Pensions Update

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BAKER & MCKENZIE

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Finance Act 2016

The Finance Act 2016 has now been passed by Parliament and contains a number of provisions relevant to pensions taxation. The Act implements the new lower lifetime allowance of £1m with effect from the 2016/17 tax year and introduces the mechanism for this to be increased in line with CPI (by requiring the Treasury to make regulations to that effect before the start of the 2018/19 tax year and each subsequent tax year).

The Act implements in legislation the corresponding tax protection regimes for individuals who are affected by the reduction in the lifetime allowance (Fixed Protection and Individual Protection 2016). These operate in a similar way to previous tax protections introduced for the last reduction in the lifetime allowance introduced for the 2014/15 tax year.

The Act also introduces a power to make regulations to align the provisions in the tax rules relating to bridging pensions with the introduction of the single tier state pension from 6 April 2016 as well as making certain changes to ensure that the pensions flexibilities introduced from 6 April 2015 operate as intended.

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Insurance Act 2015

The Insurance Act 2015 came into force on 12 August 2016. The Act applies to all insurance policies which are issued, renewed or amended after that date (which are not consumer insurance contracts). It also makes certain changes to insurance law which are relevant to trustees of pension schemes. The principal change introduced by the Act is a new "duty of fair presentation" of risk which applies when taking out an insurance policy. This replaces the old duty of disclosure.

The new duty requires an insured person to disclose to the insurer "*every material circumstance which the insured knows or ought to know*" or "*failing that, disclosure which gives the insurer sufficient information to put a prudent insurer on notice that it needs to make further enquiries for the purpose of revealing those material circumstances*". A circumstance is material if it would influence the judgement of a prudent insurer in determining whether, and on what terms, to take the risk.

The Act sets out certain remedies available to an insurer if the duty is breached, including the ability to avoid claims or vary the terms of certain contracts of insurance, although it introduces proportionate remedies for non-disclosure on a statutory footing for the first time.

The reforms introduced under the Act will be relevant to pension scheme trustees taking out contracts of insurance (including trustee liability insurance or buy-in / buy-out contracts). In some respects the changes made by the Act could be said to be more favourable to the insured rather than the insurer (for example, as the new duty above suggests, it imposes some degree of responsibility on the insurer to make enquiries). However, it remains to be seen what the new requirements will mean in practice and the Act will need to be considered carefully by trustees when entering into new contracts of insurance or variations to those contracts.

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Extension of transitional period for VAT treatment of pension fund management costs

Following the decision of the Court of Justice of the European Union in the case of *PPG Holdings*, HMRC has issued a number of briefings, on which we have reported in previous updates, on the ability of employers to recover VAT on pension fund management costs. Broadly, the decision means that it is necessary for an employer to both contract and pay for the services in order to be treated as the recipient of the services for VAT purposes. However, taxpayers have been allowed to continue using the old rules relating to VAT treatment for a transitional period which was due to expire on 31 December 2016.

Due to the length of time which it is taking for HMRC to reconcile the *PPG Holdings* decision with existing law and practice in the UK, the transitional period has been extended for a further 12 months to 31 December 2017. HMRC will review the position at the end of this period and consider the need for a further extension if necessary. Taxpayers who have already implemented arrangements to reflect the decision in *PPG Holdings*, however, may continue with these arrangements or revert back to the previous treatment during the transitional period.

This issue will be considered at our next Breakfast Briefing to be held on 2 November 2016.

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Increase to PPF compensation cap

The PPF compensation cap is currently set at £37,420.42 for the 2016/17 year. It is determined at age 65 and actuarially reduced if a person takes their benefits at an earlier age, to ensure that individuals who take their benefits at different ages are treated in a similar way.

The Government is consulting on bringing into force provisions in the Pensions Act 2014 which will introduce an enhanced long service cap. Under the new provisions, the cap will be increased by three per cent for each full year of pensionable service above 20 years, subject to a new maximum of double the standard cap. Anyone who is already entitled to PPF compensation when the new legislation comes into force and who meets the relevant conditions will have their cap recalculated (although any increased entitlement will not be backdated).

The legislation is planned to come into force on 6 April 2017. The closing date for the consultation is 9 November 2016. The consultation can be viewed here.

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Pensions advice allowance

Following the introduction of the pensions flexibilities in April 2015, members now have a wider range of options in relation to their benefits. Auto-enrolment has also led to an increase in the number of pension savers. To assist individuals in accessing financial advice on their options, the Government is consulting on the introduction of a "Pensions Advice Allowance". The allowance would permit individuals to take £500 tax free from their defined contribution pension towards the cost of regulated financial advice (as opposed to guidance) by creating a new category of authorised payment under the pension tax rules. The allowance would be available before age 55 and in addition to any tax free lump sum.

The consultation invites views on the design of the allowance, including issues such as from what age the allowance should be available and how many times it can be used. The Government does not propose to make offering the allowance mandatory but is inviting views on how to encourage the majority of schemes to offer it. The consultation recognises that there are certain issues which are specific to occupational pension schemes such as whether scheme rules would (without amendment or a permissive power) permit payment of the allowance and to what extent trustees should be involved in or responsible for the selection of advisers.

The closing date for the consultation is 25 October 2016. The consultation can be viewed here.

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Pensions Dashboard - working prototype by March 2017

In a speech by Simon Kirby MP (Economic Secretary to the Treasury) on 12 September 2016 the Government announced that it wants its "pensions dashboard" up and running and ready for consumers by 2019. The dashboard is intended to give consumers greater visibility of their pension savings by making it possible to view their pensions through one portal. The speech also announced the aim to have a working prototype of the dashboard in place by March 2017. The development of the dashboard will be undertaken by a cross-industry project group overseen by HM Treasury.

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Article on VAT and pension schemes - the saga continues

Chantal Thompson (Baker & McKenzie, London) and Koert Bruins (Baker & McKenzie, Amsterdam) have written an article which explores the legal challenges regarding the application of VAT to pension schemes. This article first appeared in the September edition of European Pensions and is reproduced by agreement with the publishers. The full article can be viewed by clicking here.

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