Sackers

LTA-Day – certain members may wish to consider delaying transfers or taking benefits

Introduction

Ahead of the LTA's removal on 6 April 2024 ("LTA-Day"), HMRC's latest newsletter was published on 4 April 2024 ("Newsletter 158"). **Crucially, HMRC states that certain members may wish to delay transferring or taking benefits until a further set of regulations is in place (expected on 18 April 2024), so their available allowances and tax position "do not need to be revisited"**.

Key points

- With the LTA's demise first announced at the Spring Budget 2023, the legislation has had to develop quickly, and continues to do so. A first set of regulations, designed to iron out some of the wrinkles in the Finance Act 2024, have already been laid before Parliament.
- A second set of regulations is expected to address "technical" errors and other remaining issues with the legislation. The regulations are scheduled to be laid before Parliament **on 18 April 2024**, but will apply retrospectively from 6 April 2024.
- Newsletter 158 sets out the changes expected to be made by the second set of regulations, and "provides guidance on how schemes should operate during the interim period".
- The second set of regulations will make various corrections to the legislation, including relating to transfers for members with enhanced protection ("EP"), the potential PCLS available for members with EP or primary protection ("PP") who have protected lump sum rights of more than £375,000, lump sum death benefits ("LSDBs") paid from funds which crystallised before LTA-Day, transfers to a QROPS, and the payment of a PCLS where the member has a scheme-specific lump sum protection.
- **Trustees should ask their administrators to make potentially affected members aware of Newsletter 158, recommending that they take independent financial advice. The original drafting of Newsletter 158 suggested that "schemes should advise" members regarding the issues raised, but an updated version has corrected this, placing the onus squarely on members to make their own financial decisions. Trustees must only ever provide members with information, never advice.**

The two new allowances – a quick recap

Following the LTA's demise, two new tax-free lump sum allowances will make their debut, the "lump sum allowance" ("LSA") and the "lump sum and death benefit allowance" ("LSDBA"). The standard LSA will be £268,275, being 25% of the current standard LTA and, matching the current standard LTA, the standard LSDBA will set at £1,073,100.

The new allowances apply per person across all registered pension schemes, not per scheme, with lump sums exceeding either taxed at an individual's marginal rate. However, individuals holding a valid LTA protection will retain their rights to higher tax-free lump sums, as well as to higher tax-free parts of other lump sums and lump sum death benefits.

EP – transferring to a new provider

In previous newsletters, HMRC acknowledged that individuals with EP could lose their "permitted maximum" tax-free entitlement to certain benefits if they transfer their benefits, since the permitted maximum is calculated on a "per arrangement" basis (see our Alert for details). Pension scheme newsletter 157 confirmed that the Government would change the legislation to enable members with EP to retain their tax protection on a transfer. This may require an exchange of information between the transferring scheme and the receiving scheme to determine the member's permitted maximum under the new arrangement.

Until the amending legislation is effective, Newsletter 158 states that members with EP "may wish to delay transferring to a new provider".

EP or PP with protected lump sum rights

HMRC has also acknowledged an issue with the legislation that will prevent members with EP or PP who have protected lump sum rights taking a PCLS in excess of their usual protected LSA of £375,000. The second set of regulations is expected to address this issue. In the meantime, HMRC suggests that members may either:

- take a PCLS up to £375,000, and "forgo their protected entitlement" since any later top-up would not meet the conditions to be a PCLS, or

- delay the payment of their PCLS so they can take their full entitlement, the timeframe for paying a PCLS being up to six months before and up to 12 months after the member becomes entitled to it.

LSDBs paid from crystallised funds

Certain death benefits payable from DC arrangements, such as a flexi-access drawdown fund lump sum death benefit, are not currently BCEs because they are paid from crystallised benefits. However, they will be "relevant benefit crystallisation events" for the purposes of the LSDBA after LTA-Day.

To prevent double counting, lump sum death benefits paid from funds which crystallised before LTA-Day will not reduce an individual's LSDBA because the funds have already been tested against the LTA. However, an issue in the legislation means that the tax-free amount of such benefits could be unintentionally limited.

Until the amending legislation is effective, Newsletter 158 states that “legal personal representatives may wish to delay requesting the payment" of an LSDB in these circumstances.

Transfers to a QROPS

The first set of regulations introduced transitional provisions to reduce members’ “overseas transfer allowance” by 100% of the value of their LTA used up as at 6 April 2024. This is intended to ensure that members can take tax-free transfers to a QROPS up to the same value as they could have expected to benefit from under the LTA. An overseas transfer charge will apply to any excess.

However, HMRC has now identified issues with the transitional provisions for members with pre-A-Day pensions in payment and members transferring funds designated to drawdown to a QROPS. As a result, until the amending legislation is effective, “affected members may wish to defer their request to transfer”.

Scheme-specific lump sum protection

The second set of regulations is expected to address technical errors in the formulas relating to scheme-specific lump sum protection, ie rights to tax-free cash greater than 25%. This includes issues around calculating the level of protection, the effect of transfers, and reductions to the member’s LSA.

While affected members should still be able to transfer their benefits, Newsletter 158 notes that they may wish to delay “the payment of a PCLS under scheme-specific lump sum protection” pending the revised legislation.

What’s next?

The second set of regulations is expected to be laid before Parliament on 18 April 2024, taking effect retrospectively from 6 April 2024.

In the meantime, HMRC looks set to continue issuing further guidance on the tax changes in regular pension scheme newsletters. A consolidated copy of all FAQs published to date is also scheduled to appear later this month.

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