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Joint APL/ACA Meeting

Ongoing pensions tax pitfalls – tax protections

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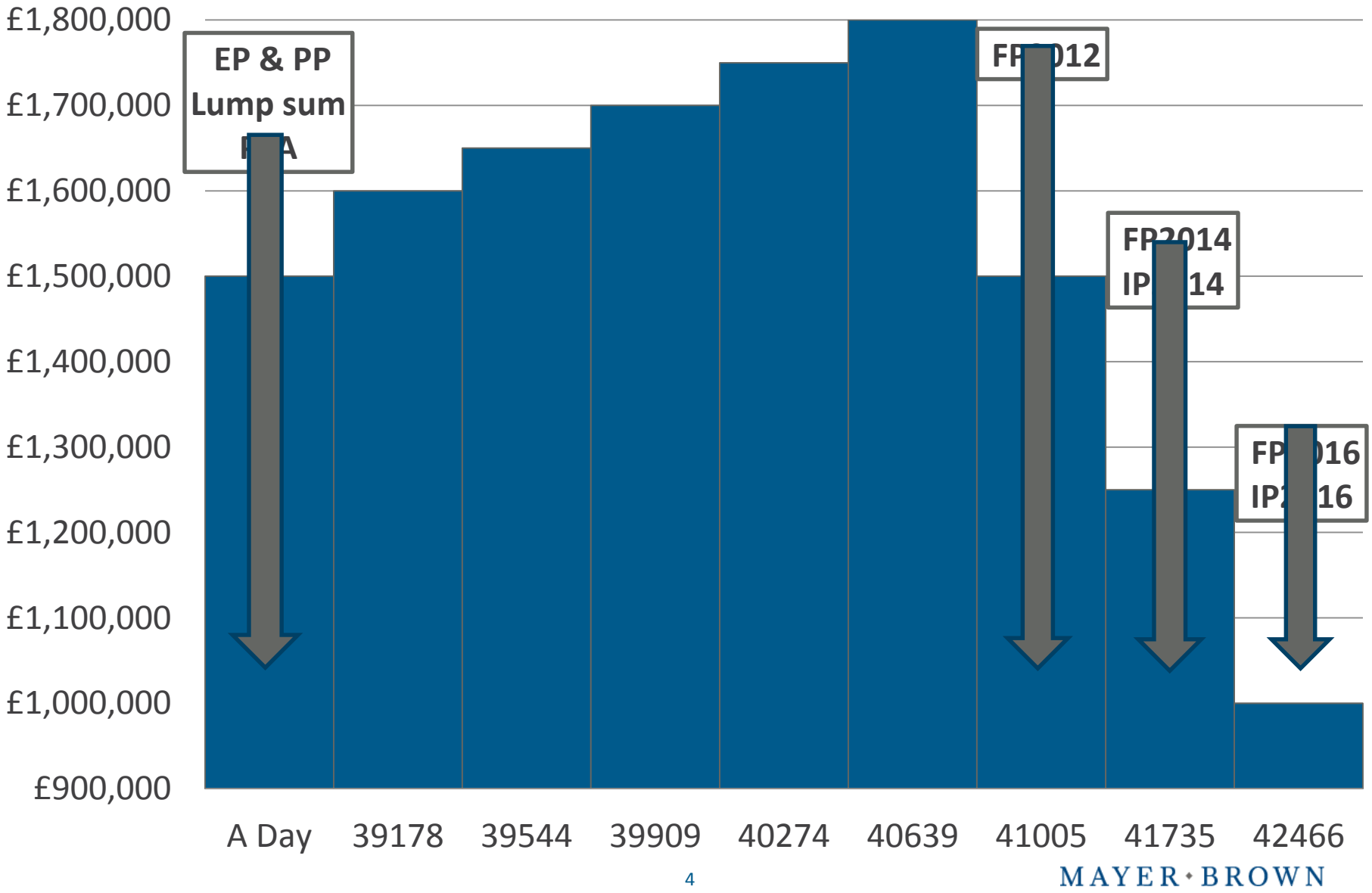
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Remaining tax issues to be aware of when dealing with scheme reorganizations

- Now that HMRC has fixed the annual allowance problem with underfunded transfers, there aren't any tax problems with scheme reorganizations, are there?
- A reorganization that doesn't affect anyone's benefit rights in any way won't lose people their tax protections, will it?
- And even if it did, trustees shouldn't care, should they?


El sueño
de la razon
produce
monstruos

Lifetime allowance since A Day



The “robust” protections

- Three protections are “robust” – in the sense that it is difficult to lose them
  - primary protection
  - individual protection 2014
  - individual protection 2016
- The other protections are “fragile” and can be lost in various circumstances, including on (some) mirror image transfers
- Some threats are clear-cut, others are less so

Primary protection

- Available if value of benefits on 5 April 2006 exceeded £1.5m
- Personal LTA which is currently same percentage above £1.8m as percentage by which benefits on 5 April 2006 exceeded £1.5m
- Individual had to apply by 5 April 2009
- Lost if member has a pension debit

Individual protection

- Individual protection 2014
  - gives individual personal LTA of lesser of value of benefits on 5 April 2014 and £1.5m
  - available if value of benefits on 5 April 2014 exceeded £1.25m
  - LTA at crystallisation of higher of "standard" and personal LTAs
  - individual has to apply by 5 April 2017
- Individual protection 2016
  - gives individual personal LTA of lesser of value of benefits on 5 April 2014 and £1.25m
  - available if value of benefits on 5 April 2016 exceeded £1m
  - LTA at crystallisation of higher of "standard" and personal LTAs
  - no deadline for individual to apply
- Individual protection lost if member has a pension debit

Protected pension age (PPA)

- Entitles member to take benefits from age under 55 without those benefit payments being unauthorised
- Protection may be specific to a contingency e.g. redundancy
- Available if:
  - member had as-of-right retirement age on 5 April 2006 ❮ 55
  - NMPA on some or all of then members of scheme
  - member had that right on 10 December 2003 (or would have if he/she had been a member on that date)
  - benefits under all arrangements under scheme come into payment at same time (usually)
    - easements where member has DB rights and is also buying DC annuity
- Scheme must also meet certain conditions
- No application required

Lump sum protection

- Entitles member to take PCLS of more than 25% of value of benefits without payment being unauthorised
- Available if:
  - member had entitlement on 5 April 2006 to PCLS of more than 25% of value of benefits
  - member did not already have special lump sum protection associated with primary or enhanced protection
  - benefits under all arrangements under scheme come into payment at the same time (usually)
    - easements where member has DB rights and is also buying DC annuity
- Scheme must also meet certain conditions
- No application required

Enhanced protection

- Available whether or not value of benefits on 5 April 2006 exceeded £1.5m
- No LTA
- Individual had to apply by 5 April 2009

Fixed protection

- Fixed protection 2012
  - available if value of benefits on 5 April 2012 exceeded £1.5m
  - LTA at crystallisation of greater of "standard" LTA and £1.8m
  - individual had to apply by 5 April 2012
- Fixed protection 2014
  - available if value of benefits on 5 April 2014 exceeded £1.25m
  - LTA at crystallisation of greater of "standard" LTA and £1.5m
  - individual had to apply by 5 April 2014
- Fixed protection 2016
  - available if value of benefits on 5 April 2016 exceeded £1m
  - LTA at crystallisation of greater of "standard" LTA and £1.25m
  - no deadline for individual to apply

Knowing whether a member has a protection

- Lump sum protection and PPA – attach to scheme
  - no need to apply for them
  - whether members have them depends on scheme rules
  - scheme should therefore be able to tell from their records which members have protection
- LTA protections – attach to individual
  - must be applied for by individual
  - scheme will not know if member has protection unless member tells them
    - other than (broadly) accruing members who can't have fixed protection and where other circumstances that will have "killed off" enhanced or fixed protection apply

Transfers that threaten protection

- Enhanced and fixed protection rules are similar
- Lump sum protection and PPA rules are similar

Losing enhanced and fixed protections (1)

- Enhanced and fixed protections can be lost by:
  - transfer that is not a "permitted transfer"
  - making of a new arrangement for member under any scheme
    - subject to certain exceptions, including where new arrangement results from permitted transfer
- Permitted transfer:
  - value of assets pre- and post-transfer must be actuarially equivalent (but destinations may be split)
  - transfer must be to MP arrangement or in connection with:
    - winding-up of transferring scheme (schemes must relate to same employment)
    - relevant business transfer between non-associated employers affecting 20+ employees
    - retirement-benefit activities compliance exercise [useless]

Losing enhanced and fixed protections (2)

- Individual transfers (except to MP arrangement)
- All block transfers that don't involve winding-up of transferring scheme and don't relate to material transfer of undertaking or business between non-associated employers (unless to MP arrangement)
- Share sales?
- Partial winding-up?

Losing lump sum protection and PPA

- Protection will be lost in receiving scheme by transfer other than block transfer:
  - all rights
  - 2 or more members
  - within a year of person first joining receiving scheme (so if people join new scheme as actives before any past service transfer, make sure the past service transfer follows within 12 months)
- Effect of partial transfer on protection in transferring scheme:
  - PPA protection probably survives
  - Lump sum protection reduced in unintuitive ways

Issues in practice – grey areas

- Buy-outs
  - Article 35 Transitional Provisions Order 2006 – additional permitted transfer applying to enhanced protection only
    - transfer of pension in payment to insurance company
    - must be in connection with winding-up of transferring scheme
  - What about fixed protection pension in payment?
  - What about any LTA protection if not winding-up?
  - What about any LTA protection if pension not in payment?
  - Does s161(4) make all buy-outs "invisible" for protection purposes?
  - Or does s153(8) mean purchase of a deferred annuity contract kills protection if not a permitted transfer?
- Transfers of pensions in payment

Examples from practice (1) – block transfers between group pension schemes

- Aim is to rationalise pension arrangements within group by transferring all DB liabilities to single scheme
- As it happens, no PPA issues
- Some members with both DB and MP benefits and lump sum protection
- Enhanced protection – pension in payment
- Enhanced/fixed protection – unknown population
- Partial fixes happened to be available in practice, but the receiving scheme doesn't know who members are
- And the key "fix"wouldn't work with FP2016

Examples from practice (2)– transfers to combine main and top-up benefits in single scheme

- Aim to buy out and wind up top-up scheme alone
- Small population of deferred members with benefits currently split between two schemes
- Not possible to buy out benefits unless combined
- Not known if any members have enhanced or fixed protection
- Solution?

