

This is a round-up of topical issues in February and March 2010

Budget confirms tax relief restrictions for high earners

The Budget statement given by the Chancellor of the Exchequer on 24 March 2010 confirmed the intention announced in last year's Budget to restrict tax relief on pension contributions for high earners.

Individuals with income above a floor of £130,000 pa are potentially affected, for which purpose income includes their own pension contributions and charitable donations but *excludes* employer pension contributions. Of these, those with "gross" income (as above but *including* "employer contributions") in excess of £150,000 pa will suffer a reduction in tax relief both on their own and their employer's contributions.

From 6 April 2011, tax relief will be tapered down from the top marginal rate of 50% for those with gross incomes of £150,000 pa to the basic rate (currently 20%) for those with gross incomes of £180,000 pa or more. The taper will apply in discrete steps of 1% per £1,000 of income.

The restriction on tax relief will be assessed through individuals' self-assessment tax returns and dealt with by a recovery charge.

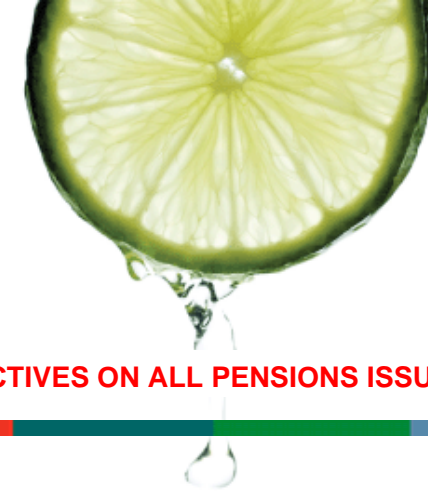
"Employer contributions" to DB schemes will be assessed having regard to the year-on-year increase in the value of each active member's pension using actuarial factors that vary by both age and normal pension age, but not sex. These factors will be adjusted where the scheme in question provides post-retirement pension increases that are particularly more generous than average. The factors will be set by HM Treasury, based on advice from the Government Actuary's Department, and will be reviewed at least every five years. The same factors will apply to both private and public sector schemes.

Members of either a DC or DB scheme who have to pay a recovery charge of more than £15,000 will be entitled to ask their scheme to pay the charge on their behalf in return for the scheme reducing their pension pot or deducting an actuarially appropriate amount from their accrued pension.

Anti-forestalling measures were also set out in last year's Budget, preventing high earners from maximising their pension contributions in order to take advantage of full tax relief while it is still available.

The Finance Act 2009 created a new tax charge of 20% that will apply until 5 April 2011 to high earners who "increase their pension savings on or after 22 April 2009 over and above their normal pattern of regular pension savings", but only if their total pension savings exceed £20,000 in that year. However, a minor concession allows people (eg the self-employed) without a regular pattern of pension saving to obtain full tax relief on the first £30,000 of their pension savings (or the average of their last 3 years' pension contributions, if smaller).

ACTION: Employers should urgently review their pension provision for high earners and take particular care when making changes to their pension arrangements. Employers and trustees should also consider whether they ought to issue amendments to their scheme booklets to explain the restrictions on tax relief.



Employer consultation extended

[The Occupational and Personal Pension Schemes \(Miscellaneous Amendment\) Regulations 2010](#)

which were laid before Parliament on 5 March 2010, have added a new item to the list of benefit changes that require prior consultation with members.

From 6 April 2010 employers must consult on an intention "to change what elements of pay constitute pensionable earnings, or to change the proportion of or limit the amount of any element of pay that forms part of pensionable earnings, for or in respect of members or members of a particular description".

The DWP's original proposal was limited to such changes being made in a scheme's rules, but the final regulations were widened so that employers are required to consult where they intend unilaterally to change which elements of pay constitute pensionable earnings, and where changes are made to the proportion of any element of pay that is to be 'pensionable', or where there are limits put on the amount of any element of pay that is pensionable. (This had always been something of a loophole.)

ACTION: Employers should factor in the consultation requirements when planning any benefit changes.

A-Day transitional arrangements – the clock is ticking

The new "simplified" pensions' tax regime came into being on 6 April 2006 ("A-Day") – over four years ago!

Under transitional arrangements, the old "IR limits" and, in particular, the "earnings cap", continue to apply to schemes by default until 5 April 2011, unless removed by a specific deed of amendment. This was to provide a period of grace during which employers could decide which of the old limits they wish to "hard code" into their scheme's rules in order to avoid any unintended increase in members' benefits and scheme liabilities.

[The Registered Pension Schemes \(Modification of the Rules of Existing Schemes\) Regulations 2009](#), which came into force on 11 December 2009, allow schemes to make appropriate changes to their rules without seeking HMRC's approval even where the rules require such approval to be obtained.

ACTION: With the transitional arrangements now having less than a year to run, employers should check whether appropriate changes have already been made and, where not, ensure the process is started soon so that their scheme's rules can be amended by 5 April 2011.

Notional earnings cap announced for 2010/11

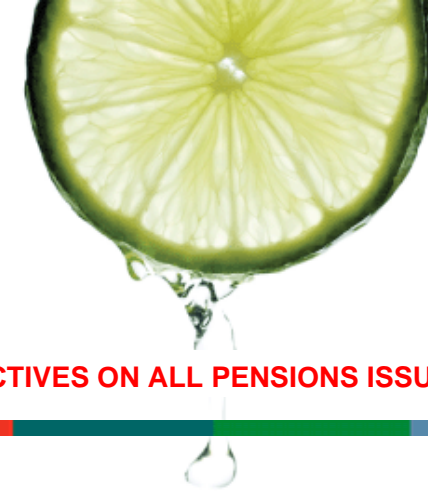
HMRC has announced that the notional earnings cap is to be £123,600 for the 2010/11 tax year.

ACTION: To note and build into relevant benefit and contribution calculation routines.

Lifetime and annual allowances frozen

It was also announced in the Budget that the Lifetime Allowance is to be frozen at its 2010/11 level of £1.8m and the Annual Allowance at £255,000. Both will remain at these levels until at least the 2015/16 tax year.

ACTION: Employers and trustees should review the relevant wording in their scheme booklets and consider whether they ought to issue amendments.



Default retirement age to be reviewed

It was confirmed in this year's Budget on 24 March 2010 that the default retirement age of 65 (ie the age at which employers can compulsorily retire employees) is to be reviewed. The Government intends shortly to launch a formal consultation, but no changes will be made before April 2011.

ACTION: Employers should continue to monitor developments, with the retention of a default retirement age of 65 looking increasingly less likely.

Regulator puts record-keeping under the spotlight

As a result of a disappointing voluntary response to the ["Record-keeping: good practice in measuring member data"](#) guidance it issued in January 2009, the Pensions Regulator has decided to take a tougher approach and issued a consultation paper on 2 February 2010 called ["Record-keeping: measuring member data"](#). This includes proposals for regulatory intervention.

The Regulator intends to ask a sample of schemes to undertake tests on their data and send a report for scrutiny, with such requests being triggered by contact with the Regulator (eg through a whistle-blowing report, a query on the scheme return or through the submission of scheme-specific funding plans). If the results of such tests are not satisfactory, and agreed and specific actions are not in place to rectify the problems, the Regulator will take enforcement action, which could include:

- issuing directions (using Improvement or Third Party Notices) to carry out certain tasks
- imposing penalties (fines) for failure to comply
- (in extreme cases) prohibiting trustees and/or appointing new trustees
- publishing details of the actions taken (to "name and shame").

ACTION: Trustees should discuss the quality of their scheme's data with their administrator and agree plans for making corrective actions where necessary.

DWP issues information on risk sharing

The DWP issued an information note ["Risk Sharing: information for employers considering making changes to Defined Benefit pension schemes"](#) on 30 March 2010, which explains how risk sharing can be achieved to a limited degree under current legislative constraints.

ACTION: Employers may wish to review whether any of the risk-sharing ideas would make it easier for them to maintain DB pension provision if their scheme has not already been closed to future benefit accrual.

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