www.pwclegal.co.uk

Pension Scheme Costs & VAT: a journey of discovery (and frustration)

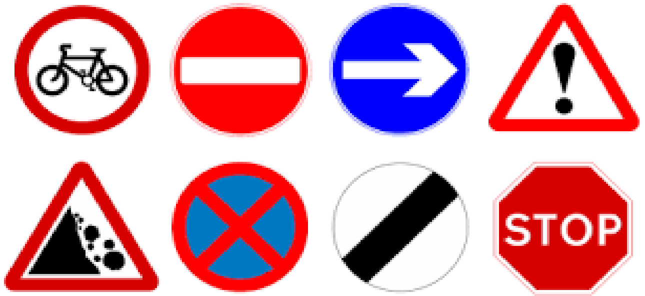
February 2016

pwc

PricewaterhouseCoopers Legal LLP

Agenda

Today’s talk



- How did we get where we are?
- What should sponsoring employers be doing?
- What should advisers be doing?

VAT on Pension Scheme Costs

- 2 distinct categories of pension scheme costs
  - Investment management costs

  - All other “administration” costs

    Includes:

    - Benefit administration
    - Actuarial advice
    - Legal advice
    - Scheme audit

VAT
Investment Management Costs

Previously

- 70/30 VAT recovery

- VAT exempt funds

- Otherwise, VAT not recoverable

Enter the European Courts

PPG – The Court of Justice of the European Union

To recover VAT:

- a direct and immediate link between a particular input transaction and an output transaction or transactions; or
- the costs of the services in question are part of a person's general costs and are, as such, components of the price of the goods or services that person supplies. Such costs have a *direct and immediate link with the person's economic activity as a whole*.

In either case, whether there is a direct and immediate link will depend on whether the cost of the input services is incorporated either in the cost of particular output transactions or in the cost of the goods or services supplied by the taxable person as part of his economic activities

PPG – The Court of Justice of the European Union

To recover VAT:

- a direct and immediate link between a particular input transaction and an output transaction or transactions; or
- the costs of the services in question are part of a person's general costs and are, as such, components of the price of the goods or services that person supplies. Such costs have a ***direct and immediate link with the person's economic activity as a whole***.

In either case, whether there is a direct and immediate link will depend on whether the cost of the input services is incorporated either in the cost of particular output transactions or in the cost of the goods or services supplied by the taxable person as part of his economic activities

PPG – The Court of Justice of the European Union

To recover VAT:

- a direct and immediate link between a particular input transaction and an output transaction or transactions; or
- the costs of the services in question are part of a person's general costs and are, as such, components of the price of the goods or services that person supplies. Such costs have a ***direct and immediate link with the person's economic activity as a whole***.

In either case, whether there is a direct and immediate link will depend on ***whether the cost of the input services is incorporated*** either in the cost of ***particular output transactions*** or in the ***cost of the goods or services supplied*** by the taxable person as part of his economic activities

HMRC's response
the tri-partite contract … 1

- the service provider makes its supplies to the employer
- the employer directly pays for the services that are supplied under the contract
- the service provider will pursue the employer for payment and only in circumstances where the employer is unlikely to pay (for example, because it has gone into administration) will it recover its fees from the scheme's funds or the pension scheme trustees
- both the employer and the pension scheme trustees are entitled to seek legal redress in the event of breach of contract, albeit that the liability of the service provider need not be any greater than if the contract were with the pension scheme trustees alone and any payments for which the service provider becomes liable may be payable in whole to the pension scheme trustees for the benefit of the pension scheme

HMRC's response
the tri-partite contract … 1

- the service provider makes its supplies to the employer
- the employer directly pays for the services that are supplied under the contract
- the service provider will pursue the employer for payment and only in circumstances where the employer is unlikely to pay (for example, because it has gone into administration) will it recover its fees from the scheme's funds or the pension scheme trustees
- both the employer and the pension scheme trustees are entitled to seek legal redress in the event of breach of contract, albeit that the liability of the service provider need not be any greater than if the contract were with the pension scheme trustees alone and any payments for which the service provider becomes liable may be payable in whole to the pension scheme trustees for the benefit of the pension scheme

HMRC's response the tri-partite contract … 2

- the service provider will provide fund performance reports to the employer on request (subject to the pension scheme trustees being able to stipulate that reports are withheld, for example where there could be a conflict of interest)
- the employer is entitled to terminate the contract, although that may be subject to a condition that they should not do so without the pension scheme trustees prior written consent (this can be in addition to any right that the pension scheme trustees may have to terminate the contract unilaterally)

HMRC's response
the tri-partite contract … 2

- the service provider will provide fund performance reports to the employer on request (subject to the pension scheme trustees being able to stipulate that reports are withheld, for example where there could be a conflict of interest)
- the employer is entitled to terminate the contract, although that may be subject to a condition that they should not do so without the pension scheme trustees prior written consent (this can be in addition to any right that the pension scheme trustees may have to terminate the contract unilaterally)

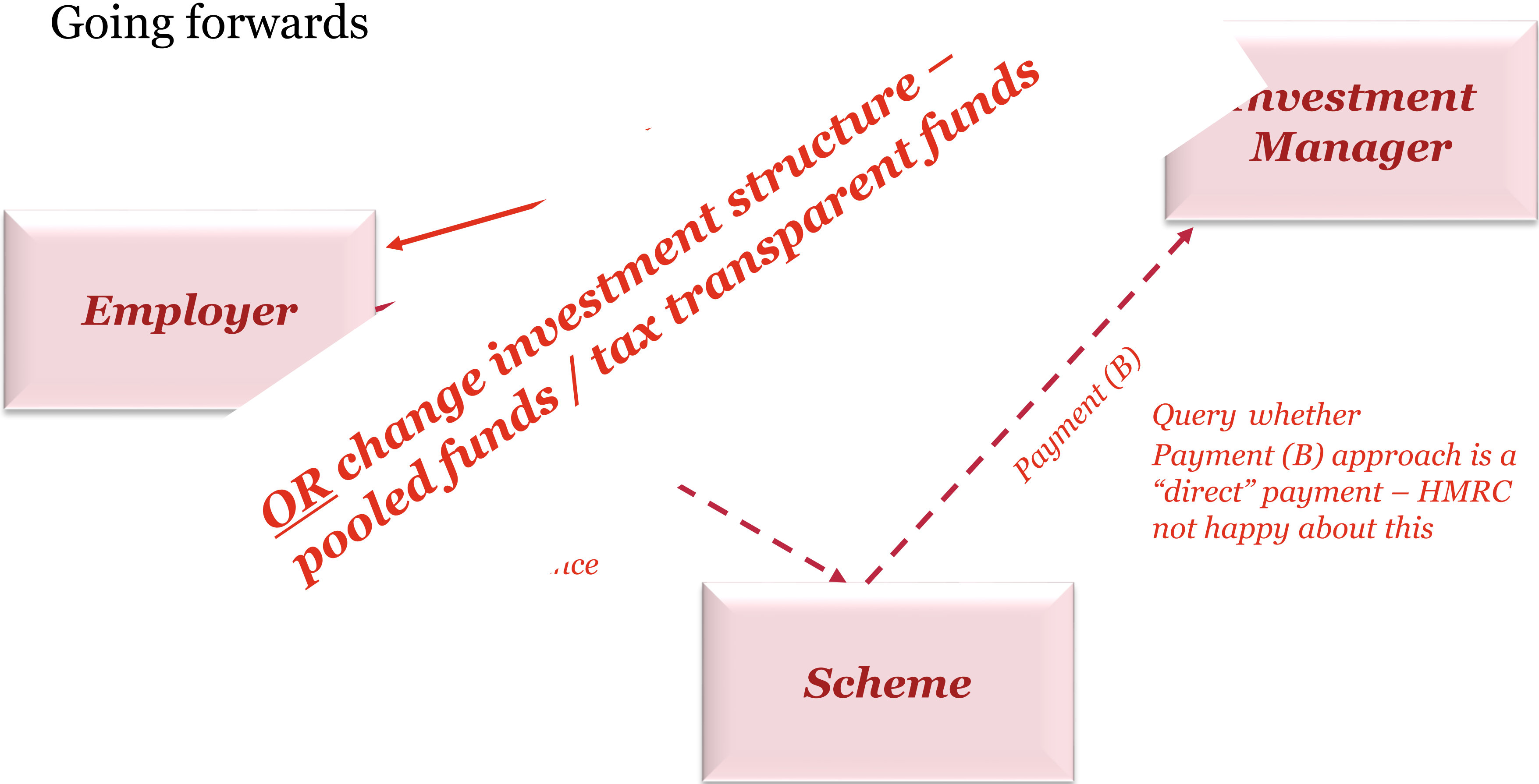
HMRC's response the tri-partite contract … 2

- the service provider will provide fund performance reports to the employer on request (subject to the pension scheme trustees being able to stipulate that reports are withheld, for example where there could be a conflict of interest)
- the employer is entitled to terminate the contract, although that may be subject to a condition that ***they should not do so without the pension scheme trustees prior written consent*** (this can be in addition to any right that the pension scheme trustees may have to terminate the contract unilaterally)

VAT

Investment Management Costs

Going forwards



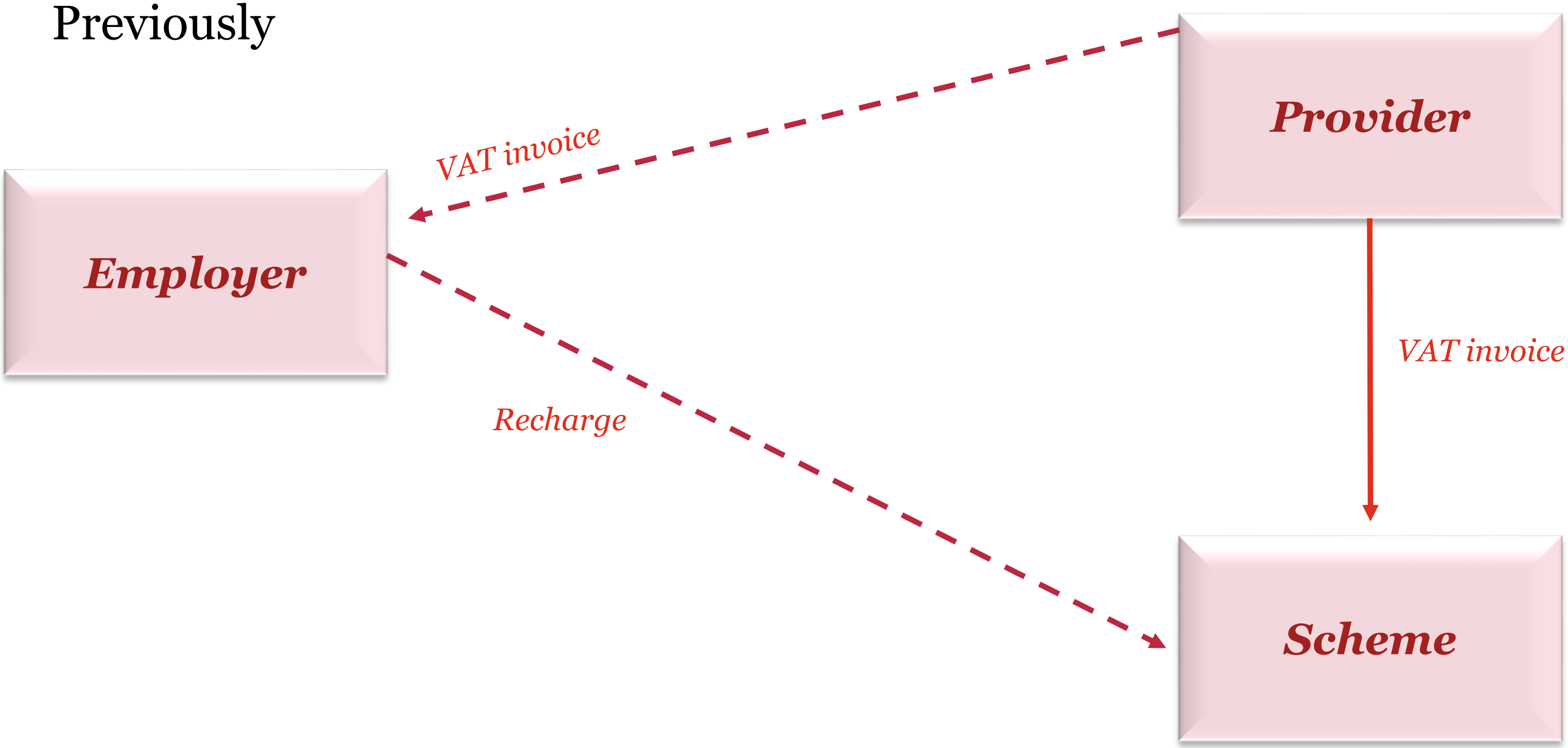
VAT
Administration Costs

Where have we come from?

- VAT Notice 700/17
    - “You [i.e. the sponsor] should hold tax invoices made out in your name. If the trustees pay for the supplies on your behalf you should arrange for the invoices to be made out in your name by the suppliers.”
    - Problems for advisers – invoicing entities who are not the client

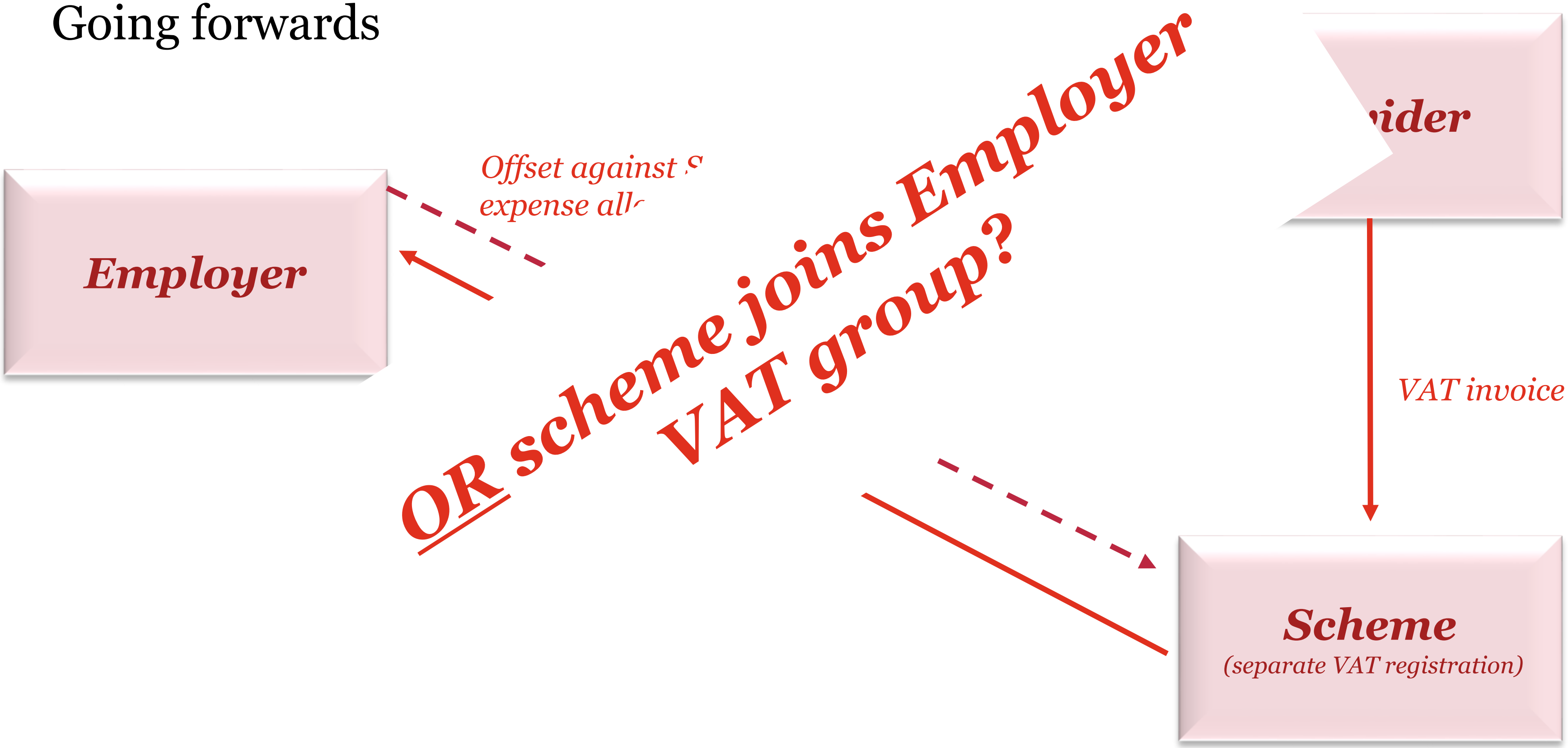
VAT
Administration Costs

Previously



VAT
Administration Costs

Going forwards



What now?

Questions