PPF confirms levy determination for 2016/17

Alert | 20 January 2016

Introduction

On 17 December 2015, the PPF confirmed its levy rules for 2016/17.

Key points

- Following consultation (see our Alert), the final levy rules "remain largely unchanged" for 2016/17.
- The main deadline for the submission of information for the levy will be midnight on 31 March 2016 rather than 5pm, as has been the case in previous years. (Click here for a list of key PPF dates for the levy year 2016/17.)
- In certain circumstances, the PPF intends to re-invoice schemes ("in a measured and considerate fashion") that incorrectly identified themselves as "last man standing" ("LMS").
- TPR's Exchange will be updated in late January 2016. Changes such as a new button allowing schemes which identify themselves as LMS to confirm they have received legal advice on their status will not be available until then.
- The PPF does not yet have sufficient data to assess the potential impact of FRS102 on the accounts of employers within multi-employer schemes. It plans to publish its conclusions as soon as it is able and it is envisaged that this will largely affect scores in 2017/18.

Changes for 2016/17

PPF-Specific Model

The PPF states that, according to the consultation responses and feedback, the model is working well and that schemes are looking for stability. As a result, the PPF has made only limited changes. These include:

- requiring only immaterial mortgages to be re-certified "on that basis that the amounts used for the purpose of calculating immateriality might vary from year to year". All other mortgage certifications that were accepted for the 2015/16 levy will be carried forward

- permitting new companies to voluntarily submit audited interim accounts (providing they cover at least one month's trading activities).

ABCs

The 2016/17 ABC guidance has been updated to make clear where the PPF considers a light touch approach to recertification (for example, the ability to use an updated valuation) may be suitable.

In addition, the revised ABC guidance confirms that:

- on a recertification, it is acceptable for trustees to use a previously obtained piece of legal advice, provided that the legal position underlying the ABC arrangement has not changed since the date the arrangement was previously certified

- the valuer may make a prudent estimate of the asset's value, provided that the valuation clearly sets out the basis for this approach and otherwise complies with PPF requirements.

Type A Contingent assets (group company guarantees)

While the PPF rejected fewer certifications than for 2014/15, the level of rejections remains above what the PPF would hope to see. The PPF therefore emphasises the need for trustees to ask probing questions. Key issues to arise from its contingent assets' review included:

- it is essential to consider in detail what the knock-on effect of the employer's insolvency will be on the rest of the group

- trustees should look behind intra-group arrangements such as trade terms and the ownership / licencing of intellectual property to consider the impact on the recoverable amount from the guarantee.

The PPF considers its guide to assessing guarantor strength (which will be re-issued shortly) to be the best source of advice on what it is looking for.

Last man standing schemes

LMS schemes are multi-employer schemes which do not have an option or requirement to segregate assets when a participating employer leaves. Such schemes receive a levy reduction because potential eligibility for the PPF does not arise until the last employer becomes insolvent.

Due to concerns that schemes were misreporting, all schemes that had identified themselves as LMS in their 2014/15 scheme return received an email from TPR requiring them to confirm that they had received legal advice regarding their structure. Schemes had until 29 May 2015 to respond (see our Alert for details).

The PPF has now identified the schemes that may have erroneously described themselves as LMS in previous levy years and will be contacting them shortly. First it plans to contact schemes which responded to TPR's email advising that they no longer believed they met the LMS definition. Schemes which report a change of status on Exchange this year (for the first time) and any which do not confirm on Exchange (by midnight on 31 March 2016) that they have received appropriate legal advice that supports their LMS certification, will be contacted next.

This exercise will exclude schemes which are in an assessment period, or which are no longer eligible for the PPF. The PPF has indicated that it will not re-invoice where it considers that it is not economic to do so. Any schemes against which the PPF decides not to take action, due to the limited sums involved, will be notified.

Next steps

Trustees and employers would be wise to start the New Year with an assessment of their risk reduction measures. If they intend to put in place (or retain) contingent assets, we recommend kicking off the process as soon as possible. For assistance, please speak to your usual Sackers' contact.

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