Sackers extra

26 March 2012

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REMEMBER:

PPF Contingent Asset deadline is 5pm this Friday 30 March 2012

S07

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
GMP: Guaranteed Minimum Pension
HMRC: HM Revenue & Customs
LTA: Lifetime Allowance
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

LEGISLATION

The Pensions Act 2007 (Commencement No. 4) (Amendment) Order 2012

This Order corrects a drafting defect in and makes various technical amendments to the Pensions Act 2007 (Commencement No. 4) Order 2011.

The Child Trust Funds, Registered Pension Schemes and Stamp Duty Reserve Tax (Consequential Amendments) Regulations 2012

The Government considers the wording of the incapacitated person definition in the Taxes Management Act ("TMA") to be both offensive and archaic and the intends to revoke the provision. The change will mean that all customers, including those individuals lacking capacity, will be treated the same as regards their tax liability.

These Regulations amend three sets of regulations that have relied upon the TMA's definition to ensure consistency.

Explanatory memorandum

The Registered Pension Schemes and Overseas Pension Schemes (Miscellaneous Amendments) Regulations 2012

The aim of these regulations is to strengthen the tax provisions relating to the tax-free transfer of pension savings that have received UK tax relief to overseas pension schemes. This is so that the savings are used to provide an income in retirement, as intended when the regime was introduced in 2006.

In addition, they make consequential amendments to existing regulations to enable non-UK schemes to report to HMRC where they pay an annual allowance charge.

Explanatory memorandum

DEPARTMENT FOR WORK AND PENSIONS

Revised implementation proposals for workplace pension reform

Following the announcement in November 2011 of the Pensions Minister, Steve Webb, that small businesses (defined as those with fewer than 50 employees) would be given additional time to prepare for the implementation of automatic enrolment, in January 2012 the DWP issued a timetable outlining revised staging dates.

The effects of this re-design are not restricted only to employers with fewer than 50 workers, as new staging dates have also been given to medium sized employers (50 to 249 workers in their PAYE scheme). The re-design also includes changes to the arrangements for phasing of minimum contributions for all employers.

On 23 March, the DWP published a consultation to seek views on these changes. The consultation closes on 4 May 2012.

Alignment of automatic enrolment with tax and National Insurance thresholds – Government response

The final building blocks for automatic enrolment were put in place today as the Government published its response "Automatic enrolment earnings thresholds review and revision" to the consultation on the earnings threshold.

With just over six months to go before the largest employers begin enrolling eligible workers into pension savings, the response sets out that automatic enrolment rates for the next tax year will be aligned with tax and National Insurance thresholds. This will make it easier for firms who will not have to negotiate another layer of complexity.

Minister for Pensions Steve Webb said: "The overwhelming response to our consultation was the call to align the automatic enrolment trigger with existing payroll thresholds. This will help firms make a success of these reforms, as they will be able to better understand who is eligible to be enrolled. These changes strike the right balance between getting as many people into workplace pension saving as possible and ensuring that we do not enrol some people who would not financially benefit from saving. People who are excluded from automatic enrolment will still be able to opt themselves in, benefiting from a contribution from their employer. The new, single tier State Pension announced in the Budget will dramatically improve savings incentives for people on a low income."

The Government must review the rates each tax year.

FINANCIAL SERVICES AUTHORITY (FSA)

Business Plan 2012/13

The FSA has published its business plan for 2012/13 The document outlines the FSA’s specific initiatives for the year ahead, which reflect the continuing challenges facing the financial services industry. This is likely to be the FSA’s final business plan before it splits into the Prudential Regulation Authority and the Financial Conduct Authority in 2013.

The FSA's main focus will be on five areas:

- delivering the regulatory reform programme;
- continuing to influence the international and European policy agenda;
- delivering financial stability by maintaining ongoing supervision of firms in a period of continued fragility in markets including business model analysis, capital/liquidity assessments, recovery and resolution planning and the Significant Influence Function regime;
- delivering market confidence and credible deterrence; and

- delivering on the principal FSA initiatives to improve consumer protection: early product intervention, the Retail Distribution Review (often referred to as "RDR") and Mortgage Market Review.

Press release

HM REVENUE & CUSTOMS

Contracting-out "Countdown Bulletin"

HMRC has published the sixth and final issue of its “Countdown Bulletin” – Abolition of Contracting-Out on a Defined Contribution basis. It includes information on:

- Contracted-out mixed benefit schemes;
- Returning incorrectly paid Age Related Rebates / Minimum Contributions and requesting repayment of an incorrect recovery;
- Transitional issues; and
- Payment of Age Related rebates / Minimum Contributions.

Short Service Refund Lump sums - from 6 April 2012

HMRC has published a note to alert schemes which are currently contracted-out on a protected rights basis of the tax position on short service refunds from 6 April 2012 onwards.

One of the conditions for a payment to qualify as a "short service refund lump sum" is that it must extinguish all of the member's entitlement to benefits under the scheme. At present, there is an exception to allow schemes to retain a member's protected rights, as this is a requirement of DWP legislation.

When contracting-out on a protected rights basis is abolished on 6 April 2012, protected rights will become ordinary scheme benefits[1] and, as a consequence, schemes will no longer be able to rely on this exception in order to pay a short service refund lump sum. From this date schemes whose rules continue to require protected rights to be retained will be unable to meet HMRC's requirements for short service refunds. Any payment which does not satisfy the tax rules will be subject to tax charges. To address this, HMRC will consult on draft regulations to allow a partial payment. However, this will not be before 6 April 2012.

In the meantime, HMRC advises schemes to check their rules to see if they are affected and to consider delaying such payments until they can either make the necessary amendments or the new regulations come into force.

Protecting your pension savings - lifetime allowance and fixed protection

Applications for fixed protection must be received by HMRC by 5 April 2012. The form cannot be submitted online.

HMRC has published guidance for individuals on the changes to the LTA.

[1] Please see our Alerts: "Abolition of DC contracting-out – the Final Countdown" and "Abolition of DC contracting-out – final regulations published" for further details

Pension Schemes Newsletter 52

HMRC has published amendments to item 3 'Fixed protection - benefit accrual - the relevant percentage' of this newsletter.

HM TREASURY

2012 Budget

After much speculation that pensions tax relief would again be hit, the 2012 Budget may have come as some relief to the industry.

Key points in relation to pensions were as follows:

- State Pension Age will be increased in future to take into account improvements in longevity.
- The state pension will become a single tier pension for future pensioners.
- Further changes were announced to the previously published legislation on employer asset-backed pension contributions.
- In the Finance Bill 2013, the tax rules on the payment of bridging pensions will be aligned with forthcoming changes in SPA.

For further details please see our Alert: "Budget 2012: the pensions story".

THE PENSIONS REGULATOR

Auto enrolment update for key industry professionals

TPR has announced that it is in the process of contacting more than 100,000 independent financial advisers, accountants and HR professionals to advise them of their role in workplace pensions reform.

TPR aims to raise awareness among these advisers as it considers that they in turn can help raise awareness that the law is changing and every employer will need to act.

CASES

BESTrustees v Kaupthing Singer & Friedlander Limited Pension & Assurance Scheme (in administration)

This decision confirms that, when a section 75 debt is triggered by an employer's insolvency, the correct date to be used for the purposes of calculating the cost of buying out members' benefits is the date of the insolvency.

Background

Under section 75 of the Pensions Act 1995, where the value at the trigger time of a DB scheme's assets are less than a scheme's liabilities (both calculated on a prescribed

basis), the amount equal to the difference is treated as a debt due from the employer to the scheme trustees (the "employer debt").

On 8 October 2008, the sponsoring employer of the Singer & Friedlander Limited Pension & Assurance Scheme (the "Scheme") Kaupthing Singer & Friedlander Limited (the "employer") went into administration. This triggered an employer debt calculation.

The issue

The trustees applied to the court for confirmation of the correct date to be used to calculate the cost of buying-out the Scheme's benefits.

The employer argued that both a pension scheme's assets and the notional cost of purchasing annuities should be valued at the "applicable time" under the Employer Debt Regulations (i.e. the date of insolvency). However, the trustees considered that the buy-out cost should be calculated as at the date the actual calculation is performed by the scheme actuary (which is likely to be some time later). If correct, this interpretation would have raised the employer debt from £73.9 million to £140 million.

Decision

Mr Justice Sales concluded that there was "overwhelming textual and contextual support for the employer's interpretation".

Comment

This decision provides helpful confirmation of how the employer debt calculation should operate for debts which have already arisen and fits in with standard actuarial practice. The legislation was changed on 27 January 2012 to clarify that the dates to be used for calculating both assets and liabilities should be the same.

Nothing stated in this document should be treated as an authoritative statement of the law in any particular aspect or in any specific case. Action should not be taken on the basis of this document alone. For specific advice on any particular aspect you should consult the usual Solicitor with whom you deal. © Sacker & Partners LLP March 2012