

Pensions Legal Update

Legal Update Contents

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Do one thing this month

Two new relaxations of the employer debt legislation have come into force. These mean that a debt may not be triggered where:

- employees move between two associated employers on an intra-group restructuring;
- the transferred liabilities account for less than 3% of the scheme's total liabilities and the scheme is fully funded on the PPF basis.

Trustees and employers should consider the new relaxations where s75 debts are triggered in the future.

Employer debt legislation: further changes

Summary. The government has changed the employer debt legislation by introducing two new easements which may mean that, on corporate restructurings, a section 75 debt can be avoided where previously one would have been triggered.

Background. A section 75 debt is an obligation on an employer participating in a defined benefit (DB) pension scheme to pay the scheme's trustees an amount equal to a share of the scheme's deficit, calculated by reference to the cost of buying-out benefits with an insurance company. Normally, a section 75 debt is triggered if an employer ceases to employ any active members in a scheme (*sections 75 and 75A, Pensions Act 1995*).

Restructurings often involve the transfer of employees from one employer to another. If the transferring employer participates in a DB scheme, then the transfer may count as an employment-cessation event under the Occupational Pensions Schemes (Employer Debt) Regulations 2005 (*SI 2005/678*) (2005 Regulations), meaning that a section 75 debt is triggered.

In September 2009, the government consulted on amending the 2005 Regulations.

Facts. The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010 (*SI 2010/725*) (2010 Regulations) came into force on 6 April 2010 and are intended to facilitate corporate restructurings. The 2010 Regulations contain two new easements: "general" and "de minimis" (the easements). The easements potentially apply where a restructuring involves:

- The transfer of employees between two associated employers (for example, on an intra-group transfer of an undertaking).
- A change in the legal status of an organisation (for example, where a partnership is converted into a company, and there is a transfer of employees between the two).

If a restructuring comes within one of the easements, then the transfer of employees will not count as an employment-cessation event, and no section 75 debt will be triggered.

If a restructuring comes within one of the easements, then the transfer of employees will not count as an employment-cessation event, and no section 75 debt will be triggered. For section 75 purposes, pensionable service with the transferring employer will be attributed to the receiving employer (so that, in effect, the receiving employer steps into the transferring employer's shoes).

The general easement will apply only if:

- The trustees are satisfied that the receiving employer will be at least as likely to meet liabilities under the scheme (its own and the transferring employer's) as it and the transferring employer would have been.
- The receiving employer takes over responsibility for all of the transferring employer's assets, employees, scheme members and scheme liabilities.

The de minimis easement will apply only if:

- The scheme is fully-funded on the Pension Protection Fund basis.
- The transferring employer accounts for not more than 3% of the scheme's DB membership, or not more than two DB members.
- The accrued annual pensions of DB members associated with the transferring employer, taken together, do not exceed a prescribed amount (£20,000 for 2010/11).
- The receiving employer takes over responsibility for all of the transferring employer's assets, employees, scheme members and scheme liabilities.

Further conditions will need to be met if there have been other de minimis restructurings in the previous three years.

The 2010 Regulations list the steps which an employer and a scheme's trustees will need to take if the employer proposes to rely on one of the easements. In some circumstances, if the necessary steps are not taken, an easement may be invalidated; if so, a section 75 debt will become due retrospectively, and the transferring employer and the receiving employer will be jointly and severally liable.

Comment. The easements may mean that restructurings are now a realistic option where previously they were not. However, employers and advisers will need to be mindful of the prescribed steps and the time limits.

Source: The Occupational Pension Schemes (Employer Debt and Miscellaneous Amendments) Regulations 2010, www.opsi.gov.uk/si/si2010/uksi_20100725_en_1.

Pensions tax relief: high earners

Summary. The government has provided further detail on how the restriction of pensions tax relief (the restriction) will apply.

the restriction will not apply to those individuals with pre-tax incomes, including their own pension contributions, of less than £130,000.

Background. In the 2009 Pre-Budget Report, further measures were announced regarding the restriction from April 2011. The restriction will apply to individuals with gross income of £150,000 and over, where gross income covers all pension contributions, including employers' contributions. For these individuals, the rate of tax relief will be tapered down from 50%, so that those on incomes of £180,000 and over will receive tax relief at 20%. However, the restriction will not apply to those individuals with pre-tax incomes, including their own pension contributions, of less than £130,000.

At the same time, the Treasury and HM Revenue & Customs (HMRC) also consulted on implementing the restriction (the consultation), focusing on the detail of applying the restriction.

Facts. As part of the Budget 2010, the Treasury and HMRC issued a summary of responses to the consultation, in which they announced the following further detail of how the restriction will be implemented:

- A stepped taper of 1% of relief for every £1,000 of gross income over £150,000 will be used.
- The restriction will not apply in cases of a member's death or serious ill-health and where the pension scheme (the scheme) starts to wind up before April 2011. The restriction will apply in cases of redundancy.
- The government's preferred method for valuing deemed contributions for individuals in defined benefit schemes using age-related factors (ARFs) will be adopted. The ARFs vary with an individual's age and normal pension age, and are to be reviewed no less frequently than every five years. Implementing regulations will include details of how the ARFs will be adjusted where individuals are eligible for generous increases to pensions in payment.
- The government is minded to use the previous year's September Retail Price Index figure for revaluing previous benefits for the purposes of the deemed pension contribution. Negative deemed contributions will also be fairly recognised.
- Where a member incurs a recovery charge in excess of £15,000 this can be met by the scheme directly, or where the scheme is unable to pay the charge it can be spread by the individual over three years with interest.
- Schemes must provide details of an individual's deemed contributions within three months of a request.

Source: Implementing the restriction of pensions tax relief: a summary of consultation responses, March 2010, www.hm-treasury.gov.uk/d/budget2010_pensionstaxrelief_summary.pdf.

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