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Budget Representations 2021

Employment Taxes and Pensions Tax Regime

Representations by the Chartered Institute of Taxation

1 Executive Summary

1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity, and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

1.2 We set out below our suggestions for the upcoming Budget in respect of employment taxes and the pensions tax regime. Our suggestions are aimed at bettering or simplifying the tax system. These include:

- A deduction for additional household expenses where an employee opts to work from home;
- Clarification of the business travel rules where an employee works from home (either full or part-time) and occasionally travels to their employer's premises;
- Amending the trivial benefits exemption so that employer reimbursements have the same tax treatment as directly provided employer benefits;
- Amending the legislation to treat ex-gratia payments by employers on the death of an employee by 'natural' causes in the same way as an equivalent payment on the 'accidental' death of an employee;
- Enhancing the Enterprise Management Incentives (EMI) eligibility criteria to help businesses recover and grow post-pandemic;
- Rectification of anomalies in the pensions tax regime for taxing lump sums from pension schemes;
- Improving pension scheme administration by fixing problems with scheme block transfers and Guaranteed Minimum Pension (GMP) sex equality equalisation conversions; and
- Reviewing the Money Purchase Annual Allowance (MPAA) rules to allow individuals who have had to access their pension savings during the pandemic to recommence saving for their retirement without the contribution restrictions imposed by the MPAA.

1.3 We would be pleased to discuss and provide further details in respect of any and all of our suggestions.

2 About us

2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Working from Home (WfH) – Household expenses

3.1 We suggest that the government introduce a specific deduction for the extra cost of Working from Home (WfH).

3.2 Section 316A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) (Homeworker's additional household expenses) provides an exemption under which employers can make a tax-free payment to an employee to meet the reasonable extra household expenses (ie costs connected with the day to day running of the employee's home) which their employee incurs in carrying out duties of the employment at home under a homeworking arrangement. Section 316A does not however provide the employee with a right to claim a deduction for tax purposes for the extra household expenses if the employer does not reimburse that expense.

3.3 For an employee (taxpayer) to be able to claim a deduction for the extra cost of Working from Home (WfH) the expense must be claimed under Section 336 of ITEPA (Deductions for expenses: the general rule), which requires the taxpayer to demonstrate that the extra household costs were incurred wholly, exclusively and necessarily in the performance of the duties of their employment. However, a claim for these costs under Section 336 is normally refused unless the taxpayer can demonstrate that (a) there are no appropriate facilities available to them at their employer's premises and (b) that at no time before or after the employment contract was drawn up is the taxpayer able to choose between working at the employer's premises or elsewhere. While this strict rule was relaxed for the pandemic (in that HMRC accept that while WfH mandates are in place by the UK governments then the appropriate facilities are not available at the employer's premises), a return to the strict application of Section 336 post-pandemic will see many employees who choose homeworking arrangements (either WfH full or part-time) to improve their work-life balance being unable to claim a deduction for any employer unreimbursed additional costs of WfH.

3.4 It is evident that modern technology allows increasing numbers of employees to carry out some or all of their duties of their employment from their own home. This has been further evidenced by employers' and employees' ability to swiftly react to the recent pandemic and put home working arrangements in place. We

also understand that the government is considering introducing day-one rights for employees to work from home either partially or fully. The tax system needs to keep up with this development and permit a tax deduction for the extra cost to an employee of Working from Home (WfH) where an employer is unable to meet that cost when it is the employee's choice to agree with their employer that they will undertake some or all their duties from home.

3.5 Consequently, we believe that with homeworking arrangements now becoming commonplace and being as much about employee choice (and, potentially, their employment rights), rather than simply whether the employer has appropriate facilities at their premises, either Section 316A should be extended to provide an allowable deduction for non-reimbursed extra costs or new legislation should be brought forward to permit a deduction for those reasonable extra costs of Working from Home (WfH).

4 Hybrid home working – travel costs

4.1 We suggest that the government review the tax rules around business travel and ordinary commuting where an employee is working from home (WfH) either full or part-time.

4.2 In general, there is no tax relief for the cost of travel between an employee's home and their permanent workplace (eg the employer's premises). This includes having to attend a permanent workplace outside of normal working hours (eg being called in for weekend overtime). (For the avoidance of doubt we are referring here to the situation where both the employee's home and the employer's office premises are located in the UK).

4.3 Where an employee's home is their sole permanent workplace, and they attend a temporary workplace to perform the duties of their employment, then tax relief for the cost of travel from home to that temporary workplace is available.

4.4 Similarly, where an employee is required to travel between two places of work (neither of which are their home), in the same employment, in order to carry out the duties of that employment, the cost of travel is incurred in the performance of the duties and are therefore normally allowable.

4.5 Whereas, where an employee that works from home attends another workplace for the same employer regularly (ie attendance is frequent or follows a pattern) then it is treated as a second permanent workplace and any travel from home to that workplace is treated as ordinary commuting and the expenses of travelling are not normally allowable.

4.6 The requirement to work from home during the pandemic has, for many employees and employers, shown that working from home (WfH) either full or part-time is not just feasible but very doable, and can bring many benefits to both employees and employers. It is therefore very likely that many employees and employers will agree either full or part-time (hybrid) WfH arrangements in the future. Therefore, the tax rules around what is business travel and what is ordinary commuting need to keep pace with this change in working practices.

4.7 HMRC's 490 booklet[1] (Chapter 3) provides an example at paragraph 3.36 of a typical hybrid-working arrangement. Correctly, the travel to the employer's premises on the days normally worked at that workplace are classed as ordinary commuting. However, there are going to be days when an employee would normally

[1] Ordinary commuting and private travel (490: Chapter 3) - GOV.UK (www.gov.uk)

be working from home (WfH) that they are required to attend their employer's premises. If such occasions are irregular then, we believe, that the journey on those days would be for allowable business purposes rather than ordinary commuting. This view appears to be borne out by the example at paragraph 3.38 of the 490 booklet.

4.8 We suggest that the government asks HMRC to review the existing exemptions and deductions for employee's travel expenses contained in the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) to ensure that they are fit for purpose in a new era of hybrid working from home (WfH) arrangements and, as appropriate, either update the relevant legislation or improve their guidance on allowable/non-allowable business travel.

5 Trivial benefits exemption – employer reimbursements

5.1 We suggest that the government amends Section 323A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) (Trivial benefits provided by employers) so that the exemption applies when employers reimburse employees the cost of a benefit, as well as, when the employer arranges for its provision (or a voucher to obtain it).

5.2 Section 323A provides a statutory exemption for trivial benefits. Under this exemption, if an employer provides a benefit to its employees, the benefit is exempt from tax as employment income if the cost of providing the benefit does not exceed £50, the benefit is not cash or a cash voucher, the employee is not contractually entitled to the benefit, the benefit is not provided in recognition of particular services performed by the employee as part of their employment duties, and the benefit is not provided pursuant to a relevant salary sacrifice arrangement.

5.3 However, the Section 323A exemption is not available where the employee directly incurs the cost of the benefit, and the employer then reimburses that cost (even where the employer provides the same benefit, or a voucher to obtain it, to other employees).

5.4 For example, an employer arranges for a nurse to attend the employer's premises and offers a seasonal flu immunisation (flu jab) to all employees. This benefit is treated as trivial and within scope of the Section 323A exemption. A second employer incurs the cost of providing flu jab vouchers to all employees (that want a 'free' flu jab) allowing them to visit their local chemist to obtain a flu jab. This benefit is treated as trivial and within scope of the Section 323A exemption. A third employer cannot afford the cost of having a nurse visit their premises to administer flu jabs, and as a small employer, is unable to obtain flu jab vouchers for their employees but, being a good employer, wants to encourage their employees to have a flu jab and offers to reimburse each employee for the cost of obtaining a flu jab. The reimbursement is not within the scope of the Section 323A exemption and is treated as taxable earnings under Section 62 of ITEPA.

5.5 It does not seem fair that the cost of a benefit that an employer indirectly incurs (because the employee initially bears the cost and the employer seeks to reimburse that cost) is not given the same tax treatment as a benefit, the cost of which, the employer directly incurs.

5.6 This issue arises not just with Section 323A but elsewhere in ITEPA 2003. Whether an expense is met (i) directly by the employer, (ii) by the employee but on behalf of the employer (such that the employee uses the 'litany' in advance of incurring the cost, so that the entity the employee pays is aware that the purchase is 'on behalf of' their employer), or (iii) by the employee, without the employee using the litany, but with agreement that the cost will be reimbursed by the employer, is a constant issue for employers and employees, and restricts

businesses working arrangements (see, for example, HMRC Booklet CWG2, Chapter 5.1[2] and the use of charge cards, and HMRC Manual NIM02191[3] and 'using the litany'). The issue most recently manifested itself at the start of the pandemic when employees were first starting to work from home and needed to quickly obtain equipment to enable them to work from home: where the employee directly purchased the equipment any reimbursement by the employer would have been taxable but for a subsequent time-limited exemption the government rightly introduced for such equipment costs.

5.7 Hence, we believe that the government should review existing legislation on benefits-in-kind and the distinction between employer pays and employer reimburses, and that the legislation should be updated to remove that distinction (particularly in regard to the trivial benefits exemption and the requirement that the employer directly incurs the cost of trivial benefits such as flu jabs).

6 Payments on death – equality of tax treatment

6.1 We suggest that the government amends the legislation in respect of ex-gratia payments from employers on the death of an employee so that payments arising following a death by natural causes receive the same tax treatment as payments that arise following an accidental death.

6.2 Section 406 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) (Exception for death or disability payments and benefits) provides that a payment or benefit in respect of the termination of an office or employment by the death of the holder, and otherwise chargeable within Chapter 3 of Part 6 of ITEPA 2003, is exempted from tax.

6.3 This said, it is more usual for a payment on an employee's (or ex-employee's) death to be chargeable under Section 394 of ITEPA 2003 as a relevant benefit from an Employer-Financed Retirement Benefits Scheme (EFRBS). This does not mean that there need be a formal pension scheme in existence from which the payment is made. It is only necessary that there be an informal agreement or arrangement, such as a decision at an employer's meeting to make an ex-gratia payment, in order for the EFRBS rules to bite.

6.4 On the other hand if a payment is made further to a qualifying death-in-service insurance policy (a 'relevant life policy' within the meaning of Section 393B(3)(c) of ITEPA 2003), then the payment is usually tax-free.

6.5 Understandably these distinctions can cause problems in practice. A particular problem in determining whether Section 406 or Section 394 of ITEPA 2003 applies is the meaning of 'accidental death'. This can result in uncertainty as to whether a payment by the employer is exempt under Section 406 or taxable under Section 394. For example, an employee dies of natural causes. The employer decides to make an ex-gratia payment to the employee's spouse. The 'gift' on death in these circumstances is a 'relevant benefit' so an Employer-Financed Retirement Benefits Scheme (EFRBS) is created by the payment, and it is chargeable on the spouse and counts as employment income. Conversely, for example, an employee dies after falling from the roof at home. The employer decides to make an ex-gratia payment to the spouse. The payment is not chargeable under Section 394 as it falls within the accidental death exclusion at Section 393B(3)(b) – that the accident happened at home outside working hours is irrelevant, the key point is that it happened during the employee's service with the employer (see HMRC Manual EIM15315[4]). Accordingly, in this situation the Section 406 exemption applies effectively to exempt the payment from tax.

[2] 2021 to 2022: Employer further guide to PAYE and National Insurance contributions - GOV.UK (www.gov.uk)
[3] NIM02191 - National Insurance Manual - HMRC internal manual - GOV.UK (www.gov.uk)
[4] EIM15315 - Employment Income Manual - HMRC internal manual - GOV.UK (www.gov.uk)

6.6 It is evident that this unequal treatment of ex-gratia payments following a death is therefore capricious and unfair. For example, is death by virtue of catching Covid a death by 'natural' causes or an avoidable death and, thus, in effect an accidental death? Would a different answer arise if Covid was caught in the workplace? Similarly, if an individual has a severe heart condition and is told if they do not have an operation within 3 months they will die, and they chose to have the operation but die during it, is that an accidental death? Equally, we understand that HMRC accept that in the tragic event that an employee is murdered this would be regarded as an 'accidental death'.

6.7 We recommend reviewing the legislation on payments from employers on the death of an employee so that ex-gratia payments on death receive the same tax treatment whether or not the death is from natural causes or arises from an accident.

7 Enterprise Management Incentives (EMIs) and other tax-advantaged share schemes – Enhancing the scheme

7.1 While we believe that the Enterprise Management Incentive (EMI) scheme is fulfilling its objectives of helping Small to Medium-sized Enterprises (SMEs) to recruit and retain employees, we also believe that it could be enhanced to include more companies and, thus, assist those companies in growing, especially post-pandemic. We therefore recommend that the current EMI scheme eligibility criteria be reviewed, and thresholds increased.

7.2 Thresholds such as the number of qualifying employees and gross asset value should be increased to reflect inflation and current business needs. Fixing the qualifying point such that the number of employees or gross asset value is set for, say, a 12 or 18 month period, would help companies whose employee numbers or gross assets flex above and below the qualifying limits. Similarly, it will help those companies that grow rapidly during such a period to retain and recruit employees. It would also ease administration as the company (and HMRC) would know whether or not the company qualifies over a particular period. A relaxation in other conditions, such as the 'working time requirement' or the list of trades that constitute 'excluded activities', would reflect the changes to working arrangements and business generally over the course of recent years.

7.3 We also suggest that the government review the eligibility criteria for other forms of tax-advantaged share schemes and increase the respective limits, as appropriate, to aid recruitment and retention of employees. Coupled with administrative simplifications (for instance in relation to share valuation agreements with HMRC) these other tax-advantaged schemes could become more attractive to SMEs, especially those that do not meet the qualifying trading activities requirements or who have grown beyond the EMI scheme qualifying limits.

8 Pensions tax regime – Pension lump sums

8.1 We believe that there are a number of issues arising from how pension lumps sums paid to UK tax residents are taxed in the UK, including:

- limitations to the scope of Section 574A of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003) ('Pension': relevant lump sums) that cause Part 7A and Chapter 3 of Part 6 of ITEPA 2003 to apply instead of the pensions tax rules in Part 9 of ITEPA 2003, and which then trigger undue tax charges because of (a) a flawed fraction applying for grandfathered Foreign Service Relief (FSR) in Section 554Z4(9) in Part 7A of ITEPA 2003 and (b) the lack of FSR available to UK residents under Charter 2 of Part 6 of ITEPA 2003;

- a lack of offset for employee contributions paid out of UK taxed income where Section 574A of ITEPA 2003 applies to tax the lump sum;
- transitional provisions set out in Schedule 36 to the Finance Act 2004 (FA 2004) not applying to lump sums taxed under Section 574A of ITEPA 2003; and
- the exclusion of UK Excepted Group Life Policies (EGLPs) from relevant lump sum treatment.

8.2 ***Limitations to the scope of Section 574A that cause Part 7A and Chapter 2 of Part 6 of ITEPA 2003 to apply instead and the knock-on detrimental impact on Foreign Service Relief (FSR)***

Individuals who receive a distribution as a lump sum from a non-UK pension scheme in the overseas part of a split tax year are specifically exempted from any tax charge under Part 9 of ITEPA 2003, by Section 575(1A) which limits the scope of taxable pension income to payments received in the UK part of the tax year. Similarly, where individuals receive distributions from Relevant Non-UK Schemes (RNUKS) of which the taxpayers are UK tax-relieved members, the distributions are outside Section 574A because Section 574A(1)(a)(ii) specifically excludes RNUKS from the scope of Section 574A. (Albeit that Section 574A(2) goes on to include any lump sums paid to members of RNUKS within Section 574A where the effect of paragraphs 1-7 of Schedule 34 to FA 2004 is that the member payment provisions do not apply to the payment of the lump sum.)

8.3 Where Section 574A of ITEPA 2003 does not apply to tax lump sum distributions paid in either of the two sets of circumstances detailed above, they will instead be taxed under Part 7A and/or Chapter 2 of Part 6 of ITEPA 2003, depending on whether the scheme operates on a funded or unfunded basis and the period over which benefits accrued. In the case of a funded scheme, benefits accrued from 6 April 2011 will fall to be taxed under Part 7A and under Chapter 2 of Part 6 of ITEPA 2003 to the extent they accrued prior to that date. In the case of an unfunded scheme, all benefits will fall to be taxed under Chapter 2 of Part 6. In both cases we believe that the Foreign Service Relief (FSR) available is not in line with the grandfathering promised at the time that the law in Finance Act 2017, which restricted FSR in relation to UK residents, was enacted.

8.4 Individuals, whose pension entitlement arose from contributions made prior to 6 April 2017, would expect to have full grandfathered Foreign Service Relief (FSR) in Section 554Z4(9) of ITEPA 2003 on that element, but the fractional reduction provided for in Section 554Z4(4) distorts this. We understand that what was intended was to allow FSR up to 5 April 2017, but what the calculation in Section 574Z4(4) actually does is to allow relief on the rights accrued up to 6 April 2017, but by reference to the total foreign service, out of total service (ie including periods before and after April 2017). This means that if a taxpayer has 'extra' foreign service after 6 April 2017 they get relief for it that we believe is contrary to the policy intent, but conversely if a taxpayer has UK service after that date, but full foreign service before, the later UK service limits the FSR that should apply in the earlier period. It is unclear to us why the fraction in Section 554Z4(4) does not operate in the same way as the fraction in Section 574A(6). We believe that it should, so that taxpayers are taxed in exactly the same way regardless of whether they fall within Part 7A (Section 574A) or the EFRBS law in Chapter 2 of Part 6. We believe that the problem could be addressed by calculating the reduction under subsection (4) by reference to the proportion of the pre-6 April 2017 lump sum rights that are in respect of a period of UK non-residence or the overseas part of a split year except insofar as the individual performed duties of the relevant employment in the UK during the periods these rights accrued.

8.5 Similarly, to the extent that entitlement to any distribution accrued prior to 6 April 2011 (or is made under an unfunded scheme) and falls outside of Section 574A of ITEPA 2003 for the reasons identified in 8.2 above, it will be caught by the Employer-Financed Retirement Benefits Scheme (EFRBS) law in Chapter 2 of Part 6. However, Foreign Service Relief (FSR) is prevented from applying where the individual is tax resident in the UK

by virtue of Section 395B(1)(ca) which we consider is inconsistent with the position that grandfathering should apply in these circumstances.

8.6 We believe that the legislation on Foreign Service Relief (FSR) needs to be amended so that the individuals identified above are able to claim the FSR to which we believe they should properly be entitled in their particular circumstances. We would be happy to provide more detail as to how this could be achieved.

8.7 ***Lack of offset for employee contributions paid out of UK taxed income where Section 574A of ITEPA 2003 applies to tax the lump sum***

Individuals taking distributions that are taxable as relevant lump sums under Section 574A of ITEPA 2003 may have been denied any UK tax relief on contributions they made to the non-UK pension plan previously and therefore may suffer tax on contributions that have come out of pay that has already been subject to UK tax. They are therefore effectively paying tax twice on the same income, first as a contribution and then as a distribution. We believe that this is inequitable and contrary to the way that the law in Part 7A of ITEPA 2003 operates in similar circumstances. For example, Section 554Z5 provides relief for overlap with any earlier relevant step and permits an offset for any amounts taxed as contributions against any amount that is taxed on distribution. In the same way, Section 567 allows relief from tax as pension income under Section 567A for any employer contributions that have already been taxed under the Part 7A regime. Similarly, relief for employee contributions is available under Section 395 where amounts are taxed under Chapter 2 of Part 6 of ITEPA 2003.

8.8 This issue could be addressed by amending Section 577A 0f ITEPA 2003 to allow an offset for employee contributions that have been made out of pay that has already been subject to UK tax, in the same way that the law in Section 554Z5 and Section 395 allows such an offset.

8.9 ***Transitional provisions from Schedule 36 to Finance Act 2004 (FA 2004) not applying to lump sums taxed under Section 574A of ITEPA 2003***

The law in paragraphs 53-55 of Schedule 36 of FA 2004 allows transitional relief in circumstances where lump sums taxed under Section 394 of ITEPA 2003 are paid out of funds that were subjected to tax as contributions previously, either as taxable employer contributions, or as employee contributions that have been funded out of employment income already subjected to UK tax. There is no equivalent provision that allows an offset for amounts previously taxed prior to 6 April 2006 (A-Day) under Part 9 of ITEPA 2003, as Section 567 does not currently allow any relief for amounts taxed prior to A-Day. Therefore, where any lump sum accruing in whole or part pre A-Day is taxed under Section 574A rather than Section 394 (for example because the taxpayer is a full year UK tax resident) no relief for amounts taxed previously will be allowed.

8.10 This could be resolved by the offsets provided for in paragraphs 53-55 of Schedule 36 of FA 2004 being replicated in a new Section 567B, which in turn could be included as a permitted deduction under Section 567(5) of ITEPA 2003.

8.11 ***The exclusion of UK Excepted Group Life Policies (EGLPs) from relevant lump sum treatment***

Lump sums from UK EGLPs are within the wide parameters of the relevant lump sum law in Section 574A of ITEPA 2003, but where they deliver death-in-service benefits from a UK policy they are in any event outside its territorial scope by virtue of Section 573(3). However, Section 574A(1)(a) is specific about excluding other types of UK lump sums including UK Employer-Financed Retirement Benefit Schemes (EFRBS) and registered

pension schemes, both of which are mentioned, which has the potential to cause confusion and difficulties in the future.

8.12 This could be remedied by adding a sub-section (iv) to Section 574A(1)(a) of ITEPA 2003 covering death in service benefits from UK Excepted Group Life Policies (EGLPs). Or, alternatively, to make clear in guidance that the reference to UK Employer-Financed Retirement Benefit Schemes (EFRBSs) is intended to include such arrangements.

9 Pensions tax regime – Pension Scheme administration

9.1 We also believe that there are a number of issues arising from how pension funds are taxed when pension schemes either consolidate or seek to equalise entitlements, including:

- Fixing problems with pension scheme consolidation that relate to restrictions on block transfers; and
- Fixing issues with Guaranteed Minimum Pension (GMP) conversions

9.2 ***Pension scheme consolidation and block transfers***

We believe that the block transfer restrictions are causing problems for pension scheme consolidation and that the government should clarify the legislation to ensure that, for example, schemes with both Defined Benefit (DB) and Defined Contribution (DC) entitlements can split the DB and DC rights where they want to consolidate the DC sections of their scheme into larger schemes such as master trusts.

9.3 The rules for block transfers require the transfer of all of a member's benefits so transfers of Defined Contribution (DC) rights without Defined Benefits (DB) rights or vice versa will lose protection because they are classified as partial transfers rather than block transfers and only ring-fenced protection on the individual transfer basis would apply. Block transfers need to be able to carry over protected minimum pension ages, and scheme-specific lump sums ('SSLS' or 'tax free cash'). Furthermore, under a block transfer of just DC rights, the SSLS formula applying to the original scheme is reduced by ¼ of the partial transfer, which can lead to a net loss of SSLS across the two schemes. Additionally, at present, a member of the transferring scheme cannot be a pre-existing member of the receiving scheme for more than 12 months.

9.4 Hence, we believe the existing restrictive block transfer provisions, in both the 2010 and proposed 2021 legislation, are practical barriers to consolidation and at odds with the government's broader policy goals.

9.5 To address this we suggest that where a 'hybrid-type' scheme with both Defined Benefit (DB) and Defined Contribution (DC) entitlements wants to 'block transfer' rights to another scheme:

- Treating a transfer of either (i) all a member's DB or (ii) all a member's DC benefits as a block transfer. This will, for example, allow DB and DC benefits to be transferred to separate schemes/insurers when a scheme consolidates or winds-up etc. If necessary, the legislation should be amended to provide for this.
- Allowing protected minimum pension ages (ie schemes with protected pension ages of under 55) to pass over the protected minimum pension age to the new scheme, at least in regard to the transferred benefits.
- Removing the restriction that a block transfer member cannot have been in the receiving scheme for more than 12 months. As a minimum this ought to be the case for master trusts. At the moment a member in two entirely separate schemes cannot protect their benefits on the second transfer if,

coincidentally, those two schemes happen to consolidate into the same master trust. For example, Shop 1 Scheme and Store 2 Plan both transfer their DC members to the Big Retail Master Trust; however, at present, if the first transfer is more than 12 months before the second then the protected cash and minimum pension age cannot be taken to the second scheme, *even if all scheme benefits transfer*.

- Removing the '-TV/4' calculation from the post-partial-transfer-out line of the tax-free cash formula (Modification of paragraph 34 of Schedule 36 of FA 2004 by paragraphs 21 to 23 The Taxation of Pension Schemes (Transitional Provisions) Order 2006 (SI 2006/572)). Broadly, this would mean that any reduction in the scheme-specific lump sum (SSLS) in the first scheme would be offset by the lump sum ('Pension Commencement Lump Sum' (PCLS)) in the receiving scheme. Under current rules we believe that there can be a double-counted loss.

9.6 ***Guaranteed Minimum Pension (GMP) conversions – sex inequality in pension schemes***

We understand that thousands of pension schemes are currently unable to pay millions of pension scheme members the benefits they are due because their legal advisers are advising that the tax and pensions law is unclear where a pension scheme undertakes a 'GMP' conversion to equalise pension benefits.

9.7 Guaranteed Minimum Pension (GMP) conversion is a way to remove or amend GMP features, using legislation enacted in 2007. In particular, pension schemes are required to equalise benefits paid to men and women where the scheme provided for different types of benefits to each. While the details of GMP equalisation are complex, and we have not repeated them here, they are well known. The legislation allows pension schemes to simplify and equalise benefits, which helps members understand their benefits better, speeds up processing times, keeps administrative costs down, and ultimately puts them on a more secure long-term basis.

9.8 We therefore recommend that the government review the conversion legislation to ensure that it is workable, and amend it if required, and confirm that where a pension scheme equalises their members entitlements under the Guaranteed Minimum Pension (GMP) conversion legislation that no taxable event arises under the pension tax regime (or amend the legislation to provide for this). We believe that action is urgently need on this matter so that pension schemes can pay their members the benefits they are entitled to.

10 Pensions tax regime – Money Purchase Annual Allowance (MPAA)

10.1 We suggest reviewing the restricted MPAA of £4,000 where individuals have had to access their pension savings during the pandemic.

10.2 The Money Purchase Annual Allowance (MPAA) reduces the 'normal' annual allowance for maximum 'pension inputs' of £40,000 to £4,000 where a scheme member makes use of flexible access. This reduced MPAA cannot be increased by unused amounts from previous years. If an individual's pension inputs exceed the MPAA the individual will pay tax at their marginal tax rate on the excess. In normal circumstances the policy intent of the MPAA is understandable.

10.3 But many individuals have had to access their pension benefits during the pandemic to help with their financial concerns: we understand that due to the significant impact the pandemic has had on people's finances, about 9% of over 55s have accessed their pensions while on furlough to make ends meet, with many of those having flexibly accessed their pensions. This need to access pension savings now will, because of the Money Purchase Annual Allowance (MPAA), curtail the tax-favoured pension saving these individuals may have anticipated

making in the run-up to their retirement. Unless some relaxation to the MPAA rules is made these individuals now have a severely limited opportunity to build their pension savings back up again.

10.4 We therefore recommend consideration of an increase in the Money Purchase Annual Allowance (MPAA) to enable individuals to make up contributions post pandemic, where they flexibly accessed pension benefits during the pandemic.

11 Acknowledgement of submission

11.1 We would be grateful if you could acknowledge safe receipt of this submission.

The Chartered Institute of Taxation

30 September 2021