

News on Pensions

NOVEMBER 2015

VAT on pension costs: transitional period extended (again)

Her Majesty's Revenue and Customs (HMRC) has issued a new briefing ([RCB 17/15](#)) in relation to employers' ability to reclaim VAT on pension costs.

Despite extensive consultation with the pensions industry, HMRC has not yet been able to reach a conclusion as to whether and how sponsoring companies can reclaim the VAT payable on invoices for services – for example actuarial and administration costs - provided to their defined benefit (DB) pension schemes. The transitional period, during which HMRC will permit existing practices to continue, has been extended by 12 months to 31 December 2016.

Companies and trustees will not now need to rush into restructuring agreements with providers of services to their pension schemes in order that companies may continue to reclaim VAT on their invoices. However, companies may wish to seek specialist tax advice, particularly as more information becomes available. HMRC have said that further guidance will be published later this year.

In the latest briefing, HMRC also explores some issues with potential solutions that had been proposed before now, including:

- **Corporate trustee joins employer VAT grouping:** Whilst HMRC does give reassurance that they “are unable to recover VAT from the scheme assets except to the extent that the relevant VAT is attributable to the operations of the pension scheme”, it nevertheless remains to be legally tested whether trustees would be held jointly and severally liable for all of the group's VAT.
- **Tripartite agreements:** HMRC concedes that entering into a three-way contractual arrangement (involving the trustees, advisers and the sponsoring company) may not be as tax efficient as initially supposed. In particular, where the employer pays the costs under a tripartite agreement, it could still be liable to pay a corporation tax charge.
- **Subcontracting services to the trustees:** HMRC suggests that an arrangement could be established where trustees contract and pay third party suppliers (for example actuaries, legal advisers and administrators) themselves as they currently do, but having first contracted with the employer to supply them with the service of running the pension scheme. To the extent that VAT charged by a trustee to the employer ‘relates to the taxable supplies of the employer’, then it may then be deductible by the employer.

Although not covered by briefing note 17/15 nor commented on by HMRC, the Association of Pension Lawyers (APL) has suggested that a simple amendment to a scheme's trust deed and rules would be sufficient to establish the “direct and immediate link” between the employer's business and the operations of the pension scheme.

For further information please see our [blog post](#).

HMRC: Fixed and Individual Protection 2016

HMRC has published [Pension Schemes Newsletter 73](#) which, amongst other things, details the process for applying for the new lifetime allowance protections (see [News on Pensions - April 2015](#)).

Fixed Protection 2016 (FP16) and Individual Protection 2016 (IP16) will enable individuals to protect their pension savings when the Lifetime Allowance (LTA) reduces to £1m from 6 April 2016 (as announced in the Budget 2015). Individuals will be able to apply for IP16 if they have pensions savings of £1m or more as at 5 April 2016, and will have a personalized LTA equivalent to the value of their pension savings as at 5 April 2016 (up to an overall maximum of £1.25m). Those with IP16 can carry on pension savings without losing their protection.

Unlike their predecessors FP14 and IP14, there is no time limit for registering for FP16 or IP16 and applications can only be made online from July 2016. An interim process will apply for individual wanting to take benefits before then.

DWP: Defined Ambition and Automatic Transfers

Pensions Minister Ros Altmann has released a [written statement](#) on behalf of the Department for Work and Pensions (DWP) setting out the Government's priorities on pensions.

The statement confirms the Government's priorities are to "carry through" the pensions reforms made over the last few years, including the new State Pension which comes into effect next April, automatic enrolment and the DC pension flexibilities which came into force this April.

This means that Government will put on hold further changes such as Defined Ambition, Collective Benefits and Automatic Transfers. However, the government has left open the option of revisiting such reforms, in particular some form of risk sharing, once the market has had "time and space to adjust".

Latest news from TPR

Research: Trustee landscape

The Pensions Regulator (TPR) has published [quantitative research](#) on the trustee skills and knowledge required to carry out the duties of running and supporting a pension scheme – in particular in light of recent changes in the pensions environment.

The research involved a survey of 816 trustees which was conducted between March and May 2015 and included a mixture of trustees of defined contribution, defined benefit, and hybrid schemes.

TPR intends to use the survey as a starting point in identifying the skills that the modern trustee should be able to demonstrate to give members increased confidence that their retirement savings are in a high-quality, well-run scheme. The regulator will set out further details next year.

The findings from TPR's research show that larger schemes are more likely to be well governed than medium and small schemes. This appears to be because trustees of larger schemes are more likely to receive training, have better access to advisers, including professional trustees, and spend more time on their duties. In general it was found that DB schemes were better governed than DC schemes, with schemes used for auto-enrolment also more engaged.

The surveyed trustees acknowledged gaps in their knowledge, including that of investment matters and pensions law. However, they were more confident in their capabilities of negotiating with the employer on funding matters and assessing employer covenant.

TPR: £13.7m scam case

TPR has [released details](#) of an investigation into a suspected scam case regarding three individual trustees who, acting on the instructions of a third party, misappropriated scheme funds and exercised poor trustee governance.

Following an inquiry, TPR believed it was reasonable to infer that a pension scam had taken place in which funds totalling around £13.7 million belonging to 242 members have disappeared – including through the payment of "exorbitant fees" and "commission payments". TPR's Determinations Panel appointed an independent trustee to administer the 17 affected schemes to prevent further losses and to claim back funds. The independent trustee helped secure around £400,000 from the schemes, though hundreds of members' savings have most likely been lost.

TPR says the case features warning signs that individuals should watch out for such as cold calling, the offer of lump sum payments on completion of a transfer, and the provision of inadequate scheme documentation at the point of transfer.

Other news

Data protection: US Safe Harbor ruling

The Court of Justice of the European Union (CJEU) has ruled that the US Safe Harbor framework is invalid. The Safe Harbor framework was used by US companies to comply with the EU directive on the protection of personal data in order to transfer data from the EU to US. This ruling could have implications for pension plans and employers if they themselves rely on the Safe Harbor framework.

EU data protection authorities have since [called](#) on EU member states and institutions to open discussions with the US in order to find a solution that would enable data transfers that “respect fundamental rights”. If no solution is found by January 2016, the data protection authorities say they are committed to take all necessary and appropriate actions.

Death benefits for same-sex partners

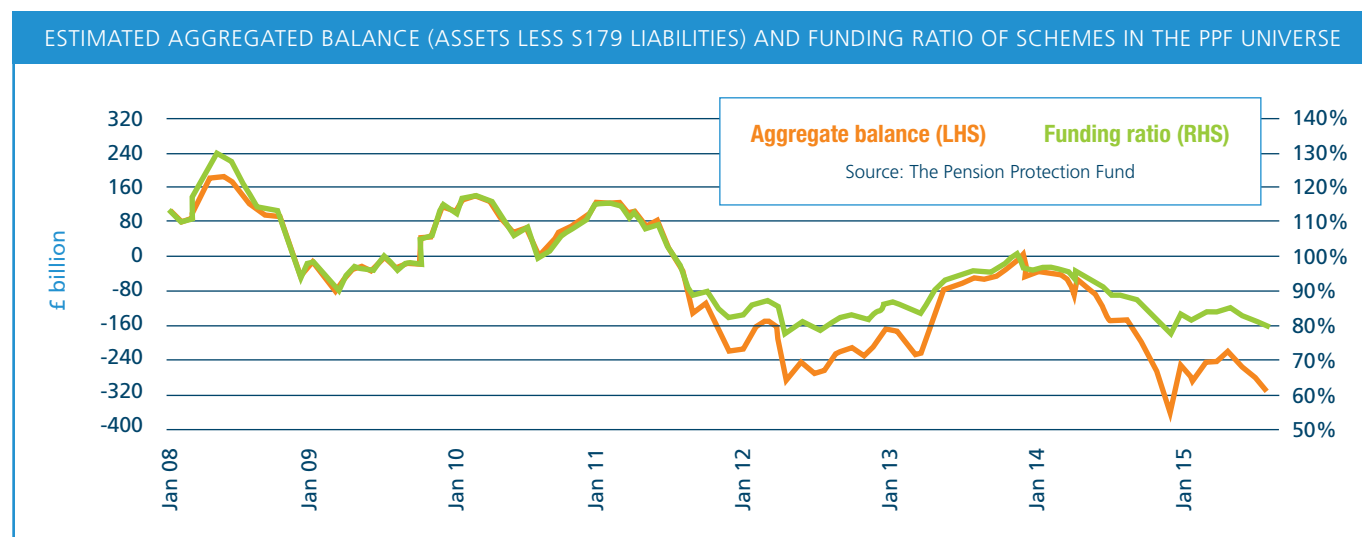
The Court of Appeal has [dismissed an appeal](#) in relation to pension provision for a civil partner. The case concerned Mr Walker who accrued benefits in the Innospec pension scheme before retiring in March 2003. Mr Walker was appealing a decision made by the Employment Appeal Tribunal to reject his claim that restricting the benefits payable to his surviving civil partner on his death breached European anti-discrimination law.

The judgement confirms that for pension accrued prior to 5 December 2005, the date where civil partnerships became law, there is no obligation for pension schemes to provide civil partners and same-sex spouses with the same survivor benefits as opposite-sex spouses.

PPF 7800 Index

The latest update of the Pension Protection Fund [PPF's 7800 Index](#) of schemes' funding (on the section 179 basis) has been published. There was a decrease in the s179 funding ratio from 81.6% to 79.9% between August and September 2015.

The aggregate deficit of the 6,057 schemes in the PPF 7800 index is estimated to have increased over the month to £311.7 billion at the end of September 2015 (there was a deficit of £280.4 billion at the end of August 2015). There were 5,101 schemes in deficit and 956 schemes in surplus.



ESOS: property investments

The Energy Savings Opportunity Scheme (ESOS) requires that, every four years, large entities (those with more than 250 employees or turnover in excess of €50 million and a balance sheet in excess of €43 million) carry out an audit of energy used by their buildings, processes and transport.

Whilst ESOS does not apply to pension schemes whose only property investments are through pooled funds, trustees of schemes with direct property investments may be affected. Schemes with a charge over a sponsoring employer's property should check whether the company is complying with ESOS.

The Environment Agency has issued some [guidance](#) on ESOS.

Further information

You may find the following recent blog posts and information sheets interesting:

- [Current Pensions Issues Autumn / Winter 2015](#)
- [Making sense of GMP reconciliation](#)
- [New State Pension statements; will we COPE?](#)

Forthcoming events

Investment Conference 2016

14 January 2016 - London

27 January 2016 - Birmingham

This conference will give delegates the opportunity to hear from industry experts and keep informed in an ever evolving industry. It will be relevant to pension scheme trustees, employers and pension professionals.

Trustee Training - DC schemes

10 March 2016 - London

16 June 2016 - Leeds

8 September 2016 - London

DC trustees are legally required to have a minimum standard of knowledge and understanding. Our courses are aimed at both trustees of DC schemes and those involved with the governance and management of DC schemes.

WHAT ELSE IS ON? >

Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail. Alternatively contact us via the following:

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