Sackers extra

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SO7

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: Court of Justice of the European Union
FAS: Financial Assistance Scheme
HMRC: HM Revenue & Customs
NEST: National Employment Savings Trust
PPF: Pension Protection Fund
TPR: The Pensions Regulator

EUROPEAN FEDERATION FOR RETIREMENT PROVISISION (EFRP)

New Secretary General appointed

The EFRP has announced the appointment of Mr Matti Leppälä as the successor to Chris Verhaegen, when she steps down from her role as Secretary General to the EFRP in December 2011.

This announcement follows Ms Verhaegen's election, in May 2011, as Chair of the Occupational Pensions Stakeholder Group of the European Insurance and Occupational Pensions Authority (EIOPA).

The EFRP represents the various national associations of pension funds (including the UK's National Association of Pension Funds (NAPF)) and similar institutions for workplace pension provision. It affiliates pensions associations in sixteen EU member states and five other European countries.

EFRP Press Release

FINANCIAL ASSISTANCE SCHEME

Advice to trustees on the purchase of missing beneficiary insurance

On 23 August 2011, the PPF (which administers FAS) published advice for trustees of 'FAS1 Annuitising Schemes' (i.e. those which are eligible for aid from the Financial Assistance Scheme and which have purchased a bulk annuity policy) on the purchase of missing beneficiary insurance.

The PPF Board has said that it "would not usually consider it appropriate for trustees of schemes which are eligible for FAS to spend scheme assets on obtaining missing beneficiary insurance". It notes, however, that if trustees can demonstrate that cover is required, the extent and cost of the insurance "should be proportionate to the risks in fact faced".

Affected trustees wishing to buy missing beneficiary insurance with scheme assets should discuss this with the PPF before taking action.

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HM REVENUE & CUSTOMS

Disguised remuneration: Draft regulations

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.

On 25 August 2011, HMRC published draft regulations which will amend The Social Security (Contributions) Regulations 2001. These draft regulations 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. The draft regulations also make miscellaneous amendments as a consequence of amendments to the Finance Act 2004.

Consultation on the draft regulations closes on 23 September 2011.

Spotlight 12: Taxing the rewards for work carried out for a UK based employer

HMRC has published a new note in its "Spotlights" series. HMRC's Spotlights relate to tax avoidance and are designed to help individuals from unwittingly entering into arrangements that HMRC is likely to see as tax avoidance.

Spotlight 12 relates to tax avoidance schemes that seek to avoid Income Tax and NICs which are being advertised to contractors, highly paid employees and those using recruitment agencies. HMRC has become aware of claims that these schemes get around the new disguised remuneration rules.

PENSION PROTECTION FUND

Invoicing for the 2011/12 levy

The PPF's invoicing for the 2011/12 Pension Protection levy is due to begin on 1 September 2011. The PPF has therefore updated its invoicing pages ahead of invoices being issued.

The invoicing pages of the PPF website contain "FAQs" and the PPF's Guide to the Pension Protection Levy 2011/12, which includes background information about the 2011/12 levy as well as general information about how to pay or query a PPF invoice.

PPF Press Release

[1] Defined in s.554A(2) of ITEPA

CASES

Pension fund challenge over VAT on investment management services

In 2008, Wheels Common Investment Fund (WCIF) and the NAPF agreed to bring a joint legal challenge against HMRC on the application of VAT on the investment management services supplied to occupational pension funds. This followed the JP Morgan Fleming Claverhouse Investment Trust plc ruling in the ECJ, which stated that investment trusts were special investment funds and should be exempt from paying VAT on investment management services. HMRC did not automatically extend the effect of the Claverhouse ruling from investment trusts to pensions trusts, hence the WCIF challenge.

As we reported in 7 Days on 7 March 2011 a Tribunal hearing held in London in February 2011 concluded that it was necessary to refer *Wheels Common Investment Fund Trustees Limited v HMRC* to the ECJ for it to interpret the scope and meaning of that exemption. The Tax Chamber of the First Tier Tribunal has now published its Order, together with a schedule which summarises the background to the case and sets out the questions on which the ECJ is requested to give a preliminary ruling.

For further background to this case, please see our June 2008 Quarterly and today's NAPF Press Release.

Scurfield v HMRC (First Tier Tribunal: Tax Chamber)

The First Tier Tribunal (Tax Chamber) has rejected an appeal against a lifetime allowance charge of 55% imposed on a retired actuary who drew lump sum benefits on reaching age 75.

Background

From A-Day (6 April 2006), the Finance Act 2004 (the Act) replaced former Inland Revenue limits with a new system of allowances for pensions tax purposes, including the Annual Allowance and the Lifetime Allowance (LTA).

The standard LTA was originally set at £1.5 million and reached £1.8m in the tax year 2010/11[2]. However, for certain individuals with savings close to or in excess of the standard LTA at A-Day, it was possible to apply for protection from the standard LTA.

The Act made provision for two main forms of transitional protection: "primary" protection and "enhanced" protection. In order to take advantage of either protection, it was necessary for an individual to have registered with HMRC by 5 April 2009.

Facts

Mr Scurfield (S) was an actuary with Norwich Union (NU) from 1959 until his retirement in July 1992. He was the President of the Institute of Actuaries from 1990 to 1992. He was not involved with pensions work during his career. On retirement, he took up his occupational pension with NU.

S subsequently took out a pension policy with Standard Life, to which he contributed between 1994 and 2004. This pension crystallised on 9 December 2010 - S's 75th birthday. S had stopped taking financial advice following the death of his financial adviser in 2002, although he took one-off advice from Standard Life in 2004, in respect of inheritance tax. He received no financial advice in relation to the Act or subsequently, as he had no intention of taking out any more investments.

[2] As a result of the Finance Act 2011, the LTA will once again be £1.5m from the tax year 2012/13

S applied for protection against the LTA charge in September 2010 - more than 17 months after the deadline. HMRC rejected the application.

As S's combined pension benefits were significantly in excess of the standard LTA, on taking his Standard Life policy proceeds as a lump sum in November 2010, he incurred an LTA charge at 55% - significantly higher than if he had secured protection. HMRC's assessment was upheld on review.

Decision

The Tribunal dismissed the appeal.

The Tribunal, which had been asked to consider whether S had a reasonable excuse for not applying for protection before the 5 April 2009 deadline, decided that S's ignorance of the available protections did not constitute a reasonable excuse.

S argued that he was unaware of the existence of the LTA and charge and that his ignorance of the protection provisions under the Act constituted a reasonable defence to his late application. He also argued that a distinction should be drawn between ignorance of basic law and the application of complex technical rules. In support of this argument, S cited the decision in *Neal v Customs & Excise Commissioners* which concerned an appeal against the imposition of a penalty for late VAT registration in which the appellant relied on the defence of reasonable excuse founded on ignorance of the law relating to VAT.

Although the Tribunal accepted that the defence of ignorance should not be summarily dismissed and that it may be a factor in considering whether or not a reasonable excuse exists, it considered that the introduction of the LTA was a "relatively straightforward provision of taxation law setting a maximum ceiling for tax relief".

The Tribunal found it to be largely irrelevant that S did not have a financial adviser in the run-up to the 2009 deadline. HMRC had operated a significant publicity campaign, which had begun in advance of A-Day and continued afterwards, particularly in the run-up to the 2009 deadline, which included the prominent publication of information on the HMRC and Directgov websites. During this time the changes to pensions tax relief and the impact of the LTA were also widely reported in national newspapers. S could therefore have reasonably been expected to discover for himself the need to apply for protection by 5 April 2009. As such, S was "put on notice to make further enquiries by the information".

The Tribunal also considered that, due to his professional background, S "should have recognised the relevance of the new provisions to his situation but for some inexplicable reason failed to make the connection with his personal circumstances".

In addition, the LTA was not, as S had argued "a draconian measure". This was because the effect of its introduction was to limit the scope of tax relief, not to create a new penalty, and the change was tempered by a transitional three year period during which individuals could secure protection against the change.

Comment

Despite the Tribunal's comments, given the many developments in the pensions sphere (both in terms of taxation and generally) over recent years, it remains a complex area. Therefore to help scheme members who often will not have the same financial awareness as S, pension scheme trustees should ensure that they communicate changes affecting members' benefits both clearly and in a timely manner.

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