HM Revenue
& Customs

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Date 24 December 2012
Our ref

Dear Miss Goldschmidt

I refer to your letter dated 15 June 2012. As with the other letters hereby responded to, I apologise for the delay that has arisen which is inexcusable.

I appreciate your letter has been sent in the spirit of other exchanges between HMRC & ACA to explore issues arising from the legislation. However, HMRC has very clear guidelines that it will not assist/give tax planning advice. I am concerned that some of the suggested solutions in your letter take us into tax planning territory. So whilst I have responded to the letter, I have flagged some areas where I don't consider it appropriate to respond to the points in detail.

As set out in RPSM06107055, HMRC's view is that it is a matter of fact how many arrangements an individual has under a pension scheme. The guidance gives the example of 'split NRA service' as one situation where a member **may** have 2 arrangements under a scheme. Where the final paragraph of that guidance says 'the Trustees might now determine ....', this is not intended to imply that there is an element of choice. It is a matter of fact. If it is an aspect that hasn't previously been considered, the Trustees would need to be comfortable that there were enough factors to distinguish 2 arrangements for a member under a scheme as opposed to there being only one. The fact that a scheme alters its normal retirement date going forward might be enough for a new arrangement to come into being. However, this is a decision for the Trustees to take with their legal advisors. Once made, that decision should be final and fix matters for all members of the pension scheme.

The decision should be based on the structure of the scheme not the possible tax effect of the decision. In the normal run of events, HMRC will accept the Scheme Trustees' view of the matter subject to it being applied consistently across the membership. Ultimately the decision is one that impacts at the individual member level. An individual member adversely affected by the decision might challenge the Trustees' view. So the Trustees need to be sure they are making a decision that stands up to scrutiny based on the scheme's rules and operation – not a decision based on what might give a better tax outcome to the majority of members.

Your letter sets out 3 approaches to the scenario in the Appendix. You will have gathered that I am concerned by the suggestion that 'arrangements' can be created/designed simply to achieve efficient tax outcomes. For that reason, I don't accept that Approach 3 is within the spirit of the legislation.

Say a member joins the example pension scheme in 1980. At the time, he understands that contributions made (in terms of years of service) will deliver a certain level of benefits at retirement at age 60. That is his 'arrangement' under the scheme – service in now and benefits at age 60.

From April 1991, the member may understand his 'arrangement' to be either:

- 'service in' - benefits out from age 60 and

  - more benefits from age 65

OR

- 'service in to 91' - benefits out at age 60

  'service in from 91' - benefits out at age 65.

The idea that a member accepts contributing to an arrangement that won't actually deliver a benefit (because at retirement age everything switches to another arrangement) doesn't fit with HMRC's view of an arrangement. As set out at RPSM09100220, the concept is historical and our view is that DB schemes are less likely to have a multi arrangement structure.

You note that Approach 3 doesn't work for members with protection. For me, this demonstrates that the proposal in Approach 3 is going beyond the purpose of the legislation. The protection regime is based on a premise that a member knows what arrangements they have and can control that involvement to ensure they maintain protection.
The suggestion that the Trustees can provide different arrangements for members dependent on whether they have protection or not is stepping into tax planning territory. HMRC would expect the arrangements under a scheme to be fairly standard across the members. The suggestion that members have identical arrangements until one of them opts for protection sounds like someone seeking to sidestep the impact of the legislation. This goes back to my earlier comment that the identification of an arrangement should be based on the structure of the scheme – not a tax impact.

Your letter indicates different potential outcomes for a member dependent on whether they have one or two arrangements in the scenario set out in the Appendix. Across the tax spectrum, it is not unusual for the tax outcome of a transaction to be different dependent on the way that transaction is carried out. Whether that difference is intended or desired then becomes a policy question. So, whilst suggested in good faith, it wouldn't be appropriate for HMRC to condone setting up 'new arrangements' to seek to sidestep a tax outcome. That is tax planning territory.

Yours sincerely

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Dear Miss Goldschmidt

Fixed Protection benefit accrual test and Annual Allowance deferred member carve-out: relevant percentage

I refer to your letter of 15 June 2012. I had been advised that this letter had been responded to albeit by email. I had not appreciated that the response was so brief and implied a follow on response.

This matter was discussed internally prior to the August response from both an AA and FP perspective. HMRC's view is that interpretation B (as set out in your letter) is the correct interpretation for both sections of the legislation. Whilst the wording is slightly different in the 2 sections, the overall intention is the same and we consider that the wording does achieve this.

There are no plans to amend the wording of this legislation beyond the recently published draft legislation.

Yours sincerely

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Technical Advisor

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Dear Miss Goldschmidt

I refer to your letter of 24 July 2012.

We have discussed this letter by phone. In view of the published draft changes to the legislation in this area, it seems more appropriate to revisit the issues raised in your letter in the light of the draft legislation. For that reason, I have not addressed matters further here. However, I can confirm that HMRC is in agreement with the methodology adopted in your letter.

Yours sincerely

Mrs J E Truelove
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