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HM Treasury
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Sent by email to pensionstaxconsultation@hmtreasury.gsi.gov.uk

Dear Sirs

**HMRC/HM Treasury Consultation – Implementing the restriction of pensions tax relief
Income measure: redundancy and termination**

I am writing on behalf of the Association of Consulting Actuaries (ACA) to respond to the HMRC/HMT Consultation on implementing the restriction of pensions tax relief. Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members are all qualified actuaries and are subject to a code of professional conduct of the Faculty and the Institute of Actuaries. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of defined benefit pension schemes. The ACA is the representative body for consulting actuaries, whilst the Faculty and Institute of Actuaries are the professional bodies.

This letter has been seen by the following bodies in the Joint Working Group who have confirmed their endorsement of the opinions we give here (which they will no doubt reconfirm separately – and potentially expand on- by letter to you):

Society of Pensions Consultants, Association of Pensions Lawyers, National Association of Pension Funds, Association of British Insurers.

The ACA is currently considering all the questions posed in this consultation. This letter deals with one particular aspect, question A5, which - assuming the overall proposals go ahead as envisaged - we consider to require urgent attention, in view of the potential for consequences well beyond any reasonable intention.

Question 5 :HMT is “*minded ... to exempt the first £30,000 of a redundancy payment (and other termination payments) from income*” in measuring whether an individual is a high earner for the year. “*The Government is willing to consider further, targeted, options for mitigating the impact of the restriction on those affected by redundancy that do not open up opportunities for abuse.*”

In the Appendix to this letter, we set out examples to illustrate why mitigation of the effect of the proposed restriction is so important. The examples illustrate that:

1. the new tax charge would hit individuals whose underlying income is relatively low compared to the income threshold at which the charge is targeted;
2. it would impact on such individuals at the difficult time when they are facing the potential long term consequences of job loss;
3. it could compromise pension savings made by the individual when he or she had no way of knowing this tax charge would arise; and
4. it could operate in an arbitrary way depending on the time of the redundancy.

In all of this it is important to think of genuine redundancy payments as compensation to help tide individuals over a period of unemployment. Some will manage to get a new job quickly, but realistically these are unlikely to be the norm: it is unreasonable that the perceived windfall of redundancy pay for the lucky few should drive your policy as it applies to the contingency reserve for the many.

With this background, we strongly suggest that it is **highly appropriate to mitigate the impact of the pension proposals by excluding the whole of any genuine redundancy payment from the income test**, at least for individuals whose annual income from employment with the employer in the previous three tax years has never exceeded £130,000. The reference to a genuine redundancy payment would restrict opportunities for abuse, but with the suggested limitation on income we consider **that the principle could reasonably be extended to any termination payment**.

Such provision avoids unfair impact of the Government's headline policy.

We will respond to the other questions raised in the consultation in due course, but in the meantime we await your urgent comments on the points raised above.

Yours faithfully

Karen Goldschmidt

*Chairman of the Pensions Taxation Committee of
the Association of Consulting Actuaries*

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1. Examples of the unfairness and anomalies of counting redundancy payment toward the £130,000 threshold:

1.1. John has sole income in the tax year to 5th April of a salary £80,000 pa.

He was a member of a final salary scheme with an accrual scale 1/60ths (or equivalently 1/80th pension and 3/80ths lump sum).

This might mean that he earns pension over a year, which, after allowing for revaluation offsets, is £1,000 pa. The new tax law might value this at £20,000. **In the normal course of events of continuing service, such pension would not attract the new charge because the individual would clearly not be “high income”.**

1.2. Suppose John is made redundant and given 17 months’ redundancy pay, say £110,000 of which £80,000 is taxable. Suppose John is out of work for the year following redundancy (ie as intended, the redundancy pay does tide him over a significant period of unemployment):

If made redundant on (at the extreme) 5th April, John’s taxable income for the tax year to date (“relevant income”) rises from £80,000 to £160,000. So if taxable redundancy pay is included in the threshold tests, John breaches the threshold of £130,000. His position on the taper relief relates to “gross income” of £180,000 (£160,000 + £20,000).

Solely by virtue of the (unexpected) redundancy John will suffer a charge of £6,000 in respect of the pension he accrued normally in the year (as well as all the other tax attaching to the redundancy payment).

1.3. In this particular case, if he arranges matters so that the redundancy payment arises on 6th April next, his taxable income in the year of accruing pension will fall out of his year of being “high income”. There will be a range of results depending where in the tax year the redundancy falls.

1.4. The tax anomaly would clearly be worse with a bigger redundancy payment (for example reflecting longer service) or with a higher base income.

A tax bill of near £5,000 would arise in a similar way for as low a salary as £60,000 pa for a payment reflecting 30 months’ pay.

2. Why has this not mattered too much in the anti-forestalling current regime?

Many industry bodies requested that redundancy be taken out of “relevant income” in the context of anti-forestalling. Government refused in that context, we understand on the basis that if an individual did fall into the “high income” definition in this way but was genuinely otherwise normally a relatively “low” income individual, they were unlikely to suffer any SAA charge because their pension savings in the tax year would probably be well below the £20,000 temporary allowance (and indeed because the Special Annual Allowance might be a non-issue anyway if they had simply continued with regular savings). An issue would arise under the anti-forestalling provisions only if they (knowingly) chose to use redundancy pay for a special pension contribution.

If redundancy continues to be included in relevant income, the position post 2011 will not be justifiable on any of these grounds. Once an individual is deemed “high income”, all pensions savings in the same tax year will be subject to the relief restriction - operated by charging extra tax. There will be no allowance for the first £20,000 of pension saving nor for regular pension saving.