

PENSIONS

Welcome

Welcome to **Pensions**, our bimonthly update keeping you informed of developments in pensions law.

To find out more about how we can help you with your occupational pension scheme, please email tim.illston@burgess-salmon.com or call him on 0117 939 2284.

TAX

Finance Bill

Pensions tax legislation is changing. Once the Finance Bill is passed (in July in the normal course), most of the changes will have effect from 6 April 2011.

Annual allowance (AA)

- The AA is £50,000 from 6 April 2011 (down from £255,000).
- The exemption from the AA charge for any increase in pension saving in the year in which benefits are taken is removed. It is replaced by an exemption where the member draws their pension because of "severe ill-health". This is a new concept and means either being entitled to a serious ill-health lump sum (i.e. life expectancy is less than one year) or being unlikely to be able to do gainful work in any capacity before state pension age. A medical opinion is required in both cases.
- Where a member has saved more than the AA in an occupational scheme and the tax charge exceeds £2,000, they can require the scheme to pay it on their behalf. Their benefits are adjusted accordingly.

Lifetime allowance (LTA)

- From April 2012 the LTA comes down to £1.5m (currently £1.8m). But today's figure is retained for certain purposes for people with primary or enhanced protection. In a new step, a member without those protections can elect to keep an LTA of £1.8m but on condition that they cease to accrue benefits from April next year.
- Despite the reduction in LTA the ceiling for trivial commutation will remain £18,000 i.e. 1% of the current figure.

Drawdown

- A DC or cash balance scheme no longer needs to require members to buy an annuity by age 75. Instead the scheme can pay a "drawdown pension" directly. As a general rule, drawdown is capped at 100% of the annuity the member could have bought (using rates set by the Government Actuary). But there is no cap for anyone who has the "minimum income requirement" of £20,000 a year from any combination of scheme



pension (typically from a DB scheme), lifetime annuity, state pension and compensation from the Financial Assistance Scheme.

- Evidently, uncapped drawdown will only be possible for someone with substantial pension saving. Any further pension saving after taking uncapped drawdown is automatically subject to the AA charge.
- Most of the prohibitions on the payment of lump sums over age 75 are being removed and, in a typical case, there will be no inheritance tax on unused drawdown funds.
- Schemes are not obliged to offer the option of drawdown pension.

Disguised remuneration

- The Bill has long and very widely drafted provisions designed to restrict tax avoidance through what is being referred to as "disguised remuneration". The target is arrangements by an employer that make an asset (money or otherwise) available to an employee via a third party or a trust in a way that avoids the normal tax charges on the rewards of employment. There is a general exception for saving through a registered pension scheme but unregistered schemes that are funded (employer-financed retirement benefits schemes or EFRBS) will often be caught. According to HMRC's FAQs, an unregistered scheme that is wholly unfunded is outside the net.
- These provisions are likely to change before the Bill becomes law as a result of strong lobbying to clarify and/or restrict them. In their current form, they are

continued overleaf

thought likely to catch a lot of common remuneration arrangements despite the many exceptions they contain.

- The short point in the pensions context at this stage is that funded retirement provision outside a registered scheme is likely to face new tax charges.

Asset-backed employer contributions

The government has announced that it will issue a consultation paper soon on asset-backed employer contributions. This concerns arrangements that are becoming increasingly

common for the sponsor of a DB scheme to commit some of its assets to the scheme (through a company set up for the purpose, say) in a way that gives the scheme the income that the assets generate. The consultation will look at ways to ensure that the tax relief available to employers as a result of such arrangements is proportionate to the benefit the scheme receives.

Any of the Bill's provisions can alter as it goes through Parliament. There will be transitional arrangements in some areas.

POLICY

Webbed feat

Steve Webb, Minister for Pensions, has launched a public consultation on two options for state pension reform:

- accelerating changes that are already planned to the earnings-related part of the second pension so that a two-tier, flat rate pension evolves by 2020, about 10 years earlier than currently envisaged. The two-tier split means DB schemes could continue to contract out and so deliver part of the state pension. As a further step, the detailed entitlement rules for the state basic and second tier pensions could be aligned and the same formula could be applied for increases;
- a more radical switch to a single tier, flat rate pension that would be increased using the triple guarantee that now applies to the basic pension. DB contracting-out would end and, in the longer term, the personal tax system could be simplified.

On either option, the full pension would be above the level of means-tested support at around £140 a week in today's terms. Eligibility would depend on a full contribution record of, say, 30 qualifying years.

There would be a lot of detailed technical issues to address before either option could be implemented. If contracting-out were to be abolished, trustees and employers would want to see simple and workable transitional arrangements. In particular they would want the sort of statutory protection from liability over restructuring rule changes that the government has not provided for the switch to CPI.

The consultation ends on 24 June. The paper is at www.dwp.gov.uk/docs/state-pension-21st-century.pdf.

Public to private

The government has begun a consultation about changing the pensions it requires private employers to provide when public sector employees are transferred on an outsourcing.

Today the "Fair Deal" policy on pensions means that an enterprise taking over a public service activity normally has to provide benefits for transferring employees that are as good as they had in their public sector scheme. This applies to any transfers of past service benefits as well as to future accrual.

This demanding standard is often a major consideration for the prospective new employer, especially when it is a charity or other social enterprise.

Fair Deal is not law but a policy imposed by the Treasury.

The consultation paper makes no proposals but invites interested parties to submit ideas to be assessed against these policy objectives:

- value for money for taxpayers,
- appropriate protection for public sector employees' pensions,

- removing the pensions barrier to entry into the market for public service provision and
- appropriate allocation of cost and risk between the public and private sectors.

The consultation closes on 15 June. There is no indication how long after that the government will need to decide the future of Fair Deal.

Meanwhile the government has withdrawn its policy of requiring a private sector employer that takes an outsourcing contract from a local authority to provide future new recruits with the same pension benefits as its former public sector employees. The cancellation of the policy (from 23 March) does not affect the terms and conditions of employees already in post.

In the Budget the government said it accepted the Hutton report into the future of public service pensions as a basis for detailed discussion with employer and employee representatives. The central recommendation in the report is a switch from final salary to career average schemes.

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Temple Trustees Ltd

See the latest bulletin from our trustee company for items on, among other things:

- re-setting pension input periods for the annual allowance charge and
- the Bribery Act coming into force in July

Go to our website at: www.burges-salmon/Practices/pensions_and_incentives/professional_trustee_services/Publications/Temple_Trustees_April_2011_Update.pdf

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A list of members, all of whom are solicitors, may be inspected at our registered office: One Glass Wharf, Bristol BS2 0ZX.

Penalty!

HMRC has increased the penalties for late filing and payment in a number of areas, including pensions. From 1 April this year, if trustees are late submitting an Accounting for Tax Return or Self Assessment Return they are liable to a £100 penalty. If the return is three months late, the penalty begins to escalate, starting at £10 a day for up to 90 days. It continues to step up from there. These penalties are in addition to interest on overdue tax.

