

# Technical

## C O N N E C T I O N

### CONTENTS

#### THE AUTUMN STATEMENT

#### HMRC RE-INTERPRETS THE CARRY FORWARD RULES

#### NEW HMRC GUIDANCE ON THE CALCULATION OF PENSION INPUT FOR DB SCHEME MEMBERS

#### HMRC CLARIFIES FIXED PROTECTION GUIDANCE

#### GOVERNMENT DELAYS AUTO ENROLMENT FOR SMALLER EMPLOYERS

#### PENSIONS ACT 2011 PUBLISHED

#### NEW GUIDANCE FOR TRUSTEES ON BUY-OUT OPTIONS

#### PART SURRENDERS: DANGER!

#### COMPANY CAR ADVISORY FUEL RATES

#### INCOME WITHDRAWAL RATE FOR DECEMBER 2011

### THE AUTUMN STATEMENT

The Autumn Statement was delivered on 29 November 2011. The announcements most relevant to the personal financial services industry can be categorised under five main headings: State pensions, other welfare benefits, Tax Credits, business initiatives and taxes and National Insurance contributions.

#### State pensions

The Chancellor confirmed that from April 2012 the basic State pension will rise by 5.2%, in line with the Consumer Prices Index (CPI). This will take the single pension to £107.45 a week. The full couple rate, for those whose entitlement is based on their spouse's or civil partner's pension, will increase to £171.85 per week. No statement was made about increases to other State pensions, eg the State Second Pension, which would normally also increase in line with the CPI.

The Chancellor also announced the next stage of the increases to the State Pension Age (SPA). An SPA of 67 (for men and women) will be phased in between April 2026 and April 2028, just five and a half years after the move to an SPA of 66 is completed. The Pensions Act 2007 had scheduled this change for eight years later. Further SPA increases will be based on 'demographic evidence' and the Government will discuss the process with interested parties in due course. The news of the latest change is also likely to affect public sector pension schemes, as the Government's proposals are that the retirement age for those schemes moves in line

*This document is strictly for general consideration only. Consequently Technical Connection Ltd cannot accept responsibility for any loss occasioned as a result of any action taken or refrained from as a result of the information contained in it. Each case must be considered on its own facts after full discussion with the client's professional advisers.*

Published by Technical Connection Ltd,  
7 Staple Inn, London, WC1V 7QH.  
Tel: 020 7405 1600 Fax: 020 7405 1601  
E-mail: [enquiries@technicalconnection.co.uk](mailto:enquiries@technicalconnection.co.uk)  
[www.techlink.co.uk](http://www.techlink.co.uk)

with the SPA.

## **Other welfare benefits**

The rumours that next year's increases to social security benefits would be kept below the level of CPI inflation proved largely to be wrong. The Autumn Statement said that 'most working age and disability benefits will be uprated in line with CPI'. Further details will emerge from the DWP in due course: the phraseology suggests that some benefits will be under-indexed.

This will certainly be the case for Pension Credit. The standard minimum income guarantee will increase by 3.9% to £142.70 a week for single pensioners and to £217.90 a week for pensioner couples from April 2012. However, 'to pay for this' and 'to limit the spread of means testing', the threshold for Savings Credit eligibility will rise from April 2012 by 7.7% to £111.10 a week for single pensioners and by £177.20 for pensioner couples.

As previously announced, Child Benefit will be frozen for 2012/13. In any event Child Benefit is due to be withdrawn from higher rate taxpayers in January 2013.

## **Tax Credits**

The June 2010 Budget made several sweeping changes to Working Tax Credit (WTC) and Child Tax Credit (CTC). A second stage of reforms/cuts was announced in October 2011, alongside the Comprehensive Spending Review. The Autumn Statement revealed several further amendments:

- The couple and lone parent elements of the Working Tax Credit will not be increased in 2012/13, 'to ensure the welfare system remains affordable'. The childcare element will also be frozen.
- The child element of the Child Tax Credit and disability elements of Tax Credits will rise in line with the CPI in April 2012. This is not as generous as it seems, as the Government had previously announced a £110 above-inflation increase to the child element of the Child Tax Credit. That has now been scrapped, producing an annual saving to the Exchequer of around £1bn.
- The family element of Child Tax Credit, currently the most widely claimed Tax Credit, will remain frozen at the £545 level set in 2003/04. Although the Chancellor did not mention the fact, this element will also be available to many fewer people from 2012/13. The June 2010 Budget changed the tapering of this Credit so that from the next tax year it will be removed immediately after the child element, rather than once total family income exceeds £40,000.

## **Business initiatives**

A variety of proposals to help businesses were announced or re-announced, including:

- The launch of the National Loan Guarantee Scheme, designed to make financing cheaper and more readily available to businesses with turnover of less than £50m. Up to £20bn of guarantees will be available over the next two years. The grand title is something of a misnomer, as the government is not guaranteeing loans to small businesses. Instead, it is

giving a state guarantee to funds raised by the banks to lend on to small businesses, i.e. the small business loan risk stays with the banks, not the Treasury.

- The establishment of the Business Finance Partnership, with an initial £1bn, to help small and medium-sized businesses (SMEs) raise money from ‘non-bank sources’.
- An extension of the Enterprise Finance Guarantee from January 2012 to include businesses with up to £44 million annual turnover.
- A new 100% capital allowance for plant and machinery investment in Enterprise Zones in six assisted areas from April 2012 to March 2017.
- Initiatives to simplify employment law, including an increase in the qualifying period for unfair dismissal claims to two years from April 2012.

Perhaps the most interesting announcement for individual investors was the release of further details on the Seed Enterprise Investment Scheme (SEIS) to encourage investment in start-up companies. From April 2012 the SEIS will provide income tax relief of 50% for individuals who invest in shares in qualifying companies, with an annual investment limit of £100,000. The income tax relief is available on cumulative total investments by individuals of £150,000 per company. In addition, in 2012/13 only there will be a capital gains tax holiday for investments made into the new scheme. This holiday will provide for a capital gains tax exemption on gains realised on disposal of an asset in 2012/13 which are re-invested into a SEIS in 2012/13.

There will also be a number of changes to Enterprise Investment Schemes (EISs) and Venture Capital Trusts (VCTs), most of which have already been the subject of consultation. These include ‘a new test to exclude companies set up for the purpose of accessing relief’, which sounds like the long-awaited attack on limited-life VCTs. One surprise is that the £1m investment limit per company for VCTs will be removed.

It is unclear when the new EIS/VCT rules will take effect – more information may emerge alongside the draft Finance Bill clauses due out on 6 December.

## **Taxes and National Insurance contributions**

Very little was said by the Chancellor on general taxes but, some considerable time after he finished his statement, the Treasury posted up details of the main tax bands and rates for 2012/13:

- **Income tax** - As announced in March, the personal allowance will rise by £630 in 2012/13 to £8,105. However, the basic rate band will shrink by the same amount, leaving the higher rate threshold unchanged at £42,475. Other income tax allowances are increased in line with RPI.
- **National Insurance** - The thresholds have generally been increased in line with inflation, but the Class 1 upper earnings limit and Class 4 upper profits limit remain unchanged because they are linked to the unaltered higher rate threshold.
- **Capital gains tax** - The annual exemption will be frozen for 2012/13 at £10,600. The Chancellor said that this freeze was to pay for the one year capital gains tax relief for SEIS,

which is slightly disingenuous, as the freeze will deliver extra tax revenue in perpetuity because the missed increase for 2012/13 would have itself been indexed in future years.

## HMRC RE-INTERPRETS THE CARRY FORWARD RULES

HMRC has announced a new ‘interpretation’ of the way the carry forward rules will operate in respect of the transitional tax years of 2008/09 to 2010/11. This new interpretation should be used for all carry forward calculations in respect of the transitional years and has retrospective effect from 6 April 2011.

Set out below is HMRC’s original interpretation of the carry forward rules and the new 25 November 2011 interpretation.

### Pre 25 November 2011 Interpretation – ‘Transitional’ Tax Years

Before an individual can use the carry forward rules, first he has to use up his current tax year’s annual allowance (AA). He can then take advantage of any unused AA in respect of the three immediately preceding tax years. The unused AA is absorbed from the earliest tax year first. The following example demonstrates how this works and is based on Angela, who has pension input as detailed below:

Tax year	Pension Input	Carry forward calculation	Carried forward to next tax year	Total carried forward to next tax year
2008/09	£40,000	£50,000 - £40,000	£10,000	£10,000
2009/10	£70,000	£50,000 + £10,000 - £70,000	Nil	Nil
2010/11	£42,000	£50,000 - £42,000	£8,000	£8,000

The maximum amount that Angela can carry forward to tax year 2011/12 is £8,000. This is because although she had £10,000 available unused annual allowance for 2008/09 this is (more than) used up in tax year 2009/10. The pension input of £70,000 in tax year 2009/10 exceeded the deemed £50,000 annual allowance for that tax year, so the £10,000 2008/09 carried forward annual allowance is set against the excess £20,000. Therefore she is only able to carry forward the unused annual allowance of £8,000 for tax year 2010/11. Note that although the carried forward calculation for tax year 2009/10 would, in theory, have produced a negative number (£50,000 + £10,000 - £70,000 = - £10,000), this is ignored and the carried forward amount will still be nil: carry forward calculations cannot give rise to negative sums.

### 25 November 2011 Interpretation – ‘Transitional’ Tax Years

HMRC now believes that the carry forward rules operate differently where the carry forward is in respect of the three ‘transitional’ carry forward tax years of 2008/09, 2009/10 and 2010/11. In these cases each year will be assessed on its own and any unused AA will not be set against pension input in excess of the AA in a subsequent carry forward tax year. Thus in 2011/12 the available carry forward will always be the sum of the carry forward amounts generated in the preceding three tax years.

Using the same example of Angela, the HMRC view is that the carry forward position is now as follows:

Tax year	Pension Input	Carry forward calculation	Carried forward to next tax year	Total carried forward to next tax year
2008/09	£40,000	£50,000 - £40,000	£10,000	£10,000
2009/10	£70,000	£50,000 + £10,000 - £70,000	Nil	£10,000
2010/11	£42,000	£50,000 - £42,000	£8,000	£18,000

Under this new interpretation the maximum Angela can carry forward to tax year 2011/12 increases to £18,000 (ie. the unused AA from tax years 2008/09 and 2010/11). The unused AA from 2008/09 is retained and is not set against the £70,000 pension input in 2009/10.

### **Carry Forward for Non ‘Transitional’ Tax Years (pension input for 2011/12 onwards)**

The original rules, as set out above under HMRC’s pre 25 November 2011 interpretation, will continue to apply for any carry forward of unused AA for tax years after the ‘transitional’ years.

#### **COMMENT**

*While this change is to be welcomed as it will increase the available carry forward for some individuals, it is a great pity that it has only now been highlighted by HMRC, almost 8 months after the carry forward rules were introduced and nearly a year since the first legislation was issued in draft.*

### **NEW HMRC GUIDANCE ON THE CALCULATION OF PENSION INPUT FOR DB SCHEME MEMBERS**

HMRC has issued further guidance on how pension input should be determined for Defined Benefit (DB) schemes. This guidance will be incorporated in the RPSM pages at the earliest opportunity and covers a number of the more complex DB situations including where a member defers drawing his benefits beyond the scheme normal retirement date.

This guidance highlights the complexity of determining pension input in a number of DB situations, and in such cases we would strongly recommend that an adviser obtains the pension input figure from the member’s scheme rather than try to calculate it himself.

### **HMRC CLARIFIES FIXED PROTECTION GUIDANCE**

HMRC has now found it necessary to issue Pension Schemes Newsletter 50 to clarify further how the fixed protection rules will apply. Although this clarification from HMRC is much to be welcomed, once again it is indicative of how complex the so-called ‘simplified pension tax regime’ has become. The main points set out in the Newsletter cover:

- Applying for fixed protection
- Benefit crystallisation and fixed protection

- A test on prospective rights
- The ‘Relevant Percentage’
- Enhancements on taking benefits
- Death benefits

**GOVERNMENT DELAYS AUTO ENROLMENT FOR SMALLER EMPLOYERS**

In responses to questions in the House of Commons on 28 November 2011 Steve Webb, the Minister for Pensions, has confirmed that the date from which smaller employers with less than 50 employees will have to first start to automatically enrol their employees in a qualifying pension scheme will be deferred from April 2014 to May 2015.

The automatic enrolment staging dates for employers are phased in over a five year period starting with the largest employers (as defined by numbers of employees) and finishing with the smallest employers.

Steve Webb has confirmed that automatic enrolment will commence in October 2012 for the largest employers, as already planned, and that the existing staging dates will continue to apply for all employers with staging dates before July 2013. However, the first staging date for smaller employers, with less than 50 employees, will now be May 2015 rather than April 2014 as in the original staging date schedule. The DWP will be providing further details regarding the changes to the staging dates in January.

Steve Webb also confirmed that short-term refunds of contributions under defined contribution occupational schemes will not be permitted where the scheme is used as a qualifying scheme for automatic enrolment purposes.

**COMMENT**

*Given the current economic pressures being felt by small businesses the delay in their automatic enrolment staging date is sensible. However, this will not help to solve the lack of pension provision, which is most apparent among employees of smaller employers.*

**PENSIONS ACT 2011 PUBLISHED**

The Pensions Act 2011 has now been published, accompanied by two fact sheets, issued by the DWP. These provide details of the Government’s belated amendments to the then Bill regarding the date from which State Pension Age would be increased to 66, and the new definition of money purchase benefits.

**NEW GUIDANCE FOR TRUSTEES ON BUY-OUT OPTIONS**

The ABI and the NAPF have published an updated good practice guide for trustees of Defined Benefit (DB) schemes on bulk-insured pensions. The guide will help trustees of DB schemes to organise, examine and implement buy-out/buy-in options, as well as to highlight key legal and regulatory issues they will need to consider.

Bulk-insured pension companies reported an increase in funds under management, totalling £30 billion to the end of 2010. Such arrangements now cover the pensions of over 600,000 people. Buy-out is a broad term used to cover situations where the assets and liabilities of a DB pension scheme are taken over by an insurance company. It is no longer simply the solution of last resort but in many cases has become the preferred way to transfer risks from a DB pension scheme.

Buy-out is considered as the ‘end step’ in a phased de-risking solution, including liability management exercises (enhanced transfer values (ETV), pensions increase exchanges (PIE) and enhanced early retirement) designed to provide members with more choice and improve the funding situation for remaining members.

Buy-out can be a very powerful tool in a company’s and trustees’ armoury to facilitate a corporate transaction, but it is important for trustees to understand what they are (or are not) buying.

## **PART SURRENDERS: DANGER!**

### *The tax detriment that can be caused by part surrenders*

The First-tier Tribunal (Tax) recently handed down its decision in the case of *Cleghorn v HMRC* [2011] UKFTT 488(TC). The facts of the case are briefly these:

- (1) On 1 March 2002 Captain Cleghorn effected an offshore single premium investment bond for a premium of £66,000 – but see (4) below.
- (2) Due to a change in circumstances he began to take withdrawals of £1,000 per month beginning in May 2002. When the insurance company confirmed the withdrawal instruction it informed Captain Cleghorn that there was a 5% annual allowance for tax purposes.
- (3) As well as his monthly £1,000 withdrawals, additional lump sums were taken.
- (4) The chargeable event history under the policy was as follows:-

<b>Tax year</b>	<b>Withdrawals £</b>	<b>5% allowances £ *</b>	<b>Chargeable excess £</b>
2002/03	24,300	3,200 *	21,100
2003/04	34,000	3,200 *	30,800
2004/05	10,000	3,200 *	6,800

\* Based on a premium of £66,000, the allowance should be £3,300. However, the judgment quoted a figure of £3,200, suggesting that the actual premium was £64,000.

It was agreed that the calculations by HMRC were correct. Despite Captain Cleghorn’s assertion that he had issues “regarding the unfair, unjust and illogical basis of the legislation and the fact he had made no profit on the investment but merely withdrew the money he had invested”, this cut no ice with the Tribunal. The Judge stated “The legislation on this type of investment is clear and if the 5% permitted withdrawal is exceed the balance falls to be taxed”.

**COMMENT:**

*It is a pity that Captain Cleghorn did not pay more attention to the insurance company’s letter pointing out the 5% rule. Although it may seem convenient to use the part surrender/withdrawal facility under a bond, this can lead to a bad tax result. Typically, this is likely to occur when the withdrawal is substantial and/or it happens early in the lifetime of the bond, both of which occurred in Captain Cleghorn’s case.*

*This potential problem can often be avoided by using a system of segment encashment. A single premium bond is generally made up of a number of individual policies known as segments. By encashing whole segments, the individual will pay tax on the actual profit under those segments which will frequently be much less than any “deemed” profit that arises on a large part surrender of the whole bond.*

**COMPANY CAR ADVISORY FUEL RATES**

HMRC has published revised advisory fuel rates which took effect from 1 December 2011. The new rates may be used to negotiate dispensations for mileage payments for business travel in company cars, or where employees are required to repay the cost of fuel used for private travel.

For one month from the date of change, employers may use either the previous or new current rates as they choose. Employers may therefore make or require supplementary payments if they so wish, but are under no obligation to do either.

<b>Engine Size</b>	<b>Petrol</b>	<b>LPG</b>
1400cc or less	15p	10p
1401cc – 2000 cc	18p	12p
Over 2000 cc	26p	18p
<b>Engine Size</b>	<b>Diesel</b>	
1600cc or less	12p	
1601cc – 2000 cc	15p	
Over 2000 cc	18p	

Petrol hybrid cars are treated as petrol cars for this purpose.

**INCOME WITHDRAWAL RATE FOR DECEMBER 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 December 2011 is 2.5%.