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Consultation on new employer debt option for multi-employer schemes

The Department for Work and Pensions (DWP) issued a call for evidence in 2015 in response to concerns about how the employer debt regime operates for employers in non-associated multi-employer schemes. Seeking to address this issue, the DWP published a consultation on draft regulations to introduce a new option – the ‘deferred debt arrangement’ – for employers in multi-employer schemes to defer the requirement to pay an employer debt on ceasing to employ an active member.

Background

Generally, if a company exits an underfunded multi-employer defined benefit (DB) scheme, its share of the deficit (if any) becomes a debt due to the trustees (the ‘employer debt’). A debt calculation is currently triggered where an employer has ceased to employ at least one person who is an active member of the pension scheme, where another employer with DB liabilities continues to employ at least one active member (this is known as an ‘employment-cessation event’).

Deferred debt arrangement

The proposed deferred debt arrangement (DDA) will enable an employer in any multi-employer scheme (whether the employers are associated or not) to defer the requirement to pay an employer debt following an ECE, provided the following conditions are satisfied:

- the funding test is met – broadly, this addresses the ability of all the remaining employers (including the ‘deferred’ employer) to fund the scheme, and whether the DDA would have an adverse impact on the security of members’ benefits
- the trustees consent to the DDA
- the scheme is not in a Pension Protection Fund (PPF) assessment period, or likely to start one in the next 12 months
- the scheme is not being wound up

The DWP’s intention is that the proposed DDA would enable employers in multi-employer schemes to cease accruing further pension liabilities without triggering a debt.

While the DDA is in place, the deferred employer will remain an employer for scheme funding purposes, and may be required to make deficit recovery contributions as part of any recovery plan. It will also remain responsible for its share of any orphan liabilities.

Ending a DDA

There are a number of circumstances in which a DDA may come to an end and an employer debt could become due, including where:

- the deferred employer chooses to trigger the employer debt, subject to the trustees’ consent
- the deferred employer employs an active member
- the deferred employer restructures
- an insolvency event occurs in relation to the deferred employer

In addition, if the trustees are reasonably satisfied that:

- the deferred employer has failed to comply with its obligations under the scheme funding regulations, or
- the deferred employer’s covenant to the scheme is likely to weaken in any other way in the next 12 months

they can serve a notice on the deferred employer stating that the DDA has come to an end. This is intended to deter employers from using a DDA to avoid their responsibilities, and to provide adequate safeguards for all scheme members.

The consultation closed on 18 May 2017, and the Government’s response is now awaited.

The DDA in practice

A DDA is likely to be a helpful option where a flexible apportionment arrangement (FAA) cannot be agreed, but the employer debt needs to be managed. However, employers may be discouraged from using this new arrangement by the wide-ranging circumstances (some of which they may feel might result in too much future uncertainty) in which a DDA may be brought to an end.