if they leave the EU. Provided the trader obtains and retains evidence of this, exported goods can be zero-rated regardless of whether the customer is a business or a consumer. Dispatch. Where goods leave the UK but remain within the EU they are not exported, they are dispatched, and establishing the correct VAT status of the customer is vital.

**ZERO-RATED DISPATCHES**

Provided both of the following conditions are met, goods that would otherwise be subject to UK VAT at 5% or 20% can be zero-rated when sold to VAT-registered customers in other EU countries:

- show the customer’s valid VAT registration number (including the two-letter country prefix code) on the VAT sales invoice; and
- the goods are removed from the UK and evidence of that removal is obtained (bill of lading, an air waybill or other commercial evidence), usually within three months.

Traders should obtain and retain evidence that they have checked the validity of the customer’s VAT number. There is a list of each EU country’s two-letter country prefix code and VAT number format in para 16.19 of VAT Notice 725 but traders should not assume that a VAT number is valid simply because it is in the appropriate format. Use the VIEN VAT number validation facility on the Europa website and print a copy of the result of each check (see http://ec.europa.eu/taxation_customs/vies/vies/).

It is important to obtain, and retain for six years, evidence that the goods have left the UK. The three-month time limit for obtaining evidence is extended to six months if the goods are processed or incorporated into other goods before leaving the UK.

The flat rate scheme for traders with turnover up to £150,000 p.a. may not be so appropriate for a client who sells many zero-rated goods.

If the customer is not VAT registered in his member state, the UK trader will have to charge UK VAT at the rate that would be appropriate to the goods being sold.

**IMPORTANCE OF VAT NUMBER**

The VAT system throughout the EU requires VAT-registered businesses to account for the local VAT due on goods that they acquire from other EU countries but the same principles apply throughout the EU.

Invalid VAT number. Will you have to account for VAT if the customer’s VAT registration number is invalid? Para 4.10 of VAT Notice 725 answers the above question by stating: “No. But only if you have genuinely done everything you can to check the validity of the VAT number, can demonstrate you have done so, have taken heed of any indications that something might be wrong and have no other reason to suspect the VAT number is invalid.”

As well as checking the validity of the customer’s VAT number when trading commences, traders should ensure that they have systems in place to check from time to time thereafter. That way they can demonstrate to HMRC that they have taken reasonable steps to ensure the customer’s VAT number is still valid to zero-rate sales and retain evidence of this.

**EVIDENCE OF REMOVAL FROM UK**

If the customer collects the goods, or arranges for their collection and removal from the UK, they should confirm to the trader how the goods are to be removed from the UK and what proof of removal will be provided. The trader may wish to take a deposit equal to the amount of VAT which would become due if satisfactory evidence of removal is not provided. The standard of evidence is required in these circumstances is higher and should include additional information including a written order from the customer showing the customer’s name, address, EU VAT number and the address where the goods are to be delivered (see para 5.5 of VAT notice 725 for a complete list of additional information required).

**REPORTING REQUIREMENTS**

In all cases Box 6 (total sales excluding VAT) of your client’s VAT return should be completed as usual. If the conditions for zero-rating the sale to a VAT-registered customer in another EU country are met, the value of the sale should also be included in Box 8 (total value of goods supplied to other EU countries). Sales that are included in Box 8 of the VAT return should be included on the EC Sales List (Form VAT 101) and, if the value of such sales in a calendar year exceeds the Intrastat threshold for dispatches (currently £250,000), the client will need to submit Intrastat Supplementary Statistical Declarations (see Follow up). Failure to submit an Intrastat when required is a criminal offence. The other return that has to be completed for dispatches is the EC Sales List or ESL (Form VAT 101). It shows the value of supplies made to each customer, with each customer being identified by their VAT registration number in the appropriate Member State. The information provided on the ESL is used in the UK and by other Member States to make sure that VAT has not been correctly accounted for. There are civil penalties if a trader fills in an ESL incorrectly or if the form is submitted late.

**ZERO-RATED CONDITIONS NOT MET**

The general rule is that if the conditions for zero-rating are not met, UK VAT will be due on the sale at the rate that would apply if the goods remained in the UK, but see para 6.3 of VAT Notice 725 for special arrangements in certain circumstances. For many clients an important exception to the general rule applies to distance selling.

What’s distance selling? Distance selling occurs when the customer is in another EU country, is not registered for VAT, and the supplier in one member state is responsible for delivery of the goods. The most common examples of distance sales are goods supplied by mail order or ordered over the internet.

Currently, each EU country can choose to have a distance selling threshold of approximately the equivalent of either €35,000 or €100,000 (the UK threshold is currently €70,000 and was set at a time when this was approximately equivalent to £100,000). A client which makes distance sales to customers in another EU country must register for VAT in that country and charge the local rate of VAT if the value of the distance sales to that country exceeds the relevant threshold on a calendar year basis. Note: The mini one stop shop facility for businesses selling digital services to consumers in other EU countries is not available for sales of goods (see Autumn 2014 Genie Article).

An early voluntary foreign VAT registration may be advantageous for a client making distance sales if the local rate of VAT is lower than the UK rate, and compulsory registration is anticipated at some point as their prices will be more competitive.
Chartered accountants regularly deal with confidential information and their communication data should attract the same level of protection as lawyers and journalists. This is the message that the Institute of Chartered Accountants in England and Wales (ICAEW) has told the Government.

The ICAEW feel that to leave chartered accountants off the list of professions requiring an additional infringement of privacy controls, which has been drawn up by the Home Office in its draft acquisition and disclosure of communications data code of practice, risks undermining public trust.

As currently drafted, the list includes medical doctors, lawyers, journalists, MPs and ministers of religion, but not accountants.

“We would like to make it clear that accountants also have a duty of confidentiality and in certain circumstances, the advice they offer can be subject to legal professional privilege” ICAEW pointed out in its response to the consultation on the code.

“Therefore all the concerns regarding sensitivity of communications data are also relevant to accountants”.

The code of practice is intended to cover communications data – who, where, when and how – rather than the contents of the communications themselves, explained David Stevens, ICAEW integrity and law manager.

“The draft code is designed to determine how requests for communications data from the law enforcement and intelligence community are dealt with”, he said.

“We are concerned because you can build up quite a picture about someone simply by knowing who they have communicated with and at what time on what day.”

In its response, ICAEW suggests that the public interest would be better protected by primary legislation rather than a non-mandatory code. “While we recognise the usefulness of communications data in fighting crime, the confidentiality of the advice provided by professionals is vital to the functioning of our legal and economic systems.

We believe that the public interest would be better served by the introduction of primary legislation governing the protection of sensitive communications data.”

The above issue is one that I have a particular interest in. The content above is, in part, an extract from an article that appeared within the accountancy professional press and is certainly one that I concur with as I am sure many of our readers will agree.

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