MAYER • BROWN

January 2018

THE PENSIONS BRIEF

At a glance...

Issues affecting all schemes

RELIEF AT SOURCE ▲
HMRC paper on the changes to relief at source as a result of introduction of the Scottish rate of income tax.

LAND AND BUILDINGS TRANSACTION TAX ▲
Revenue Scotland announcement on LBTT on transfers of land on a scheme merger.

AGE DISCRIMINATION
Employment Appeal Tribunal decisions on whether transitional provisions in the new firefighters' and judicial pension schemes constituted age discrimination.

Issues affecting DB schemes

2018/19 PPF LEVY ▲
Revised standard form PPF contingent asset agreements finalised.

DB PENSIONS REFORM ▲
Government update on white paper.

CHANGING INDEXATION MEASURES
High Court interpretation of power to change indexation measure.

CLOSURE TO ACCRUAL
High Court decision on effectiveness of closure to accrual and final salary link.

Issues affecting DC schemes

PROVISION OF INFORMATION ▲
Regulations introducing new provision of information requirements for registered DC schemes.

▲ Action required
▲ Follow development and keep under review

Issues affecting all schemes

Changes to relief at source

HMRC has published a policy paper describing the changes that will be made to the administration of relief at source as a result of the introduction of the Scottish rate of income tax. HMRC has also published issue 95 of its Pension Schemes Newsletter which contains further details of the changes.

Action

Schemes should liaise with their administrators to ensure that they are making the necessary changes to the scheme's administration processes to reflect the changes to relief at source.

Land and buildings transaction tax on scheme mergers

Revenue Scotland has announced that, following representations, it has concluded that land and buildings transaction tax (LBTT) will not generally be chargeable on transfers of land between schemes as part of a scheme merger. (LBTT is the Scottish equivalent of stamp duty land tax.) However, LBTT will be chargeable on any money or money's worth given for the transfer of land to or from a scheme. Previously, Revenue Scotland had taken the position that LBTT was chargeable on transfers of land as part of a scheme merger.

Action

Schemes which have paid LBTT on a transfer of land as part of a scheme merger should consider whether they wish to seek repayment of the tax paid.

Benefit changes and age discrimination

The Employment Appeal Tribunal (EAT) has held that transitional provisions in the regimes establishing the new judicial and firefighters' pension schemes were pursuing legitimate aims. Under the transitional provisions, current judges and firefighters were compulsorily transferred to the new schemes which offered less favourable benefits. Some older judges and firefighters were entitled to remain in the old schemes until either retirement or the end of a tapered period, depending on their age.

However, the EAT agreed with an employment tribunal's decision that the transitional provisions for the new judicial pension scheme were not a proportionate means of achieving those legitimate aims and therefore constituted unlawful age discrimination. In relation to the new firefighters' pension scheme, the EAT held that an employment tribunal had erred in the level of scrutiny it applied when deciding whether the transitional provisions were a proportionate means of achieving the legitimate aims. The EAT therefore remitted the question of proportionality in that case back to the tribunal for reconsideration.

Lord Chancellor and Secretary of State for Justice and another v McCloud and others [2017] UKEAT 0071_17_2901 and *Sargeant and others v London Fire and Emergency Planning Authority and others* [2017] UKEAT 0116_17_2901

Action

Schemes wishing to make benefit changes should consider whether those changes have a potentially discriminatory effect on members due to their age and, if so, whether the changes are objectively justified as a proportionate means of achieving a legitimate aim.

Issues affecting DB schemes

2018/19 PPF levy – contingent assets

The PPF has published the finalised versions of its updated standard form contingent asset agreements and accompanying guidance. The new standard forms must be used for any contingent assets entered into on or after 18 January. Agreements with an earlier execution date that have not previously been submitted to the PPF, and re-certifications (where the original certification was completed using an earlier version of the standard form agreements) can still be submitted for the 2018/19 levy without re-execution on the new forms.

For the 2019/20 levy year, the PPF anticipates that Type A (group company guarantee) and B (charge over cash, land or securities) contingent assets that include a fixed cap will need to be re-executed on the new standard forms by the deadline for that levy year (the end of March 2019) if they wish to receive levy credit.

Action

Schemes wishing to enter into and certify a contingent asset for the 2018/19 levy year should ensure that they use the new standard forms. Schemes with existing Type A and B contingent assets should check whether they will need to re-execute them on the new standard forms for the 2019/20 levy year.

White paper on DB pensions reform

The government has confirmed that the white paper on DB security and sustainability will now be published in the spring and that it will contain proposals to strengthen the Pensions Regulator's powers, including a requirement for compulsory clearance of some corporate transactions and enhanced information-gathering powers. Other possible areas for reform include a power for the Regulator to issue punitive fines and changes to the statutory insolvency priority order.

Action

No action required.

Power to change indexation measures

The High Court has held, among other things, that:

- Where a scheme's pension increase rule permitted the scheme's indexation measure to be changed if RPI had become "inappropriate", the question of whether RPI had become inappropriate was an objective question, rather than an issue for the employer and/or the trustees to decide.
- Matters and events identified by the employer had not, whether by themselves or in combination, caused RPI to become inappropriate. These matters/events included, among many others, the government's 2010 decision to use CPI as the basis for calculating statutory pension increases, the UK Statistics Authority's 2013 assessment that RPI does not comply with the Code of Practice for Official Statistics, and the 2015 Johnson Review's recommendation that the Office for National Statistics adopt CPIH as its main measure of inflation.

British Telecommunications plc v BT Pension Scheme Trustees Limited and another [2017] EWHC 69 (Ch)

Action

Schemes with a power to change their indexation measure where the existing measure has become inappropriate or no longer suitable should bear the Court's judgment in mind when deciding whether they can exercise the power to change their existing indexation measure.

Effectiveness of closure to accrual and breaking of final salary link

The High Court has held that a fetter in a scheme's amendment power against amendments which prejudiced or adversely affected the rights of any member only applied to past service rights. The parties agreed that the fetter preserved a final salary link.

The Court also held that an amendment introducing a new employer power to terminate contributions was valid notwithstanding the fact that it engaged the fetter in the amendment power by removing one of the restrictions in the previous power. The restriction removed required it to be "impracticable or inexpedient" for an employer wishing to exercise the power to continue to participate in the scheme. The Court held that the amended power was subject to an implied limitation that it could only be exercised if it was impracticable or inexpedient for the employer to continue to participate in the scheme.

The Court decided that there were sufficient factors at the time that the scheme employers exercised the termination power for them to have legitimately concluded that it was impracticable and inexpedient for them to continue to participate in the scheme, and that the termination notices issued were therefore effective to close the scheme to future accrual and to break the final salary link.

Wedgwood Pension Plan Trustee Limited v Salt [2017] EWHC 79 (Ch)

Action

Schemes should consider whether proposed amendments to scheme rules engage any fetters in the amendment power, even where the proposed amendments do not directly impact members' benefits.

Issues affecting DC schemes

Changes to provision of information requirements

Regulations have come into force which:

- make consequential changes with effect from the 2017/18 tax year to the provision of information requirements for registered pension schemes to reflect the reduction of the money purchase annual allowance to £4,000; and
- introduce a new requirement with effect from the 2018/19 tax year for scheme administrators to notify HMRC if the scheme becomes or ceases to be an authorised master trust.

Action

Schemes should liaise with their administrators to ensure that they have factored the changes to the provision of information requirements in relation to the money purchase annual allowance into the scheme's administration processes.

Mayer Brown events

If you are interested in attending any of our events, please contact Katherine Carter (kcarter@mayerbrown.com) or your usual Mayer Brown contact. All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

Trustee Foundation Course
27 February 2018
15 May 2018
11 September 2018
11 December 2018

Our Foundation Course aims to take trustees through the pensions landscape and the key legal principles relating to DB funding and investment matters, as well as some of the specific issues relating to DC schemes, in a practical and interactive way.

Trustee Building Blocks Class
12 June 2018 – topic to be confirmed
13 November 2018 – topic to be confirmed

Our Building Blocks Classes look in more detail at some of the key areas of pension scheme management. They are designed to be taken by trustees who have already taken our Foundation Course.

The View from Mayer Brown: Pensions Podcasts

Every month Richard Goldstein, a partner in our Pensions Group in London, places a spotlight on key developments that could affect your scheme in a podcast. Just 10-15 minutes long and available on iTunes, the podcasts provide a quick and easy way to stay on top of current issues in pensions law.

Listen to or subscribe to The View from Mayer Brown Pensions Podcasts via iTunes here:

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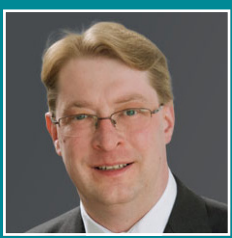
Please note – subscribing above will only work on a device with iTunes installed. Alternatively, if you don't have iTunes, you can access the podcasts via our website.

Please speak to your usual contact in the Pensions Group if you have any questions on any of the issues in this Brief.



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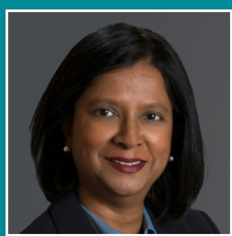

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Dates to note over the next 12 months

14 February 2018

Annual allowance deadline for schemes to pay tax due under "scheme pays" (2015/16 tax year)

5 March 2018

- Deadline for schemes that are not already registered with HMRC for self-assessment and that have incurred an IHT, SDLT, SDRT or LBTT liability in the 2016/17 tax year to register with the TRS and to provide information on the scheme's trustees, employers and beneficiaries to HMRC
- Deadline for schemes that are registered with HMRC for self-assessment and that have incurred an income tax, CGT, IHT, SDLT, SDRT or LBTT liability in the 2016/17 tax year to register with the TRS and to provide information on the scheme's trustees, employers and beneficiaries to HMRC

29 March 2018

PPF levy deadline for submission of hard copy contingent asset documentation

31 March 2018

PPF levy deadline for submission of scheme returns, contingent asset certificates, ABC certificates, mortgage exclusion certificates and supporting evidence, accounting standard change certificates and special category employer certificates

5 April 2018

Deadline for passing trustee resolution to remove protected rights provisions from scheme rules

6 April 2018

- Automatic enrolment - 2% employer contributions required for DC schemes
- Lifetime allowance increases from £1m to £1.03m
- Introduction of new valuation requirements for transfers/conversions of safeguarded benefits and new risk warning requirements for transfers/conversions and lump sum payments of safeguarded-flexible benefits
- New costs and charges disclosure requirements for DC schemes expected to come into force
- New rules on DC bulk transfers without consent expected to come into force
- Changes to rules governing transfers of contracted-out rights to schemes that have never been contracted-out expected to come into force
- New HMRC powers to de-register master trusts and schemes with dormant sponsoring employers expected to come into force
- Scottish rate of income tax comes into force

30 April 2018

PPF levy deadline for submission of deficit reduction contribution certificates and exempt transfer applications

25 May 2018

EU General Data Protection Regulation comes into effect

29 June 2018

PPF levy deadline for submission of full block transfer certificates

6 July 2018

Annual allowance deadline for employers to provide schemes with information to calculate pension input amounts incurred by members in pension input periods ending in the 2017/18 tax year

31 July 2018

Annual allowance deadline for member requests for "scheme pays" (2016/17 tax year)

1 October 2018

Roll-out of new authorisation and supervision framework for master trusts expected to start

6 October 2018

Annual allowance deadline for schemes to provide members with pension savings statements for the 2017/18 tax year

31 December 2018

Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2016/17 tax year)

Key:

- Important dates to note
- For information

About Mayer Brown

Mayer Brown is a global legal services organization advising clients across the Americas, Asia, Europe and the Middle East. 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, CAC 40, DAX, Hang Seng and Nikkei index companies and more than half of the world's largest banks. We provide legal services in areas such as banking and finance; corporate and securities; litigation and dispute resolution; antitrust and competition; US Supreme Court and appellate matters; employment and benefits; environmental; financial services regulatory and enforcement; government and global trade; intellectual property; real estate; tax; restructuring, bankruptcy and insolvency; and wealth management.

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