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HM Revenue & Customs

15 March 2022

By email to pensions.policy@hmrc.gov.uk

Dear policy team

Pension Scheme Pays reporting: information and notice deadlines

I am writing on behalf of the Association of Consulting Actuaries (ACA) to provide comments on the draft regulations published on 18 February 2022 https://www.gov.uk/government/consultations/draft-legislation-the-registered-pension-schemes-miscellaneous-amendments-regulations-2022, which work alongside and help trigger some of the recent changes by Finance Act 2022 to Finance Act 2004 (FA04) modifying the mandatory Scheme Pays (MSP) information and notice deadlines.

The ACA welcomes the opportunity to provide input, and we set out in the Appendix comments on the draft regulations and areas where we believe further guidance is required (some of which areas we raised originally in comments we made on the Bill).

Members of the ACA are all qualified actuaries – mainly Fellows of the Institute and Faculty of Actuaries. All actuarial advice given by our members is subject to the Actuaries' Code. Members provide advice to thousands of employers and pension schemes – with total assets exceeding £1 trillion – including most of the country's largest schemes – and increasingly consulting actuaries are now involved in a wide range of additional areas.

We are therefore responding in the capacity of a representative body for professional advisors who provide advice to occupational pension schemes, including the experience we have from some of our member firms providing administration services to such schemes (particularly private sector).

We would be happy to discuss this matter further. Please contact me on 020 7432 6621 or karen.goldschmidt@lcp.uk.com, . or Jillian Pegrum on 01252 768175 or jillian.pegrum@aon.com

Yours sincerely

Karen Goldschmidt FIA, Chair of the Pensions Taxation Committee
On behalf of the Association of Consulting Actuaries Limited

Appendix

We note that the regulations should be read in the context of their relevance for recent changes to Finance Act 2004 created by Finance Act 2022, in particular the following clauses:

> **237BA Time limit for notices under section 237B**
>
> (1) This section specifies the time limit for an individual to give a notice under section 237B(3) in relation to a pension scheme for a tax year (see section 237B(5)(a)).
>
> (2) Except where subsection (5) applies, the individual must give the notice not later than 31 July in the year following the year in which the tax year ends.
>
> (3) Subsection (5) [extended deadlines] applies where—
>
>> (a) at a relevant time, the scheme administrator gives the individual information about a change to the pension scheme input amount in relation to the pension scheme for the tax year,
>>
>> (b) the scheme administrator is required to give the individual the information by regulations under section 251, and
>>
>> (c) section 237B applies to the individual, in relation to the pension scheme and the tax year, as a result of that change.
>
> (4) In subsection (3), "relevant time" means a time falling—
>
>> (a) on or after 2 May in the year following that in which the tax year in question ends, and
>>
>> (b) before the end of the period of 6 years beginning with the end of the tax year in question.
>
> **..254 Accounting for tax by scheme administrators**
>
>> (7A) Where a scheme administrator is liable under section 237B in respect of the annual allowance charge for a tax year, for the purposes of subsection (2) the tax is to be taken to be charged on the scheme administrator in the later of—
>>
>> (a) the period ending with 31 December in the year following that in which that tax year ended, and
>>
>> (b) the period following the period in which the scheme administrator receives the notice which gives rise to the liability,
>
> subject to subsections (7AA) and (7B).
>
> (7AA) The tax described in subsection (7A) is to be taken for the purposes of subsection (2) to be charged in an earlier period if the scheme administrator makes an election to that effect in the return for the earlier period.
>
> (7B) if the notice which gave rise to the liability is amended in accordance with regulations under section 237B(5)(c), any additional tax to which the scheme administrator becomes liable is to be taken for the purposes of subsection (2) to be charged in the later of the period in which it is taken to be charged by virtue of subsection (7A) or (7AA) and the period in which the scheme administrator receives notice of the amendment.

Comments on the draft changes to regulations

1) Triggering the new provisions in the Act

Our key query relates to what events in the regulations trigger the provisions of 237BA (3)(b), which allows the extended deadlines for notices (and hence deadlines for payment) to apply. Our reading is that this centres on the newly-proposed paragraph 15B in the Provision of Information Regulations.

Setting aside the case where a member did not previously make a (valid) election for MSP and has missed the (standard) deadline for making such an election), does this mean that the extended deadlines only apply where the employer/responsible party provided new information to the scheme? What happens:

- if the scheme had the correct information but made an error in calculating PIA, and now provides an (upward) correction?

- If there is a revised reading of the benefits and/ or calculations for the scheme, with retrospective effect, because of the interpretation of the scheme rules – possibly in relation to reading through overriding legislation or because of a court case (other than in relation to GMP equalisation – see later) – and this leads to an upward correction of PIA?
- If information has come from another source such as HMRC in the case of GMP rectification?

If these scenarios are already covered (and therefore have extended scope for MSP) either under the existing regulations or by the proposed new change, then it would very useful if this could be made clear in guidance. If they are not covered, then we would hope for a change to the regulations to cover them.

(We also note that it is not always clear whether information has come from the employer or trustees. We are not in a position to comment on whether the provisions as drafted pick up the actions envisaged in the solution to the McCloud case.)

With regard to GMP equalisation: HMRC has very helpfully clarified in [Guaranteed Minimum Pension (GMP) equalisation newsletter - February 2020 - GOV.UK (www.gov.uk)] that

> *" there is no need to revisit pension input amount calculations done in the past, for changes to implement GMP equalisation. Calculations for the pension input amount in the tax year of implementing GMP equalisation and tax years thereafter will need to take into account the revised amount of the benefit entitlement in both the opening and closing benefit calculations"]".*

This overall position is important and we would not want this to change, particularly as many schemes are yet to complete implementation GMP equalisation and we already expect equalisation will be a complex process for schemes.

We would also like clarification of s237BA 3(c). We read the "S237B applies … as a result of the change" to mean that the situation satisfies S237B 1(a) and S237B 1(b) using the changed PIA information. This is the basis for our comments on the regulations. We assume that it does not mean "ONLY as a result of the change", ie it does not exclude cases where the member had the right to scheme pays before but did not use it (for example because the member chose to meet the tax as it appeared to be at the time.]

2) Proposed new para (9) to regulation 3 (Provision of information by scheme administrator to the Commissioners)

This states *"(9) An event report in respect of reportable event 22 when the pension savings statement was issued following additional information being provided to the scheme administrator under regulation 15B must be delivered within 3 months of the date of issue.".*

There would be a practical problem here, we suggest that

> "within 3 months of the date of issue"

is replaced by

> "by the later of 3 months after the statement is issued or if later, 31 January in the tax year following that in which the pension savings statement was **originally** issued to the member (or would have been issued) pursuant to regulation 14A(1) .)"

Or indeed, treat the revised PSS as a reportable event in the tax year it is issued and which is reported in the usual timescales (no 3 month acceleration).

Comment: Although the scheme administrator will commonly provide a PSS to a member in relation to the immediately prior tax year (ie to meet the legislative deadline of 6 October in that subsequent tax year) the administrator's duty to report the PSS under event 22 relates to the tax year in which the PSS is actually given to the member. (PTM161600 confirms 'The Event Report is, therefore, likely to be for a later tax year than the tax year for which the pension savings statement relates.’). The legislative deadline for the event report is therefore 31 January in the tax year following that in which the PSS is provided. Our first suggested edit would be consistent with the approach for the deadline in inserted reg 6A for the administrator to provide an updated PSS.

3) Paras 4 and 5 – so the changes to regulation 14A, and the introduction of 14D

We read the new provisions in 14A as applying where the scheme PIA changes, following a 15B event, such that the new figure is above £40K (without regard to what the previously calculated PIA had been). We note the reference at the end to “irrespective of whether a pension savings statement has previously been provided for the relevant tax year”; we assume that this is clarification that the situation could arise where (based on the pre-change figure) the member had received a proactive statement as required under the original 14A, or had received a requested a statement under 14B; or indeed there had been delays such that an original PSS was due but had missed the deadline. We note that in these circumstances a PSS must be issued.

We read the new provision 14D to apply following a 15B event, where a PSS has been provided as part of a response to a statutory requirement (proactively because input was more than £40K, or on request), and a revised scheme PIA is identified which is less than £40K. We note that the revised information on the PIA must be provided (arguably not a full PSS.]

In both provisions it may be helpful to add to the legislation wording “as a result of this information” and “ in respect of the relevant pension input period”.]

4) Para 7 re The Registered Pension Schemes (Notice of Joint Liability for the Annual Allowance Charge) Regulations 2011

We note the change made to 4(2) of the 2011 Regulations. This relates to the present requirement that if the member is asking for an annual allowance charge of £2,000 or less to be paid using MSP for a tax year, the member must confirm that their overall liability to AA charge for the tax year exceeds £2,000. The proposed revision would mean the member no longer has to make this confirmation if the member who has made an MSP election is making a revision to their previous MSP election.

We query how this fits with Finance Act provision 237B and in particular the operation of 1(a). This requires, that for MSP to be available at all, the member’s overall charge due must exceed £2,000 (and we assume that this applies cumulatively for the total AA charge for the tax year concerned allowing for the latest correct information). So for example if initially the charge was thought to be £1,000 (so no access to MSP) but a change in information results in identifying additional £1,500, we assume that the member has access to use MSP for some or all (if within appropriate deadlines) because the total charge due for the tax year is £2,500.

Conversely, if initially the charge was thought to be £2,500 but following the change is found to be £1,000, then MSP would not seem to have applied, although it was used originally in good faith.

Our query is whether the change to 4(2) does more than change a disclosure requirement. Does it actually overwrite the requirement in FA04 237B 1(a)?

- If it is just a disclosure requirement (necessary because a scheme cannot determine a member’s total AA charge because some may have arisen from PIAs in another scheme, but the scheme needs to satisfy itself that the member is eligible to use MSP), then we would prefer the regulation not to be amended; even if the statement has already been made in the MSP election, it is helpful to have it reconfirmed as still valid.

- If it overwrites the original requirement in FA04 237B 1(a) then that needs clarification and we would have further comment. (Where the charge has dropped to below £2,000, we can see that it is sensible to allow an appropriate portion of the original MSP to stay in place as MSP despite part of 1(a) no longer applying, but there could be other complications.)

Comments we made to the Bill which still pertain

1) Individuals who have started receiving their pension benefits do not benefit from the extension to the Scheme Pays deadlines – or has reached age 75 with uncrystallised benefits.

If an individual wishes to use mandatory Scheme Pays then they must notify the scheme administrator before becoming entitled to their benefits.

In the example of an individual retiring and then being subject to a (qualifying) retrospective change of facts causing them to have an AA charge for an earlier tax year (when there had previously been no AA charge for that year), then as the legislation stands, solely for the reason of having become entitled to benefits, the individual would not be able to use mandatory Scheme Pays.

This situation could arise often in practice, especially given the new measure can be used up to six years after the relevant tax year. We note that voluntary Scheme Pays could be used in these circumstances, although not all pension schemes would allow this; and if used now in respect of the retrospective change, it will count as late payment of tax in relation to the relevant tax year.

A similar cut off arises if the individual has reached age 75 with uncrystallised benefits.

2) Implications for voluntary Scheme Pays

We note that the measure does not apply to individuals who are not eligible to use mandatory Scheme Pays for any or all of their charge and who therefore have to rely (partially or wholly) on voluntary Scheme Pays. This will cover a significant number of individuals including those who have (or had) a tapered Annual Allowance or who have Pension Input Amount across more than one scheme.

The effective deadline for submitting a voluntary Scheme Pays election is 31 January after the end of the relevant tax year, coinciding with the self-assessment tax return form deadline. This is because late notifications can attract interest or penalties.

Action: for both (1) and (2) above we would ask HMRC to consider waiving interest and penalties where a voluntary Scheme Pays election is made "late" due to a retrospective change of facts.

Additional guidance for members

Whilst this is outside of the scope of the legislation we are commenting on, we note that individuals may require additional guidance related to these changes. In particular, relating to any retrospective changes that they need to make to their self-assessment tax return.

In forming our response to this consultation, we note the comment we made in our response to a consultation on the McCloud provisions, which sets out our understanding of the tax reporting requirements generally, as context for the above comments:

> *"We would also request clarification of what is referred to as the nature of the "usual 4-year statutory time limit" so that the situation is clearer for those outside the consultation target members. We understand that both HMRC and the taxpayer can amend a return at any time up to four years after the end of the year of assessment to which it relates, to correct for any further or better information that comes to light or to correct any misstatement of tax due. Beyond that time limit, HMRC may seek to amend a return for up to six years where there has been a loss of tax through carelessness by the person being assessed, and up to twenty years where the loss was brought about deliberately by the person. We interpret the guidance's reference to be to a statement / easement, that in this case only, and not for other situations, not only do they expect members not to report "new" tax charges from before 4 years, but they will specifically classify such omission to report as not being a careless, let alone a deliberate omission. While they may take this view in other cases, the guidance is not a statement of blanket reassurance."*

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