...in this world nothing can be said to be certain, except death and taxes... (...and changes to the taxation regime!)

1 The Lifetime Allowance (LTA)

The LTA was introduced in April 2006. It limits the amount that an individual can draw from a registered pension scheme without triggering any extra tax charges. When launched, the LTA was set at £1.5m and gradually increased to £1.8m in 2010. The tables were then turned and the LTA decreased over subsequent years to an all-time low of £1m in April 2016.

2 Why does this matter?

When an employee dies, any registered lump sum death in service benefits which are payable in respect of him are added to his pension benefits. The resulting amount is then compared against the LTA. If benefits have not been protected – and there are complicated provisions dealing with a whole raft of individual protections – and they amount to more than the member's available LTA, those benefits are currently taxed (at 55% if taken as a lump sum; at 25% if taken as income i.e. a pension). Trustees would pay the beneficiaries without any tax deducted so any tax liability will fall to the beneficiaries.

With the reduction in the LTA, employers are increasingly noticing that more employees are being impacted by the tax charge when their pension benefits and potential life assurance benefits are calculated together.

Relevant Life Policies (which cover one individual) and Excepted Group Life Policies (**EGLPs**) (which cover a number of individuals) are increasingly being looked at as a means of mitigating the potential charge to tax which might arise where benefits exceed the LTA.

3 Why EGLPs?

EGLPs fall outside the registered pension scheme regime and so any lump sum benefit paid will not count towards an individual's LTA. In addition, EGLPs are, broadly speaking, as tax efficient as conventional life assurance arrangements.

4 What conditions apply to EGLPs?

There are a number of conditions which apply to EGLPs:

4.1 Individuals cannot be insured under the policy beyond age 75;

4.2 The same benefit formula must be used for calculating the benefits payable on each member's death;

4.3 The policy cannot have a surrender value.

4.4 The benefits which are paid out can only be as a lump sum on death;

4.5 Benefits payable under EGLPs must be paid either to an individual beneficially entitled to them or to a trustee for payment to individuals;

4.6 Lump sum benefits are not payable to any employee also covered under the same EGLP (unless a person is a "financial dependent") so, for example, benefits could not be paid to partners of the same partnership; and

4.7 Tax avoidance cannot be the main purpose, or one of the main purposes for having an EGLP. This last condition is the one which, generally speaking, causes the most consternation.

5 Is there anything else to think about?

EGLPs should be established under a discretionary trust to ensure that benefits do not form part of a deceased member's estate for Inheritance Tax (**IHT**) purposes. However, this may not completely avoid IHT charges arising. It is possible for an IHT charge to apply:

5.1 On each tenth anniversary of the creation of the trust (the *periodic charge* or *ten year anniversary charge*), where the property of the trust has a value i.e. money held in the trust at that time could be taxed. The charge would be between 1% and 6% of the value of the benefits held in the trust at that time; and

5.2 Where a lump sum is paid out of the trust following the death of a member where the property of the trust is deemed to have a value (either when the trust is created or on each tenth anniversary of its creation). The charge would, again, be between 1% and 6% of the value of the benefits paid.

Trusts holding EGLPs should therefore be structured in a way which reduces the likelihood of these charges arising. Standard/off-the-shelf documentation may not always properly achieve this.

Because trusts are generally used as the vehicle to house EGLPs, it is important not simply to adopt a "set and forget" approach to their use. The documentation should be kept under regular review and, where appropriate (particularly in light of the possible tax charges), replaced with a new trust.

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