

News – September 2009

How are you affected?

As a valued client we're keen to ensure that you're kept up to date on important issues affecting your pension scheme. Reviewing changes to legislation is a key part of the services that we provide. This bulletin contains information which you will need to consider.

Finance Act 2009

The 2009 Budget proposed major changes to pensions tax relief available to 'high earners'. Following industry discussions some of these proposals were modified before being implemented in the Finance Act 2009.

'High earners' – what's the effect?

From 22 April 2009

Individuals with taxable income (not just earnings) below £150,000* are not affected.

Individuals with taxable income of £150,000* or more will not be affected if:

- total pension contributions up to a maximum of £20,000 per annum are paid; or
- there is a pattern of regular pension contributions (i.e. paid quarterly or more frequently) at 21 April 2009 and the frequency is not reduced and the amount of contributions is not increased; or
- pension contributions have been paid less frequently than quarterly and continue to be paid at a level not exceeding the 3-year average of those contributions for the tax years 2006/07, 2007/08 and 2008/09. This is subject to a maximum of £30,000 per annum.

Pension contributions outside these guidelines are subject to a 20% personal tax charge. This effectively limits tax relief to basic rate.

* The £150,000 limit is deemed to be met if taxable income in the current tax year, or in either of the previous two tax years, is £150,000 or more.

N.B. In determining taxable income any salary sacrifice amounts made after 21 April 2009 will be included.

The above is only a very brief summary of highly complex provisions, particularly those relating to determining 'regular' contributions and total taxable income. If you feel that this affects you then you should contact your Financial Adviser. This is known as 'anti-forestalling legislation' and further information is also available at: <http://www.hmrc.gov.uk/budget2009/anti-forestalling-qa.pdf>



From 1 September 2009

New regulations bring any measures which artificially reduce liability to the above tax charge within the tax avoidance legislation. The effect of this is that anyone becoming aware of such measures has an obligation to report them otherwise they will be liable to penalties.

From 6 April 2011

Whilst not implemented in the Finance Act, the Budget announced the intention to restrict the availability of tax relief to basic rate on pension contributions for individuals whose taxable income is £150,000 or higher.

Other points – 6 April 2010

An additional higher rate tax of 50% will be introduced on taxable income over £150,000.

For those with taxable income over £100,000, the personal allowance will be reduced by £1 for every £2 by which the income exceeds £100,000. As income increases over the £100,000 threshold the allowance will reduce and ultimately fall to zero.

However, by using personal contributions to a pension scheme to reduce your taxable income, you can earn more than the £100,000 threshold and still benefit from the full personal allowance.

Example

1. Without a pension contribution

| | |
|------------------------|----------|
| Gross income | £105,000 |
| Pension Contribution | £0 |
| Taxable Income | £105,000 |
| Threshold | £100,000 |
| Excess | £5,000 |
| Reduction in allowance | £2,500 |
| Full allowance* | £6,475 |
| Reduced allowance | £3,975 |

| | |
|--------------------------|-----------------|
| Taxable income | £105,000 |
| Allowance | £3,975 |
| Chargeable income | £101,025 |

2. With a £5,000 pension contribution

| | |
|------------------------|----------|
| Gross income | £105,000 |
| Pension Contribution | £5,000 |
| Taxable Income | £100,000 |
| Threshold | £100,000 |
| Excess | £0 |
| Reduction in allowance | £0 |

| | |
|--------------------------|----------------|
| Full allowance* | £6,475 |
| Taxable income | £100,000 |
| Allowance | £6,475 |
| Chargeable income | £93,525 |

* Assumes the personal allowance for 2009/10.

Normal Minimum Pension Age changes to 55

On 6 April 2010 the earliest age at which you can normally take your pension increases from 50 to 55 (subject to a few exceptions e.g. retirement due to ill-health).

If you were born after 6 April 1955 and before 6 April 1960, YOU are affected

People in this group are able to take part or all of their pension benefits before 6 April 2010, but after that date they will not be able to take any further benefits until their 55th birthday or later. So if you were planning to take benefits, perhaps in phases, between ages 50 and 55 you may need to talk to your Financial Adviser. You may also want to now consider paying in an additional contribution prior to 6 April 2010 to boost your benefits, if you intend to take benefits before then.

Restructure Expensive Pre-6 April 2006 Borrowing

SSAS or SIPP which had borrowing in place prior to 6 April 2006 may be experiencing problems in current market conditions. If asset values have fallen it is possible that the loan amount exceeds the current maximum limit of 50% of the net asset value. Any restructuring of that borrowing would have resulted in an unauthorised charge (i.e. a tax charge) being levied on the scheme.

In current market conditions, where investment income is falling yet interest on the loan remains at a high level, this could lead to financial hardship for a scheme. Her Majesty's Revenue and Customs (HMRC) has recognised this point and will now accept that such borrowing can be restructured, including a change in the interest rate and / or a change in the term of the loan, without generating an unauthorised charge. This is providing there is no increase in the amount borrowed and that there is no change in the borrower.

If your SSAS or SIPP has been left with expensive pre-6 April 2006 borrowing you should contact your Financial Adviser.

Problems with Property Rental Payments?

In current market conditions tenants of SSAS and SIPP owned properties may be experiencing difficulty in paying their contractual rent. To avoid triggering unauthorised charges the scheme should be enforcing the terms of the lease in a commercial manner. The practical problem faced by schemes is in assessing what would be

regarded as 'commercial', particularly if the tenant is connected with the scheme.

Recognising that it is better to have a lower rental income than no tenant at all, HMRC has confirmed that the terms of a lease can be reviewed, leading to potentially lower rents, providing the scheme can demonstrate the revision is on commercial terms.

To demonstrate commerciality where connected tenants are involved the scheme must:

- obtain professional advice which considers the terms of the lease in relation to similar properties in the area in the current market, and the likelihood of finding a replacement tenant; and
- obtain professional advice relating to the financial circumstances of the tenant.

It is important to note that if the tenant is a company, no dividends should be paid if the company is to be deemed unable to afford the current level of rent. If the tenant company can afford to continue to pay dividends on its shares then HMRC will not accept any downward negotiation of the rent.

Ensuring Acceptable Investments

One of the attractions of having a SSAS or a SIPP is the wide investment powers that are available. Of course these powers still need to be used prudently.

Background

HMRC does not explicitly prevent a scheme from holding any type of investment. However, it does state that certain types of investment and certain transactions by a scheme will lead to tax charges being levied on:

- the scheme,
- the scheme Administrator; and
- in some cases the members of the scheme.

The scheme must be able to meet its objectives to provide benefits and avoid investments likely to cause problems. For example, an individual may be quite happy to have an investment which cannot be sold for many years but this would not be acceptable for a pension scheme since the

investment would need to be sold at short notice should, for instance, the member die.

What we can do to help

We will review proposed investments, where appropriate, prior to them being made.

Generally speaking the investments likely to fall into this category are unit trusts and investment trusts or similarly structured investments.

'Standard' investments, such as those widely available in the market and which do not involve special offerings or extensive paperwork, will not normally raise any issues.

'Non-standard' investments are usually those which have only a limited distribution or invest in specific assets and are usually accompanied by considerable documentation. Generally it is this type of investment that may raise a number of issues. These issues include:

- lack of liquidity
- risk of liabilities exceeding the initial amount invested
- risk of generating tax charges
- unreasonable undertakings required in the investment documentation.

Having reviewed a proposed investment, if we find any potential issues our first approach is to try and address these with the investment provider. There may also be instances in which we require forms of undertaking to be signed by the scheme member and / or the trustees. We will always try to find a successful outcome but sometimes the investment is just not acceptable.

Because of the amount of paperwork to be reviewed, sufficient time should be allowed for this process e.g. where there is a closing date for making the investment. It is wise to allow at least a couple of weeks as, even if the investment is agreed, applications have to be completed and signed and funds paid across etc.

In no circumstances is this review process, or any of its conclusions, a form of investment advice. It does not attempt to assess investment suitability rather it is about investment acceptability. Suitability of an investment is determined by the member (in the case of SIPP) or the trustees (in the case of SSAS) and their Financial Advisers who should always be consulted.

Protected Rights and Safeguarded Rights

Protected Rights

Since 1 October 2008 it has been possible to transfer Protected Rights into the new Xafinity SIPP. (Protected Rights are benefits arising as a result of being contracted out of the various State earnings-related schemes.)

Safeguarded Rights

Safeguarded Rights were abolished on 6 April 2009. These are rights granted to a former spouse under a pension sharing order as a result of a divorce, and are derived from the contracted out pension rights of the ex-spouse. This means that the restrictions that applied to such rights are removed and these benefits can be paid under the same rules as other benefits.

If you don't have a Financial Adviser, we suggest you contact IFA Promotion Ltd, which is an industry body responsible for promoting independent financial advice in the UK. IFA Promotion Ltd will be able to give you details of a Financial Adviser in your area and whether they have specialist pensions qualifications. Their contact details are:

Telephone: 0800 085 3250
Internet: www.unbiased.co.uk

Contacting Xafinity

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