Hot Topics

Pensions

1. TAXING TIMES

The Lifetime Allowance will reduce from £1.8m to £1.5m as from 6 April 2012. Individuals can apply for fixed protection to benefit from the higher LTA but will not then be able to make further savings into registered pension schemes. The Government is introducing anti-avoidance legislation and has also issued a discussion document on “Scheme Pays” – the payment of members’ Annual Allowance tax charges by pension schemes.

2. RPI TO CPI

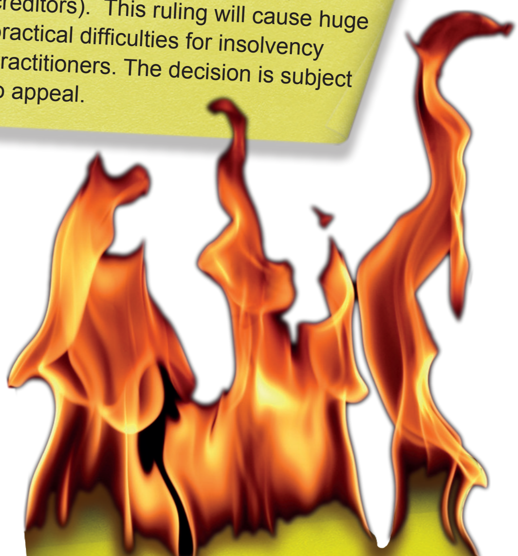
The long-awaited consultation does not provide any real clarity for private sector schemes. The Government is against introducing legislation which overrides more generous scheme rules and imposes a switch to CPI, as this may interfere with long-standing benefit design decisions. This effectively leaves us with a ‘scheme rule lottery’ regarding both increases to pensions, and employers’ abilities to amend scheme rules to embrace CPI.

3. LEHMAN AND NORTEL

According to a ruling of the High Court, Financial Support Directions and Contribution Notices issued by the Pensions Regulator once an English insolvency process has commenced rank as expenses of the insolvency process (and therefore take precedence over ordinary creditors). This ruling will cause huge practical difficulties for insolvency practitioners. The decision is subject to appeal.

4. COMPROMISING PENSION RIGHTS

The Court of Appeal has confirmed that section 91 of the Pensions Act 1995 (which prevents a member from assigning, commuting, surrendering or charging pension rights or entitlements) is not a bar to compromising disputed claims over the existence of pension rights. This had been the subject of some doubt following a controversial High Court ruling to the contrary in a case involving the IMG Pension Plan.



5. LONGEVITY SWAPS

De-risking in DB schemes is expected to be a **red hot** topic in 2011. Economic improvements and the change to CPI as an inflation measure will increase affordability and subsequent demand. Early in 2011, we expect to see some significant longevity swaps completed. Evidence suggests that insurers are preparing for the anticipated surge in interest.

6. ELECTRONIC COMMUNICATIONS

Many pension schemes are already taking steps towards delivering member communications electronically following recent changes to the disclosure of information regulations. Development of websites and increased use of email could lead to a huge cost saving over time, especially for larger schemes. Definitely worth thinking about!

7. INCENTIVE EXERCISES

Regulatory guidance over-emphasises the view that incentive exercises (including Enhanced Transfer Values) are not in most members' best interests, potentially making it more difficult for trustees and companies to find common ground. However, the DWP has stated that transfers from contracted-out DB schemes to DC arrangements will now remain possible after April 2012 – which buys more time for ETV exercises.

8. MONITORING EMPLOYER SUPPORT

Under new Regulatory guidance, trustees of DB schemes are expected to establish a process for reviewing and monitoring the employer covenant. Knowledge requirements (legal and financial) are emphasised. The guidance defines the covenant as the "employer's legal obligation and its ability to fund the scheme now and in the future" – a notable departure from the "ability and willingness" terminology previously used.

9. EMPLOYER-RELATED INVESTMENTS

A change to employer-related investment regulations means that certain investments, such as the assets underlying collective investment vehicles, are now included in the scheme's 5% self-investment limit. These were previously exempt. The Regulator has outlined its expectations on the measures that trustees should take towards (i) assessing and monitoring the scheme's self-investment limit and (ii) non-cash funding strategies generally.

10. FINAL CHECK BEFORE 6 APRIL 2011

You may be tired of reading this, but we will try to make it the last statement of its kind in our publications… it is VITAL that schemes which have not taken action to amend their rules, in order to retain features (most notably benefit limits) of the old tax regime that existed before 6 April 2006, do so before 6 April 2011… otherwise they, and their sponsors, may face a huge – and irreversible – increase in scheme liabilities…

FURTHER INFORMATION

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