

In brief - the effect of the budget on pensions

The Chancellor has announced that tax relief on pension contributions will be restricted from 6 April 2011 to the basic rate of income tax (currently 20%) for individuals with taxable annual income of £180,000 or higher. Please note that this is a change in that income for tax relief now includes investment income, including dividend income.

Those with taxable annual income up to £150,000 will receive full relief as at present, whilst those earning over £180,000 will be entitled only to basic rate relief. Relief will be tapered (from 50% to 20%) where taxable income is between £150,000 and £180,000.

'Anti-forestalling' measures have been put in place from 22 April 2009 until 6 April 2011 aimed at clawing back tax-relief where individuals whose income exceeds £150,000 in the tax year or either of the two preceding ones make additional contributions or accrue additional benefits (in addition to their usual pattern) before the tax-relief changes come in.

A 'Special Annual Allowance' of £20,000 will apply where contributions or benefit accrual are increased beyond "normal, ongoing regular pension saving". Current regular contribution levels of over £20,000 in the tax year will be eligible for tax relief as normal without any special tax charges, but any increase to a regular contribution or one-off contribution will attract a 20% charge on the excess over £20,000. Note that regular means at least quarterly, although the government are consulting further on this. Contributions made before 22 April 2009 are unaffected.

Salary sacrifice arrangements put in place on or after 22 April 2009 will be disregarded when determining whether the individual earns over £150,000.

If you believe you are affected, please contact your usual Barnett Waddingham consultant, which we suggest you do in any event before making new contributions.

Final call for members

The minimum age from which you can access benefits other than due to ill-health 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 access their pension benefits prior to 6 April 2010, following which retirement must be delayed until they reach 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.

Protection of pension rights as at 5 April 2006

Now that the HM Revenue & Customs (HMRC) deadline of 5 April 2009 has passed, new notifications of Primary or Enhanced Protection will only be accepted in exceptional circumstances. Amendments to notifications are still being accepted at the time of writing.

Individuals should keep a copy of the certificate issued by HMRC following their notification and should also keep

all documents relating to their successful notification of protection for six years.

When an individual loses Enhanced Protection (e.g. if contributions are made on their behalf) or an individual no longer wishes Enhanced Protection to apply to them, they must notify HMRC within 90 days or they will be liable to a penalty of up to £3,000.



Lease negotiations

To comply with tax rules, schemes must act in a commercial manner when dealing with connected tenants. So if a scheme leases property to a connected tenant, the scheme must have a fully commercial lease in place charging rent at a market rate, and the scheme must enforce that lease as a third party would (including pursuing outstanding rent).

Where a tenant is in genuine financial difficulties and falls behind on the rent a third party landlord may be sympathetic, depending on the history of the tenant

and the current market. They will also factor in costs of pursuing any debt that is likely to accrue legally.

In the current economic climate, we are getting numerous requests from tenants to re-negotiate rental terms. HMRC have advised that scheme trustees should take professional advice if they decide it is appropriate to renegotiate the terms of a lease. That advice should consider rents and other lease terms in relation to similar properties in the current market. Trustees may take into account the

financial circumstances of the tenant and the prospects of getting a new tenant in the current financial climate.

HMRC's key requirement is that if they ask for an explanation of a transaction between a pension scheme and a connected party, the trustees should be able to demonstrate that they have taken steps to ensure that they have acted in the best interests of the scheme members.

Charging orders

A charging order is an order of the court applied for by a creditor. A SIPP or SSAS may take out a charging order on a defaulting tenant, either against tangible assets that the company holds or, for example, a director's house. This entitles the scheme to recovery of a debt from the proceeds of disposal of the asset.

HMRC's view is that putting in place a charging order on taxable property immediately creates an interest in that taxable property which means that the scheme is treated as having made an unauthorised payment. The unauthorised payment is charged on the amount of fees or costs paid to obtain the charging order. Unauthorised payment charges are therefore likely to be very small and unlikely to be an obstacle to seeking or enforcing a charge to recover a debt.

Please note that charging orders are separate from first charges that trustees require to grant loans to a SSAS sponsoring employer.



Good news on re-mortgaging

HMRC has agreed that borrowing within a scheme that exceeds the current maximum limit can be remortgaged e.g. to get a better rate of interest or repayment terms without giving rise to an unwanted tax penalty. The remortgage cannot increase the amount of capital outstanding at the time of remortgage (nor at the time of original borrowing). This means that outstanding interest payments cannot be included in a remortgage package.

There is still uncertainty about whether a Self-invested Personal Pension (SIPP) with greater than 50% borrowing can transfer to a new SIPP without incurring tax charges. The industry is continuing to lobby on this but at present HMRC are inviting individual cases to be presented to them.

HMRC audits

We have received correspondence from HMRC on a few cases where they have decided to do an audit of the pension scheme following receipt of the information provided on the scheme's Registered Pension Scheme Return. During this audit, HMRC have been mainly challenging missed rental payments and loan interest and capital payments involving connected companies, and schemes with no formal leases in place. It is therefore important that the trustees have documentation in place to support rental and loan payments and that they ensure that all payments to the scheme are made on time, particularly where the other party is connected to the scheme.

Life insurance

Late last year, Sterling Life advised us that they were withdrawing from the business of providing life cover policies for SSASs and SIPP. However, we are pleased to advise that we have now come to an agreement with Lutine Life to provide alternative life cover at similar rates to Sterling Life. If you are interested in setting up life cover with Lutine, please contact your usual Barnett Waddingham consultant.

Pensioner reports

The maximum amount of unsecured pension payable to a member in drawdown under age 75 must be reviewed every five years until the member reaches age 75. However, the member is able to request a review of their maximum income level on any anniversary of their first pension review date if they so wish. (A member can opt to purchase a lifetime annuity at any time).

A higher maximum pension may be possible, due to allowance being made for an increase in the member's age if they are below age 75. On the other hand, maximum pension levels could reduce on review as, depending on when

the pension drawdown commenced, there may have been a fall in gilt yields, which can lead to a fall in drawdown rates. These rates are applied to the member's fund value to calculate their maximum pension. Such a reduction may be further exaggerated where the fund value has also decreased further than expected.

On request, we are able to produce a report which indicates how a fund may progress given a particular assumed investment yield and a set level of pension. We can produce alternative versions based on different assumptions if required.

Return requested for third consecutive year

We have again been asked by HMRC to complete Registered Pension Scheme Returns for the majority of our Small Self-Administered Schemes (SSASs) for the tax year ending 5 April 2009.

If you have received a notice or a reminder to complete a Registered Pension Scheme Return directly from HMRC in relation to a SSAS, please forward a copy to your consultant.

We are yet to receive the extra guidance on completing the returns promised by HMRC. This would help questions to be answered more consistently across the industry, which should mean that the information that HMRC is collecting from the returns will be more useful to them. Hopefully, this would lead to a reduced number of pension schemes being asked to complete a return in future.

Compensation scheme for SSAS and SIPP

We have recently sought clarification from the Financial Services Compensation Scheme (FSCS) of the treatment of deposits held by SSAS and SIPP Trustees.

Whilst FSCS would not give a definitive ruling, their guidance was that an individual with an account in his own name and another account at the same bank for his SSAS or SIPP, would only

qualify for one compensation payment of up to £50,000 in the event of the bank's failure.

Better news is that according to the guidance, each individual member of the pension scheme would usually be able to claim up to the £50,000 limit, regardless of how many members there are in the SSAS (or the BW SIPP).

Cash deposits

Given recent events in the global financial system we have reviewed and expanded the selection of banks with whom we have established streamlined trustee account application processes. We have maintained the current account with Bank of Scotland but have increased the rate payable on the account to 0.20% below Bank of England Base Rate, equating to 0.30% AER at the time of writing. Our expanded range of no-notice deposit account rates is as follows:

No-Notice Deposit Account Rates as at 31 May 2009¹

Anglo Irish Bank	2.75% AER
Scottish Widows Bank	2.00% AER ²
Bank of Scotland	0.70% AER ³
Royal Bank of Scotland	0.70% AER ³

Source: Barnett Waddingham LLP

¹ Bank of England Base Rate is 0.50% at the time of writing

² decreases to 1.75% AER on balances below £50,000

³ rate is 0.20% above Bank of England Base Rate

Please note that we allow the trustees of pension schemes which we administer to choose any bank for their cash deposits as long as that bank can facilitate an account for a pension scheme. Pension schemes may not get the rates stated above if the account is not set up through a Barnett Waddingham office. We can also help with personal, corporate and charity monies and term deposits are also available over varying time periods.

New tax rates on FURBS income from 6 April 2010

The Budget also included details of new tax rates for trusts, which includes FURBS. The first £1,000 of gross income will remain at the lower rate band. This means 22% for rental income, 10% for dividend income and 20% for other investment income. All gross income over the £1,000 threshold earned after 5 April 2010 will be taxed at 42.5% for dividend income and 50% for all other trust income. Capital Gains Tax (CGT) remains at 18%.

It seems advantageous for outstanding loan interest and any overdue rentals to be paid to the scheme by 5 April 2010 as otherwise the income, when paid, will be taxed at the new higher rates. With these increases in tax rates, there is even more reason to review the trust's assets, and consider moving the emphasis from income producing assets to capital appreciating assets, whilst the gap between income tax and CGT is so large.

How a pension scheme can release cash

There are many different ways in which a pension scheme can release much-needed cash to members personally or to their businesses such as drawing pension benefits, granting loans, investing directly in a company by acquiring equity or purchasing assets from members or their companies.

Whichever route is chosen, members 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. If you would like more information on this, please contact your usual Barnett Waddingham consultant.

2009/2010 pension allowances

For the tax year 2009/10, the Lifetime Allowance will be £1.75 million and the Annual Allowance will be £245,000. The Lifetime Allowance and Annual Allowance will be set at £1.8 million and £255,000 respectively for 2010/11 and the five tax years thereafter.

From 22 April 2009, there is a Special Annual Allowance for high earners (see above).

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