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Pensions Update

November 2017

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Autumn 2017 Budget

The Autumn 2017 Budget did not contain many pensions related items and a number of those it did contain referred to measures which had been previously announced by the Government.

The key pensions points in the Budget were:

- the Government is to introduce powers to allow HMRC to register and de-register master trust pension schemes and schemes for dormant companies;
- applying the triple lock mechanism, the basic state pension and the new state pension will be increased by 3% in April 2018; and
- applying existing legislation, the lifetime allowance will be increased in line with the increase in the Consumer Prices Index from April 2018, rising to £1,030,000 for the 2018/19 tax year.

An overview of tax legislation and rates in the Autumn 2017 Budget can be viewed by clicking here.

Money Laundering Regulations

We reported in the June 2017 Update that the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 had come into force and set out some further detail in the July 2017 Update about what the new Regulations meant for trustees of occupational pension schemes, and how we believed they were likely to be applied in practice.

In the July 2017 Update, we noted that there was some uncertainty about how registration with HMRC for the purposes of anti-money laundering compliance would apply. In principle, a scheme must register in any year in which it is liable to pay relevant UK taxes such as income tax, capital gains tax and stamp duty reserve tax.

HMRC has now provided further guidance in relation to the Trust Registration Service ("TRS") which confirms that a pension scheme will not need to register with HMRC (through the TRS) for the purposes of the Money Laundering Regulations if the scheme administrator has to pay income tax only due to any of the various pensions specific charges under the Finance Act 2004 (such as the unauthorised payments charge).

Consequently, it seems likely that many pension schemes will not be required to register with HMRC but schemes will need to check this with their administrators each tax year to confirm whether any of the relevant taxes have arisen. Given the uncertainty that this may create from year to year, trustees will need to consider whether to register as a matter of routine.

The guidance can be viewed by clicking here.

DWP Consultation on changes to the DC to DC bulk transfer regime.

The DWP has launched a consultation on draft amending regulations (The Occupational Pension Schemes (Preservation of Benefits Charges and Governance) (Amendment) Regulations) which would:

- replace the requirement to obtain an actuarial certificate for bulk transfers of defined contribution (DC) pensions without member consent (DC to DC) with an alternative test and new member protections;
- remove the scheme relationship condition for these transfers; and
- maintain charge cap protections for those transferred without consent.

The proposed changes would not apply to defined benefit (DB) schemes or to DC schemes with guarantees.

The consultation can be viewed by clicking here.

DWP Consultation on draft regulations requiring disclosure of costs and charges in DC occupational schemes

The DWP has announced plans for the disclosure of pension costs and charges in DC occupational pension schemes and has launched a consultation in relation to these plans (along with draft statutory guidance and regulations which are due to come into force on 6 April 2018).

The DWP proposals include:

- the requirement to publish charge and transaction cost information and disclose this to members, beneficiaries of the scheme and others including recognised trade unions – and that this should apply, subject to a small number of exceptions, to schemes that provide money purchase benefits;
- the costs and charges information to be published on the internet for public consumption;
- trustees and managers should also provide an illustration of the compounding effect of the costs and charges affecting pensions savings;
- trustees and managers should, as a minimum, publish costs and charges on a similar annual cycle to the Chair’s Statement; and

- that each member who receives an annual benefit statement must also be provided at the same time with a web address where members can find the costs and charges for their scheme.

Draft statutory guidance and regulations were published alongside the consultation, which runs until 5pm on 6 December 2017.

The consultation can be viewed by clicking here.

HMRC Consultation on changes to tax treatment of foreign pensions

HMRC has published the Pension Schemes (Application of UK Provisions to Relevant Non-UK Schemes) (Amendment) Regulations 2018 for consultation. A draft explanatory memorandum has also been provided.

These draft regulations follow on from legislation introduced in the Finance Act 2017 which introduced:

- the overseas transfer charge from 9 March 2017; and
- revised member payment provisions from 6 April 2017,

and determine how funds benefiting from UK tax relief are calculated and how the amount subject to UK tax charges is reduced.

The draft regulations seek to cover:

- the calculation of the new "ring-fenced transfer fund" which arises from transfers of UK pension savings made on or after 9 March 2017;
- the calculation of the associated "ring-fenced taxable asset transfer fund"; and
- rules determining the order in which payments out of funds that have benefited from UK tax relief or other events such as setting funds aside to be paid as a drawdown pension will reduce the funds that can be subject to UK tax charges.

The draft regulations and explanatory memorandum can be viewed by clicking here and here.

The Pensions Regulator publishes checklist for completing 2017/2018 scheme return

The Pensions Regulator has published a checklist which sets out new information which will need to be included in the 2017/2018 scheme return for all DB pension schemes. This new information includes:

- confirmation of a specific scheme contact for pension tracing purposes (this is optional);
- confirmation as to whether the scheme consents to electronic delivery of documents;
- information about common and conditional data;
- membership details as at the scheme year end falling between 1 April 2016 and 31 March 2017; and
- the guidance and assumptions used for the latest section 179 valuation.

The checklist and example scheme return form can be viewed by clicking here.

HMRC to retain existing practice for VAT recovery in respect of DB pension schemes

HMRC have announced that the current approved options for employers to recover VAT on services supplied to DB pension schemes will not be withdrawn but will instead be retained indefinitely. This comes more than three years after HMRC announced their intention to withdraw their approved treatment for VAT recovery on services provided in connection with DB pension schemes, including the 70/30 split concession on investment services.

This change in policy was not set out in a Revenue & Customs Brief, but included as an update to the VAT Input Tax Manual (which is intended as guidance for HMRC officers and so can be taken as an indication of HMRC's likely approach to a particular issue) on 1 November 2017.

Employers which sponsor DB pension schemes are advised to review their current arrangements for recovering VAT on services supplied to these schemes to consider whether they are complying with HMRC requirements and whether they can do more to maximise recovery.

A Special Client Alert prepared by Chantal Thompson in relation to the revised guidance can be viewed by clicking here.

DB regulation changes

As the final stages of the BHS and Tata Steel sagas play out, the Pensions Regulator has said that it will "transform" the way in which it regulates DB pension schemes. And with DB regulation likely to be a key part of the Government's White Paper due in the New Year, it is possible that we could see wider changes to the regulatory regime. Sarah Hickling and Jonathan Sharp take a look at some key aspects of the possible changes and what these might mean for trustees and sponsors of DB schemes in an article which first appeared in the November 2017 issue of Pensions Age and is reproduced by agreement with the publishers. The full article can be viewed by clicking here.

Pensions Disputes News

Smith v Sheffield Teaching Hospitals NHS Foundation Trust: the Pensions Ombudsman and compensation awards

A member has successfully appealed in the High Court against an award of £500 by the Deputy Pensions Ombudsman ("DPO") for non-financial loss caused by maladministration. The High Court allowed the member's appeal holding that the DPO's award resulted from an error of fact and/or principle.

The Court's decision was that whilst the £500 award was set by the DPO on the basis that there was only one occurrence of maladministration, there were in fact a number of inaccurate pension estimates and summaries each constituting maladministration. On the basis that the number of instances of maladministration was material to the level of distress of the member, the Court held that the decision to award £500, which was at the lowest end of the possible level of award, must have been embody an "error of fact and/or of principle". **The Court instead awarded the member £2,750 (which was above the top end of the normal band - which the Court considered to be £1,600)**.

The case is helpful in setting out some of the factors considered relevant when deciding where on the scale an award by the Pensions Ombudsman should fall.

Contact us

If you wish to discuss any of these issues further, please contact your usual Baker McKenzie lawyer.

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