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February 2019

The Pensions Brief

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Issues affecting all schemes

Life assurance arrangements and QROPS – employer premiums/contributions

Legislation will come into force on 6 April 2019 that changes the tax treatment of premiums paid by employers to standalone life assurance arrangements and employer contributions to qualifying recognised overseas pension schemes (QROPS) so that premiums/contributions will be tax-exempt if the beneficiary is an individual or a registered charity.

Action

Employers who offer a life assurance arrangement and/or pay contributions to QROPS should consider whether the tax treatment of the premiums/contributions will be affected.

Investment consultancy and fiduciary management – CMA remedies order

The Competition and Markets Authority (CMA) is consulting on a draft order implementing the remedies that it has decided to impose following its review of the investment consultancy and fiduciary management markets. Under the draft order, trustees would be:

- prohibited from receiving fiduciary management services in certain circumstances unless they have carried out a competitive tender process;
- prohibited from receiving investment consultancy services unless they have set strategic objectives for the investment consultant; and
- required to submit annual statements with an accompanying certificate to the CMA on their compliance with these requirements.

The requirements will come into force six months after the order is made. The draft order envisages that the requirements will fall away once equivalent requirements are brought into force by the Pensions Regulator. The CMA has also published an accompanying draft explanatory note. The consultation closes on 13 March 2019.

Action

Trustees should keep the progress of implementation of the CMA's remedies under review.

Brexit – changes to pensions legislation

The regulations making changes to pensions legislation to reflect Brexit have now been made. The main changes made are to:

- adjust references to the UK as an EU/EEA state where a distinction is being drawn between EU/EEA states and other overseas countries; and
- repeal the cross-border pensions regime.

The regulations will come into force on the date of Brexit.

Action

No action required.

Issues affecting DB schemes

2019/20 Pension Protection Fund levy – deadlines approaching

The deadlines for the 2019/20 PPF levy are as follows:

- 31 March 2019 (midnight) – online submission of scheme returns, contingent asset certificates, asset-backed contribution certificates, mortgage exclusion certificates and supporting evidence, accounting standard change certificates, and special category employer certificates.
- 1 April 2019 (5pm) – submission of hard copy contingent asset documents.
- 30 April 2019 (5pm) – submission of deficit reduction certificates and exempt transfer applications.
- 28 June 2019 (5pm) – submission of full block transfer certificates.

Schemes with a Type A (group company guarantee) or Type B (charge over shares, UK real estate or securities) contingent asset may need to re-execute that contingent asset in order to certify it for the 2019/20 levy. For more information, please see our legal update.

Action

If they have not done so already, trustees and employers with existing Type A and Type B contingent assets should confirm whether they are subject to the re-execution requirement.

Action

Trustees and employers should ensure that any required information and documents are submitted by the relevant deadline.

Protecting DB pensions – new Pensions Regulator powers

The government has responded to its consultation on proposed new Pensions Regulator powers. The response confirms that:

- A range of new Regulator powers will be introduced, including creation of a new offence of "wilful or reckless behaviour in relation to a pension scheme" which will be punishable by up to seven years' imprisonment, unlimited fines, and/or a civil penalty of up to £1 million.
- Changes will be made to the list of employer-related notifiable events.
- Parties planning particular types of corporate transactions affecting a scheme employer will be required to send a "declaration of intent" to the trustees and the Regulator.
- Changes will be made to the anti-avoidance regime, including replacing financial support directions with financial support notices under which the financial support to be provided must be cash and/or joint and several liability of the targets for the employer's liabilities to the scheme.
- A new sanction of a civil penalty of up to £1 million will be introduced for breaches of certain statutory duties, including failure to comply with a contribution notice, failure to comply with a financial support notice, and failure to comply with the notifiable events regime.

The government plans to consult on regulations making some of the changes, and will lay legislation "when Parliamentary time allows". For more information, please see our legal update.

Action

Trustees and employers should keep the progress of implementation of the government's proposals under review.

Derivatives – EMIR clearing exemption

The UK government has published guidance on the exemption for pension scheme arrangements (PSAs) from the clearing obligation under the European Markets Infrastructure Regulation (EMIR) post-Brexit. This confirms that the government intends to introduce legislative amendments to incorporate the temporary exemption for PSAs that will be introduced under a forthcoming EU regulation so that the exemption will apply to both UK and EEA PSAs post-Brexit.

Action

No action required.

Issues affecting DC schemes

DC investment – illiquid investments

The government is consulting on proposals to encourage DC schemes (including DB schemes that provide DC benefits other than AVCs) to invest in illiquid investments. The proposals include:

- requiring larger schemes to report on their policy and current practice on illiquid investments;
- requiring smaller schemes to assess every three years whether they should consolidate into a larger scheme; and
- changing how schemes calculate charges in order to accommodate performance fees.

The consultation closes on 1 April 2019.

Action

Trustees should keep the progress of the consultation under review.

Winding-up a DC scheme – guidance

The Pensions Regulator has published detailed guidance for trustees on winding up a DC scheme. The guidance covers:

- deciding whether the scheme should be wound up;
- preparing for and entering the formal winding-up of the scheme;
- securing members' benefits; and
- completing the winding-up process.

Action

No action required, but trustees may find the guidance useful when considering a scheme winding-up.

Mayer Brown news

Upcoming events

All events take place at our offices at 201 Bishopsgate, London EC2M 3AF.

- Trustee Foundation Course

  21 May 2019
  17 September 2019
  10 December 2019

- Trustee Building Blocks Classes

  18 June 2019 – DC governance
  12 November 2019 – DB funding and investment

- Annual Pensions Conference

  2 October 2019

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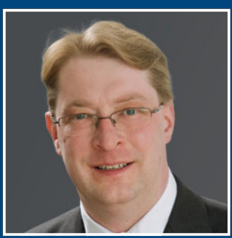
Mayer Brown media comment

- Stephen Walsh will be speaking at the 17th Conference on Bulk Annuities which is being held in London on 9-10 April 2019.

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

For more information about the Pensions Group, please contact:



Ian Wright

Co-Head of Pensions, London
E: iwright@mayerbrown.com
T: +44 20 3130 3417

Jay Doraisamy

Co-Head of Pensions, London
E: jdoraisamy@mayerbrown.com
T: +44 20 3130 3031

Dates to note over the next 12 months

29 March 2019

UK expected to leave the EU

31 March 2019

- Expiry of VAT exemption for pension fund management services provided by insurers
- Deadline for master trusts in existence on 1 October 2018 to either apply for authorisation from the Pensions Regulator or wind up
- 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

1 April 2019

PPF levy deadline for submission of hard copy contingent asset documentation

5 April 2019

Expiry of automatic enrolment quality requirement transitional easement for formerly contracted-out DB qualifying schemes

6 April 2019

- Automatic enrolment – 3% employer contribution and 8% total contribution required for DC schemes
- New pooled fund disclosure requirements for DC schemes come into force
- Lifetime allowance increases to £1.055 million

30 April 2019

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

28 June 2019

PPF levy deadline for submission of full block transfer certificates

6 July 2019

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 2018/19 tax year

31 July 2019

Annual allowance deadline for member requests for "scheme pays" (2017/18 tax year)

1 October 2019

- Removal of the actuarial certification option for DC bulk transfers without consent
- New requirements on the content of SIPs and the annual report and on disclosure come into force

6 October 2019

Annual allowance deadline for schemes to provide members with pension savings statements for the 2018/19 tax year

31 December 2019

Annual allowance deadline for schemes to include details of tax due under "scheme pays" in scheme's AFT return (2017/18 tax year)

14 February 2020

Annual allowance deadline for schemes to pay tax due under "scheme pays" (2017/18 tax year)

Key:

- Important dates to note
- For information

Mayer Brown is a distinctively global law firm, uniquely positioned to advise the world's leading companies and financial institutions on their most complex deals and disputes. With extensive reach across four continents, we are the only integrated law firm in the world with approximately 200 lawyers in each of the world's three largest financial centers—New York, London and Hong Kong—the backbone of the global economy. We have deep experience in high-stakes litigation and complex transactions across industry sectors, including our signature strength, the global financial services industry. Our diverse teams of lawyers are recognized by our clients as strategic partners with deep commercial instincts and a commitment to creatively anticipating their needs and delivering excellence in everything we do. Our "one-firm" culture—seamless and integrated across all practices and regions—ensures that our clients receive the best of our knowledge and experience.

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