HMRC'S AUTUMN "TO DO" LIST FOR TRUSTEES

Unusually, instead of gently winding down for summer, July saw a flurry of publications from HMRC. This means that after the summer holidays there will be issues for trustees, administrators and employers to consider.

DC Pension flexibility

From April 2015, there will be a permissive statutory override to allow trustees to pay the new larger DC lump sums or operate flexi-drawdown arrangements even if their scheme rules do not currently permit such payments. However, schemes will not be required to operate the new forms of DC flexibility if they do not wish to. Trustees need to consider in advance of April 2015 what level of flexibility they plan to permit in their schemes. If they do not allow the new types of benefits, DC members will still be able to make use of them by exercising a new right to transfer-out right up to the date of retirement.

The new annual allowance charge

One issue not trailed in the Budget which has subsequently emerged in relation to the new DC flexibility is the introduction of changes to the annual allowance for DC benefits. Where members make use of the new flexibility (either by taking their benefits as a lump sum or through flexi-drawdown arrangements), they will become subject to a new £10,000 defined contribution annual allowance (although their total annual allowance will remain at £40,000). The creation of this new annual allowance will mean that testing members' benefits against the annual allowance could become more complex, particularly in hybrid arrangements where members' benefits could be either defined benefit or defined contribution. HMRC have provided draft guidance on how they think this will work and trustees and their administrators may wish to start giving thought to what issues, if any, the new DC annual allowance might create for their scheme.

Trivial commutation lump sums

The legislation will change the minimum age from which schemes can pay trivial commutation lump sums from 60 to 55. One thing to be aware of is that the reduction in age will not override provisions in scheme rules that are drafted by reference to age 60. Therefore, where schemes are considering providing this new benefit, particularly as part of a DB liability reduction exercise to make use of the new £30,000 trivial commutation limit, they need to ensure that their scheme rules permit this and do not specifically refer to the old age limits.

Pension commencement lump sums

Provisions in the Finance Act 2014 allow DC members some flexibility where they have taken lump sums since 19 September 2013 (or earlier in the case of certain lifetime annuity contracts that have since been cancelled). Such members will not now have to take their associated pension entitlements within 6 months, but can delay taking them until 5 October 2015. They will also be able to make transfer payments of their residual pension entitlements. Trustees may begin to face requests from members in relation to this flexibility and HMRC has issued draft guidance explaining these interim arrangements in more detail.

Underfunded DB transfer payments and the annual allowance

In 2012 an issue arose in relation to transfers from DB schemes which were underfunded. The way the legislation works is that where there is a transfer, for the purposes of calculating the annual allowance, the transfer is deducted from the value of the member's benefits in the receiving scheme and added back in the transferring scheme. It had generally been thought that when working out the amount of the deduction in the receiving scheme, you deducted the value of the benefits the member had been credited with as a result of the transfer (particularly where they were mirror image benefits). However, this turned out not to be HMRC's view – HMRC said that what it looked at was the amount transferred and where this was less than the value of the benefits granted in the receiving scheme (due to underfunding in the transferring scheme) the value of the underfunding taken on by the receiving scheme was an increase in benefits for annual allowance purposes.

This HMRC approach proved an unintended obstacle for some bulk transfers and scheme mergers and HMRC said that they would issue legislation to retrospectively deal with the problem. Draft regulations have now been issued which provide that in relation to "block transfers", there will be no annual allowance impact if the same benefits (or benefits of the same value) are provided in the receiving scheme as under the transferring scheme. "Block transfer" is defined as: "*a transfer which involves the transfer in a single transaction of all the sums or assets held for the purposes of, or representing accrued rights under, the arrangements under the pension scheme from which the transfer is made which relate to the individual and at least one other member of that pension scheme*". There is draft HMRC guidance on how this should be interpreted, but it seems that there are some bulk transfers which could potentially be excluded. As a result, schemes making or planning to make bulk transfers from underfunded DB schemes should seek advice on how these regulations might relate to them.

End of contracting-out in 2016 – GMP reconciliation

HMRC launched their Scheme Reconciliation Service in April 2014 to help pension scheme administrators and trustees reconcile their GMP records against HMRC records in advance of the ending of contracting-out in April 2016. HMRC have reminded schemes that although it's not compulsory for them to use this service, it is the responsibility of trustees to make sure records are accurate. To allow HMRC to plan future resources they are encouraging trustees interested in using this service to contact them soon as possible. Details of how to do so and the service itself are here.

VAT

One thing that HMRC did not deal with before the summer, but has promised more on in the autumn is the treatment of VAT in relation to pension scheme expenses. Updated guidance is expected on the extent to which employers can deduct VAT incurred in relation to scheme expenses, particularly investment expenses. We will update you when the guidance is published.

If you have any queries about any of these issues, please contact your usual CMS Cameron McKenna contact or Keith Webster.