7 April 2017

Industry Feedback on 'Draft legislation: the Individual Savings Account (Amendment) Regulations 2017' Technical Consultation from the British Bankers' Association, Building Societies Association and Tax Incentivised Savings Association

Feedback

The BBA, BSA and TISA consider that 6 April 2018 is the earliest possible start date for these changes, without our members incurring significant additional costs and causing a serious impact on other regulatory projects, such as IFRS 9 implementation, enhanced prudential reporting and ring fencing. Any earlier commencement date will require manual workaround processes. Our preferred commencement date will allow limited lead time to analyse the changes, establish requirements including changes to IT systems, test them and implement them. It would still be sooner than the 18 month lead-time that larger providers (other institutions may need up to two years) would normally request for implementation of a change.

Implementing the change at tax year end is always preferable. It is preferable for the customer who can see all the changes at one time, also for the provider. The provider makes changes to ISA terms and conditions, other customer facing product literature and staff training at one time once a year. As these updates are usually carried out at tax year end, the changes could be incorporated without the need for additional activity mid-year, which might include having to dispose of existing stocks of literature that have already been produced.

For example, some of the ISA T&Cs used by providers currently contain clauses saying that the tax advantages of ISAs cease on death and/or that the account will be closed on death. These will need to be changed for existing customers as well as for new business. This is a huge undertaking.

Changes to T&Cs require advance notice to be given to customers, e.g. under regulatory (e.g. FCA) and other legal (contractual) requirements, usually by way of notice of variation or similar. As we say earlier, where possible/practical, providers endeavour to change ISA T&Cs on an annual basis to minimise the number of communications required, both from a customer impact and cost perspective, rather than sending several one-off changes at different times during the year.

In terms of the cost impact, for example, two large banking groups have informed us that to put through a one-off T&C change notification to all of their existing cash ISA customers (circa two million and three million respectively) would cost each group in excess of £1m. A large part of this cost is because a significant proportion of customers need to have T&C changes sent to them in the post rather than electronically. As all types of ISA (apart from Junior ISAs) are in scope, this figure would be higher still once all other (non JISA related) ISA products offered by the groups (e.g. stocks and shares ISAs) are taken into account. The impact on smaller banks and building societies is even more severe as they tend not to have the IT resource larger ones have. In some cases, they look to external providers – activities that take time and money.

Other providers have indicated they would need to undertake a similar exercise with significant costs, e.g. due to costs of postage. So industry wide the cost of a one-off T&C change notification to existing customers would run to many millions of pounds.

Such a significant and onerous one-off cost could be avoided and possible customer confusion avoided, if the change is made at the same time as other changes to T&Cs. Hence we reiterate that a mid-tax year change is not appropriate/ cost effective. Should HMRC disagree, then a full regulatory impact analysis must be carried out before a final decision is made.

A delay in the launch of Lifetime ISAs could be a further unintended consequence of a mid-year start date. Assuming this change will be mandatory for all ISAs (apart from JISAs), providers will be required to introduce the changes before April 2018; this might jeopardise some providers' current plans/timescales for launching a LISA. It is likely that the same key internal resources will be needed for both, but one change is mandatory and the other is optional.

We would also like to highlight that there are alternative means in order to benefit from the higher figure in the short term if there was a delay, for those that would benefit most, i.e. using their allowance. The impact of the delay can therefore be seen as minimal.

Reporting

The draft regulation 31(3)(a)(v) requires an additional field to be added to the ISACOM 100 to report the date of death. We understand the reason is to allow HMRC to check that ISAs do not remain open for more than three years post death. The number of ISAs left open for more than three years is likely to be small, but the cost to providers of amending all ISA COM 100 returns to include an additional field will be significant. It would also require IT resource to be moved from other projects such as IFRS 9, making tax digital and ringfencing. Industry proposes that the existing ISA type field should be used to identify continuing deceased accounts with a new letter. If HMRC wants to check that an account has not been open for more than three years, it could ensure that an account of this letter type was not on more than four annual returns. If extending the use of the ISA type field was not considered appropriate, then consideration should be given to other potential solutions focussed on existing data fields on the annual return rather than introducing new ones.

Draft regulation 31 (11) requires statistical reporting of the total number of continuing deceased accounts. Again this is an additional requirement for ISA providers which would not be necessary if a new letter was used on the ISACOM100 as HMRC could see the total number from the return.

Three year backstop date

We support the three year backstop date but consider that it should be the responsibility of the executor/beneficiary and/ or HMRC to ensure that the allowed time period is not exceeded. When the APS was introduced, it was agreed that customers would self-declare that they were within the required timescale to use the APS, and ISA providers would not be required to check. The same pragmatic and consistent approach should be adopted to this extension of tax benefits to avoid systems development and significant cost to deliver little compliance benefit. As stated above, HMRC could police this by looking at the ISA type reported. The ISA provider should not be responsible for policing this as this will add further IT build and complexity.

Transfer of APS to another ISA provider

Draft regulations state that the APS value would be the higher of the value at date of death or the value when the account ceases to be a continuing deceased's account. If the spouse decides to use the APS and subscribes using it while the continuing deceased's account is still open then the APS value at date of death is crystallised. However, industry proposes that the value at date of death should also be crystallised if a spouse transfers the APS to another ISA provider but does not actually subscribe. Otherwise the spouse could theoretically ask the old ISA provider at a date in the future for a revised APS at closure, a complex and messy process. The old ISA provider would need to keep the record open and monitor it until it is aware the 3 year period has passed before closing it. The old ISA provider needs to be able to mark the APS as used at transfer and know that it will not need to re-examine this APS in future.

Flexible subscriptions – withdrawals after death

After the date of death the ISA becomes a 'continuing deceased's account' which cannot be flexible. As the regulations are currently drafted, this means that if a withdrawal is made post death, the current year subscriptions should not reduce. This is a practical issue for ISA providers with fully flexible books who monitor a net subscription field. They would have to implement a manual process to identify any withdrawals from such accounts and manually amend the subscriptions. This would be another resource heavy requirement for some providers to cover the very small risk that a customer had invested more than the ISA allowance in total prior to death in the tax year of death.

Industry suggests that while flexibility is not available post death - to ensure that no deposits are accepted into the deceased's account - a pragmatic approach should be taken to reporting current year subscriptions for flexible ISAs prior to death.

Fixed term product maturity

Draft regulations do not refer to whether an executor can give instructions to change the product held within a cash ISA wrapper. This is particularly relevant when a fixed term product matures after the date of death. Dependent on the terms and conditions, some products will default to another ISA, but some require an instruction where to reinvest otherwise the money is removed from the ISA wrapper and returned. Does the lack of reference to such instructions in the draft ISA regulations mean that this would not be prevented by the ISA rules and would be a matter for the product terms and conditions?

Who we are

The British Bankers' Association ('BBA') is the leading association for UK banking and financial services representing members on the full range of UK and international banking issues. It has over 200 banking members active in the UK, which are headquartered in 50 countries and have operations in 180 countries worldwide. Eighty per cent of global systemically important banks are members of the BBA. As the representative of the world's largest international banking cluster the BBA is the voice of UK banking.

The Building Societies Association ('BSA') represents all 44 UK building societies. Building societies have total assets of over £345 billion and, together with their subsidiaries, hold residential mortgages of over £270 billion, 21% of the total outstanding in the UK. They hold over £250 billion of retail deposits, accounting for 18% of all such deposits in the UK. Building societies account for about 31% of all cash ISA balances. They employ approximately 40,000 full and part-time staff and operate through approximately 1,550 branches.

The Tax Incentivised Savings Association ('TISA') is a not-for-profit membership association operating within the financial services industry. The focus of our recommendations and actions is improved outcomes for consumers and UK plc with this approach leading to a stronger UK financial services industry. TISA's growing membership comprises over 150 firms involved in the supply and distribution of savings and investment products and services. These members represent many different sectors of the financial services industry, including asset managers, insurance companies, fund managers, distributors, building societies, investment managers, third party administrators, consultants and advisers, software providers, financial advisers, pension providers, banks and stockbrokers.