TO: Paul Cottis, HMRC, pensions.policy@hmrc.gsi.gov.uk

FROM: Andrew Roberts, Chairman of AMPS

RE: Consultation on Pensions Tax Relief – Individual Protection from the Lifetime Allowance Charge

DATE: 30 August 2013

INTRODUCTION

The Association of Member-Directed Pension Schemes is the main trade body representing self-invested personal pension providers. We represent around 90 SIPP providers and 90 SSAS providers.

As well as cascading information to our members about practical pension issues and facilitating debate amongst our members, we regularly engage with regulatory authorities about matters affecting the self-invested pension industry.

Our members are primarily involved with defined contribution pension arrangements and our response therefore focusses on the application of the proposed Individual Protection regime for administrators and members of these types of arrangements, rather than defined benefit arrangements.

Although not part of the consultation, we are of course concerned about the general erosion of pension allowance compared to the support for increasing ISA allowances. We believe that the structure of the Lifetime Allowance does not lend itself to regular reductions and adopting this approach projects an underlying message that consumers cannot trust governments not to safeguard what they have saved up in good faith, despite protection regimes being introduced.

OUR RESONSE

Question 1: Are there particular difficulties for scheme administrators in allowing individuals to hold both fixed protection (FP12 or FP14) and IP14?

We have no concerns over allowing individuals to register for both fixed protection and IP14.

We suggest that when applying for IP14, notification of the underlying individual lifetime allowance is confirmed by HMRC even where the individual has fixed protection. When HMRC sent certificates confirming that an individual had enhanced (dormant primary) protection, there was no mention of the agreed lifetime allowance enhancement factor should enhanced protection be lost.

Question 2: Do you agree that individuals with enhanced protection should be excluded from applying for enhanced (sic) protection? If not, please give the reasons why you think there is a case for allowing individuals with enhanced protection to apply for IP14 and set out any difficulties or issues this might create.

Please note the typographical error in the first sentence of your question which we believe should read whether individuals with enhanced protection should be excluded from applying for IP14.

We do not agree that this exclusion is fair in all cases and further consideration should be given to this as the lifetime allowance is due to fall below its introductory level at A Day.

For example, Barbara notified for Enhanced Protection and her (defined contribution) pension fund on 5 April 2006 was valued at £1.2 million. Barbara has not contributed since then and did not need to notify for Fixed Protection in 2012. Barbara's fund in August 2013 is now £1.4 million due to investment growth. Barbara has not vested benefits and does not intend to do so for another 5 years. If Barbara gives up Enhanced Protection and opts for FP14, then she is able to have an underpinned Lifetime Allowance of £1.5 million and, should her fund reduce in the next few years, lapse her FP14 and pay additional contributions to get back to her 5 April 2014 fund value if she also notified for IP14. It seems unfair that this option is only available to Barbara if she first lapses Enhanced Protection which Barbara would assume is the most likely optimum route for her.

Barbara may also not intentionally lapse Enhanced Protection but have additional accrual as a result of unwanted Auto-Enrolment.

Our conclusion therefore is that it is unfair to allow both FP14 and IP14 without allowing both EP and IP14. It could be very helpful to some individuals with EP and we doubt there will be any material cost to the Exchequer in allowing this.

Question 3: Would monitoring an individual's personalised LTA for the purposes of the tax free lump sum limit, be likely to create difficulties for scheme administrators?

We have no technical concerns regarding this and would expect most scheme administrators to be able to accommodate the changes.

Question 4: Are these valuation methods fair and appropriate?

We support linking valuation methods to the existing rules but would also suggest two easements:

i) an easement that allows values as at 31 March 2014 to be used where there has been no material change in circumstances;

ii) an easement that allows values to be taken at reasonable market value without reference to Section 272 of Taxation of Chargeable Gains Act 1992, as this can involve individuals in additional expense where stockbrokers charge for a valuation in that format.

Question 5: Are there any issues or additional burdens associated with these valuation methods?

Since 6 April 2006, AMPS has highlighted the additional administrative burdens associated with using market values defined as per Section 272 of Taxation of Chargeable Gains Act 1992.

We reiterate our opinion that using that valuation basis is a disproportionate administrative burden compared to any potential tax abuse concerns. We would therefore support an amendment or easement to the definition of market value in Section 278 of Finance Act 2004.

Question 6: Should there be some form of revaluation of the pension debit for IP14 to take into account the change in the value of the individual's pension rights since 5 April 2014 and if so, on what basis this should be done?

It seems fairer to have some form of valuation, though simplicity has its merits.

Given that individuals do not typically seek divorce to manipulate the tax system, we would question whether any deduction is worthwhile given the small population that it would apply to and the relatively small tax cost if the deduction was not applied. It would facilitate much simpler descriptions of the impact of divorce in scheme literature.

Question 7: Are there any particular reasons why a scheme pays adjustment should not be deducted from an individual's personalised LTA, and in particular are there any specific administrative burdens that this might lead to?

Given the burden to HMRC of issuing new certificates and the onus then placed on individuals to keep track of their latest position, we would support an alternative method as there may be individuals that will be due an Annual Allowance Charge each tax year and therefore each tax year new certificates will need to be issued.

An alternative could be to adjust the Annual Allowance Charge tax rate depending whether the scheme is funding the Annual Allowance Charge or not, and whether the member has IP14 or Primary Protection. This may also be easier to introduce to Primary Protection.

Question 8: What would be the impact if a deduction was also applied to individuals with primary protection whose pension savings are subject to a scheme pays adjustment?

As noted above, an alternative method may be easier to accommodate rather than bringing in deductions that had not previously applied.

Question 9: Are there any other circumstances when an individual's personalised LTA under IP14 should be adjusted?

No comment.

Question 10: Is a three year window for IP14 applications about the right timeframe, and are there any issues associated with this?

A three year window should be sufficient.

Question 11: Are there any difficulties and issues that may arise if individuals cannot apply for IP14 until summer 2014?

It is certainly not ideal for those individuals wishing to crystallise benefits between 6 April 2014 and receiving confirmation of their individual allowance.

With clear guidance and support from HMRC on how to deal with these crystallisations, including clarity that where a scheme has relied upon the individual then any tax charge or penalty should rest with the individual, then it should be reasonable to expect schemes to manage this process.

An example: Fred has benefits valued at £1.4million on 5 April 2014 and tells the scheme administrator that he will notify for IP14 when the notification window opens. The scheme administrator pays his benefits on the basis of an individual lifetime allowance of £1.4 million. Despite chasing, Fred does not provide the scheme administrator with a copy of his IP14 confirmation and it later transpires that Fred did not get around to making the notification. Any additional tax charge in this instance should rest with Fred.

In any other scenario, it is possible that Fred dies before making the notification, and his personal legal representatives did not know that he was expected to make the notification.

Question 12: If you have any comments on the draft legislation at Annex B, please include these as part of your response.

We have declined to review the draft legislation.

Question 13: Does the Tax Information and Impact Note at Annex C capture correctly the impacts and burdens associated with the introduction of IP14?

We do not consider ourselves able to comment on this.

Yours sincerely

Andrew Roberts

Chairman, AMPS