SLAUGHTER AND MAY/

CLIENT BRIEFING

NOVEMBER 2023

2023 HR AUTUMN STATEMENT BRIEFING

Pensions

Employment

Share Incentives

The 2% cut in the main rate of employee's National Insurance Contributions is likely to be at the forefront of employees' minds following the Government's Autumn Statement today, but there were also other important announcements that employers and pension scheme trustees should consider in the Chancellor's speech to Parliament. In this briefing, we discuss the practical implications of the Government's proposals.

PENSIONS

Although there was some disappointment that the King's Speech did not provide for a new Pensions Bill in the current Parliament, the Department for Work and Pensions (DWP) and the Chancellor have tried to make up for that today.

Surplus

The tax charge on repaying surplus will be reduced from 35% to 25% with effect from 6 April 2024, although we don't yet know whether this will come with strings attached.

In addition, the circumstances in which employers can take surplus out of a pension scheme are limited. One of the calls for evidence following the Chancellor's Mansion House speech asked whether allowing employers to extract surplus would encourage more risk to be taken in defined benefit (DB) investment strategies and enable greater investment in UK assets.

The Government has published a response saying that it will introduce measures to make surplus extraction easier. The Autumn Statement says that there will be consultation later this year on the rules around return of surplus and new mechanisms to protect members.

Decumulation options

DWP intends to go ahead with proposals consulted on in July to place duties on all defined contribution (DC) occupational pension scheme trustees to offer a decumulation service to members, including products of an appropriate quality and price at the point they access their benefits. This will be legislated for at the earliest opportunity.

It will also require schemes to devise a default decumulation solution, based on the general profile of their members. This could be done either directly or in partnership with another organisation.

DB consolidation

A call for evidence earlier this year considered whether there should be a public consolidator for DB schemes that are unattractive to commercial providers. The Government has now responded to that call for evidence and confirmed that a public consolidator will be introduced by 2026. It also intends to consult later this year on the details of how this will work, including design, eligibility, safeguards and a possible Pension Protection Fund (PPF) underpin. The PPF has already publicly stated that the PPF would be "well placed" to run a public consolidator.

Small pots

In July, DWP consulted on potential solutions to deal with the proliferation of small DC pots. It is estimated that there will be 27 million deferred pots within master trusts by 2035 if no

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action is taken, leading to significant costs for the pensions industry and a growing number of members losing touch with their pots.

The Government has now responded to that consultation and confirmed that it is going forward with proposals to consolidate small pots. The key elements of the proposals are:

- They will apply to DC pots created under the auto-enrolment regime which have not had any contributions paid into them for the last 12 months and are valued at £1000 or less;
- A central clearing house which will be responsible for matching deferred pots and leading on communications with members;
- Multiple default consolidators, authorised and supervised by the Pensions Regulator (**TPR**). They will need to demonstrate good value for money and provide decumulation services. They will also have to have sufficient scale to be able to deliver value; and
- Members will be able to make a choice about which default consolidator they use. If they don't, they will be consolidated into the scheme that holds the largest pot for them or allocated to a consolidator on a rotating basis.

The Government refers to similar reforms in Australia which took 4 years to fully develop, so these proposals are unlikely to become law in the near future.

Lifetime provider model

The Government has issued a call for evidence exploring medium to long term mechanisms to prevent multiple small pots arising in the first place. It considers a "lifetime" model where a member would remain in a single scheme over their working life. In theory this would enable the scheme to develop a better understanding of the member's needs and tailor communications to them, increasing the possibility that they might engage in a meaningful way.

Amendments would be needed to the existing auto-enrolment framework as contributions would need to be directed to the member's chosen scheme rather than an employer's auto-enrolment scheme. This could potentially increase the administrative burden for employers and reduce their engagement in employee pension savings. The Government invites views on these issues.

Lifetime schemes could potentially reduce the need for members to make complex financial decisions, particularly at retirement. The Government suggests that one option would be Collective Defined Contribution (**CDC**) schemes and views are invited on whether this is appropriate.

The call for evidence closes on 24 January 2024.

Pension trustees' skills, capability and culture

A call for evidence was issued in July on trustee capability and other barriers to trustees doing their job in an effective way resulting in the best outcomes for members. The Government has responded and its proposals include:

- Supporting TPR to set up a trustee register which will help it to regulate trustees more effectively and improve the communication of information and guidance to them.
- Encouraging professional trustees to seek accreditation through one of the existing frameworks, although this will not be required at the moment.
- Working with TPR to produce additional information for employers on the factors they should consider when selecting their workplace pension scheme, focussing not just on costs but on best value and long-term outcomes for members.

Lifetime allowance

As expected, the Government will legislate in the Autumn Finance Bill to abolish the lifetime allowance (LTA) from 6 April, 2024. The latest policy paper summarises the proposed revisions to the pensions tax legislation, building on draft legislation published in July. Headline points include:

- The new personal allowance of £1,073,100 (the current LTA) for tax free lump sums and lump sum death benefits is confirmed, with lump sums paid above this level taxed at the recipient's marginal rate of tax.

- The additional limit for tax free lump sums paid in life of £268,275 (25% of the current LTA) is confirmed, but only pension commencement lump sums (PCLS) and the tax free element of uncrystallised funds pension lump sums (UFPLS) will be tested against this.

- In a welcome change from the July proposals, the tax free element of trivial commutation lump sums, small lump sums and winding up lump sums will not be deducted from either allowance, but an individual will need to have available capacity within these allowances to be paid these lump sums.

- In a new move, the lifetime allowance excess lump sum (LTAELS) will be replaced by a "pension commencement excess lump sum", presumably modelled on the LTAELS, which will be taxed at the marginal rate. This is expected to address the defect in the July drafting, which gave scope for members of DB schemes to take most of their benefit as a (taxable) lump sum.

- Individuals with valid lump sum protections and valid LTA protections will retain their rights to higher levels of tax-free lump sums and lump sum death benefits. HMRC has confirmed that the deadline for applying for fixed protection 2016 and individual protection 2016 will be 6 April 2025.

- For money purchase funds, the proposal to impose income tax on pensions paid from uncrystallised benefits on death before age 75 has been dropped.

- There will be changes to the annual Event Report, removing the existing LTA events and adding a new event relating to relevant lump sum and lump sum death benefits paid in excess of the new allowances, marginal tax paid and reliance on valid protections.

- Trustees will need to provide statements to individuals telling them "how much" of their allowances are used up when relevant lump sums and lump sum death benefits are paid. It is unclear whether this will operate on a £ basis or a percentage basis.

- Where benefits have been taken before 6 April 2024, without using up all of the individual's LTA, there will be a transitional calculation mechanism to work out how much of the new allowances these use up. It appears that the default calculation method will be based on the pension that has crystallised, addressing the concern that there is no requirement in the current LTA reporting system to separately identify tax free cash. Members will be able to request an alternative transitional calculation where they have full accurate records of their previous tax free amounts.

- In a welcome move, the Treasury will have a two year power to make any necessary changes to the primary legislation via secondary legislation.

Whilst this update is welcome, we will need to wait for the Finance Bill (to be published "later this year") for the finer detail, and for confirmation of how the changes are expected to work in practice. This leaves pension schemes very little time to prepare for the changes. Some important points the policy paper does not address include:

- Whether there will be any legislative overrides or modification powers to assist schemes with hard coded LTA provisions.

- Where the burden of reporting and paying tax will lie in relation to lump sum death benefits.

- Whether there will be protective provisions for trustees to discharge them from PAYE liabilities, where that is reasonable.

- How benefits will be valued under the new provisions (although HMRC has previously said in Newsletter 152 that it does not intend to change the approach that schemes currently take to valuing benefits).

EMPLOYMENT

Income tax and NICs

The headline news was a cut in the main rate of Class 1 employee National Insurance Contributions (NICs) from 12% to 10%. This promises to provide a tax cut for 27 million working people, with the average worker on £35,400 receiving a tax cut in 2024-25 of over £450. The cut will take effect from 6 January 2024 (instead of the usual 6 April). Employers will therefore need to ensure their payroll systems are adjusted in time to apply the new rate.

The Government is also cutting taxes for the self-employed, reducing the main rate of Class 4 self-employed NICs from 9% to 8%, and abolishing Class 2 self-employed NICs, in both cases from 6 April 2024.

The Lower Earnings Limit (LEL) and the Small Profits Threshold (SPT) will be frozen at 2023/24 rates, so remaining at £6,396 per annum (£123 per week) and £6,725 per annum respectively for 2024-25. For those paying voluntarily, the government will also freeze Class 2 and Class 3 NICs rates at their 2023/24 levels in 2024-25, remaining at £3.45 per week and £17.45 per week respectively.

Wages

The Autumn Statement included the largest ever increase in the rates of the National Living Wage (NLW) and the National Minimum Wage (NMW). The increases have been driven by the strength of pay growth across the economy, which is forecast to continue into next year.

From 1 April 2024 there will be:

- a 9.8 per cent increase to the NLW (from £10.42 to £11.44 per hour). The age threshold for NLW will also be lowered from 23 to 21.
- a 14.8 per cent increase to the NMW (from £7.49 to £8.60 per hour) for those aged 18-20.
- a 21.2 per cent increase to the NMW (from £5.28 to £6.40 per hour) for those aged 16-17 and apprentices.

Off-payroll working

Employers will welcome the Government's decision to move ahead with its proposal to address the potential over-collection of tax and NICs where an error has been made in applying the off-payroll working rules. Following a consultation earlier this year, the Government will now legislate to allow HMRC to account for taxes already paid by an individual and/or their intermediary, when calculating a PAYE liability due by a deemed employer in this scenario. Legislation will be included in the Autumn Finance Bill 2023 and will come into effect from 6 April 2024, in respect of deemed direct payments made on or after 6 April 2017.

Back to Work Plan

The Autumn Statement also included a range of measures designed to support the long-term unemployed, long-term sick and disabled individuals back into work. These include further reforms to Universal Credit and the Work Capability Assessment (to reflect greater availability of home working since the Covid-19 pandemic), a new voluntary minimum framework for Occupational Health, and a consultation in 2024 on wider reforms to the fit note regime.

SHARE INCENTIVES

CGT

Following the proposed reduction in the "annual exempt amount" (to £3,000 with effect from April 2024) previously announced by the Chancellor, there were, disappointingly, no proposals announced to protect participants in HMRC-approved all-employee Sharesave plans from a greater proportion of any gains made under their share options being subject to Capital Gains Tax (CGT). Employers should therefore prepare themselves for the fact that next year more employees will fall within the CGT net as a result of their participation in Sharesave plans and for more queries from employees as a result of these changes.

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