Technical Connection

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GOVERNMENT RESPONDS TO AGE 75 CONSULTATION

On 9 December 2010 the Government set out its response to the age 75 consultation and issued a tax and impact note providing a draft of the Finance Bill 2011 legislation to introduce the changes. The changes will become effective from 6 April 2011. The timing is surprising given the number of pension providers that had warned of difficulties in amending their systems by April. This administrative resource issue is exacerbated by the further requirement to handle the annual allowance changes, also due in April.

The main changes are:

Retirement benefits

- From 6 April 2011 there will no longer be any specific date (eg 75th birthday) by which members of registered schemes must 'annuitise' or otherwise secure their benefits. There appears to be no requirement to crystallise benefits at all, although a lifetime allowance test at 75 remains.

- It will be possible to continue capped drawdown (broadly USP as at present) beyond age 75. The maximum capped income will be reduced to 100% of the 'relevant annuity rate' based on updated HMRC/GAD tables, which will be extended beyond age 75. The maximum income will need to be reviewed every three years prior to age 75 and annually thereafter. There will be no requirement to take a minimum income before or after age 75.

- There will be an option to take flexible (unlimited) drawdown amounts, provided the member or dependant can meet the Minimum Income Requirement (MIR) of a secure pension income of at least £20,000 pa at the point flexible drawdown begins.
- ASP is to be abolished from 6 April 2011. Existing ASP members will initially become subject to the capped drawdown rules, including those for death benefits.
- The PCLS can be taken whenever benefits are crystallised, even if this is after age 75. The PCLS can only be taken alongside a 'relevant pension' (ie. a lifetime annuity, scheme pension or capped drawdown).
- Where a serious ill health lump sum is paid to a member aged 75 or over the scheme administrator will be subject to a tax charge of 55% of the gross lump sum payment. No such tax charge will arise where the member is aged less than 75 when the benefit is paid.

Death benefits

- Any lump sum death benefit will be subject to a recovery charge of 55%, unless it is a lump sum paid in respect of uncrystallised benefits where the member died before age 75.
- Uncrystallised lump sum death benefits and defined benefits lump sum death benefits will be able to be paid on the death of a member on or after age 75.
- A charity lump sum death benefit may be paid tax free from a drawdown pension on the death of the member before or after age 75. This can only be paid where the member has no dependants and the charity is nominated by the member.
- Value protected lump sums can be paid irrespective of whether the member dies before or after age 75.
- Any lump sum benefits paid at the discretion of the scheme administrator/trustees should be paid free of IHT if made within 2 years beginning with the earlier of the notification of the member’s death to the scheme trustees and the day on which the scheme trustees could reasonably be expected to know of the member’s death. The potential IHT charge under section 3(3) of the IHT Act 1984 will no longer apply.
- The option of a trivial commutation lump sum death benefit will also be extended to allow payment where a member dies aged 75 or over.

Benefit testing

- Benefits will be subject to lifetime allowance testing at age 75. These will be tested under a revised BCE5A in respect of uncrystallised benefits and benefits in capped/flexible drawdown at age 75.

HMRC CLARIFIES THE LIFETIME ALLOWANCE CHANGES

The annual and lifetime allowances are to be reduced respectively from 6 April 2011 and 6 April 2012. While the Government has already set out the main detail of the changes to the annual allowance, there were many unanswered questions about the revision of the lifetime allowance. Most have now been covered by the draft clauses of the Finance Bill 2011 and draft guidance issued by HMRC.

The main unanswered questions concerned how the reduction in the standard lifetime allowance would affect members' benefits that were based on the lifetime allowance (eg primary protection and scheme specific protected cash) and what protection would be given to those individuals with pension rights exceeding £1.5 million (or who expect the value of their pension rights to exceed £1.5 million).

Existing benefits based on the standard lifetime allowance

Many pension limits are based on the standard lifetime allowance. These range from those which apply to individuals with primary protection, scheme specific protected cash and enhanced lifetime allowances to the ceiling for trivial commutation.

The Government has introduced the 'underpinned lifetime allowance' to help protect most of these benefits that would otherwise be cut because of the reduction in the standard lifetime allowance (SLA) from £1.8 million to £1.5 million from 6 April 2012. The 'underpinned lifetime allowance' is defined as the greater of the SLA for the relevant tax year and £1.8 million. In this way, benefits would be protected at their current levels and would be increased should the standard lifetime allowance rise above £1.8 million in subsequent tax years. The following example illustrates how this will apply for an individual with primary protection.

Example: primary protection

Ann elected for primary protection, and has a primary protection factor of 1.5. This means that she can crystallise benefits with a value of up to 2.5 times the SLA without suffering a lifetime allowance charge. In the current tax year she could crystallise benefits with a value of up to £4.5 million (£1.8 million x 2.5) without suffering a lifetime allowance charge, assuming she has not crystallised any benefits to date.

When the SLA is reduced to £1.5 million in 2012/13 her primary protection factor will be applied to her 'underpinned lifetime allowance' meaning that the maximum value of the benefits she can draw without a lifetime allowance charge will continue to be £4.5 million. If by, say, 2025/26 the SLA had been increased to £2 million she would, in total, be able to crystallise benefits with a value of up to £5 million.

Where a member has elected for primary protection and their protected cash at A-Day exceeded £375,000 the maximum PCLS is determined as the protected cash amount increased in line with the SLA. From 2012/13 this calculation will also be based on the 'underpinned lifetime allowance'.

The reduction of the SLA has no effect on members with enhanced protection, except where the member has scheme specific cash (see below). The member's enhanced protection is not related to the SLA, and where the member had tax-free cash of more than £375,000 at A-Day the maximum allowable cash will be based on the percentage that the member's cash at A-Day bears to the value of his uncrystallised pension rights at A-Day.

Where a member has scheme specific protected cash, the cash is determined as a two part calculation. In each part of the calculation the 'underpinned lifetime allowance' will replace the SLA in determining the protected cash.

Where a member has an enhanced lifetime allowance (eg an ex-spouse who has an enhanced lifetime allowance where a pension credit has been received in respect of her ex-husband's post A-

Day crystallised benefits), which arose prior to 6 April 2012, the enhancement factor will from 2012/13 tax year be applied to the 'underpinned lifetime allowance' and not the SLA. Where the enhancement arose in tax year 2012/13 or later the enhancement factor will be based on the SLA.

Where a member is entitled to a trivial commutation lump sum or a winding up lump sum this will, from 2012/13 tax year, be subject to a limit of £18,000. This limit can be increased in future years by Treasury orders.

Fixed protection

Fixed protection is the new form of transitional protection that can be applied for by individuals who do not have enhanced or primary protection. It will generally only be of interest to those individuals whose pension benefits currently have a value in excess of £1.5 million (or who anticipate that the value of their pension rights will exceed £1.5 million). It will protect pension savings of up to £1.8 million from a lifetime allowance charge.

The following conditions must be met if fixed protection is to apply:

- No new contributions may be paid to a money purchase arrangement on or after 6 April 2012. The only exceptions to this are any NI rebates (although these will primarily be for 2011/12 only, the final year of DC contracting out) and contributions to a life assurance policy that started before 6 April 2006.

- The amount of benefits that can be accumulated under a DB (or cash balance) scheme on or after 6 April 2012 will be limited to not exceeding the 'relevant percentage' (see below).

- The member cannot set up any new registered scheme on or after 6 April 2012 unless that scheme is solely to receive a transfer of existing benefits.

For a deferred member of a DB scheme the 'relevant percentage' is an increase in the member's pension each year of no more than either:

- ♦ The annual rate used to revalue the member's benefits as specified in the scheme rules as at 9 December 2010, or if none

- ♦ The increase in the CPI in the year ending in September of the previous year.

For an active member of a DB scheme the 'relevant percentage' is an increase in the member's pension that is no more than the increase in the CPI over the year ending in September of the previous year. In practice this means that few, if any, active DB members will be able to continue to accrue further benefits under their scheme without breaching the 'relevant percentage'. Unlike the A-Day rules for 'relevant benefit accrual' under enhanced protection, there is no 5% pa increase floor. The ongoing accrual of death in service benefits under a DB scheme will not result in the loss of fixed protection.

Where the member's benefits are transferred to a new scheme, fixed protection will only be retained where the transfer complies with the following:

- A transfer from a money purchase arrangement can only be made to another money purchase arrangement under a registered scheme or a recognised overseas pension scheme.

- A transfer from a DB scheme or a cash balance scheme can only be made either to:
  - A money purchase arrangement under a registered scheme or a recognised overseas pension scheme, or
  - Another cash balance scheme, but only if the transfer is made because:
    - The transferring scheme is winding up, or
    - The sponsoring employer of the transferring scheme has sold all or part of its business, and benefits are being transferred to the new employer's scheme.

If any of the above conditions are not met fixed protection will be lost and the member must report this to HMRC.

Where a member has elected for fixed protection and, after having opted out of his scheme to meet the fixed protection conditions, is automatically enrolled in a new scheme in accordance with the provisions set out in the Pensions Act 2008, he/she will need to opt out of the auto enrolment scheme within one month of having been enrolled, if fixed protection is to be retained. If the member is automatically enrolled in a scheme in accordance with provisions other than as set out in the Pensions Act 2008, fixed protection will be lost.

Any application for fixed protection must be made to HMRC by no later than 5 April 2012. Once HMRC has accepted the application it will send the member a certificate confirming the protection.

If the SLA increases in the future to more than £1.8 million, fixed protection will cease and the member's benefits will become subject to the higher SLA.

Change to annual allowance provisions

The draft Finance Bill also confirmed that where an individual satisfies the ill-health condition in a tax year his pension input from the arrangement concerned in that tax year will be treated as nil. To meet the ill-health condition the individual must either:

a) become entitled to all the benefits under the arrangement as a result of the scheme administrator receiving evidence from a registered medical practitioner that the individual is unlikely to be able to undertake gainful work (in any capacity) at any time in the future (otherwise than to an insignificant extent), or

b) become entitled to a serious ill-health lump sum under the arrangement.

COMMENT

It will be interesting to see how many individuals opt for fixed protection. If an individual does intend to opt for such protection, it raises the issue of whether he should maximise his contributions prior to 6 April 2012. This could be a very difficult decision and will depend, among other things, upon how close he is to his intended retirement date (or age 75, if earlier) and the current value of his retirement benefits.

GOVERNMENT CONSULTS ON ANNUAL ALLOWANCE CHARGE PROVISIONS

Our October 2010 monthly bulletin provided details of the new annual allowance (AA) provisions which apply with effect from 2011/12 tax year. Despite the introduction of new carry forward rules, there were concerns that a small number of individuals – principally long serving and high earning members of DB schemes with generous accrual rates – may be subject to substantial annual allowance tax charges that would not be manageable from their current income.

A joint consultation has been issued by the Treasury and HMRC reviewing how such charges could be met by reducing the member's pension benefits.

The Government is considering two broad options for the timing of such benefit reduction:

- when the charge arises, or
- when the member crystallises his/her benefits, ie. deferral

The Government:

- Has confirmed that meeting the AA tax charge from the pension benefits is not intended to be tax-advantageous and that there would not be any tax difference between the two options.
- Takes the view that everyone who exceeds the annual allowance should pay up to a certain amount of the tax charge (suggested as between £2,000 and £6,000) in cash, with all or part of the tax due above this level being taken by reducing their pension benefits.
- Wishes to consider whether the ability to pay part of the AA tax charge from pension benefits should be limited to members of DB schemes or be made available to members of all types of scheme.

NEW HMRC6 ISSUED

On 29 December 2010 HMRC published a revised version of the guidance “Residence Domicile and the Remittance Basis”.

The main changes can be found in chapters 3, 7 and 8, all of which centre around an individual’s residence status. The majority of the other changes have been made to include legislative developments such as the new EU regulations on social security. The section on domicile, including the domicile flowcharts, remains unchanged.

The new version is effective from the date of publication. However, in HMRC6 it is stated that “the wording used in the previous version of HMRC6 may be used for any tax liability that arises before April 2011”.

GOVERNMENT LAUNCHES CONSULTATION ON EARLY ACCESS TO PENSION SAVINGS

The Government has launched a consultation on whether individuals should have early access to their pension savings. This seeks evidence on the potential benefits and risks of allowing early access to pension savings, how it could be offered, and to what extent a reform would be welcomed by pension schemes, providers, individuals and other interested parties.

The Government has identified four main options which may allow more flexible access to private pension funds:

- A loan model allowing individuals to borrow from their pension fund; this is similar to the US 401(K) where interest is charged on the loan which is supposed to be repaid to the pension scheme.

- A permanent withdrawal model, allowing access to funds without repayment obligations, possibly in limited circumstances, such as in cases of hardship; this is similar to the New Zealand Kiwi Saver.

- Early access to the 25 per cent tax-free lump sum currently available from age 55; here the Government seems to be concerned about recycling of PCLS and is suggesting the need for complex rules to guard against this.

- A feeder-fund model, creating a more flexible savings product linking liquid savings products, such as ISAs, and pension savings together into a single account. Suggestions made to the Government include linking an ISA and pension with the ability to move funds from the ISA into the pension. The Government is yet to be persuaded as to the merits of this as this flexibility already exists by taking advantage of the generous annual allowance limits.

The Government also wants to consider giving more flexibility to individuals with small pension pots and those with small funds looking to purchase an annuity. In particular, the Government wants to consider whether any change can be made to the rules on triviality. It has been suggested that a similar £2,000 triviality option be made available for benefits under an individual personal pension scheme as currently apply under an occupational pension. The Government is, however, concerned that there is much greater scope for abuse if the £2,000 limit is extended to personal pensions.

The Government also wishes to address the potential poor value for money where individuals purchase an annuity with small retirement funds. One possible solution put forward to Government is that couples with small retirement funds should be able to amalgamate them.

The closing date for replies is 25 February 2011 and the Government will make a decision on whether to develop more detailed proposals in this area in light of the responses received.

MARITAL PROPERTY AGREEMENTS

The Law Commission has published a consultation paper on the enforceability of marital property agreements (pre-nuptial and post-nuptial agreements)

On 11 January 2011 the Law Commission published a consultation paper reviewing the current law of marital property agreements, which includes possible options for reform. Currently, the law does not allow a couple to prevent each other from asking the courts to decide how their property should be shared. It is therefore down to the courts to decide, on a case-by-case basis, how much weight to give to any agreement the couple may have made. In many cases this can offer important protection but it can also lead to uncertainty and expensive litigation; and there have been calls for statutory reform. These calls have intensified recently, with the Supreme Court in Radmacher v Granatino (2010) going further than before in recognising the significance of pre-nuptial agreements.

The aim of the consultation is to examine the status and enforceability of agreements made between spouses or civil partners (or those contemplating marriage or civil partnership) concerning their property and finances. These agreements might be used to regulate the couple's financial affairs during the course of their relationship; equally they might determine how the parties would divide their property in the event of divorce, dissolution or separation.

The consultation closes on 11 April 2011.

GOVERNMENT ISSUES CONSULTATION ON CPI/RPI CHANGES

The Government has issued a consultation on the impact of using CPI as the measure of price increases on private sector occupational pension schemes. Responses are required by 2 March 2011.

The consultation document sets out the Government's views on:

- the impact of using CPI on private sector occupational pension schemes;
- whether there should be legislative provision to enable schemes to modify scheme rules to remove or replace references to RPI; and
- the case for legislation to avoid schemes having to pay the higher of CPI and RPI in any one calendar year.

It also considers the addition of a further 'listed change' for the purpose of the employer consultation requirements.

The Government is mindful of the potential issues that will be faced by private sector DB schemes, which wish to switch the measure of inflation under their scheme from the RPI to the CPI when determining revaluation and pension in payment increases. It would be necessary for schemes wishing to change their inflation measure to the RPI to see whether this is permitted by their rules. Statistics from the NAPF show that 68% of private sector DB schemes have RPI increases written into their rules while 31% of such schemes have RPI increases written into their revaluation rules. Even where the scheme rules permitted such a change it is arguable whether the scheme trustees would agree to such a change as they may feel that this was not in the best interests of scheme members.

As many employers offering DB schemes may be very keen to move benefits to a CPI increasing basis to reduce costs, and perhaps encourage them to continue with DB pension provision, the Government needed to consider whether it would provide any statutory override, or other measures, to enable schemes to move to a CPI increasing basis.

The Government does not propose to introduce legislation that would directly override the rules of occupational pension schemes without the consent of trustees or employers. The Government believes this would:

(a) represent an unwarranted interference in the rights of employers and trustees to manage their financial affairs. It would potentially override arrangements agreed through collective bargaining arrangements, privatisation agreements and private contracts;

(b) create unnecessary complications and difficulties in respect of employment and other contracts; and

(c) potentially have a detrimental impact on members in schemes where the employer is prepared to fund increases at a rate above the required statutory minimum.

The Government also has no plans to interfere with existing contracts for buy-outs or buy-ins by means of a statutory override and no plans to interfere with annuity contracts.

The Government also considered whether it would be appropriate to include modification provisions that would make it easier for a scheme to amend its inflation measure from RPI to CPI. The Government considers that members' trust in schemes and the scheme rules could be severely damaged if it intervenes to give schemes the power to change their rules where the scheme does not already have such a power. Consequently the Government does not propose to introduce a modification power to allow schemes to use CPI as the basis for revaluation and indexation of members' benefits.

Where a DB scheme intends to continue to offer increases linked to the RPI the Government will be taking action to ensure that the scheme will not have to provide increases in line with the CPI where this exceeds the RPI in any year.

The Government has also announced that it intends to make an amendment to the employer consultation requirements. Some schemes will want to change their rules in response to the changes to statutory indexation and revaluation. Some changes to scheme rules that affect future accruals are subject to consultation under section 259 of the Pensions Act 2004. Section 259 requires consultation by the sponsoring employer for at least 60 days before making a 'listed change'. Listed changes to occupational pension schemes are set out in regulation 8 of the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006.

At the moment, changes to revaluation and indexation rules are not 'listed changes' for the purpose of the employer consultation requirements. This means that there is no requirement for employers to consult under these provisions with employees affected by changes to scheme rules on indexation or revaluation. The Government therefore proposes to make certain changes to scheme rules on indexation or revaluation a listed change for the purpose of the employer consultation requirements, and has included draft regulations alongside the consultation.

FINANCIAL SERVICES COMPENSATION SCHEME (FSCS) – INCREASED COMPENSATION AND OTHER CHANGES

The Deposit Guarantee Schemes Directive (DGSD), passed by the European Council in February 2009, set in train an increase in the minimum compensation limit for deposits to €100,000. The Directive fixed a start date of 31 December 2010, subject to a satisfactory impact assessment and the consent of the European Commission. The Commission approved legislation in July 2010, requiring all member states to adopt the €100,000 limit by the end of 2010.

In spite of the ample warning of the change, it was not until Friday 17 December that the FSA issued a press release that confirmed that the €100,000 limit would be translated to £85,000 for UK depositors.

The increase will coincide with three other changes to the FSCS deposit protection scheme:

- The special double cover for certain depositors in merged building societies will come to an end, as planned. In practice this could mean a loss of £15,000 protection where £50,000 was held in each of two merged building societies.

- There will be a switch to a 'gross payout'. This will mean that an individual who has debts with the same bank as they hold deposits is paid compensation on the deposit in isolation. The current regime nets off debts before fixing compensation. So, for example, someone with a £300,000 mortgage and £100,000 deposit, would currently end up with a net debt of £200,000 if their bank failed. Under the new regime, the same individual would receive £85,000 compensation for their deposit, but still be left with their £300,000 debt, ie. they will be £15,000 worse off.

- New fast payout rules will apply, with a target of seven days after default for the majority of payments and the remainder within 20 days. This is much quicker than was achieved in the Icesave exercise, where some depositors waited over two months for compensation.

These changes are being publicised with a £4m consumer awareness scheme. Other compensation cover is unaltered.

COMMENT

Despite the reforms, some of the old issues about deposit compensation remain. For example, the protection remains on a per individual, per banking institution basis. Thus care is still needed with institutions that run a variety of different banking brands, the most obvious example being HBOS (Halifax, Bank of Scotland, Birmingham Midshires, The AA, etc). A few foreign banks operating in the UK will continue to be outside the UK compensation scheme and rely on an EEA 'passport'. Cover for these banks comes from the home country's scheme, which could now start to be a concern.

The 70% increase in the compensation ceiling will mean that about 99% of individual depositors will be fully protected according to the FSCS. It will reduce shopping around for nervous cash-rich investors – now £250,000 can be fully protected by a three way split of deposits, rather than by placing £50,000 with each of five separate institutions.

The new gross payout rule may prompt some re-examination of offset mortgages, depending upon the precise structure used.

TIERED RATES OF INHERITANCE TAX

The Institute for Public Policy Research (IPPR) is calling for the current rate of inheritance tax to be replaced with a tiered system in order to increase revenues. In a recent report, called Death and Taxes, the IPPR says a capital receipts tax payable on cash and non-cash gifts over £150,000 would raise an extra £1bn.

The report claims that because inheritance tax now only raises £2.2bn from a dwindling number of estates, there is no political prospect of radically increasing its scope and revenue, so it may be time to give up on it.

As an alternative the report recommends that the current rate of tax of 40 per cent payable on the excess of transfers over £325,000 should be replaced with a system which taxes gifts worth between £150,000 and £300,000 at 20 per cent, between £300,000 and £450,000 at 30 per cent and over £450,000 at 40 per cent.

COMMENT

Although a tiered system of IHT has existed in the past and would probably raise more revenue, as the report suggests, the thresholds which it recommends that tax is payable seem rather low. In addition, such a change would cost a lot more to administer

THE GOVERNMENT PERFORMS ABOUT TURN ON DB TRANSFERS

The Government has now issued its response to the consultation on the abolition of contracting out on a DC basis. As part of that response it has confirmed that there will, after all, be no restriction on transfers from contracted out DB schemes to money purchase schemes once DC contracting out is abolished from 6 April 2012.

AVOIDING TRUSTEE TAX RETURNS – INTEREST IN POSSESSION TRUSTS

It is generally known that trustees are liable to income tax only on income they receive or are entitled to. Where a trust is an interest in possession trust, clearly the trustees are not entitled to any income – the beneficiary with the interest in possession is entitled to all the income – so the trustees would normally only pay tax (at a maximum of the basic rate) when they actually receive income – in the case of an interest in possession trust - on behalf of the beneficiary.

In order to avoid any assessment on the trustees, the trustees can arrange for income to be mandated to the beneficiary, ie. paid directly to the beneficiary from the source. The Trust Settlements and Estates Manual confirms this practice, ie. that in such a case the trustees do not receive any income and are not subject to income tax on any.

The Trust and Estate Tax Return (SA900) also makes it clear that where all income is mandated to any interest in possession beneficiary, there is no need for a tax return or any income tax to be paid by the trustees. However, up to now it has not been clear what the situation is where the trust is a settlor-interested trust. In the December 2010 issue of the HMRC Trusts and Estates Newsletter, HMRC states that it has recently concluded that, where income is mandated to an interest in possession beneficiary under a settlor-interested trust, there is no statutory basis for taxing the trustees as being in receipt of the income. The settlor is taxed on any income in which he or she has retained an interest. This is merely confirmation of the statutory provision but HMRC has also confirmed that the guidance in the Trust and Estate Tax Return has been amended to reflect this point.

HMRC AMENDS GUIDANCE ON CHANGE OF NORMAL MINIMUM PENSION AGE FROM 50 TO 55

In Pension Schemes Newsletter 44 HMRC has indicated that it will be introducing legislation to ensure that where a member aged between 50 and 55 elects to use all or part of his drawdown fund to secure a scheme pension or lifetime annuity this will not be treated as an unauthorised payment.

It had been indicated that where an individual who had commenced income withdrawals prior to 6 April 2010 but who was aged less than 55 decided, prior to age 55, to use all or part of his drawdown fund to purchase a lifetime annuity or scheme pension this would result in unauthorised payment charges being made in respect of each annuity/pension payment made prior to his 55th birthday. In Newsletter 44 HMRC has now indicated that it will be introducing new regulations so that these payments will not be treated as unauthorised payments. The regulations, which will also cover the position where an individual transfers his drawdown benefits from one provider to another prior to age 55, will be backdated to cover any such payments/transfers made on or after 6 April 2010.

The new legislation will ensure that there will be no unauthorised payments tax charge on the application of these sums and assets, nor on any ensuing payments of pension made before age 55 following the transfer to another provider or the provision of a different type of pension.

In that Newsletter HMRC also indicated that the advice it had given in Pension Schemes Newsletter 38 concerning the relevant date when individuals would become subject to the revised normal minimum pension age of 55 was incorrect. HMRC has confirmed that this is the date of the first payment of pension in accordance with the pension tax legislation. In other words, if an individual receives the first payment of their pension after 5 April 2010, the prevailing NMPA of 55 applies. If the payment was received before that date, the previous age of 50 applies.

However, in Pension Schemes Newsletter 38, HMRC incorrectly stated that the relevant date was the date on which the member first became entitled to draw their pension. HMRC is aware that some scheme administrators and members have acted in reliance on that Newsletter in deciding to draw their pension before 6 April 2010 from an age of more than 50 but less than 55. In such cases, where the first pension payment does not occur until after 5 April 2010, the prevailing NMPA of 55 in fact applies. Nevertheless, HMRC accepts that in these circumstances people and schemes should not incur an unauthorised payments tax charge in respect of any payments of that pension made before age 55 is reached.

INCOME WITHDRAWAL RATE FOR FEBRUARY 2011

The appropriate gilt yield, used to determine the ‘relevant annuity rate’ from HMRC’s tables for an adult member commencing income withdrawals (or reaching an income withdrawal review date), in February 2011 is 4.0%.