Sackers

LTA-Day – it's the final countdown

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Introduction

6 April 2024 ("LTA-Day") will mark the end of the LTA and the introduction of new allowances, the "lump sum allowance" ("LSA") and the "lump sum and death benefit allowance" ("LSDBA"). In this Alert we look at key recent developments, including a new statutory override to help schemes with LTA-related limits on benefits in their rules.

Key points

- With the changes first announced at the Spring Budget 2023, the legislation has had to develop quickly, and continues to do so. Last week, regulations ("the Regulations") were laid before Parliament to help iron out some of the wrinkles in the Finance Act 2024 ("FA24").
- HMRC continues to publish regular guidance, including its February 2024 and March 2024 LTA guidance newsletters.
- A new statutory override will help ensure that scheme rules which limit benefits by reference to the LTA (or related concepts) continue to operate after LTA-Day.
- Members with enhanced protection ("EP") looking to transfer their benefits to a different arrangement on or after 6 April 2024 stand to lose their entitlement to the tax-free parts of certain benefits.
- The Regulations make changes to the grounds for taking a pension commencement excess lump sum ("PCELS"), to ensure that this new authorised payment works as intended.
- If LTA-Day results in a material change in a scheme's "basic scheme information" for the purposes of disclosure requirements, members must be notified within three months of the change (ie by 6 July 2024). This includes changes to benefit options available, the conditions on which benefits are payable and how they are calculated.
- HMRC's February and March newsletters gives some practical information to help schemes prepare for "transitional tax-free amount certificates".

Statutory override

Depending on their rules, the tax changes may inadvertently cut across some schemes' benefit design, eg because benefits are limited by reference to the LTA (or related concepts). A new statutory override aims to ensure that such limits remain in place post LTA-Day. This should provide comfort to those schemes whose benefit design is tied to the current tax regime, although trustees may still wish to check how the new override and their particular scheme rules work together.

The override will expire on **5 April 2029**, giving schemes some much needed breathing space, especially with the legislation still in a state of flux. However, as it did in the run-up to A-Day, we are hoping that the Government will also look at providing an exemption from the requirements of section 67 of PA95 (which protects members' subsisting rights), as well as a power to make changes to rules by resolution (under section 68 of the same Act), to help facilitate scheme amendments to take account of the LTA's removal.

Issue with transfers for members with EP

Since 6 April 2023, members holding valid EP applied for before 15 March 2023 (Spring Budget Day 2023) have been able to build up new benefits, join new arrangements or transfer their benefits without losing this protection. (The same applies to relevant members with fixed protection.)

As noted by HMRC in its March LTA guidance newsletter, members with EP will stand to lose their entitlement to tax-free parts of certain benefits if they transfer to a different arrangement on or after 6 April 2024. Given the tight timeframe in which the legislation has developed, and continues to do so, members with EP may well be unaware of this. This reinforces the need for members with LTA protections to seek independent financial advice on the impact of the new tax regime on their specific circumstances. HMRC is considering whether further changes should be made here.

Changes to PCELS

The Regulations make changes to the new authorised payment, the PCELS, after HMRC acknowledged that the FA24's drafting led to some unintended consequences.

The PCELS will be payable where a member has exhausted their LSA, or has exhausted their LSDBA (because they have become entitled to a serious ill-health lump sum), provided certain other conditions are met and scheme rules permit the payment. The aim is to ensure that individuals who have crystallised benefits above £1,073,100 will be able to continue to take benefits as a lump sum when the LTA excess lump sum is no longer available.

For some schemes, introducing a PCELS option could alter benefit design. Trustees will therefore need to consider whether to pay a PCELS, taking account of the views of sponsoring employers, the potential impact on DB funding, and the administrative implications.

There may be an existing power under which a PCELS can potentially be paid. Whilst the FA24, in effect, replaces references to the LTA excess lump sum in scheme rules with the new PCELS, the extent to which this will work will come down to the specific rule drafting.

Finally, the Regulations will ensure that members of occupational pension schemes can take a PCELS (provided this does not impact contracted-out rights) without breaching the restrictions on forfeiting benefits.

Transitional tax-free amount certificates

To cater for individuals who have taken benefits before LTA-Day, the LSA and LSDBA will, in most cases, be reduced by 25% of any LTA used up before then. This standard transitional calculation is intended to broadly reflect the amount of tax-free cash taken. But if, in fact, an individual took less tax-free cash, members (or their PRs) will be able to request an alternative calculation by applying to their scheme for a "transitional tax-free amount certificate". This application needs to be made before benefits are first crystallised under the new regime.

HMRC has set out some practical guidance on the certificates in its February 2024 and March 2024 newsletters, including when and how members should apply and what the certificates should contain.

Crucially, to obtain a certificate, members must be able to provide "complete evidence" of the tax-free lump sums they have taken as BCEs before LTA-Day. HMRC considers this means applicants will need to provide evidence of their total LTA percentage used, and evidence of benefits not taken as lump sums. This will need to be considered on a case-by-case basis, but HMRC expects members to provide documents such as financial records, bank statements or BCE statements. Further HMRC guidance is expected on this topic.

What happens if a certificate is inaccurate?

Certificates must be cancelled if the scheme administrator becomes aware that they are inaccurate. If a certificate is cancelled, members may be liable for additional tax due, and future benefits will be subject to the standard transitional calculation (unless the member successfully applies for a new certificate). HMRC is considering whether there should be a requirement to report where a certificate has been cancelled so that it can determine whether further tax is due on past benefits.

Penalties for inaccurate certificates

Penalties may apply where individuals fraudulently or negligently give false information, or where someone assists them in doing so. If scheme administrators do not comply with the new requirements, they may also face fines of up to £300 plus daily fines of up to £60 for a continuing breach. However, reassuringly, HMRC has confirmed that it will not look to punish trustees where certificates are based on inaccurate information supplied by members.

What's next?

More guidance from HMRC (including an updated Pensions Tax Manual) is on its way, and further regulations are expected to be laid before Parliament on 18 April 2024. So, there is still a lot to come. For steps schemes can be taking now to get LTA-Day ready, see our recent Hot Topic.

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