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Please reply to:
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Sent by email only

Paul Cottis
HM Revenue & Customs

Dear Paul

Anti-forestalling measures following Budget 2009 – Treatment of Non-regular Contributions

We refer to the Budget announcement and subsequent material posted on HMRC website. In particular we refer to the written ministerial statement dated 22nd April 2009 by The Financial Secretary to the Treasury (Mr. Stephen Timms) who states that:

> "when assessing whether benefits against the special annual allowance of £20,000, "normal patterns of contributions" are those agreed before 22nd April 2009 and payable at least quarterly,
>
> "Contributions or benefits accrued outside normal patterns of contributions above this will attract a tax charge so that relief is restricted to the basic rate, and
>
> "The Government recognise that those with less regular contribution patterns may be affected and would welcome views on whether there are ways of ensuring the contributions of this group are protected in the same way as those making more regular patterns, while continuing to meet the objectives above."

The purpose of this letter is to provide the views of the Association of Consulting Actuaries ("ACA") specifically to this question ie on alternative ways of ensuring the contributions of the group correctly identified above are treated fairly compared to other groups. We will be writing separately on other issues raised by the Budget proposals.

Background

Clearly the requirement that regular contributions are payable at least quarterly is not appropriate for certain groups of individuals who have historically made contributions (or in some cases additional voluntary contributions) to defined contribution arrangements (such as occupational defined contribution schemes and personal pension plans) on a regular basis but less frequently than quarterly, e.g. annually or six-monthly. Furthermore, some such individuals have made contributions which significantly vary from year to year (or throughout the year) reflecting the varying amounts of monies available to invest in their pension arrangement(s). These groups include (amongst others):

1 the self employed whose annual income is uncertain until the end of the tax year.

2 those people who choose to use their annual or six-monthly bonuses to supplement their pension pot.

3 those who take career breaks - typically women although in the current economic climate there may be many enforced career breaks at this level of earner - and want to supplement their pension to make good those contributions not paid during their period out of employment.

A fourth group with a different issue is

4 those who, following the introduction of the "A-day regime" in 2006, intended to use the significant flexibility on timing introduced by that regime (but existing in previous regimes to a lesser extent via carry back/forward provisions), so have made their savings elsewhere with the intention of putting sums into pension arrangements at a later date – as it turns out a very unfortunate delay.

We would note that the special annual allowance of £20,000 is significantly lower than the amounts allowed as contributions with tax relief under the restrictions that existed before A-day. In particular, someone contributing to a personal pension plan before A-day would have been able to receive tax relief on contributions of at least 17.5% of the earnings cap rising to 40% for someone aged 61 or over – so £21,630 to £49,440 if those limits had applied for the 2009/10 tax year. Similarly, someone contributing to an occupational pension scheme would have been able to receive tax relief on £18,540 for the 2009/10 tax year as well as benefiting from the employer contributions being paid into their pension arrangement and/or accrual of defined benefits (which latter could be expected in many cases to at least double this figure).

We also note that with investment markets plummeting it is likely that, ignoring any change in behavious arising from the Budget, individuals would have been likely to have been considering raising their contributions to bring their retirement provisions back to plans and expectations. This of course is an issue particular to defined contribution arrangements.

Possible approaches

The ACA considers that the simplest and most effective approach to ensure a fairer treatment of all the groups identified above would be a special annual allowance at a higher figure than £20,000 – we suggest at least £30,000 based on the above historical position. This would be specific to the groups above if they could be identified – but we do not think this is practical so for simplicity it should apply for all individuals. The draft provisions on protection for DB arrangements are already very favourable compared to DC – so this proposal is unlikely to have material impact for DB arrangements.

We would also propose that **the protected pension input in respect of defined contribution arrangements is allowed as the average (over two or three consecutive years) of total defined contributions paid in any of the 3 tax years to 5th April 2009, if this amount is higher than the amount defined as regular contributions in the Finance Bill.** Such an approach would provide some protection for the first two categories of members - the self-employed and those who have used annual bonuses for pension contributions. It would also be relatively straightforward to calculate by the individual and to administer by occupational pension schemes and HMRC.

We note that an important feature of this latter suggestion is that "protected pension input" for all individuals should be a **figure**, not an imposed pattern of payment. Flexibility of timing of contributions is important.

A fairer variation on this approach might be to allow averaging to occur within a longer period, e.g. 10 years but we recognise that this would add significant complication to the calculations and monitoring required.

It would be appropriate to include a provision for automatic indexation to reflect inflation, in case for any reason, these anti-forestalling provisions continue in force after April 2011.

We look forward to working with you to ensure that arrangements are put in place so that such groups are treated fairly compared to other groups with more regular contribution patterns.

Yours sincerely

Karen Goldschmidt

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