

## Simplification by Complication? De Minimis (trivial) commutation, overpayments of pensions and lump sums

Over three years have passed since A-Day and gaps in the UK pensions tax simplification legislation continue to be identified and filled. The Registered Pension Schemes (Authorised Payments) Regulations fill some gaps by broadening the range of authorised member payments to include:

- scheme-specific trivial commutation up to £2,000
- overpayments of pension and related lump sums

### Trivial Commutation

Occupational pension schemes will be allowed to commute very small pensions without having to aggregate the total benefits across all registered pension schemes. Aggregation is currently required when determining whether a trivial commutation lump sum is less than 1% of the Lifetime Allowance.

These provisions will only apply to payments made on or after 1 December 2009. This will enable the Department of Work and Pensions to ensure that other regulations (such as those covering contracting-out) are amended to reflect this new type of trivial commutation.

Scheme-specific trivial commutation will be allowed under the tax legislation in the following circumstances.

- De Minimis commutation for occupational pension schemes with at least 50 members

An occupational pension scheme can make a payment of up to £2,000 to a member provided that the member is aged between 60 and 75 and the payment extinguishes entitlement to benefits from the scheme in question. Other requirements will also need to be met.

The requirements are slightly different for schemes with less than 50 members. In small schemes, benefits under schemes relating to the same employment must be taken into account, when determining whether the £2,000 threshold has been exceeded.

- Payments of no more than £2,000 which extinguish a member's benefit entitlement and are made in respect of a relevant accretion. A relevant accretion may, for example comprise, a belated payment received occurring after a recognised transfer to another registered pension scheme.

- Payments of no more than £2,000 made after the member has reached aged 75 where the trustees had previously been unable to trace the member, despite having taken reasonable steps to do so.
- Payments to members receiving annuities. Payment of no more than £2,000 which would be a trivial commutation lump sum but for the continuing payment of an annuity after the lump sum is paid, will be authorised in certain circumstances.
- Compensation of no more than £2,000 paid by the Financial Service Compensation Scheme which extinguishes the member's entitlement to benefits under the pension scheme will be authorised.

These lump sums will be taxed like trivial commutation lump sums. The recipient will, in most cases, only pay income tax on 75% of the lump sum provided, at the time of payment he has "uncrystallised rights".

However, rule amendments are likely to be needed before such payments can be made from a scheme.

## Overpayments of pension or lump sums paid in error

Occupational pension schemes will not be treated as having made an unauthorised payment (with additional tax charges) where overpayments are made by mistake in certain circumstances. These provisions will apply retrospectively to overpayments made on or after 6 April 2006. However just because an overpayment by genuine mistake may not have adverse tax consequences, trustees will still need to consider recovering overpayments in the normal way.

- **Pensions paid in error – on death or otherwise**

A mistaken payment of pension will be an authorised payment if the trustees believe that the recipient who is entitled to payment was entitled to that amount of payment. There is no explicit requirement that belief to entitlement must be reasonable.

Pensions paid after discovery of the error will only be an authorised payment if the trustees took reasonable steps to prevent the payment being made (for example instructing administrators to cease paying the pension).

Payments made after a member or other beneficiary has died will be authorised payments provided that payment is made within six months of death and the trustees did not know and could not reasonably have been expected to know that the person had died.

- **Arrears of pension after death**

Arrears of pension will be authorised where the payment is in respect of a defined benefits arrangement and the member was under 75. This provision does not appear to cover payment of arrears of a spouse's pension where a member dies.

- **Overpayment of lump sums**

Pension commencement lump sums based on pension errors and which therefore exceed the 25% maximum when compared with the correct figures will be authorised. Such payments will be treated as benefit crystallisation events for the purposes of the Lifetime Allowance charge.

## Outstanding issues

There are still a number of gaps in the legislation, including:

- Compensation payments in excess of compensation for distress and inconvenience
- Overpayments made more than 6 months after someone has died
- Trivial commutation in excess of the £2,000 threshold will still be subject to the 1% LTA (including aggregation)

For more information please do not hesitate to get in touch with your usual Mayer Brown contact or:

Ian Wright

Partner

Tel: +44 20 3130 3417

Suzanne Burrell

Senior Associate

Tel: +44 20 3130 3060

Visit us at [www.mayerbrown.com](http://www.mayerbrown.com)

## About Mayer Brown

Mayer Brown is a leading global law firm with offices in major cities across the Americas, Asia and Europe. We have approximately 1,000 lawyers in the Americas, 300 in Asia and 500 in Europe. Our presence in the world's leading markets enables us to offer clients access to local market knowledge combined with global reach.

We are noted for our commitment to client service and our ability to assist clients with their most complex and demanding legal and business challenges worldwide. We serve many of the world's largest companies, including a significant proportion of the Fortune 100, FTSE 100, DAX and Hang Seng Index companies and more than half of the world's largest investment banks. We provide legal services in areas such as Supreme Court and appellate; litigation; corporate and securities; finance; real estate; tax; intellectual property; government and global trade; restructuring, bankruptcy and insolvency; and environmental.

### OFFICE LOCATIONS

#### AMERICAS

- Charlotte
- Chicago
- Houston
- Los Angeles
- New York
- Palo Alto
- São Paulo
- Washington

#### ASIA

- Bangkok
- Beijing
- Guangzhou
- Hanoi
- Ho Chi Minh City
- Hong Kong
- Shanghai

#### EUROPE

- Berlin
- Brussels
- Cologne
- Frankfurt
- London
- Paris

#### ALLIANCE LAW FIRMS

- Mexico, Jáuregui, Navarrete y Nader
- Spain, Ramón & Cajal
- Italy and Eastern Europe, Tonucci & Partners

Please visit [www.mayerbrown.com](http://www.mayerbrown.com) for comprehensive contact information for all Mayer Brown offices.

© 2009. Mayer Brown LLP, Mayer Brown International LLP, and/or JSM. All rights reserved.

Mayer Brown is a global legal services organisation comprising legal practices that are separate entities (the "Mayer Brown Practices"). The Mayer Brown Practices are: Mayer Brown LLP, a limited liability partnership established in the United States; Mayer Brown International LLP, a limited liability partnership incorporated in England and Wales; and JSM, a Hong Kong partnership, and its associated entities in Asia. The Mayer Brown Practices are known as Mayer Brown JSM in Asia. "Mayer Brown" and the "Mayer Brown" logo are the trademarks of the individual Mayer Brown Practices in their respective jurisdictions.

This Mayer Brown publication provides information and comments on legal issues and developments of interest to our clients and friends. The foregoing is not a comprehensive treatment of the subject matter covered and is not intended to provide legal advice. Readers should seek specific legal advice before taking any action with respect to the matters discussed herein.