

# alert

## TAX SIMPLIFICATION: DEADLINES AND HEADLINES

### 1 INTRODUCTION

A-Day (6 April 2006) may now be a distant memory, but tax simplification continues to raise new issues for pension schemes. As well as highlighting some important deadlines which are looming, in this Alert we also take a brief look at some recent tax simplification developments.

### 2 KEY POINTS

- The deadline for registering for enhanced and / or primary protection with HM Revenue & Customs (HMRC) is technically 5 April 2009 (but see section 3 below regarding a recent concession).
- Provisions have recently come into force extending the ability to reduce pensions in payment to reflect bridging pensions (see section 4).
- Both the lifetime allowance (LA) and the annual allowance (AA) look likely to be frozen from the end of tax year 2010/11 (see section 5).
- The notional earnings cap for tax year 2009/10 has been published (see section 6).
- Various regulations are set to be changed by the Department for Work and Pensions (DWP) to reflect changes announced in last year's Budget (for example, to facilitate the commutation of small stranded pots). But it is still unclear when the relevant tax regulations will be finalised<sup>1</sup> (see section 7).

<sup>1</sup> See our Alert: "Budget 2008: What's in it for pensions" dated 14 March 2008

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### 3 PENSION PROTECTION DEADLINE!

#### *A quick recap*

Since A-day, there have been no tax limits as such on pensions saving. Instead, there is the LA (currently £1.65 million) and the AA (currently £235,000). Whilst pension benefits may accrue which exceed the LA, an additional tax charge will be levied on the excess (55% if taken as a lump sum, or 25% if taken as a pension).

Primary and enhanced protection were introduced to provide transitional protection for those who, at A-day, had already exceeded, or were on course to exceed the LA.

"Primary Protection" allows individuals whose accumulated pension exceeds the LA at A-Day to escape the LA tax charge, provided post A-day growth remains within certain limits.

"Enhanced Protection" is available whether or not a fund was over the LA at A-day, but is restrictive. No post A-Day contributions or accrual are generally allowed, and protection may be lost if they occur. However, salary-linking (subject to restrictions) can continue for a defined benefit pension.

Depending on an individual's circumstances, it may be possible to register for both types of protection. Enhanced protection takes precedence but, should this be lost, an individual's protection will default to primary protection.

#### *The deadline*

Members who think that their benefits may need protecting should obtain a formal valuation of their pension/lump sum rights as at 5 April 2006. If they then wish to register for LA protection, they will need to notify HMRC by completing and submitting form APSS 200, "Protection of Existing Rights" (copies are available from <http://www.hmrc.gov.uk>). Although the deadline for doing so is technically 5 April 2009, because this is a Sunday, HMRC are allowing

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individuals until midnight (the end of the day) on 6 April 2009 to submit their forms.

HMRC has published guidance on notification for LA protection purposes<sup>2</sup>. If the above deadline is missed without reasonable excuse, an individual will not be able to benefit from protection against the LA tax charge.

### 4 BRIDGING PENSIONS

The Finance Act 2004 includes rules about what qualifies as a “scheme pension” (and therefore as an authorised payment). As part of these rules, once in payment, a scheme pension cannot generally be reduced and remain “authorised” for tax purposes. There are exceptions to this, including reductions which are made within specified limits to reflect “bridging pensions”.

For some schemes, the reduction which could be made to bridging pensions under scheme rules before A-Day was greater than that allowed for under current legislation. This exposes schemes (and members) which continue to make such reductions to additional tax charges (as corresponding pension payments are classed as unauthorised), or to the potential financial burden of having to pay a larger pension than intended under the scheme’s rules.

Having come into force on 1 January 2009, transitional regulations now permit pensions which were in payment before 3 July 2007 (to individuals who were members of the scheme on 5 April 2006) to be reduced in accordance with their pension scheme’s pre-A-Day rules, without causing future pension payments to be treated as unauthorised.

### 5 FREEZING THE LA AND AA

With the aim of “ensur[ing] fairness, affordability and sustainability of tax reliefs”, the Pre-Budget Report<sup>3</sup> proposed freezing both the LA and the AA at £1.8 million and £255,000 respectively from 2010/11 until the end of the tax year 2015/16.

<sup>2</sup> <http://www.hmrc.gov.uk/pensionschemes/life-allow-pn.htm>

<sup>3</sup> Announced on 24 November 2008



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The Government considers that this will only impact on the largest pension pots. However, without specific legislation, the smallest pension pots will also be affected as the rules on trivial commutation are assessed by reference to a percentage (1%) of the LA.

The Chancellor is due to make his Budget statement on 22 April 2009.

### 6 NOTIONAL EARNINGS CAP

The Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 set out transitional provisions for schemes in place at A-Day. Under one of those provisions, HMRC agreed to publish details of a notional earnings cap each year until 2011.

On 19 February 2009, HMRC confirmed that the notional earnings cap for 2009/10 will be £123,600<sup>4</sup>.

### 7 FURTHER DWP / HMRC REGULATIONS IN THE PIPELINE?

We are awaiting the publication of the Registered Pension Schemes (Authorised Payments) Regulations 2009. These were first available in draft back in May 2008 and are intended to implement measures announced in the 2008 Budget. Once in force (possibly in April 2009?) they will reclassify certain currently unauthorised payments as authorised (such as some overpayments of ongoing pension) and relax the rules on trivial commutation.

At the back end of last year, the DWP published regulations for consultation<sup>5</sup> which, amongst many other changes, were intended to make consequential amendments to reflect the above tax changes. As the DWP regulations are largely due to come into force on 6 April 2009, watch this space for further developments!

<sup>4</sup> <http://www.hmrc.gov.uk/pensionschemes/earns-cap-0910.htm>

<sup>5</sup> See our Alert, "When Draft Regulations Are Born!" dated 10 December 2008