From: Cheek, Jessica [jessica.cheek@ssd.com]
Sent: 11 February 2011 17:11
To: peter.seedhouse@hmrc.gsi.gov.uk; paulcottis@hmrc.gsi.gov.uk; Kara.Humphreys@hmtreasury.gsi.gov.uk
Cc: Karen Goldschmidt; Powell, Andrew
Subject: Urgent issue on default PIPs
Attachments: 1102APnotePIPsfinal.DOC

<<1102APnotePIPsfinal.DOC>>
Sent on behalf of Andrew Powell

Dear Peter ,

As you are aware, I have for some time acted as an APL delegate to the JWG Technical Committee and also to the Pensions Industry Stakeholder Forum (PISF).

At Wednesday's PISF, the issue of the closing date for the nomination of a PIP was raised.The reference in HMRC's recent Announcement to the date on which the Finance Bill 2011 becomes law (anticipated as 1 July 2011) was put forward as the point at which the window available for an occupational pension scheme to nominate a PIP to replace the date assumed in default of such nomination would close.

There remains much confusion in the OPS community as to how much reliance they may place on this. It is very important that no lingering doubt remains such as might lead to a sense of panic.

I have attached a note addressing this and a suggestion as to how HMRC/Treasury might help to calm the situation.
I have discussed this with Karen Goldsmidt of ACA who is aware that I am to send this note.
Given the urgency I have not yet been able to confer with my colleagues on the relevant APL Sub- Committee but feel very certain that the community of pensions lawyers would support the need for such clarity.

I am happy to discuss ;
Regards ;
Andrew.

Jessica Cheek
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Pension Input Periods (PIPs) - nominating a date to replace default

As you are aware, the provisions in Finance Act 2004 allowing retrospective nominations of PIPs (where there is currently no nomination so defaults apply) operate in a way that will change once the Finance Bill 2011 is in place – and the change may mean that retrospective nominations that would be valid without the Finance Bill 2011 could be invalid under the Finance Bill provisions. This is important for the many Scheme Administrators who wish to change their position in the new context of the reduced Annual Allowance.

HMRC helpfully issued an Announcement (http://www.hmrc.gov.uk/pensionschemes/rest-pens-tr.htm) which addressed this point and stated as follows:

"If a scheme wishes to retrospectively nominate for their first pension input period to end on 5 April 2007, they need to do so before the draft legislation receives Royal Assent. Under the draft legislation, from 6 April 2011 it will not be possible for a nominated date to be a date before the date on which the nomination is made".

Our reading of this statement is that it was intended to indicate that it is not policy nor, in the Government's view, a proper reading of the draft legislation that it might have effect such as to call into question the effectiveness of a retrospective nomination made on or after 6 April 2011 but prior to Royal Assent (expected to be 1 July 2011). However, many lawyers in the Occupational Pensions Industry believe that this risk still exists because of the complex nature of the legislation leading to possible different interpretations (the draft legislation may operate retrospectively but the period of retrospection is itself reliant on the draft legislation coming into force).

Without further clarification on this issue, and reassurance that retrospective nominations can be made up until the point that the Finance Bill 2011 receives Royal Assent, Scheme Administrators will be unwilling to risk deferring making retrospective nominations beyond 5 April 2011, particularly if their legal advisers are unhappy on this point. This is likely to result in complex decisions regarding PIPs being rushed and cause unnecessarily alarm in the lead up to 6 April 2011.

Would you please confirm, on the basis that your written confirmation can be disseminated within the Occupational Pensions Industry, that:

1. our understanding is correct and the draft legislation will not have retrospective effect;

2. this is a settled position that will not alter prior to Royal Assent; and

3. you will continue to liaise with stakeholders to ensure that the legislative platform needed to make transitional provision will not inadvertently alter the position.

We are sorry to belabour this but there is a real danger that a "safety first" mentality will create huge problems for occupational schemes absent such strong reassurance.

From: peter.seedhouse@hmrc.gsi.gov.uk
Sent: 14 February 2011 07:33
To: jessica.cheek@ssd.com; paulcottis@hmrc.gsi.gov.uk; Kara.Humphreys@hmtreasury.gsi.gov.uk
Cc: Karen Goldschmidt; andrew.powell@ssd.com
Subject: Re: Urgent issue on default PIPs

Jessica,

Further to your e-mail below and the points made in the accompanying document, I can confirm the following:

1. Your understanding is correct and the draft legislation will not have retrospective effect;
2. Whilst you will appreciate that the legislation is currently in draft and the final version that will be enacted is a matter for Parliament, this is a settled position that we do not intend will alter prior to Royal Assent; and
3. We will continue to liaise with stakeholders to ensure that the legislative platform needed to make transitional provision will not inadvertently alter the position.

I hope this gives you the reassurance you are seeking.

Peter

From: Cheek, Jessica
To: Seedhouse, Peter (CAR Pensions); Cottis, Paul (CAR Pensions); Humphreys, Kara [HMT]
Cc: Karen.Goldschmidt@lcp.uk.com ; Powell, Andrew
Sent: Fri Feb 11 17:10:56 2011
Subject: Urgent issue on default PIPs

<<1102APnotePIPsfinal.DOC>>
Sent on behalf of Andrew Powell

Dear Peter ,

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I am happy to discuss ;
Regards ;
Andrew.

Jessica Cheek
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