LEGISLATION DAY: PENSIONS

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Disclaimer

Introduction

Since 2010, it has become the norm for draft tax legislation to be published late in the calendar year for eventual inclusion in the following year's Finance Bill. This is published one week or two after the Chancellor's Autumn Statement, and the publication date has generally become known amongst tax practitioners as 'Legislation Day'. This year, Legislation Day was on 9 December.

We have divided our commentary on the draft legislation amongst seven subject areas: Income tax & NICs, Corporation tax, Inheritance tax, VAT, Stamp taxes, Pensions & Compliance, avoidance and evasion. Our commentary does not attempt to cover everything for which legislation was published. Instead, we have opted to cover about 25 significant topics on which there is now more detail available than on Autumn Statement day (25 November).

Draft legislation is always subject to amendment of course, both before and after it is introduced to the House of Commons.

See Simon's Taxes Binder 1 for information about recent New Developments which are to be incorporated into the commentary.

Reduction of pensions lifetime allowance

The standard lifetime allowance is to be reduced from £1,250,000 to £1,000,000 for 2016-17 and 2017-18. For subsequent years it is to be the same as the preceding year, unless there is a rise in the consumer prices index, in which case it will be increased to reflect that rise (rounded up to the nearest £100).

The £1,250,000 figure is retained for the purposes of applying lifetime allowance enhancement factors where the standard lifetime allowance (SLA) as defined in the relevant section falls within the period covered by 2014-15 and 2015-16: and a similar preservation applies to a death benefit lump sum where the death occurred during that period.

As in previous reductions in the lifetime allowance, there are fixed and individual protections available to prevent retrospective effect. Applications may be made on or after 6 April 2016 and it will be important to identify and alert clients who may be affected. Reference numbers will be issued and there are rights of appeal where numbers are withheld or withdrawn.

Fixed protection 2016 guarantees a minimum SLA of £1,250,000 (if the current SLA is greater, then it applies). It is conditional on the grant of a reference number, other protections (primary protection, enhanced protection, fixed protection 2012 and fixed protection 2014) not applying, and no further benefits accruing (that is, no further contributions in money-purchase schemes, and for defined benefit schemes no increase in rights other than, broadly, inflation increases). Impermissible transfers and arrangements outside the permitted circumstances also end fixed protection.

Individual protection 2016 is based on the individual's relevant amount – broadly pensions in payment, previous benefit crystallization events and uncrystallised amounts. If this is more than £1,250,000 then the protection applies the greater of current SLA and £1,250,000: if less, the greater of the relevant amount and current SLA. It only applies if none of the other protections (including fixed protection 2016) apply. However, applications may be accepted on a "dormant" basis until the prior protection no longer applies. Thus, fixed protection takes precedence.

Information requirements are adjusted to accommodate the new protections, including an obligation for a scheme administrator to supply the information needed to calculate an individual's relevant amount.

The opportunity is also taken to adjust provisions relating to pension commencement lump sums where there is protection for pre-April 2006 rights.

Pensions tax: bridging pensions

The current legislation allowing the reduction of a scheme pension on receipt of the state pension (facilitating bridging pensions) will be repealed and replaced with regulations. The intention is to maintain the provision for bridging pensions on the introduction of the single tier pension in April 2016

Dependants' scheme pensions

The anti-avoidance provisions that apply to ensure that a disproportionate amount of a member's fund is not used to provide dependants' pensions are to be amended for dependants' scheme pensions payable on or after 6 April 2016 in order to reduce the compliance burden by reducing the number of comparison calculations required.

This is achieved by introducing three circumstances in which the limits to dependants' provision do not apply.

The first is where all prior benefit crystallization events relate to having unused funds under a money purchase arrangement at age 75 (BCE 5B).

The second is where enhanced protection applies to the member immediately before the member's death.

The third operates by applying the limits only where:

- money purchase pension savings (including cash balance and other money purchase pension savings), and
- defined benefits scheme pension and dependants' scheme pensions multiplied by 20 plus any lump sum death benefits,

add up to more than 25 per cent of the lifetime allowance at the member's death.