Technical Connection

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PENSIONS ANTI-FORESTALLING PROVISIONS

HMRC issues frequently asked questions and answers

In our June bulletin we made reference to an amendment to the pensions anti-forestalling provisions which means that where "infrequent money purchase contributions" have been paid it will be potentially possible to increase the special annual allowance from £20,000 up to a maximum of £30,000.

HMRC has issued a series of very helpful questions and answers to address a number of the key questions raised by practitioners regarding the new anti-forestalling provisions.

(a) Protected pension input – regular ongoing contributions

The Q & As address the question of what will constitute regular payments for the purposes of protected pension input and give a number of very useful examples. In a number of cases these examples provide different answers from those produced in examples used in seminars held by HMRC with a number of the representative pension bodies shortly after the Budget. It should be noted that these are only examples and that each case will need to be assessed on its own facts. A number of the more interesting examples are set out below.

(i) Contractual agreement

Jenny has a pre-22 April 2009 contractual agreement to pay £2,000 per quarter to an arrangement that Jenny has under a personal pension scheme. However, she actually failed to pay three of the four payments due in tax year 2008/09.

In this case, because there was an agreement to make payments on a quarterly basis in respect of the arrangement and contributions continued to be paid on that quarterly basis after Budget Day (22 April 2009), HMRC would accept that the normal regular contributions of £2,000 per quarter from 2009/10 onwards are protected amounts.

(ii) No formal agreement

Sam pays £1,000 each quarter to his pension provider throughout 2008/09, although there is no formal agreement to make any payments. During 2009/10 Sam pays £1,000 each quarter into the same arrangement.

In this case, HMRC would accept that the normal regular contributions of £1,000 per quarter in 2009/10 are protected amounts. HMRC goes on to indicate that even if one of Sam's quarterly payments in 2008/09 had only been £100 it would still accept that there is a set pattern of regular contributions of £1,000 per quarter and that this would be protected pension input in 2009/10.

(iii) Varying regular contribution amounts

This is best explained by the following two examples:

Example 1

In 2008/09 Emma contributes quarterly to her pension scheme but different amounts each quarter. The contributions were as follows:

April	£3,000
July	£4,000
October	£4,500
January	£2,900

In this case, HMRC would accept that regular contributions have been made although there is no set pattern to the actual rate paid. In these circumstances, HMRC would accept that the rate of quarterly contributions is the median of the four contributions made in 2008/09. That is if the contributions were put in order of value, the middle value, or in the case where there are an even number of contributions the average of the two middle values. In this example, this would be the average of £3,000 and £4,000 (i.e £3,500).

Therefore, if Emma continues to make quarterly payments at an amount of £3,500 in 2009/10 and onwards, HMRC would accept that they were protected amounts.

Example 2

In 2008/09 Angus contributes quarterly to his pension scheme but in different amounts each quarter. The contributions were as follows:

April	£2,000
July	£5,000
October	£4,400
January	£45,000

HMRC would accept the median value of the contributions as his rate of quarterly contributions. In this example, this would be the average of £4,000 and £5,000 (i.e £4,500), giving a protected amount of £4,500 per quarter, despite the disproportionately large payment in January.

(b) Protected pension input - flexible benefits

HMRC also considered the position where an individual was provided with a flexible benefit package, which meant that each year the individual would be able to choose how much to contribute to the company pension scheme. An example was given of an individual, who in September 2008 had opted to pay 5% of his salary on a monthly basis to the company pension scheme.

HMRC confirmed that in the above example, even though the individual would need to opt to continue such contributions on 1 September 2009 (ie. after 21 April 2009), the maintenance of the 5% of salary regular monthly contribution would be protected pension input. However, if the individual had opted to increase the contribution to, say, 7% of salary, only the amount up to 5% of salary would be protected pension input.

HMRC also confirmed that, where an individual is a member of a DC scheme and their contributions were agreed before 22 April 2009 to be on the basis of a set percentage of salary, any increase in contributions on or after 22 April 2009 as a result of an increase in the individual's salary would be protected pension input.

(c) Protected pension input – discretionary rules

HMRC has considered the position on whether the increase of a member's benefits under a DB scheme on or after 22 April 2009, using the scheme's discretionary powers, would be regarded as a material change and hence not protected input.

In considering this, HMRC would wish to establish whether the discretion used post 21 April 2009 is consistent with how that discretion was applied prior to 22 April. If it is HMRC would accept this was a rule of the scheme pre 22 April and that any increase in the member's benefits resulting from that discretion post 21 April would not be a material change and would therefore qualify as protected pension input.

(d) Protected pension input – anti-avoidance provisions

HMRC has used the Qs and As to remind practitioners that even in those circumstances where a change to DB scheme provisions is made, which involves 50 or more active scheme members on the same basis such that where protected pension input can normally be retained, the impact of the anti-avoidance provisions still needs to be considered.

In this respect HMRC states that *"In addition, the anti-avoidance provision in paragraph 14 of Schedule 35 which relates to any case where there is a scheme to avoid or reduce liability to the special annual allowance charge, lifetime allowance charge or annual allowance charge should always be borne in mind when considering the tax position of any pension input, as there will be no protected pension input amount where paragraph 14 applies. This could include the case where, as part of a scheme to avoid or reduce tax liabilities, there was a material change to the scheme rules affecting 50 or more members where the purpose of that rule change was to avoid or reduce these charges."*

(e) 'Relevant income' – salary sacrifice

HMRC has reaffirmed that any new salary sacrifice agreement linked to the payment of pension contributions set up on or after 22 April 2009 will result in the income sacrificed being added back when determining the individual's 'relevant income'. This will apply to regular salary sacrifice arrangements that were already in force prior to 22 April 2009 but which need to be renewed after that date, unless the arrangement included a default position whereby in the absence of any new decision by the individual the sacrifice continued at the existing level for another year. In this latter case the sacrifice would continue to be accepted as a pre 22 April 2009 sacrifice.

(f) 'Relevant income' – redundancy

HMRC confirmed that any taxable part of a redundancy payment (ie over and above the £30,000 exempt sum) will be included in an individual's 'relevant income'. However, it also confirmed that where an individual had agreed prior to 22 April 2009 that he would give up part of his redundancy pay in return for equivalent pension contributions being paid to his pension plan by his employer, this sacrificed redundancy pay would not be part of his 'relevant income' even if the employer pension contribution is not paid until after 21 April 2009.

LONG-TERM CARE

Reform of the current system

The Government has issued a Green Paper that considers the current system for the provision of care in the UK, identifies problems with the current system and makes proposals as to how the system can be improved in the future.

This article provides a summary of the Green Paper.

The current system

The Government has undertaken a review of the current system for the provision of care in the UK. It has identified a number of areas of concern:-

- The system is unfair as regards

  - People who own an unoccupied house, which might have to be sold to meet the costs of care, whereas others with no assets will have all their costs of care paid for.

  - People who live in different areas of the country who may be treated differently.

  - People who receive care in their own home and are not given proper support.

- As longevity improves the current system will come under more and more pressure.

- The way central Government and local authorities interact in providing care could be improved.

Improving the system for the future

Following research, the Government is making the following proposals:

- the creation of a National Care Service to provide a more streamlined, understandable and fairer system to provide care

- a change in the funding for care. In this respect

  - everyone who qualifies for care and support from the state should get some state help with paying for it but should contribute themselves if they have the means to

  - the Government has put forward three options for funding long-term care, which will now be subject to further consultation. These options are as follows:

    (a) Partnership

    Here the state guarantees a certain level of care costs – maybe up to a third – leaving the individual to pay for the rest. People with lower means would be given greater support. This could still mean that the personal cost of care could run into tens of thousands of pounds, especially if a person was a long-term resident of a care home. It could mean that most of their personal assets would be utilised in the payment of care home fees.

    (b) Insurance

    This would operate on the same basis as the Partnership Scheme above but the Government would help to set up insurance schemes for people to cover these extra costs.

    (c) Comprehensive

Here all people (who can afford it) reaching retirement age (65) would pay between £20,000 - £25,000 to a social fund to pay for all future care fees, except accommodation costs. This payment could be made in one lump sum, instalments or taken from pension payments. It could be paid on retirement at age 65 or also possibly be paid on death by a deduction from the individual's estate.

COMMENT

Discussion on the potential to improve the system of care in England is to be welcomed – especially for those who may need to sell their house to meet those costs: this is clearly a very emotive issue.

NEW DISCLOSURE OPPORTUNITY

In the June bulletin we gave some details of the "New Disclosure Opportunity" – the new tax "amnesty" (the second and final one). The exact dates for the "amnesty" have now been announced. The period of disclosure will run from 1 September 2009 to 31 March 2010 for paper disclosures, and from 1 October 2009 to 31 January 2010 for on-line disclosures.

PENSIONS MISCELLANY

- With reference to the easements agreed by HMRC with regard to certain SIPP investments, including where there was a re-structuring of scheme borrowing, HMRC has now confirmed that there will be no need for such borrowing to be retested against the 50% borrowing limit where the borrowing is transferred from one provider to another provided:

  - the borrowing remains with the same lender, and
  - there is no unpaid interest in respect of the borrowings at the time of transfer.

- The PPF has issued an updated Statement of Investment Principles.

- The Pension Protection Fund (Entry Rules) (Amendment) Regulations 2009 – SI 2009/1552 came into force with effect from 21 July 2009, and enable the PPF to give directions to schemes in the PPF assessment period to stop rule changes being made during that period which would have the effect of increasing the scheme's protected liabilities.

- The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 – SI 2009 No. 1851 have been laid and came into force on 10 July 2009. These Regulations introduce the third tranche of the improvements to the FAS that were first announced on 17 December 2007.

- The Government Equality Office has issued a Consultation Document on the Equality Bill "Making it work: Ending age discrimination in services and public functions".

Section 4 of the document covers financial services and is designed to help the Government draw up the necessary financial services exception(s) to the Equality Act when it comes into force.

- In its document "Building a society for all ages" the Government has announced its intention to bring forward, to 2010, the planned review of the default retirement age of 65.

LAND LET ON CONACRE

Permission to appeal refused

In our May bulletin we considered the Court of Appeal decision in McCall v Special Commissioners. This case considered the inheritance tax (IHT) position of land held on conacre. Such land could have potential development value and until the McCall case HMRC accepted that 100% IHT business property could apply to any development value (not covered by agricultural property relief).

In the McCall case HMRC successfully argued before the Court of Appeal that although land held on conacre was a business, it was an investment business which meant it did not qualify for business property relief. It has recently been announced that the House of Lords has refused to grant leave of appeal.

COMMENT

This leaves many landowners in Northern Ireland in a very difficult position. The McCall decision itself meant that an additional £2.4 million of IHT was payable.

In light of this, what action can such landowners take? Well, they could consider the following:

(i) *To, if possible, review the existing conacre agreements with a view to replacing them or varying them so that the landowner does have substantial activities to undertake in connection with the land which would avoid the business being treated as a business of holding investments.*

(ii) *Alternatively, it may be possible to borrow money against the security of the land to diminish its value for IHT purposes. The borrowed cash would then be gifted to the next generation for them to invest in a safe area (as they would be expected to ultimately repay the borrowing on the borrower's death). Survival of the donor for 7 years would mean that the gift falls outside of the IHT net.*

(iii) *Landowners could consider gifting the land to the next generation. If business property relief was not available, a direct gift to adult children would seem appropriate to obtain PET treatment. Obviously the donor would need to give up all benefits from the gifted property (and this may present a problem if the donor lives in a farmhouse that was part of the land that was subject to the gift). Capital gains tax may, however, be a problem here as if HMRC did not accept the land was business property, hold-over relief may not be available.*

One thing is for sure – all clients affected by this change in practice need to take professional advice.

FINANCIAL SERVICES COMPENSATION SCHEME

Policy Statement issued by the FSA
The FSA announces changes to the Financial Services Compensation Scheme

On 24 July the FSA issued a Policy Statement entitled "Banking and compensation reform". The Statement reports on the issues arising from four Consultation Papers and announces some changes to the Financial Services Compensation Scheme (FSCS) as a result.

The feedback on banking reform is a small part of the Statement. Under section 7 of the Banking Act 2009 the FSA has to monitor the financial health of banks as measured against a number of threshold conditions, and the Statement sets out how the FSA proposes to carry out this duty.

The remainder of the Statement is concerned with the FSCS. It is confirmed that the introduction of new rules to provide special protection for temporary high deposit balances would continue to be postponed until the outcome of the European Commission research on this topic is known.

From 1 August 2009 the eligibility criteria for claiming compensation have been simplified. The main change is the inclusion of *all* (our emphasis) natural persons and smaller entities.

As part of a campaign to raise consumer awareness of the FSCS, during the first quarter of 2010 deposit takers will be required to provide generic information about the FSCS to its depositors and state whether they operate under different trading names.

At present, in general terms, if a depositor has a deposit and a loan with the same institution then a claim for compensation would be based on the net balance ie. the amount of the deposit less the amount of the loan. From 31 December 2010, compensation will be based on the amount of the deposit ignoring any debt. This is to ensure that depositors do not lose liquidity, which could lead to hardship.

From 31 December 2010 it is a requirement of the EU Deposit Guarantee Schemes Directive that deposit guarantee schemes (ie. the FSCS in the UK) pay out compensation within 20 business days of the default of an institution. The FSA intends that payment in the UK is speedier, with a target of 7 business days. To facilitate this fast payout target the FSA has prescribed the data to be kept for each customer to enable the customer to be identified and the compensatable amount to be calculated. This should enable the majority of claims to be settled by an automatic payment without need of a claim form.

Finally, from 31 December 2010 for a term deposit the compensation will be universally calculated at the date the firm defaulted.