

SSASs & SIPP's- Technical Update- 2009/10 Tax Year

Allowances

TAX YEAR	LIFETIME ALLOWANCE	ANNUAL ALLOWANCE
2006/07	£1,500,000	£215,000
2007/08	£1,600,000	£225,000
2008/09	£1,650,000	£235,000
2009/10	£1,750,000	£245,000
2010/11	£1,800,000	£255,000
2011/12	£1,800,000	£255,000
2012/13	£1,800,000	£255,000
2013/14	£1,800,000	£255,000
2014/15	£1,800,000	£255,000
2015/16	£1,800,000	£255,000

Contributions – general guidance

Contribution rules are complex under the new pension system. When giving contribution advice, corporate tax relief, personal tax relief, the Annual Allowance, tax spreading and Lifetime Allowance issues need to be considered.

Personal contributions qualify for personal tax relief where they do not exceed 100% of earnings, or £3,600 if higher.

Company contributions qualify for corporate tax relief provided that the contribution is wholly and exclusively for the purposes of business, as determined by the company's local Inspector of Taxes. There is no formula for working out a maximum, though we suggest that illustrations are obtained to help justify contributions higher than 70% of salary. We can provide these illustrations.

The **Annual Allowance** is separate to the above. If an individual has "pension input" of more than the Annual

Allowance during their "pension input period", then an Annual Allowance Charge of 40% is due on the excess through self-assessment. "Pension input" is a term used in legislation to capture all pension contributions and accrual within defined benefit type schemes. The "pension input period" can be different for each pension arrangement that an individual has, and can be set by the individual for money purchase schemes. An individual can alter their "pension input period". By doing so, it is possible on occasion for an individual to have contributions in excess of the Annual Allowance during a twelve month period but without suffering an Annual Allowance Charge.

Spreading of tax relief can impact on company cash flow and applies where there are large contributions being made by an employer to a single scheme. The definition of large in this instance is reasonably involved, and so we would suggest advice is sought if a company's contributions to a scheme in a financial year exceed £500,000. There are ways of mitigating the spreading of tax relief.

Contained within the Pre-Budget Report was a press release confirming that the Lifetime Allowance (and Annual Allowance) will be frozen at £1.8 million (and £255,000) for a further five tax years from 2010/11. This may alter previously given advice regarding contribution and retirement planning.

Contributions – for those already in retirement

It is worth noting that clients who have already retired may still make pension contributions - though personal tax reliefs disappear from age 75. New contributions build up a separate fund that can, if there are sufficient allowances, yield a pension commencement lump sum. Accessing this new fund will trigger a test against the Lifetime Allowance which can often first trigger a test against the Lifetime Allowance of the pension in payment, which would be valued for this purpose as a multiple of pension rather than fund value.

Other issues that warrant consideration are the possibility of recycling of pension commencement lump sums and impact on Enhanced Protection status.

Contributions in specie

We are happy to organise contributions in specie for the BW self-invested personal pension (BW "SIPP") and our small self-administered pension schemes ("SSAS"s). There is a set procedure to follow with associated paperwork, without which the contributions will not qualify for tax relief.

Protected Rights

The BW SIPP can now accept protected rights transfers, which can be invested and drawn at retirement in the same way as the rest of the fund.

There is no obligation to use the protected rights to buy an insured annuity, and the usual pension rules apply. However, there are still be some rules governing the provision of pensions by way of insured annuity from protected rights. There will also be more restrictions on the death benefits, and for these reasons, transferred in protected rights will be tracked as a separate pension "pot" within the BW SIPP.

As it is relatively cumbersome to deal with ongoing National Insurance rebates under the current system, the BW SIPP cannot receive rebates directly from HM Revenue & Customs. From 2012, it is expected that contracting out will be

abolished for all "defined contribution" schemes, and from that point, all distinction between protected rights and other pension monies should fall away completely.

The Department for Work and Pensions do insist that SIPPs with protected rights that are in drawdown do not erode the protected rights element of the fund ("PR fund") more vigorously than the non-protected rights element ("NPR fund"). In essence, this means that where a member only requires a portion of their maximum pension drawdown, it has to be drawn across the PR fund and NPR fund in a suitable proportion, which could include exhausting the NPR fund faster than the PR fund.

There is one unwelcome side effect; a SIPP receiving a PR fund that is already in drawdown will trigger crystallisation of the NPR fund so that the NPR fund can pay pension to avoid the PR fund being exhausted quicker than the NPR fund.

A SSAS can technically be set up to receive protected rights monies. However, this causes the loss of the self-investment features that makes SSAS attractive as a company pension arrangement. Therefore we do not organise contracted-out SSASs but would instead suggest a review of pension arrangements to see whether a SIPP would be more suitable if a vehicle for self-investing protected rights is required.

Helping clients through these difficult economic times

There are many different ways in which a client's pension can release much-needed cash to them. Whichever route is chosen, they should bear in mind that they could be exposing their pension arrangement to the fortunes of their business, as one of the little known advantages of having money within a pension arrangement is the potential protection it provides from creditors.

The obvious way to realise cash from a pension arrangement is to trigger benefits. So, if a client has not already drawn a pension commencement lump sum and is over the age of 50, then typically 25% of their pension fund (up to the Lifetime Allowance) could be paid out alongside a regular pension to be paid annually in advance. If they are already drawing a pension, it may possible to arrange for an increase in the amount that is being paid out (though less likely in the current economic climate).

However, if the client has a SIPP, or their company has a SSAS, there are other ways in which they could use their pension monies without commencing benefits.

Subject to certain conditions, a SSAS - but not a SIPP - can lend up to 50% of the scheme value to its sponsoring company. Typically, for a loan to be authorised, it must be granted on a capital repayment basis for a maximum term of five years and with interest of at least 1% over base. Interest and capital must be repaid in at least annual instalments. Authorised loans must also be secured with a legal charge. This must be a first charge, such that if company assets are already securing debt from a bank then this route may not be available.

Both SSAS and SIPP can invest directly in a company by acquiring equity. In principle, the whole of a SIPP could be used to invest in the client's company whereas a SSAS is restricted to investing 5% of its assets in the company. However, health warnings beyond the usual ones about investment risk are needed. In particular, one area of complexity is the possibility of tax charges arising if the company itself purchases items such as pride in possession articles or residential property.

If these assets are held directly by a pension arrangement they will typically be subject to tax charges of at least 55%. For these purposes, the Revenue treats an equity holding in an unlisted company as being an indirect investment in the underlying assets of the company. If, for instance, the client's pension arrangement was a 50% shareholder in a company, and that company acquired a car for £10,000, the pension arrangement would be treated as having acquired 50% of the car. The Revenue would treat this as an unauthorised payment and the pension arrangement would be subject to a tax charge.

SIPPs and SSASs can also purchase assets from their members or their companies. So if a member or a company requires cash but does not want to sell assets to a third party, selling to the pension arrangement can be a useful way of realising cash.

Beware that the rules on how pension assets can be used are stringent as the Revenue do not approve of pension arrangements being used for purposes other than providing retirement benefits. Thus, any unauthorised payments made from a pension arrangement will incur high tax charges, starting at a minimum rate of 55%.

Retirement window for those born after 5 April 1955

At present, "retirement" (meaning access to pension benefits) is possible from age 50 regardless of employment or health status. This minimum age is set to increase from 50 to 55 from 6 April 2010.

For those who will be over 50 but under 55 by the end of this tax year, there is a window of opportunity to retire prior in the current tax year, following which retirement must be delayed until age 55.

Benefits may continue to be paid to anyone who has retired before 6 April 2010, regardless of their age. However, for those with some funds providing benefits and some not, no new funds can be crystallised until age 55.

Barnett Waddingham - APRIL 2009

Chalfont Court
Hill Avenue
Amersham
HP6 5BB
Tel: 01494 788100
Fax: 01494 788800

Rigby Hall, Rigby Lane
Bromsgrove
B60 2EW
Tel: 01527 559111
Fax: 01527 559222

St James's House
St James's Square
Cheltenham
GL50 3PR
Tel: 01242 538500
Fax: 01242 538501

163 West George Street
Glasgow
G2 2JJ
Tel: 0141 243 4400
Fax: 0141 243 4432

West Riding House
67 Albion Street
Leeds
LS1 5AA
Tel: 0113 394 3700
Fax: 0113 394 3760

Port of Liverpool Building
Pier Head,
Liverpool
L3 1BW
Tel: 0151 235 6600
Fax: 0151 235 6640

Cheapside House
138 Cheapside
London
EC2V 6BW
Tel: 020 7776 2200
Fax: 020 7776 3800

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