



HM TREASURY



HM Revenue  
& Customs

## **Pensions Tax Consultation: *Implementing the restriction of pensions tax relief***

### **SCHEME PAYS WORKSHOP**

**5 February 2010**

**13:30 – 16:30**

**HM Treasury**

## **SUMMARY OF DISCUSSION**

### **Introduction**

**Angela Miles** of HMRC pensions policy team gave an introduction to the event, a brief background and overview of the proposed scheme pays process, setting out the possible steps in the scheme pays process. Participants then discussed each step of the process in small groups before feeding back to the whole group.

The following points were made in the feedback discussions on each step:

### **Step 1. Member advises scheme they want to use scheme pays and asks them to calculate a reduction in benefits**

It was commented that the request for scheme pays should be in writing but did not need to be too prescriptive. One group said that in the request or nomination the member should confirm that the recovery charge related to contributions or deemed contributions in that scheme. It was also felt that the three month period should start only once the required information had been correctly received by the scheme.

It was recognised that further information from the member would be required for the scheme to be able to gross up the recovery charge. The view reported back by one group was that the individual should be responsible for carrying out the grossing up calculation (as it would be their tax liability) and informing the scheme

of the appropriate scheme pays recovery charge. The scheme should just take the information and process it, with no onus on the scheme to check its accuracy (similar to Benefit Crystallisation Events information given to schemes by members) with the responsibility for its accuracy remaining firmly with the taxpayer.

The issue of confidentiality was raised and whether individuals would want to give details of total income to scheme administrators.

### **Step 2. Scheme checks member can use scheme for scheme pays and confirms whether or not they are able to pay**

One group reported that they felt there needed to be an additional step (between steps 1 and 2) for the scheme to inform the member that there would be a charge for doing the work and that this needed to be paid before work began.

Others supported that costs needed to be highlighted early on and suggested there should be a schedule of all charges so people could clearly understand the costs of going down this route.

It was felt that the checks on the member at this stage should not be particularly onerous, as schemes would have already been involved in doing the work on valuing the pension benefits. It was commented that time lags caused by sending out details of costs and clarifying issues etc. could be an issue for scheme administrators if this reduced the 3 month window to do the actual calculation.

The consultation document asks how individuals in multiple schemes should be able to use scheme pays. Some felt that the charge should be split proportionately, although it was recognised that this leads to multiple charges and potentially multiple schemes paying with respect to one individual. Others thought that the scheme should only pay tax charges relating to accrual of benefit in that particular scheme.

Many supported the comment that the possible opt-out needed to be widened out further than just heavily under-funded schemes, for example DC schemes with mainly illiquid funds or where the scheme was in a recovery plan.

### **Step 3. Scheme calculates the reduction in benefits for the member and the scheme pays charge**

One group felt there should be one agreed methodology across DB schemes. Others felt they could not comment on this aspect without details of how the reduction would be calculated. This issue was to be discussed at the DB technical group meeting. [This meeting took place on 12 February.]

For individuals in DB schemes the reduction in future benefits would mean that member became 'non-standard' and any future calculations would be more complex and increase admin costs on a year by year basis for that individual.

There could be a large gap between working out the reduction calculation and paying the tax across to HMRC. It was suggested that an agreed valuation date would be required. A suggestion was made the scheme produced a certificate showing the valuation date. That would prevent members in DC schemes coming back to the scheme saying they disinvested at a bad time to their detriment.

One group reported they had discussed the difficulties for DC schemes, in particular deciding which assets would be needed to be disinvested as well as timing issues that this would throw up. Another group thought the reduction in value for DC schemes would depend on the value of the units that had to be surrendered. This value would depend on the valuation date.

One group thought there needed to be a clear process and rules in legislation for working out the reduction in benefits, rather than leaving it to individual scheme rules. It felt that because of the complexity of the issue, manual calculations would be required (so costs would be significantly greater than estimated). It also questioned what was meant by under-funding – this would need to be defined.

#### **Step 4. Scheme advises member of the scheme pays charge and the amount of reduction in their benefits**

Some questioned what information would be required here. If it was just a statement showing the reduction that may be too little information for the member and leave schemes open to later challenge of not providing all the necessary information and that a revised statement of projected benefits would also need to be supplied. This was something that may particularly affect trust-based schemes. Whilst this would not be obligatory, it would be consistent with

best practice for trustees, and could make this step may be more onerous than just providing details of the reduction.

The point was made that third parties could be involved in the request. It was felt that there could be an additional step between steps 4 and 5. This would be after the scheme had informed the member of the reduction as this was likely to result in some further administration from the member or their financial advisor asking questions about how the reduction was arrived at. This would require the scheme to answer any questions before the member took the final decision.

#### **Step 5. Member confirms to scheme they want to proceed with scheme pays**

One group questioned whether the request at this stage should be made irrevocable to give schemes security. If it was not and the member backed out, the pension scheme would be required to do further work to undo the position. This was broadly supported although others commented that there may be very limited occasions when circumstances meant the payment could not go through, so there should be some possible exceptions, for example where the funding position had changed.

Others comments on this step were around schemes ensuring due protection from the potential for legal challenge by the member further down the line. For example, they would want a signature from the member agreeing to the reduction. It was also questioned whether it might be necessary to get a signature from the spouse as well, if their benefits were potentially being affected. Complications if the member was divorced or separated were also noted.

One group thought that the legislation should be drafted to protect the scheme from the member, particularly where there is a late election. There should be a time limit from the scheme sending out the valuation for the member to decide whether to go for scheme pays, there should be a formal election and it should be in writing.

#### **Step 6. Scheme applies reduction in benefits**

The comment was made that although there needs to be consistency in how the reduction applies, ultimately it has to be for the scheme to choose. The member

should not have choice on which benefits are deducted. The decision should be that of the trustees.

### **Step 7. Scheme reports recovery charge to HMRC and pays tax due**

All groups noted that current Accounting for Tax filing and payment dates do not match the 31 January Self Assessment payment date. Gaps would exist between the divestment date and payment of the tax to HMRC. This may lead to complaints from members affected, so an agreed valuation date would be needed to mitigate this.

One group totally disagreed with using the Accounting for Tax process and suggested that instead the process should be that the member nominated for scheme pays to HMRC and HMRC requested the money from the scheme. Although this made the process longer they felt that this was a better process.

Participants commented on the timetable for completing the scheme pays process. All felt that this was very stretching and many questioned whether it was achievable.

### **Points from general discussion**

The question was asked who was liable for the tax charge, as participants felt this was a very important point. Participants did not believe it should be joint and several liability. The comment was made although the lifetime allowance charge liability was joint and several, the annual allowance was not. One group was strongly of the view that the scheme is only executing instructions from the member and should not be held liable by HMRC for any tax.

On adjustments to scheme pays charges after they had been paid, although this was not discussed in any detail, the predominant view was that this should be handled between the individual and HMRC and the scheme should be totally outside the process.

### **Summary**

Overall, the participants agreed the seven proposed process steps set out above were necessary and some identified possible further steps in the process. HMRC

said the next important step was to look at the scheme pays process alongside the end-to-end delivery process. [A workshop for this has been planned for 23 February.]

There was also discussion around the scheme pays process for DC arrangements and whether a further workshop should look at these issues, reflecting the fact that the DB technical group would consider step 4 around offsetting pension adjustments in DB schemes. It was suggested that DB and DC should not only be looked at in isolation as many schemes had both DB and DC sections which might be affected by scheme pays at the same time.