

## 1. CPI/RPI – QinetiQ case

The High Court considered whether the pension plan trustees could use a discretion in the rules to switch to CPI for indexing deferred and pensioner benefits. The Court held they could switch for all benefits and for all pensionable service (without infringing Section 67) if the increase had not been applied to the benefit. The judgment may be appealed, however employers and trustees may wish to review rules which incorporate a similar discretion.

## 2. Civil partners' challenges

Civil partners do not have the same occupational pensions rights as married members in respect of pensionable service before 5 December 2005. Therefore, death benefits payable to civil partners may be much less than those payable to spouses. This discrepancy is likely to be subject to further challenge so employers and trustees may require legal advice if a complaint is received.

## 3. Short service refunds

The Government intends to abolish short service refunds from DC pension plans as soon as 2014. This is a blow to employers who currently benefit from retaining their own contributions in the plan when the member takes a refund. Separately, HMRC has clarified the circumstances in which short service refunds are 'unauthorised payments' following the abolition of protected rights.

## 4. VAT reclaims

The ECJ is to decide whether occupational pension plans can recover VAT paid for management services, in the *Wheels* case. In a potentially related development, the High Court recently held in the *ITC* case that where an entity has been incorrectly charged VAT it can reclaim this directly from HMRC for some periods. Guidance on 'look back' periods is awaited. Trustees may want to consider making a protective claim.

## 5. Auto-enrolment thresholds

The DWP has indicated that the automatic enrolment earnings trigger will be £8,105 and the lower and upper limits of the qualifying earnings band will be £5,564 and £42,475 for the tax year 2012/2013. Employers can now assess the effect on their workforce and the impact on company budgets.

## 6. Changes to state pensions

In the budget, the Government announced that: (a) it is committed to increasing the state pension age in future to take account of increases in life expectancy; and (b) it will introduce a single tier state pension for future pensioners to replace the current two tier system. This is likely to signal the end of defined benefit contracting-out.

## 7. FATCA

The Foreign Account Tax Compliance Act is causing shockwaves in financial markets worldwide. The U.S. Government will impose a 30% withholding tax on U.S. sourced income from 2014 if 'foreign' financial institutions do not agree to disclose information about their U.S. customers. The impact on UK pension plans is unclear – we continue to work with our U.S. colleagues on this issue.

## 9. Fixed Protection

Individuals who applied to HMRC for fixed protection by 5 April 2012 maintained the lifetime allowance of £1.8 million but they cannot accrue additional benefits in registered pension plans. Employers and trustees should be aware of which employees have fixed protection and avoid any plan changes that may cause them to inadvertently lose protection.

## 8. GMP equalisation

Developments in ECJ case law have led the Government to conclude that DB pension plans are required to equalise GMP benefits irrespective of whether an opposite sex comparator exists. The Government's conclusions are controversial and likely to cost £billions to implement. We advise clients to take a "watching brief" on the issue and to take no further action until the position is clarified following consultation.

## 10. Trustee training

The Pensions Regulator has refreshed its online trustee toolkit, to offer learners a more tailored programme and to provide extra downloadable resources. Trustees should keep their training needs under constant review to ensure that they remain up to date with general developments and have sufficient knowledge of the rules of their own pension plan.

### Further information

For further information on any of our Hot Topics please contact any of the partners listed below or your usual contact in the Squire Sanders pensions team.

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