Employee Benefits

New Pensions Flexibilities and the Pensions Schemes Act

The Pensions Scheme Act was given Royal Assent on 3 March 2015. This act, along with the Taxation of Pensions Act 2014, will allow for the implementation of the new pension flexibilities announced in the 2014 budget, due to come into effect on 6 April 2015. The key changes are explained below:

New pension flexibilities

From 6 April 2015 onwards members of money purchase pension schemes will be able to access their pension benefits from age 55 using “flexi-access drawdown” arrangements. This will allow the member to take a tax free lump sum of up to 25%, with the remaining fund staying invested. The member will be able to take withdrawals of any value at any time from this fund. These withdrawals will be taxed at the member’s marginal rate. If the member dies before 75 then any remaining funds will be passed onto their beneficiaries tax free.

Any funds not used for drawdown or to purchase an annuity can be taken as a lump sum, 25% of which will be tax free. The member could choose to take their entire fund as a single lump sum.

Annual allowances

Pension scheme members are currently allowed to contribute up to £40,000 a year into their pensions. This limit is known as the ‘Annual Allowance’.

To prevent individuals using the new pension flexibilities for tax avoidance, a new lower annual allowance known as the ‘Money Purchase Annual Allowance’ (MPAA) has been introduced. This will apply as soon as an individual starts using flexi-access drawdown or takes a lump sum from their money purchase pension scheme. The MPAA has initially been set at £10,000.

Pension guidance

Included in the Pensions Scheme Act 2014 is a guarantee that all members of money purchase pension schemes will be offered free, impartial guidance as they approach retirement. This guidance service has been branded as ‘Pensions Wise’ and will be provided by The Pensions Advisory Service and Citizens Advice, over the phone or face-to-face.

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Commercial

Professional negligence: claiming for bad tax advice

When considering a claim for professional negligence with respect to poor advice that has been given, the established position for assessing loss is to consider what the parties would have done if the correct advice had been given.

The court will evaluate what the client would have done if the correct advice had been given, which will be decided on the balance of probabilities i.e. is it more likely than not that the alternative advice would have been taken. The court will then look at the loss that has been sustained as a result of the client following the bad advice.

In the context of a taxpayer, and poor tax advice has been given, there is the added complication of whether or not the alternative option is an untested tax-efficient structure that HMRC may or may not permitted.

The court considered this issue, as well as a loss of chance, in the context of tax planning in the recent case of *A v BT.* A alleged that BT had failed to advise it of a change in corporation tax law. A claimed that if they had been made aware of the change, it would have restructured its business so as to mitigate its tax liabilities. The court accepted this.

BT argued that HMRC would have investigated the structure and would not have accepted it. They asked the court to determine if the restructuring would have had the intended effects. The court refused to do so and instead, made a broad assessment of the chances of the structure working. To calculate A’s loss, the court assessed the probability that HMRC would have challenged the re-structure and if so, the probability that the challenge would have succeeded. The percentages were applied to the maximum tax saving to give the recovered loss.

If you consider that your business has been given poor advice by a professional, which has led to your business losing money, please contact 3HR. Our commercial litigation department can provide you with dedicated assistance for any professional negligence claims that you think you may have.

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