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FEATURE ARTICLE

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NISAs – Legitimate Tax Avoidance for Middle Britain (2)

In a Feature Article that was published on 3rd February I confirmed that in the 2014 Autumn Statement George Osborne announced that new rules were being introduced allowing the tax advantages of married NISA savers to be inherited by a surviving spouse or civil partner on the death of the NISA holder.

I explained that according to the Government 150,000 married NISA savers pass away each year, and their NISA tax advantages die with them, even if they were saving as a couple. It was confirmed in the Autumn Statement that from 3rd December 2014 the surviving spouse/civil partner of those who died on or after that date benefit from a one-off NISA allowance equal to the total amount the deceased held in their NISA(s) at the date of death and this additional allowance is available to the surviving spouse/civil partner from 6th April 2015. (Surviving spouses/civil partners in addition have their usual 2015/16 NISA allowance available.) This additional allowance is known as an Additional Permitted Subscription (APS).

I explained that unfortunately as I wrote that article the full details of how this APS will work in practice and the full rules were still subject to Consultation. I am pleased to say that the rules have now been finalised and are as follows:

- ✓ From the date of death of the spouse/civil partner the NISA wrapper of the deceased is lost and the underlying assets become potentially subject to income tax on any interest or dividend income generated or capital gains tax where gains are made. In addition the value of the deceased individuals NISA(s) are potentially subject to inheritance tax on death with the one main exception being where NISA investments qualify for business property relief such as qualifying AiM shares held for a two year period. (However it is important to remember that transfers of any assets between spouses on death are IHT free.) APS does not entitle a surviving spouse/civil partner to the funds or cash held by the deceased in their NISA at date of death, that will depend on the details of the deceased's Will or if there is no Will then the rules of intestacy.

- ✓ The deceased and the surviving spouse/civil partner must have been living together at the date of death. That is, not separated under a court order, under a deed of separation, or in circumstances where the separation was likely to be permanent.

- ✓ Additional Permitted Subscriptions are limited to the value of the deceased investor's NISA(s) at their date of death. That will include any income accrued, but not paid or credited to the NISA at the date of death. If the deceased held a number of NISAs with the NISA manager the additional permitted subscription limit will be their combined value at the date of death. NISA managers must have processes in place to ensure Additional Permitted Subscriptions do not exceed this limit. The value of the APS(s) will be determined by the product providers(s) on application.

- ✓ Additional Permitted Subscriptions must be made to the NISA manager who held the deceased's NISA at their date of death unless the allowance is transferred (see below). Managers can insist on a new NISA being opened if this will allow them to police the additional permitted subscription limit. A NISA opened solely to receive the additional permitted subscriptions will not cause the saver to breach the "one NISA of each type per tax year" rule. Where the deceased held NISAs with a number of different managers the surviving spouse will have additional permitted subscription limits with each manager. It is possible however to transfer an APS to another provider provided the new provider accepts the transfers. If an APS is transferred to another provider contributions can only be made in cash, the transfer of assets "in specie" to utilise the allowance is not possible. Also, the APS can only be transferred once and only where no subscriptions have been made under the APS. The APS cannot be transferred to another person.

- ✓ A surviving spouse can make a single Additional Permitted Subscription or a series of Additional Permitted Subscriptions subject to the terms offered by the manager and so long as in aggregate they do not exceed the permitted subscription limit i.e. the value of the deceased's NISA at the date of death.

- ✓ Subscriptions can be made at any time from the date of death subject to the following time limits:
  a. in the case of "in specie" transfers, within 180 days of beneficial ownership passing to the surviving spouse, and
  b. in the case of cash subscriptions, within 3 years of the date of death, or if later, 180 days after the completion of the administration of the estate.

- ✓ Where the estate makes an interim in specie distribution(s) followed by a final distribution each will have a 180 day window for subscriptions to be made. For distributions prior to 6^{th} April 2015 in respect of deaths between 3rd December 2014 and 5th April 15, the 180 days will run from 6th April 2015. Where the death of the ISA holder occurred in the period 3rd December 2014 to 5th April 2015, the 3 year period starts on 6th April 2015, but the Additional Permitted Subscription limit is still the value of the deceased's ISA at their date of death.

- ✓ Where a surviving spouse inherits non-cash NISA assets, these may be used to make an additional permitted subscription "in specie" (without having to be sold and the subscription made in cash). However, only inherited non-cash NISA assets can be used to make an additional permitted subscription in specie and provided the title to those assets has remained with the ISA manager or his nominee. If title has moved from the NISA manager or his nominee, the assets cannot used to make an additional permitted subscription. The subscription must be made in cash instead.

- ✓ The value of assets at the time the Additional Permitted Subscription is made counts towards the Additional Permitted Subscription limit (the value of the deceased's NISA at their date of death). The additional permitted subscription limit is not affected by any change in asset value during the administration period, so if the value of the assets increase during administration it will normally not be possible to subscribe them all to the NISA. If the value of the non-cash assets decreases they can all be subscribed 'in specie' and a cash additional permitted subscription made to 'top up' to the value at date of death. Cash additional permitted subscriptions can be made using sums inherited by the spouse or any other cash they have available.

- ✓ Where the deceased held a combination of stocks & shares and cash NISAs with the same manager the surviving spouse will have a single Additional Permitted Subscription limit with that manager. In these circumstances, the combined date of death values may be sufficient to allow non-cash inherited NISA assets that have increased in value to be subscribed.

As you can see the rules are reasonably complicated and as ever I believe that it is beneficial to obtain professional advice to make full use of them.

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