HM Revenue & Customs

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1. Changes to the Pension Schemes website

HMRC has recently made some changes to the Pension Schemes website. Old and out of date guidance has been removed as part of the first phase of work to improve the website. Over the coming months further weeding and archiving of out of date information will be done as the main source of guidance for Pension Schemes, the Registered Pension Schemes Manual (RPSM), is updated.

Pension Schemes Services is also working with experts in the HMRC web team to redesign the existing pension schemes area of the HMRC website; to make it easier for customers to use. More information will be available as this work progresses.

2. Registered Pension Schemes Manual (RPSM)

RPSM has been updated to include all the changes made by Finance Act 2011 and accompanying regulations. Given the scale of the amendments (over 700 pages) below is a summary of the main changes made.

Subject	**Guidance starts from**
Annual allowance rules from 6 April 2011	RPSM06105000
Fixed protection	RPSM11101500
Drawdown pension	RPSM09103500
How existing unsecured pension moves to drawdown pension	RPSM09102450
Pension commencement lump sum changes from 6 April 2011	RPSM09104195
Dependants drawdown pension	RPSM10104850
Lump sum benefits that may be paid in respect of someone	RPSM10106000

who died after 5 April 2011	
How LTA enhancement factors work from 6 April 2012	RPSM11101100
New BCE 5B from 6 April 2011	RPSM11104655
How primary protection works from 6 April 2012	RPSM03102020
How scheme specific lump sum protection works from 6 April 2012	RPSM03105580
Change to the conditions for paying a lump sum of more than 25% following SI 2011/732	RPSM03105520
Change to the conditions for paying benefits before normal minimum pension age die to SI 2011/732	RPSM03106060
Change to the special lump sum death benefit tax charge	RPSM04101110
New serious ill-health lump sum tax charge	RPSM04101125

3. Trivial Commutation

Trivial Commutation is a complex subject and HMRC has recognised that guidance on this topic is not easily accessible or understandable. This has caused real difficulties for members, pension providers and advisers in making informed decisions. Pension Schemes Services is looking to significantly improve this guidance, based on current legislation, to help customers better understand:

- what trivial commutation is about
- whether it is applicable/available
- the circumstances in which trivial commutation may be sought
- what needs to be done and when to obtain a trivial commutation
- the tax consequences
- the repayment claims process and interaction with HMRC
- how this may affect other benefits/credits etc

This review will also help pension providers to ensure PAYE is correctly operated on the taxable element of lump sums paid by schemes.

As part of the review Pension Schemes Services will be liaising with the pensions industry to ensure the guidance meets customer needs.

Further updates will follow in due course. Meanwhile if you have any views or comments on the issues mentioned above please forward them to:

John Brothwood email: john.brothwood@hmrc.gsi.gov.
Julia Davis email: julia.davis1@hmrc.gsi.gov.uk

4. Drawdown pension tables – Under 23's

Where an individual who is aged under the age of 23 is in receipt of a drawdown pension, the maximum amount that may be paid is calculated by reference to the 5 year UK gilt yield shown in the FTSE UK Gilts Indices, rather than the 15 year UK gilt yield which is used for those aged 23 or over. The basis amount for those under 23 is then worked out using Table 3 of the drawdown pension tables. The drawdown

pension is payable only until the child's 23rd birthday and so the tables are drawn up on the basis that income withdrawals deplete the fund by that time.

As the 5 year UK gilt index yield is currently less than 2%, and Table 3 only provides a basis amount for gilt rates down to 2%, HMRC has been asked what scheme administrators should do currently if they need to calculate the maximum amount of drawdown pension that may be paid for someone under the age of 23.

HMRC can confirm that, if the 5 year UK gilt index yield is below 2%, the scheme administrator should calculate the basis amount for anyone aged under 23 using the gilt yield figure of 2%.

It is important to note that the tax rules never require the maximum income to actually be drawn in pension. The statutory calculations merely serve to determine whether a given level of drawdown pension is authorised for tax purposes. For advice purposes scheme administrators are free to provide more modest calculations suggesting recommended maximum withdrawals, to avoid the possibility of prematurely exhausting the drawdown pension fund, and ensuring the resulting payments do not exceed the statutory limits.

5. Flexible drawdown pension – scheme administrator responsibilities

If a pension provider wishes to offer flexible drawdown then, in order to ensure they are not subject to a scheme sanction charge, a scheme administrator needs to take reasonable steps to satisfy themselves that the individual satisfies the minimum income requirement ('MIR'). If so, and they keep an audit trail to show that, then whilst each case would have to be considered on its merits, HMRC would expect the good faith let out from the scheme sanction charge to apply.

However, it is down to the scheme administrator to make an assessment of the extent to which they need to make further enquiries following receipt of a MIR declaration. HMRC are not prescribing what scheme administrators must obtain, if anything, beyond the statutory declaration. That would depend on what the scheme administrator felt appropriate considering 'treating customers fairly' and the good faith provisions (that is not being subject to a potential tax charge if the scheme administrator acted in good faith in accepting that the client had met the MIR).

In addition to potential false declarations, there is also the capacity for some members to simply get it wrong. Clearly not all scheme pensions and lifetime annuities (including dependants' pensions and lifetime annuities) qualify so scheme administrators will have to routinely get more specific detail of the income source. As a minimum, it would be reasonable for scheme administrators to ask members for a description of the particular source they wish to count towards the MIR, to state which category of income each source used in the MIR declaration falls under and why the member believes this to be the case.

If the scheme administrator is familiar with the characteristics of the pension and scheme then no further enquiries may be necessary; they can document as evidence that they have taken reasonable steps to satisfy themselves that the individual is entitled to flexible drawdown. However, if scheme administrators are not familiar with the pension or scheme in question, and have concerns then they may need to find out more about the characteristics of the pension and/or the scheme. If they are aware that the pension being relied on does not count towards the MIR then HMRC

would expect they would not take it into account in determining whether to offer flexible drawdown.

If the declaration relies on an amount of non-UK pension income, scheme administrators should bear in mind that as a UK provider they are likely to be in the best position to determine whether the particular income counts as relevant income. Neither the non-UK pension scheme nor the individual is likely to be able to say with any confidence whether or not the pension meets the statutory test, that is whether or not it would be a 'relevant income' scheme pension or a lifetime annuity if it were being paid by a registered pension scheme. Such cases might therefore call for a scheme administrator to make more detailed enquiries about the characteristics of the pension and/or scheme than in relation to payments from other sources, where they are more familiar with the pension's characteristics and/or the payer operates in the UK and so is familiar with the UK tax rules.

6. Update on the Pension Schemes Anti Fraud Unit

An investigation involving HMRC Pension Schemes Services has led to the conviction of a bogus financial adviser who fraudulently manipulated his "clients'" pension funds to evade tax of over £1.9 million.

Colin Pearson (47) was sentenced for three years at Hull Crown Court on Friday 02 September. Pearson was jailed for the fraudulent manipulation of pension funds which he used to maintain a lavish lifestyle, driving expensive cars and owning luxury homes in both the UK and Cyprus.

Mr Pearson was arrested by HM Revenue & Customs investigators in September 2009 and pleaded guilty at an earlier court hearing. The sentencing is the culmination of two years work involving officers from Criminal Investigation and the Pension Schemes Services Anti Fraud Unit.

This is a clear message that HMRC takes fraud and abuse of pension schemes seriously and will pursue anyone involved in this type of crime.

If you have any information about suspicious activity on pension schemes please contact the Pension Schemes Anti Fraud Unit on 0115 974 2328.

If you have any information about tax fraud please contact the HMRC 24 hour hotline on 0800 50 5000.

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