Group Briefing

Winter 2016

Pensions Update

1. BUDGET 2017

Budget 2017 was announced on 11 October 2016 and the implementing Finance Bill was published on 18 October 2016. Together, they contained two pensions-related initiatives.

Benefits for Pensioners Increase

There will be a €5 per week increase in the State pension with effect from 10 March 2017. The timing of the increase will mean that schemes which operate State pension offsets based on the State pension amount in January of a given year will not see a change to the deduction until January 2018.

PRSA and Tax Planning

The Finance Bill proposes legislative amendments to provide that, where benefits are not taken by a Personal Retirement Savings Account ("**PRSA**") owner on or prior to his or her 75th birthday, they will be treated as being taken on that date and the PRSA will be treated as 'vesting' on that date. For individuals over the age of 75 with an unvested PRSA, the PRSA will be deemed to vest on the date of the passing of the Finance Bill 2016, though transitional arrangements will apply. This is a codification of the Revenue's view that PRSAs are deemed to vest at age 75.

The effect of this provision is that such PRSAs will now be subject to the imputed distribution regime that applies to vested PRSAs (i.e. a deemed distribution of taxable income will arise at a rate of 6% of the value of the PRSA on each 30 November annually where distributions are not in excess of this amount). Further, the 75th birthday of an individual will be treated as a benefit crystallisation event for the purposes of the Standard Fund Threshold ("**SFT**") regime.

2. POLICY UPDATE

2.1 NEW CODES OF GOVERNANCE

On 12 October 2016, the Pensions Authority (the "**Authority**") published the fourth and final tranche of codes of governance (the "**Codes**") comprising two codes. The final Codes cover guidance relating to member communications and ensuring charges borne by members provide value for money ("**VFM**").

The Codes are statements intended to promote best practice by supplementing the Authority's Trustee Handbook. The Authority intends that compliance with the Codes shall be made mandatory and that they (or similar codes) shall also apply to defined benefit schemes.

Value for Money

The Code states that the Authority considers the assessment and delivery of VFM to be an important part of the responsibility of trustees to act in the interests of their members. VFM is considered by the Authority to be achieved where costs provide good value in relation to the benefits and services provided when compared to other available options. Larger well-funded schemes are likely to rely on bargaining strength to ensure VFM and will have the resources to maintain and survey this. Smaller schemes where the employer has selected the provider may not necessarily have alternative options, particularly where a 'bundled' solution is sourced from an insurance house/institution.

To ensure that members are provided with VFM, the Code suggests that trustees should consider the type of services provided to members, the costs of such services across a range of service providers and the performance of service providers in the context of the needs of the members. Trustees should be willing to challenge their service provider if they feel members are not receiving VFM. While this is a laudable aim, it is not necessarily within a trustees' sole power to make changes to the provider.

Member Communications

This Code supplements the existing obligations of trustees to disclose information pursuant to the Pensions Act 1990 (the "**Pensions Act**") and the Disclosure Regulations. The Authority stresses that the focus of trustees should be on the effectiveness of member communications rather than simply meeting their legal obligations under the Pensions Act and the Disclosure Regulations.

With this goal in mind, the Code directs Trustees to:

- consider the most effective approach for communicating with members (based on the demographic of scheme members) and consider initiatives for the promotion of member engagement;
- convey trustee communication objectives to scheme administrators and review draft communications; and
- develop a communications programme which ensures that:
    - language used is clear, understandable and considers members' needs and financial literacy;
    - key information is highlighted and benefit options are presented simply and clearly;
    - members are regularly informed that their contribution levels can affect the overall size of their retirement fund, are encouraged to check whether they are on track to meet their retirement goals and are informed of the options available to increase their level of contributions; and
    - members can understand the investment options available and costs and charges incurred by members are clearly disclosed.

In practice, the action taken by trustees will depend on the profile of the scheme and the resources available to the trustees, having regard to the obligation of trustees to ensure that members receive value for money. Trustees should review the Code and consider how to align its aspirations with the relatively limited regulatory obligations. It is important that trustees take care not to stray into the area of giving advice. The trustees have no trust or statutory duty to give advice or to promote or encourage participation in a scheme. Having said that, the significant majority of the Code's suggestions can be accommodated within statutory disclosure requirements.

2.2 PRESCRIBED SECTION 34 GUIDANCE

The Authority has issued revised statutory guidance (with an effective date of 1 January 2017) in relation to Section 34 of the Pensions Act. Section 34 relates to a member of a funded occupational pension scheme who is entitled to a preserved benefit and who will, in certain circumstances, be entitled to a transfer payment.

The assumptions used to calculate a minimum transfer value were previously updated in 2012. The impact of the new assumptions will depend on the member's age and gender and the benefits provided by the relevant scheme. As the minimum transfer values are also often used in calculating scheme liabilities for the statutory minimum funding standard (the "**MFS**"), the new guidance may have funding consequences for schemes seeking to meet the MFS.

3. CASE LAW UPDATE

Trustee in Bankruptcy may not access/ force access of uncrystallised funds

The UK Court of Appeal in the case of *Horton v Henry* has confirmed that a UK trustee in bankruptcy cannot access uncrystallised funds in a bankrupt's pension arrangements or force the bankrupt to crystallise the funds so that they become available for distribution.

Although the bankrupt member was eligible to elect to draw down a lump sum and other payments, the member had made no election and, at the date of the application, the pension was not in payment. The bankrupt member also indicated that he did not intend to make any such election in the foreseeable future.

The Court held that a prospective right to a future payment of income from a pension fund is not the same as an entitlement to that income and that a bankrupt cannot be forced to take steps to turn pension rights into income. The Court compared the situation to an attempt to force a bankrupt to work or request payment from a discretionary trust to enable payments to be distributed which acts are equally impermissible.

Irish legislation similarly provides that mere interests in or entitlements under relevant pension arrangements shall generally not be treated as assets of the debtor (with certain prescribed exceptions). The decision in *Horton v Henry* may therefore provide valuable guidance to trustees where a member whose benefits have not yet commenced is declared bankrupt.

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