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
FAS: Financial Assistance Scheme
FSA: Financial Services Authority
HMRC: HM Revenue & Customs
NAPF: National Association of Pension Funds
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

Pensions Act 2011: Full text and explanatory notes published

Having received Royal Assent on 3 November 2011, the full text of the Pensions Act 2011 has now been published, together with Explanatory Notes.

Disguised remuneration: Regulations laid before Parliament

The Finance Act 2011 amended the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) so that, subject to a number of conditions, it now provides for an income tax charge where rewards, recognition or loans in respect of an employee's employment which amount to disguised remuneration are provided through a third party. For that purpose, the value of "relevant steps"[1] taken by a person other than an employee's employer, and in some limited cases by the employer themselves, counts as employment income.

Two sets of regulations relating to Part 7A of ITEPA have now been laid before Parliament.

- The Employment Income Provided Through Third Parties (Excluded Relevant Steps) Regulations 2011

  These regulations are designed to prevent members of certain foreign pension schemes from being liable to tax on amounts counting as employment income under Part 7A of the Income Tax (Earnings and Pensions) Act 2003 when the member's employer provides rewards, recognition or loans under the scheme in connection with the member's employment. It applies to the extent that the member's rights under the pension scheme are derived or arise from UK tax reliefs or exemptions in respect of provision made by the member's employer.

  The regulations were laid before Parliament on 10 November 2011 and will come into force on 6 December 2011. Further information can be found in the explanatory memorandum which accompanies the regulations.

- The Social Security (Contributions) (Amendment No. 5) Regulations 2011

  These regulations amend The Social Security (Contributions) Regulations 2001. They provide for amounts chargeable to Income Tax under ITEPA to be treated as earnings for the purposes of National Insurance Contributions (NICs) if they would not already be earnings for NICs purposes and include a provision to prevent a double liability for NICs on such amounts. They also make miscellaneous amendments as a consequence of amendments to the Finance Act 2004.

[1] Defined in s.554(A) of ITEPA

These regulations will also come into force on 6 April 2011, having been laid before Parliament on 11 November 2011.

Further information can be found in the explanatory memorandum which accompanies the regulations and in an update from HMRC published on 11 November 2011.

DEPARTMENT OF WORK AND PENSIONS

Employer debt regulations: further delays on the horizon?

The DWP put forward a new option for dealing with employer debt in a consultation which closed in August 2011[2]. It proposed the introduction of a "Flexible Apportionment Arrangement" (FAA), which is designed to offer a simpler method for apportioning a debt than exists currently under the Employer Debt Regulations[3]. It had originally been intended that the new provisions would come into force on 1 October 2011 but following a DWP announcement in September 2011, the implementation date was put back to 1 December 2011.[4]

In its latest "Monthly Implementation Update", the DWP notes that it missed a deadline in relation to its review of the rules on employer debt and, giving reasons for the delay, notes that "New regulations will simplify the rules on employer debt and make it easier for employers to restructure their businesses. The introduction of these regulations will be slightly later than previously anticipated. In the consultation on the draft regulations which ended on 10 August 2011, respondents asked for them to be extended to provide businesses with further flexibility. The scope for allowing these further flexibilities is being explored with the intention that the regulations be brought into force as soon as possible".

But as the regulations have not yet been laid before Parliament, we understand it is now not possible for the 1 December implementation date to be met. We continue to monitor developments.

FINANCIAL SERVICES AUTHORITY

FSA Consultation: Implementation of Solvency II

On 9 November 2011, the FSA set out its proposals for rules which are designed to maintain the protection of policyholders with unit-linked and index-linked life insurance products, while taking account of new European requirements for insurers.

Unit-linked policies are used within individual pensions, endowments, investment bonds and whole of life insurance policies. They are also used as investments for both DC and DB occupational pensions. Recent figures show that the UK unit-linked long-term life sector has assets of £815 billion under management and a further £24 billion in index-linked policies.

Under the Solvency II Directive, which will come into effect in 2013/14, new solvency requirements will apply to insurers. These include high-level principles around how insurers' assets, including unit-linked and index-linked funds, must be managed, replacing the current FSA approach which lists the particular assets insurers can use. Where individuals bear the direct risk of investing in unit-linked and index-linked policies, Solvency II allows the FSA to continue to specify which assets can be used for such policies.

The proposed new rules will largely continue the existing FSA requirements, but will also expand them to permit investment in some indices-based investments and bonds. The FSA

[2] Please see our Alert: "Employer debt revisited" (dated 30 June2011)

[3] The Occupational Pension Schemes (Employer Debt) Regulations 2005

[4] For more information, please see 7 Days dated 3 October 2011

will implement high-level requirements from Solvency II that strengthen the current rules, saying insurers should only invest in assets that they can properly value and monitor.

The FSA is also consulting on proposals for related changes to the guidance contained in the Conduct of Business Sourcebook (COBS) 21.

Consultation on the proposals closes on 15 February 2012. The FSA intends to publish a Policy Statement giving feedback in the second quarter of 2012.

FSA Press Release

HM REVENUE & CUSTOMS

Tax Returns for Trustees of Registered Pension Schemes: HMRC Reminder

HMRC has today (14 November 2011) issued a reminder for trustees of registered pension schemes who need to complete a self assessment tax return for 2010/11, that they must submit this by 31 January 2012 (not 31 October 2011 as some trustees may have previously been informed by HMRC).

NATIONAL ASSOCIATION OF PENSION FUNDS

Quantitative Easing: The pension scheme perspective

During recent months, the NAPF has been monitoring the impact of recent economic developments on pension schemes, in particular the impact of Quantitative Easing (QE).

The NAPF has now published a paper which broadly summarises the issues and which outlines:

- the NAPF's approach to QE;
- the potential impacts of another round of QE on scheme assets, liabilities and deficits; and
- the specific impact on both DB and DC schemes.

PENSION PROTECTION FUND

PPF confirms method for GMP equalisation

On 10 November 2011, the PPF confirmed the method that it will use for calculating compensation for men and women being assessed for entry into the PPF – or who are already PPF members – to ensure the equal treatment of men and women required by law.

The announcement follows a lengthy consultation process which began in 2008, culminating in a consultation on the proposed method of calculation of PPF compensation and FAS assistance for schemes contracted-out on a GMP basis which closed in March 2011. The response to that consultation has also now been published.

Before applying the method to all pension schemes in the PPF assessment period, the PPF will undertake a six month pilot project with selected schemes "to iron out any teething problems".

As the manager of FAS, the PPF will also ask affected FAS schemes in wind-up for data to enable it to adjust the calculation of assistance payments. Guidance to help schemes do this is expected from the PPF "shortly".

For further information, please see:

- Statement on equalization for GMPs AND the application of a Statutory Minimum to PPF compensation for schemes in a PPF Assessment Period
- PPF Press Release