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Options to meet high annual allowance charges from pension benefits: a discussion document November 2010

I am responding on behalf of the ACA to the invitation to make representations about the proposed options for members to meet high annual allowance ("AA") charges from pension benefits, so-called "Scheme Pays".

Members of the ACA provide advice to thousands of trustees and sponsoring employers of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and all actuarial advice given by members is subject to the Actuaries' Code. 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 Institute and Faculty of Actuaries is the professional body.

Appendix 1 sets out some key drivers that we have considered in forming our response. Appendix 2 sets out our resulting detailed responses to the questions posed.

We look forward to the Government's decisions in this area as soon as possible, and draft legislation released in February as indicated. The treatment of tax charges is a key part of an individual's decision whether to continue making pension savings in the new Annual Allowance regime; and in some cases immediate action is needed to mitigate the impact.

Overall, the length of our response demonstrates the very thorny issues arising from this element of the policy, many of which will emerge fully only as the cases arise.

Yours faithfully

Karen Goldschmidt
Chair of the Pensions Taxation Committee,
Association of Consulting Actuaries

Appendix 1 – Overall drivers in our response

Overview

The Government have identified that "Scheme Pays" is a crucial part of the tax regime - and we can understand its political necessity in a regime that taxes upfront a benefit that the member might not receive for many years.

In this context, there is only room to "tinker at the edges", and our response reflects this.

The requirement to operate Scheme Pays will place additional burdens on pension schemes, potentially at a disproportionate level for each member who investigates or takes advantage of the option. So our focus is to lighten the burden for schemes as much as possible within this context, bearing the following in mind.

A scheme should not have to take on its first case lightly

because there is a large initial fixed cost in setting up Scheme Pays for a scheme:

- devising the appropriate offset from benefits to recoup the tax - which involves advice tailored to the scheme's circumstances and benefit scales, and trustee/employer decisions
- setting up the appropriate offer material
- setting up an administration process for running a scheme offset; and
- ensuring appropriate amendment to any benefit communications for the individual to take account of the benefit adjustment.

It seems unlikely that even just the first two steps for even the simplest case will cost a scheme less than £10,000 in professional costs and management time.

A scheme should not have to implement Scheme Pays for a small amount of tax

because, as well as the initial fixed cost, there will be a substantial cost in relation to each case arising – the initial offer stage; and if accepted, the implications for ongoing administration. For most schemes, this will involve manual systems, and calculations done and reviewed by senior staff, each time calculations arise.

Tax neutrality is key

Scheme Pays should deal only with helping cash flow. As much as possible it should not create a difference in the member's overall financial position compared to the member meeting the charge from their own current resources.

Pay now not roll-forward

Finally we would note that our response is based on our view that the "roll forward" approach does not have merit, so all our answers are in the context of immediate payment of the tax. (See later for our reasons).

The Discussion Document indicates that the Government intends not to allow schemes to charge members the administration cost of dealing with Scheme Pays. This seems inappropriate and we comment on this area in Appendix 2. We note that a precedent for charging is set by charges being payable in relation to the workload imposed on schemes in relation to divorce.

Appendix 2 – detailed answers

Question 6 is: "To inform the overall approach, the Government would be interested to see evidence on the numbers and characteristics of employees or scheme members respondents have identified as potentially eligible to meet AA liabilities from pension benefits. (Paragraph 2.17)"

We address this question first to set a context to our response.

Amongst the range of clients that ACA members advise, many are still evaluating the issues and deciding on their policy. The number of individuals impacted by an actual AA charge, and therefore potentially calling on Scheme Pays, will largely depend on the extent to which the employers then decide to make scheme changes to "aim off" benefit accrual that would trigger AA. Cases that will trigger the charge include:

- High accrual schemes in which the employer offers no option to "aim-off" – instead simply telling members to opt-out (and accrue no further scheme benefit) if they do not want to incur the AA charge (this appears to be the stance that may be taken for some public sector schemes).
- Where the employer's approach to "aiming off" AA is offered as an option – which will be the majority of cases – and in particular if alternatives are of very different nature (potentially of less value) so not attractive to the members: members may opt to keep full pension accrual and to deal with the tax consequences;
- Schemes providing pensions on ill health (unreduced early retirement plus service credit) if the ill health is not of a nature that qualifies for the recently-announced exemption for "severe ill health".
- Generous redundancy pension terms (unreduced early retirement plus service credit) that cannot be aimed-off because of legal or union negotiated commitments – for example a number of "passport schemes have these.
- Cases involving actuarial late retirement actuarial uplifts (including some schemes where each members has tranches of benefit that effectively have different Normal Pension Ages - depending on the nature of the scheme rules and potentially interpretation of sex equality legislation).
- Individuals who change employments and so move between pension arrangements with different PIPs: this as a key area where AA charges might arise in relation to DC savings (as well as accidental cases of 13 month's saving counting for one PIP) – and only in some of these cases (where sufficient underpayment precedes an overpayment) will the member be able to call on carry-forward to mitigate the tax.

The number of cases is likely to be highest in early years – including where employers have had insufficient time to absorb the details of the new legislation, convert this into policy decisions and roll this out for member decisions. The number of cases will begin to tail away as employers have time to implement scheme changes; and as legacy DB cases retire. Balancing this to some extent will be the fact that the AA is fixed in amount. However, it will be the first case arising that causes the most difficulty for the Scheme.

Paragraph 4.3 of the Discussion Document makes asks: *"If you are willing and able to provide data on the impact of these proposals to enable individuals to pay significant AA tax charges from their pension benefits on your business, employees, scheme, or scheme members, please do so."* The cost to employers of these proposals will depend on the details of the final legislation and what schemes have to implement. So currently we are not in a position to provide costings (apart from the lower end guestimate for one aspect in Appendix 1), but we would expect it to be disproportionate to the tax involved.

Specific questions raised in the discussion document

1. The Government's current thinking is that it would be appropriate for individuals to pay the first £2,000 to £6,000 of any AA tax charge from their current income; and welcomes evidence to indicate an appropriate threshold figure. (Paragraph 2.9)

We agree that it is appropriate that members meet the first part of the AA charge:

- the cash flow issue for members (and their reaction to this) will be an important incentive for employers to "aim off" the charge.
- It also gives a first resort if corrections arise to a member's tax position

Our view is that the threshold should be set high – and if structured as currently described, we would suggest £10,000 rather than £6,000 to maximise this effect.

A £10,000 tax trigger point means (ignoring carry-forward) no Scheme Pays unless there has been Pension Input Amount of more than £70,000 (ie an excess of £20,000 with tax rate 50%), equivalent to a real increase in DB pension of £4,375pa.

Given the carry-forward facility and the nature of DB valuation, in general it will be high paid individuals who trigger the AA charge. So these will be individuals who can meet this level of charge reasonably easily, or else can use the Government's "time to pay" facility already in place (we note that Government have decided not to offer a specific facility to spread the AA charge over three years.).

Our concern is that the proposed structure means that , if the AA charge exceeds the threshold (whatever level set) by only a small amount, a scheme cannot rely on a member deciding to meet that small excess – so may have to offer Scheme Pays for small amounts of money. .We suggest an adjusted approach, which could then accommodate a lower threshold than our proposed £10,000.

A £6,000 "boundary mark" and an £8,000 "trigger point" such that

- if an individual's AA charge is less than £8,000, they meet it all
- if it is more than £8,000, then they can use Scheme Pays to pay the excess tax over £6,000 (with the first £6,000 paid directly by the individual).

This means that Scheme Pays is never triggered for less than £2,000.

It does create a "sudden death" point for the member: if their charge is £8,001 they have to meet only £6,000 direct; but if it is £7,999 they must meet it all. But they have the certainty of a maximum charge of £8,000 to meet directly.

For lower paid individuals, the nature of the cases triggering the charge will often be such that the charge is of very substantial amounts so is likely to exceed any threshold set – and our "boundary + trigger" approach aids such members.

There should be an automatic mechanism to increase the maximum threshold with time, so that more cases are not drawn into Scheme Pays over time. (This is already a danger, as the AA is fixed for at least five years.)

It may be that some employers are prepared to have their scheme offer Scheme Pays for a lower threshold. Would this be acceptable or would it complicate the tax processing too much for HMRC? (A minimum could be set by HMRC sufficiently high to still allow future corrections to a member's tax position.) This could be particularly important in the first one or two years of the regime, given that many employers currently need time to formulate their policy in response to the legislation as it emerges: so may have a high number of members continuing to accrue on existing DB scales and triggering large AA charges.

2. The Government welcomes views and evidence on whether individuals in DC schemes would have need of and / or would make use of a facility to meet AA charges from pension benefits. Views are also sought on whether restricting access to members of DB schemes only creates significant material administrative or communication issues for schemes. (Paragraph 2.11);

The Government indicates that members are less likely to see charges on DC arrangements because the member has more control on contributions. That is true in broad terms – even in employer sponsored schemes, where employers will commonly offer a salary supplement instead of employer pension contribution.

The rare employer may offer no alternative to DC pension accrual; or offer life and risk cover only in connection with DC contribution rather than salary. So, one could argue for the need for Scheme Pays even where benefit accrual is solely DC. However in such cases one would hope that the amounts involved would not be of the material levels being discussed here.

More typically the charges might arise

- on unplanned overlapping of DC contribution on top of DB, especially from moving between arrangements with different PIPs and
- especially in the early days of the regime,
- or, from 13 contributions falling into one PIP.

Where the member has both DB and DC benefits with one employer – or in particular within one scheme – there is the broader question of whether Trustees should be allowed to frame their offering to a member for Scheme Pays based on cashing out the member's DC fund rather than by a reduction in the DB benefit (including the situation where the only current accrual has been DB, with the DC funds arising from contributions made in the past),

This is the closest parallel possible to members meeting the tax from their own resources (ie an approach that solely deals with the reason for Scheme Pays which is aiding cash flow and which does not introduce additional issues such as "actuarial averaging" between members. The administration cost involved for the scheme would be substantially smaller than an offset from DB. There would be some complexity at the point of implementation (timing, which funds) but this would be one-off, with no subsequent special adjustment to be dealt with. This is also the more natural route if the core benefit is not excessive, and it is only in combination with voluntary DC contributions that the excess arises

On the other hand, DC is in general given higher security in trusts than DB. Calling on this highest security asset might be seen as unfair- in particular where it represents a member's own voluntary additional savings –and especially if the member has been offered no alternative to the DB accrual that has led to the charge It also means a member who chose to make DC savings in the past is put in a very different position from one who did not.

We focussed on the use of DC assets for a member with both DB and DC in a scheme: but If Scheme Pays can be sourced from DC in some circumstances but not others (eg from trusts but not contract-based arrangements), individuals will be very confused.

Overall applying Scheme Pays requirements equally to DB and DC arrangements will make matters simpler and easier for members, trustees and employers to understand and communicate.

3. The Government welcomes views on whether there are other exceptional circumstances in which it is appropriate to exempt certain schemes from facilitating payment of AA tax charges, including whether this would differ under the broad options. (Paragraph 2.13);

Where a scheme has implemented a design of benefits that in isolation would never cause an AA excess (ie has "aimed-off" as is the Government's intent), it seems inappropriate that it should have to deal with the administration of Scheme Pays. (This applies equally if the aiming-off applies to a specific set of members.)

(If such a scheme cannot have an exemption, then there is an extremely strong argument for the scheme to be able to charge for the administration of Scheme Pays.)

We note that the Consultation Document already proposed *"The Government will consider with the Pension Protection Fund whether it is appropriate to make specific provision for members of schemes that enter the assessment period".* Our view is in such a period and on into entry or wind-up, it would be inappropriate to apply AA charge at all to an individual who ultimately has his or her benefits cut back.

4. The Government welcomes views on its proposed approach to multiple pension-holders. That is, that individuals are allowed to elect for a single scheme – in which they are an active member – to meet the AA charges each year; and that where the AA has been exceeded outright in a single scheme in a given year, that is the only scheme that can be elected to meet the liability from their pension benefits. (Paragraphs 2.14 and 2.15);

and

5. The Government welcomes views on whether it would adversely affect schemes, administratively or otherwise, to meet a charge that did not arise exclusively in that scheme. (Paragraph 2.16);

The cases considered here can be described as (in the context of members meeting the first £10K of tax as per our suggestion above):

- the "40K+40K" case
  (ie two scheme each separately using up £40,000 of AA – broadly meaning their PIA for the tax year but should probably take into account carry-forward),
- the "80K+20K" case and
- the "80K+80K" case.

These representing the cases where in total there is a large AA change, but, respectively

- neither scheme involved expected to have to offer Scheme Pays;

- one scheme expected to offer Scheme Pays; and
- two schemes each expected to offer Scheme Pays.

Multiple schemes could be:

- Multiple DB schemes – relatively rarely - bulk transfer exercises or top-up schemes (although we note that many doctors work part-time in multiple jobs and so have multiple DB membership);
- DB and DC schemes - DB main scheme and DC AVCs (including the case where AVCs are paid early based on expected DB benefit, which then has an uplift from some major event such as redundancy or ill health); leaving an employer with a DB scheme and joining one with DC; with one employer but a DB scheme closing and a DC scheme replacing it for future service); or
- Most commonly multiple DC – we do not consider these further here.

The simplest and most robust approach might be to require Scheme Pays to be offered only under DB arrangements where the threshold is exceeded in that arrangement in isolation. The exceptions would be (i) where the member is transferred involuntarily from one scheme to another (in which case the schemes (or their employers) would need to agree which would offer scheme pays) or (ii) where both (DB) arrangements have the same employer (i.e. main scheme and top-up, where the employer would decide which would offer scheme pays). A problem with this is how to deal with carry forward - perhaps the member should be allowed to offset this against each input amount as he chose, thus maximising the scope for scheme pays, if desired?

If the intention is broader than that, the following are further thoughts:

Our view for the “40+40” individual is that Scheme Pays should not be available. As noted above, the key issue for a scheme is whether a Scheme Pays case arises: it would be entirely inappropriate for a scheme that has provided benefits with PIA well below the £50,000 to be obliged to offer Scheme Pays. (One might have more sympathy if all the arrangements involved relate to one scheme; or relate to one employer.)

Once Scheme Pays does arise for a scheme (ie the “80+20” case), one might argue that the quantum of tax involved is relatively second-order in terms of the onus of managing the charge. However, the position is geared. In this example, if the first scheme had to offer Scheme Pays for the total AA charge, the amount it would have to deal with would increase by £10,000 (50% x 20k) on top of the £5,000 that it might have expected (50% x (80K-50K) - 10K). The charge can become so large that the reduction to benefit exceeds a simple tranche of the benefit. Our view is that the scheme with the excess in isolation should not be mandated to assist in the member meeting the charge from the second scheme’s PIA - in other words its obligation is limited to what would arise had the other scheme’s PIA for the tax year not existed; but that offering to meet such obligation is left as an option for schemes– and a number may do so.

The “80+80” case is a very significant overrun in accrual and one would hope a rare eventuality. Offering the individual thee choice of one of the two schemes meeting the charge arising from both means (in our example) one scheme having to manage an additional £40,000 of tax (50% x 80K) on top of the £5,000 it expected . We would have great concerns about members “shopping around” to achieve the most beneficial reduction. We suggest that each scheme is again required only to meet the charge that would arise had the other scheme(s) accrual not existed: but acknowledge this leaves the member with a large sum to meet from his own resources.

If the above overall type of approach is not adopted, and if Government decides that a member of a DC scheme “cannot make use of “ Scheme Pays (see earlier question), proposals involving collating the total charge into one scheme would suggest significant transfer of AA charge arising “because” of DC, into additional “Scheme Pays” obligation in DB.

6. To inform the overall approach, the Government would be interested to see evidence on the numbers and characteristics of employees or scheme members respondents have identified as potentially eligible to meet AA liabilities from pension benefits. (Paragraph 2.17);

See the start of this section.

7. The Government welcomes views on whether respondents agree that it would be insufficient to report the value of the charge to be offset without explaining the corresponding effect on pension benefits to members; and whether the level of detail and precision required varies across the options. (Paragraph 3.13);

We have considered this question carefully.

One approach mooted for adjusting benefits so as to recoup the charge paid by the Trustees is to operate on a “negative money purchase” basis: that is

- rolling forward the tax paid by the Trustees at some pre-agreed benchmark of returns;
- and converting to benefits only at the point benefits are drawn taking into account the circumstances of the scheme and the nature of the benefits drawn – for example in the case of a transfer-out only a simple deduction is needed with no conversion to a pension amount required.

There is no doubt that this could substantially reduce the work for the scheme and the actuarial risk for the scheme (and implicitly the employer) otherwise involved in setting terms many years before the benefits come into payment.

However, this means the member cannot weigh up the relative merits in meeting the charge directly or taking up Scheme Pays, so cannot make a well-considered decision. And with the Government’s belief *“that ultimately all individuals should have ready access to easily understandable information on the current value of their pension, alongside other information about their overall financial position”* [from the consultation response document issued 14 October], we anticipate that eventually the Government will expect annual illustrations of the actual benefit deduction to which such a money purchase deduction might convert.

So overall we feel that the typical DB scheme will feel obliged to determine a “shadow pension offset” of pre determined form. For example it may be shaped like a deferred pension in the scheme (eg linked to inflation until due for “payment”). It will be important that the deduction is a shadow offset and not to count as an immediate reduction in accrued benefit – if the start point of future AA calculations were reduced, this would put a member using personal resources to meet the AA charge in a different net position to one using Scheme Pays.

It is very important to give schemes flexibility in determining the particular offset to suit its benefit scales and administration. We appreciate that, for Third Party Administrators, a uniform approach has some attraction - such as the “equal proportions” one used for divorce debits under DWP legislation; but we feel that this is not appropriate for a tax that may only rarely apply in a particular scheme and so needs to be as easy to manage as possible.

8. The Government welcomes views on whether it is necessary for individuals in the year of benefit crystallisation to have access to the option to meet their liability from the pension benefit, and if so how to ensure that this process works sensibly for both schemes and members. (Paragraph 3.22);

The Consultation Document states that “the majority of individuals in this situation should be relatively well-placed to estimate their position in their final year of pension accrual, and indeed that they may be better able to control their finances as they are approaching the benefit crystallisation event.”

If Scheme Pays is needed at all, the same reasons would seem to apply in the year of benefit crystallisation - indeed this may be the period most likely to lead to large AA charges (eg redundancy or ill health special benefits) – which events can arise at short notice and unplanned. One counter argument might be that the member can use his tax free cash sum (potentially obtained by commuting DB benefit on scheme terms, or else as basic entitlement) to meet the charge.

There are special considerations however, in that the information about the tax charge will potentially not emerge for some months after the crystallisation.

We are not sure whether the consultation document is suggesting that the member estimates his taxable benefit and appropriate tax rate, and that that estimate can be used as the basis of an initial setting of Scheme Pays with an adjustment later? A scheme should have to deal with Scheme Pays and information provision only once – any revisiting will cause considerable expense in adjusting records. The timing issue might be solved if the rules for Scheme Pays could be modified such that a scheme could choose to offer this if it is in a position to provide the required disclosure information early enough, and based on a tax assessment as if the scheme exists in isolation – together with such information on unused AA as exists at the start of the last closed-off tax year; and the appropriate tax rate set to a notional rate of 40% - ie to underestimate the actual tax if anything. The member would have to meet the balance of any remaining tax emerging once other schemes and exact taxable income calculations are collated.

The only alternative solution we can see to this (and the default if the scheme does not want to operate the above) is that the scheme is allowed to put in place gross benefits, and apply a reduction starting later once the tax emerges and Scheme Pays is chosen.

This does mean that the benefit deductions for these two years will be made after the scheme assesses the individual’s allowed maximum Pension Commencement Lump Sum and liability to Lifetime Allowance charge – so it puts such a member in a different position from the usual one for Scheme Pays in this regard (but in the same tax position as the member who meets the charge from his own resources).

This alternative would, however, raise issues where:

- a scheme secures pension at the point of retirement using insurance policies; or
- if a member dies before the AA tax matters are finalised]

The timing issues arise in relation to the [tax year] **preceding** the year of BCE (ie the charge will be known too late to implement on benefits at drawing); and applies more unpredictably – the parties involved may not know that it is the "preceding year" until events emerge. (This raises the issue of AA charges arising in respect of the tax year preceding death – too early to access the death exemption but potentially not processed in time to access a Scheme Pays option while the member was alive.)

The question is asked in the context of benefits crystallising, but more complex issues arise in relation to AA charge arising from accrual shortly before an individual transfers pension savings from the scheme to another. Presumably the transferring scheme will still have responsibility to provide relevant disclosure information; but the receiving scheme will have the onus of offering Scheme Pays – in the context of a DB to DC transfer, this strongly supports DC schemes having to offer Scheme Pays. (Various timing issues emerge on crystallisation thereafter.) Alternatively the member could be deemed to lose the option of Scheme Pays – and would have to bear this in mind in deciding to transfer out.)

9. **The Government welcomes views on whether there are other circumstances in which the application of either option may need to be given specific consideration? (Paragraph 3.23); and**

10. **The Government welcomes information that explains how and why these might work differently in practice, and where that leads to different impacts for scheme members, or scheme administration (Paragraph 3.24);**

We feel that the rolling-up approach adds little value to the process. It has the conceptual advantage of tax not being deductible until there are actually benefits from which to deduct it. This would be a real solution if used as a means by which the member could meet the tax from his own pension resources – and so avoid Scheme Pays altogether. However, we understand that the member needs to make irrevocable decisions upfront to use Scheme Pays and thereafter the Scheme would manage the liability (rather than HMRC). This will involve recording the charge due, the roll-up for interest and the actual payment when a BCE arises.

If one feels that terms need to be specified upfront (see above for our view) then in practice the roll-forward approach does not save the scheme work, and instead creates some long-term liability management. (If the charge were to apply to DC funds, then roll-forward would have the advantage of the deduction from the DC fund being able to be exactly the same as the tax actually payable.)

Finally we understand that it introduces huge complexity for HMRC including due tax not collected for a long time past the 5 years on which tax systems are currently centred.

11. **The Government welcomes views and evidence to indicate where legislating for a standard approach would reduce burdens, or be necessary to ensure that the policy intent is delivered; and whether there are areas where the Government should be even less prescriptive. (Paragraph 3.25);**

12. **The Government welcomes views on any practical or administrative issues that may arise from implementing these options to meet charges from pension benefits, bearing in mind that the Government believes it is necessary to introduce a facility to meet high AA charges from pension benefits. In particular it is interested in the benefits and burdens associated**

with each of the options, and whether there are significant differences between the two. (Paragraph 3.26); and

13. The Government welcomes views on whether there are particular advantages to this approach of rolling-up AA excesses, rather than AA charges. (Paragraph 3.28).

The roll-up of AA excess and then treating it as if a LTA excess seems to have most of the disadvantages of rolling up the charge (if one assumes that it is as equally inappropriate to leave the member without detailed terms of conversion upfront when choosing Scheme Pays).

14. Any additional information relevant to the practicalities of implementing this policy.

14.1. Grossing up and Interaction with other pensions taxes

We do not understand the Government's comments regarding

- "no need to gross up tax liability" in paragraph 2.5 and
- "no distortion with regard to LTA charge" comment in paragraph 2.18.

On the face of it, if the Trustees pay the same amount of charge as would have been due direct from the member and then deduct the charge from, say, pension (which is subject to income tax), this reduces the effective tax paid by the member.

Reducing the benefit by any Scheme Pays reduction before assessing the LTA charge means fairer tax (but an advantageous position) compared to a member who meets the charge from his own resources (who can therefore end up with some pension savings triple-taxed: (deferred) income tax, AA charge and LTA charge. Conversely, for the member who does not trigger LTA charge, there is a disadvantageous reduction in his scope for tax free cash sum using Scheme Pays rather than personal resources. The anomaly could be removed if any AA charge paid direct by the member could be deducted notionally in assessing LTA charge due.

14.2. Other changes to legislation

Clearly DWP legislation must be reviewed to permit Scheme Pays – there needs to be overriding legislation similar to that applied for Lifetime Allowance.

14.3. Timing for member to make decisions

The Scheme Pays process timeline has been extended but mostly in relation to how long a scheme has to pay a Scheme Pays charge once the member has decided to use the option (with no interest accruing over this period).

Effectively the member has at maximum 4 months between identifying that there is an AA excess and declaring his decisions for Scheme Pays (since schemes are given – necessarily – until 6 October; but the member must have entered his AA charge and a decision of who pays it, by 31 January).

This period needs to encompass:

- pinning down the exact quantum of AA charge (which may involve completing all the rest of the return so as to identify the appropriate rates of tax);
- obtaining the terms for Scheme Pays reduction from the scheme(s) for that quantum; and
- taking advice on the alternatives;

and therefore is relatively short.

In discussions HMRC have indicated that the member actually has until the scheme is due to pay the charge at the due AFT date – until then the member can effectively change his mind and the charge will ultimately revert to the member when the scheme does not pay. This extra time however will engender interest for the member.

It would be more appropriate to extend the time for the member to make the decision; but then not to give a special concession on interest for Scheme Pays over such a long period.

More background to this: In consultation meetings, HMRC explained that the member ticks in his SATR by 31January a box saying s/he expects the scheme to pay the tax, yes/no. The scheme would not be due to pay the charge until the subsequent AFT, the amount being increased by inflation for the delay but not by a penalty. This would be typically a December AFT. From HMRC's point of view the tick box would simply switch off tax being collected through SATR. HMT would wait until the December and then if the scheme does not pay the charge HMT would revert to asking for the charge from the individual. HMRC envisage that this effectively gives the individual extra decision time. The process for making sure that the member actually instructs the scheme to pay the tax would a matter for the scheme and the member to organise. There would be clear warnings in the SATR to explain that this was up to the member. Easing this slightly, if our approach to multiple schemes is followed, Scheme Pays would arise only where the scheme had already had an obligation proactively to provide disclosure information about a potential AA charge, which could include some strong information from the scheme about instructions for paying the charge, any time limit the scheme sets on that, and any paperwork the scheme wants filled in.

HMRC seemed unsympathetic with concerns about the short time frame – based on the fact that there tax returns already can involve a number of complex tax calculations in these sorts of periods. So indications were that HMRC are not inclined to extend and delay collecting the charge under this upfront process especially. However, we note that:

- overall year 1 of the new complex regime will need sympathetic treatment
- if a scheme very rarely has to face an AA charge, it may be that the Trustees will not consider the issue and the approach it takes to benefit reduction, until *such a case arises (it would be a waste of time to do otherwise) – this could arise many years hence. And this is where extra time may eat into the four month timeline.*

14.4. HMRC support

These new provisions will require significant technical support from HMRC because they test every aspect of the AA regime. As noted above, there is a short and long term need for support when processes will be tested in each scheme's circumstances and rules:

- In respect of the first year overall of the regime (2011/12) - HMRC have "eased" this period in relation to information requirements, but the Scheme Pays process will apply in full to that year (and matter immediately as part of the member's decision making process at the start of the tax year) and
- the first year in which a particular scheme has to offer or implement Scheme Pays – so potentially many years hence before some issues arise.

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