Sackers extra

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Abbreviations commonly used in 7 Days

Alert/News: Sackers Extra publications (available from the client area of our website or from your usual contact)
DB: Defined benefit
DC: Defined contribution
DWP: Department for Work and Pensions
ECJ: European Court of Justice
FAS: Financial Assistance Scheme
GMP: Guaranteed Minimum Pension
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

The Social Security Pensions (Flat Rate Accrual Amount) Order 2013

This Order is made following a review by the Secretary of State under section 148AA(1) of the Social Security Administration Act 1992 of the general level of earnings in Great Britain view to determining whether, and if so by how much, the general level of earnings has increased during the period from 1st October 2011 to 30th September 2012. The flat rate accrual amount is a flat rate cash amount of additional pension which applies to accruals in the first earnings band under Schedule 4B to the Social Security Contributions and Benefits Act.

As a result of that review, it appears to the Secretary of State that the general level of earnings during that period has increased by 1.8%.

The Social Security Pensions (Low Earnings Threshold) Order 2013

The low earnings threshold is the amount by reference to which the surplus earnings bands are determined for the purpose of calculating the additional pension (the state second pension) in a state retirement pension. This Order is made following a review by the Secretary of State under section 148A (revaluation of low earnings threshold) of the Social Security Administration Act 1992 of the general level of earnings in Great Britain with a view to determining whether, and if so by how much, the amount of the low earnings threshold for the purposes of the Social Security Contributions and Benefits Act 1992 should be increased for future tax years.

As a result of that review, it appears to the Secretary of State that the general level of earnings during the period from 1st October 2011 to 30th September 2012 has increased by 1.8%. This Order directs that the low earnings threshold for the tax years following 2012 – 2013 shall be £15,000. The threshold for the tax year 2012 – 2013 was directed to be £14,700 by virtue of the Social Security Pensions (Low Earnings Threshold) Order 2012.

The Social Security Revaluation of Earnings Factors Order 2013

This Order is made following a review under section 148 (revaluation of earnings factors) of the Social Security Administration Act 1992. When entitlement to additional state pension (SERPS/State Second Pension) is calculated the earnings on which it is based need to be revalued in line with earnings growth.

The percentages set out in the Revaluation Order will be used for revaluing earnings factors for additional state pensions in tax years 2012/13 and earlier tax years. This Order directs that the earnings factors relevant to the calculation of the additional pension in the rate of any long-term benefit or of any guaranteed minimum pension, or to any other calculation required under Part 3 of the Pension Schemes Act 1993 are to be increased for the tax years by 1.8%.

DEPARTMENT FOR WORK AND PENSIONS

Response to consultations on miscellaneous amendments regulations

In 2012, the Government consulted on two sets of miscellaneous amendments to Occupational Pensions Regulations.[1] It also needs to make changes to the Stakeholder Pensions Regulations following the removal of the requirement for most employers to designate a stakeholder pension.

The response to these consultations was published on 6 March 2013. Since all the changes will come into force on 6 April 2013, the DWP has merged all the amendments into one set of Occupational and Stakeholder Pension Schemes (Miscellaneous Amendments) Regulations 2013.

The response is divided into three parts:

- Part 1 covers:
  - bulk transfers without member consent to non-UK schemes within the European Economic Area;
  - clarify the policy intention in relation to schemes that have ceased to contract out and wish to make a change to their scheme rules;
  - bulk transfers of contracted-out rights to formerly contracted-out schemes without member consent; and
  - bulk transfers of scheme membership to schemes which did formerly apply to employment with the same employer but now no longer do so.
- Part 2 covers:
  - changing a reference to the Retail Prices Index in transfer rights exclusions;
  - indexation of pension credit benefit (pensions shared on divorce);
  - indexation of pension credit benefit held in cash balance schemes; and
  - modification of bridging pensions as a result of State Pension Age changes.
- Part 3 covers consequential amendments following the removal of the requirement for most employers to designate a stakeholder pension scheme.

Of particular interest is the fact that the Government has decided not to use these regulations to put in place a power to assist trustees to modify their scheme's provisions on bridging pensions. It intends to undertake a further informal consultation on this issue, at a later date.

We will be publishing an Alert on the detail of the new regulations shortly.

[1] Please see our Alerts: "Consultation on miscellaneous amendment regulations" dated 31 July 2012 and "Consultation on draft legislation – bridging pensions" dated 8 October 2012

NATIONAL ASSOCIATION OF PENSION FUNDS (NAPF)

Pension funds lose VAT case against HMRC

On 7 March 2013, the Court of Justice of European Union (CJEU) ruled that UK workplace DB pension funds are not "special investment funds" and are therefore not exempt from paying VAT on investment management services.

The judgment means that pension schemes will continue to pay about £100m a year in VAT.

The long-running case against HMRC was brought by the NAPF and Wheels Common Investment Fund (Wheels), with its underlying Ford pension schemes.

The action was initiated in 2008 following a ruling in the CJEU on JP Morgan Fleming Claverhouse Investment Trust plc. The CJEU stated then that investment trusts were "special investment funds" and should be exempt from paying VAT on investment management services.

The NAPF and Wheels brought the case because they believed that pension funds have similar characteristics and should have a similar exemption.

A Tribunal hearing held in London in February 2011 referred the matter to the CJEU to interpret the scope and meaning of the VAT exemption.

Joanne Segars, Chief Executive, NAPF, said:

"This has been a long struggle, and unfortunately the judgment is deeply disappointing. Pension funds were set up to be vehicles that are free from tax, and they should not be paying these VAT charges.

The European Commission is currently reviewing the VAT Directive, and we will be making strong representations as to why the management of pension funds should be VAT exempt under the proposed change to the current VAT regime. We will be taking this matter up with the Commission as a matter of urgency."

Please see our Alert: "No VAT Exemption for Workplace Pensions" dated 11 March 2013.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

Improving the design of retirement saving pension plans

The OECD has issued a "roadmap" which aims to assist countries to strengthen retirement income adequacy in DC schemes by identifying elements of good design and public policy.

The 10 recommendations in the roadmap were approved and endorsed by the OECD Working Party on Private Pensions in June 2012:

- ensure the design of DC pension plans is internally coherent between the accumulation and payout phases and with the overall pension system;

- encourage people to enrol, to contribute and contribute for long periods;
- improve the design of incentives to save for retirement, particularly where participation and contributions to DC pension plans are voluntary;
- promote low-cost retirement savings instruments;
- establish appropriate default investment strategies, while also providing choice between investment options with different risk profiles and investment horizons;
- consider establishing default life-cycle investment strategies as a default option to protect people close to retirement against extreme negative outcomes;
- for the payout phase, encourage annuitisation as a protection against longevity risk;
- promote the supply of annuities and cost-efficient competition in the annuity market.
- develop appropriate information and risk-hedging instruments to facilitate dealing with longevity risk; and
- ensure effective communication and address financial illiteracy and lack of awareness.

The publication has been welcomed by NEST.

THE PENSIONS REGULATOR

Report: Intermediaries' awareness, understanding and activity relating to workplace pension reforms

On 6 March 2013, TPR published research which demonstrates that intermediaries' awareness and understanding of automatic enrolment rose significantly during 2012.