Meeting of the Board 23 January 2023

Response to HMRC consultation (tax regulations)

Introduction

1. On 25 November 2022, HMRC published a technical consultation on a draft statutory instrument which ensures the pensions tax framework will apply as intended to pension scheme administrators and members affected by the public service pensions remedy. The consultation documents also included an explanatory memorandum and guidance for administrators on the draft regulations.

2. The consultation sought views from pension scheme administrators on the draft regulations. The regulations set out changes to how the pensions tax rules will apply to pension scheme administrators and members of public service pension schemes as a result of the public service pensions remedy.

3. The regulations will make changes to how pensions tax legislation operates in certain circumstances, including changes to how schemes will need to report and pay extra tax charges or reclaim overpaid tax and ensure that schemes can pay pension benefits as authorised payments.

4. This legislation is intended to take effect from 6 April 2023, but some provisions will have a retrospective effect.

5. An engagement session on the effect of the regulations was held for the Board on 20 December 2022 to give members the opportunity to comment. A response to the consultation was subsequently submitted to HMRC on behalf of the SAB on 6 January 2023:

   FPS SAB response to HMRC consultation on remedy tax regulations

6. The covering letter to the response expressed disappointment at the lateness of providing the materials and the absence of final tax policy positions in the ‘discrete’ areas not covered by the consultation, which have caused a subsequent delay to schemes being able to draft and consult on their secondary legislation.

7. The response suggested some areas where further clarity could be provided for scheme administrators and highlighted some minor errors in drafting

8. This paper confirms submission of the Board’s response and the key points raised.

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9. Tax relief on contributions

9.1. As the FPS legacy and reformed schemes have different contribution rates, all unprotected and taper protected members will have a contribution adjustment due at rollback – subject to any provision made by the Home Office under Section 18(8) of the Public Service Pensions and Judicial Offices Act (PSPJOA) 2022.

9.2. Regulation 3 provides that section 2(1) PSPJOA is ignored for the purposes of contributions paid into a Chapter 1 new scheme, which ensures that those contributions remain eligible for tax relief. The Board sought further clarity on why the contributions could not also have been rolled back to the legacy scheme and what the implications are of the contributions not being rolled back from the point of view of future actuarial valuations.

10. Pension Savings Statements (PSS)

10.1. Where regulation 6 allows for a Pension Saving Statement (PSS) in respect of the 2022-23 tax year to be delayed until 6 October 2024, the Board expressed concern that this presents a risk to the member of not being fully informed of their nominally correct tax position in that year, which could then impact on future, post-remedy years.

11. Scheme pays

11.1. Regulation 10 does not allow for a member to reverse a decision they may have made to settle an Annual Allowance Tax Charge (AATC) by lump sum, for example where the charge was under £2,000 but now exceeds that amount. It is probable that this does not fully reinstate the individual to their pre-reform position as they may have made a different decision at that time. The Board noted particular interest in the consistent application of contingent decisions and compensation, both of which may arise in this scenario.

12. Retrospection and scope

12.1. The Regulations come into force on 6 April 2023 and some provisions will have retrospective effect. The SAB recognised that it would provide greater clarity to administrators if retrospection was set out in each regulation where it so applied. And that it would have been helpful for clarification to be given within the Regulations as to the in- and out-of-scope tax years, as the Annual Allowance Provision Definition Document indicated would be the case.

13. Impact on administrators and scheme members

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13.1. The Board's response welcomed the provisions made within the regulations to alleviate some of the administrative burden associated with correcting a member's tax position retrospectively. Additionally, for members, the modifications to the conditions for Mandatory Scheme Pays (MSP) were welcomed.

14. Accompanying guidance

14.1. While not specifically requested under the consultation, the guidance which to be published alongside the Regulations was also reviewed on behalf of the SAB. Comments submitted in this regard related mainly to typographical errors or suggested rewording.

14.2. A substantive point was made around retrospection, as the regulations cannot be applied to members obtaining an immediate detriment remedy, by virtue of the scheme regulations not coming into force until 1 October 2023. The Board noted that FRAs are under significant pressure to apply immediate detriment to affected members and risk incurring substantial unauthorised payment charges on their behalf due to the PCLS timing of payment condition when this will not be the final legislative position (regulation 17).

14.3. The Board wished to understand the implications of waiving tax relief liabilities using Section 18 PSPJOA from a scheme manager perspective. In particular, whether the encouragement for tax liabilities to be waived in respect of unrecoverable tax relief on contributions transfers the liability to repay this from HMT to the scheme and thus ultimately employers (paragraph 3.4.4).

14.4. Additionally, the SAB noted that there are a number of areas where the scheme will be paying compensation, including in respect of overpaid tax received by HMRC and not recoverable (including overpaid scheme pays for out-of-scope tax years according to the PDD) and wished to ensure that the financing requirements for these extra cash flows are fully considered and understood.

14.5. The final substantive point confirmed that neither the Regulations nor the guidance appeared to clarify the exact treatment of any previously unauthorised elements of lump sum commutation payments which are no longer deemed excessive. This could be important in the potential scenario that a member's permitted maximum increases as a result of rollback, but they choose not to receive arrears of lump sum to secure a higher continuing pension amount/ pension arrears

Board actions

15. The Board is asked to note the contents of this paper.

Board Secretary
January 2023

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Further resources

- HMRC remedy tax consultation (FPS coffee morning presentation 13 December 2022)

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