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Essential pensions news

Updater

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Introduction

Essential Pensions News covers the latest pensions developments each month.

Consultation response published on proposed new measures to combat pension scams

On *August 20, 2017*, the DWP and HM Treasury published a consultation response confirming the new measures which are intended to protect private pension savers from the threat of unscrupulous pension scammers.

The measures will include

- A ban on cold calling in relation to pensions, including emails and text messages.
- A tightening of HMRC rules to stop scammers opening fraudulent pension schemes.
- Tougher actions to help prevent the transfer of money by individuals from occupational pension schemes into fraudulent ones.

The cold calling ban will be enforced by the Information Commissioner's Office.

The Government also intends to tackle scammers by ensuring that only active companies, which produce regular, up-to-date accounts, can register pension schemes. Limiting members' statutory rights out of occupational schemes will mean trustees must check that the receiving scheme is

- A personal pension scheme regulated by the Financial Conduct Authority
- Or has an active employment link with the individual seeking the transfer
- Or is an authorised master trust

The new transfer regime is due to be progressed during 2017 but will not be finalised until the master trust authorisation regime is in place.

The announcement came as new figures were released showing almost £5 million was obtained by pension scammers in the first five months of 2017. It is estimated that £43 million has also been unlawfully obtained by scammers since April 2014, with those targeted having lost an average of nearly £15,000, as scammers try to encourage savers to part with their money with false promises of low-risk, high-return investment opportunities.

Some of the necessary legislation is to be included in the Finance Bill 2018, a draft of which was published on *September 13, 2017* (see further below).

View the consultation response.

Comment

The consultation response confirms that, broadly, the proposals were positively received. However, while the proposed measures go some way to tightening the restrictions on possible pension scams and protecting consumers, the cold calling ban may be difficult to enforce. While the ban on cold calling has been welcomed, there is a lack of a definite timetable, with the Government stressing the need for more work "on the final and complex details" of the ban during the course of 2017.

The greater clarity surrounding statutory transfer rights to be provided to scheme trustees, will be welcome as this issue has proved problematic in recent years following the growth of more innovative pension liberation schemes. However, linking the introduction of these measures to the roll-out of the master trust authorisation regime may mean that the measures will not be in place until 2019, and that has been noted as a concern by many respondents.

Money Laundering and the registration of trusts with HMRC – extension of registration deadline

In our update for July 2017, we reported that the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the New Regulations) came into force on *June 26, 2017*, the deadline for transposition into UK law of the EU Fourth Money Laundering Directive.

The Money Laundering Regulations 2007 (the 2007 Regulations) require trust or company service providers to register with HMRC if they are not authorised by the FCA (or certain other specified professional bodies) and where they are in the business of offering services as a trustee or director of a trustee company.

The New Regulations define trust or company service providers in the same way as the 2007 Regulations, and thus registration will continue to apply to those acting as trustees by way of a business. However, the classification of occupational pension schemes as low risk trusts under HMRC's existing guidance, meant professional trustees of those schemes were not required to register with HMRC, and this had caused some confusion.

HMRC's latest Trusts and Estates Newsletter, which was published on *September 14, 2017*, contains further information about the new trusts registration service (TRS) under which trustees of certain private trusts (including pension trusts) must register online and provide HMRC with information about the beneficial owners, where this is required by the New Regulations.

Under the New Regulations, HMRC is required to maintain a register of beneficial owners and potential beneficiaries of "taxable relevant trusts". A taxable relevant trust is a "relevant trust" (broadly speaking, a UK express trust where all the trustees are resident in the UK) that is liable in a given tax year for either income tax, capital gains tax (CGT), inheritance tax, stamp duty land tax (SDLT), land and buildings transaction tax (LBTT) or stamp duty reserve tax (SDRT). While registered pension schemes are generally exempt from income tax, CGT and inheritance tax, they are likely to incur one or more of SDLT, LBTT or SDRT on their investment dealings unless their investments are held wholly within a unit-linked life policy.

By *January 31, 2018* (or January 31, in any later year after they were first liable for any of the above taxes), the trustees of a taxable relevant trust must give HMRC a range of information about the trust and its beneficiaries.

HMRC originally required a taxable relevant trust that had incurred a liability in 2016/17 for income tax or CGT (and was not previously registered for self-assessment) to register with the TRS by *October 5, 2017* in line with normal self-assessment rules. However, the newsletter confirms this deadline has been extended to *December 5, 2017* in the TRS's initial year of operation, by which date the trustees must also provide the required beneficial ownership information. For a taxable relevant trust that has incurred a liability in 2016/17 for any of SDLT, LBTT or SDRT, the registration and provision-of-information deadline remains *January 31, 2018*.

In summary

Trust registered for self-assessment
If the trust is registered already for income tax or CGT under self-assessment (SA) and the trustees of the trust have incurred a UK tax liability then registration must be completed by no later than *January 31*, after the end of each tax year.

Trust not registered for SA
If the trust is not registered under SA and has incurred either an income tax or CGT liability for the first time then registration must be completed by no later than *December 5*, after the end of each tax year.

Trust not registered for SA
If the trust is not registered under SA and has not incurred either an income tax or CGT liability but has incurred either an inheritance tax, SDLT, SDRT, or a LBTT liability then registration must be completed by no later than *January 31*, after the end of each tax year.

Separately, the newsletter confirms HMRC has published two new forms to help trustees and pension scheme administrators meet their information obligations regarding taxable lump-sum death benefits paid to trusts.

View the Newsletter.

DWP consults on changes to PPF compensation for members entitled to bridging pensions

This is of interest to DB schemes offering "bridging pensions". Some schemes offer bridging pensions where the normal retirement age under the scheme rules is lower than the member's State Pension Age (SPA) and additional benefits are paid during the period before the member receives his State Pension.

The DWP is consulting on draft regulations to enable the Pension Protection Fund (PPF) to alter its compensation to reflect the different rates payable to members receiving or entitled to a bridging pension under their scheme rules. Currently, the PPF's compensation rules mean that any member in receipt of a bridging pension continues to receive it past SPA.

As a result, members entitled to a higher rate bridging pension when a scheme enters the PPF have their PPF compensation fixed at that rate for life, whereas if the scheme had not entered assessment the member's pension would have decreased when the bridging pension ceased to apply under the original scheme rules.

The draft regulations reflect the DWP's preferred "smoothing approach" to allow PPF compensation to be reduced to reflect more closely the compensation that members would have received in their employer's pension scheme. This would require actuarial calculation of a flat-rate lifetime-equivalent compensation amount. An alternative, but more complex "mirroring" option is also presented, with sequential different rates of compensation to mirror a member's scheme provision. The DWP calls for evidence about the current bridging pension arrangements in pension schemes to assess the potential impact of these changes.

The consultation closes on *October 1, 2017*.

View the consultation.

HMRC publishes issue no. 27 of its Countdown Bulletin

Of interest to formerly contracted-out DB schemes is the publication on *August 30, 2017* of HMRC's latest edition of its Countdown Bulletin.

The Bulletin provides further detail for administrators of such schemes about the end of contracting-out and is available here.

HMRC publishes Pension Schemes Newsletter no. 90

Of interest to all scheme administrators is the publication on *August 31, 2017* of HMRC's latest Pension Schemes Newsletter. The principal topics covered are

- Confirmation of the intention to release an updated version of the annual allowance (AA) calculator in the autumn.
- A reminder to scheme administrators that they will need to provide AA pension savings statements for 2016/17 to those active members contributing more than £40,000 to their pension scheme. They will also need to remind members who have exceeded their AA across all schemes for 2016/17 with insufficient carry forward, that they must declare this on their self-assessment tax return.
- A request for outstanding information to be provided by *September 30, 2017* by those schemes preparing to operate relief at source for Scottish income tax from *April 6, 2018*.
- A reminder that penalties may apply where the latest version of form APSS262 is not used to report transfers to qualifying recognised overseas pension schemes made from *March 9, 2017* within the relevant timescales.
- Confirmation that the lifetime allowance look-up service for pension scheme administrators will be "available shortly".
- Confirmation that existing scheme administrator data is to be transferred on to the new pensions online service by April 2018 instead of April 2019. Scheme administrators are requested to log on Pension Schemes Online as soon as possible and to check that their details are up to date to facilitate the transfer.

View the Newsletter.

Finance (No.2) Bill 2017 – pensions provisions

The first version of the Finance (No.2) Bill 2017 was published on *September 8, 2017*, along with explanatory notes. The Bill includes the two pensions-related provisions that were withdrawn from the Finance Bill 2017 when it was fast-tracked through the legislative process ahead of the June 2017 general election.

The following provisions are included in the Bill and will apply retrospectively from *April 6, 2017*

- Clause 3 (pensions advice) – introduces an exemption from income tax for up to £500 worth of employer-arranged pensions advice provided to an employee (including former and prospective employees) in any tax year (so long as the advice costs no more than this).

- Clause 7 (money purchase annual allowance) – the money purchase annual allowance (MPAA) is reduced from £10,000 to £4,000. Individuals who flexibly access or have already flexibly accessed registered pension scheme savings will be subject to an MPAA of £4,000.

The Bill had its first reading on *September 6, 2017*, and its second reading *September 12, 2017*.

Draft Finance Bill 2018 – pensions provisions

In the Spring 2017 Budget, the Government announced proposed measures to tackle pension scams and a consultation response was published on *August 20, 2017* (see above). On *September 13, 2017*, draft provisions to be included in the Finance Bill 2018 were published setting out proposed amendments to the tax registration regime, which are intended to improve HMRC's effectiveness at combatting fraudulent pension schemes and restricting tax registration to those schemes providing legitimate pension benefits.

Specifically, draft Schedule 1 of the new Bill amends Part 4 of the Finance Act 2004 to extend the circumstances in which HMRC will be allowed to refuse to register, or will be able to deregister a pension scheme to include

- Where the sponsoring employer of an occupational pension scheme has been dormant for a continuous period of one month that falls within the period of a year ending with the day on which the decision is made, meaning only active companies will be permitted to register a new pension scheme.

- Where the receiving scheme is an unauthorised master trust.

The amendments concerning dormant companies are intended to come into effect on *April 6, 2018*. The amendments in relation to unauthorised master trusts will come into force on the same day that section 3 of the Pension Schemes Act 2017 (prohibition on operating a master trust scheme unless authorised) comes into force, or if later, the date the Bill receives Royal Assent.

The technical consultation on the draft legislation closes on *October 25, 2017*. The final contents of the Finance Bill 2018 will be confirmed at the Autumn 2017 Budget to be presented on *November 22, 2017*.

Changes to auto-enrolment legislation – the Employers' Duties (Miscellaneous Amendments) Regulations 2017

The Employers' Duties (Implementation) (Amendment) Regulations 2017 (the Regulations) make changes to the date the employer duties under the Pensions Act 2008 to automatically enrol a worker into a pension scheme first apply. They come into force on *October 1, 2017*.

The Regulations make further technical changes to the auto-enrolment regime in order to ensure the DWP's policy regarding post-staging new employers works as originally intended.

The Regulations will

- Align the timing of the deferral period for post-staging new employers with the postponement period specified in section 4 of the Pensions Act 2008, so that the period for which auto-enrolment may be deferred for both staging and post-staging employers will be the same.

- Clarify that an employer whose first eligible worker is employed before *October 1, 2017*, but who does not first pay PAYE income tax until October 1, 2017, or later, will be able to use a deferral period.

- Amend the Employers' Duties (Registration and Compliance) Regulations 2010 to ensure these reflect the revised implementation regime for post-staging new employers. The main amendment is to align the trigger date for the five-month window for submitting a declaration of compliance to TPR for post-staging new PAYE employers, and non-PAYE employers first employing workers on or after October 1, 2017. For both groups of employers, the trigger date will be the day on which the employer's first worker begins to be employed. For non-PAYE employers first employing a worker between April 2, and September 30, 2017, the trigger date for a declaration of compliance will remain the date on which PAYE income is payable in respect of any worker.

View the Regulations.

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