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Finance Bill 2021-22 – Income Tax draft legislation

Increasing the normal minimum pension age for Pensions Tax

Pension Scheme Pays reporting: information and notice deadlines

Response 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 think that the draft legislation increasing the normal minimum pension age (NMPA) will introduce a gap whereby some transfers that would be protected if they took place on or after 6 April 2023 would not be protected if they happened between now and then. Also, it appears that members protected by the 2010 legislation would still be unable to retain any of that protection on an individual transfer to another scheme. Additionally, we think the current position whereby a member with both Defined Benefit (DB) and Defined Contribution (DC) rights in a scheme cannot retain fully protected NMPA for their transferred DC rights should be corrected.

1.3 We would also suggest amending the various parts of the pension tax legislation that reference turning 75 by replacing age 75 with age 77, so that in the same way the NMPA is being increased to remain 10 years below the normal state pension age, these 'upper' age limits are increased to remain 10 years above state pension age. In particular, we think that tax relieved saving should continue to be possible for 20 years after the ability to take benefits, reflecting increased life expectancy and longer working lives.

1.4 Regarding the amendments to the 'Scheme Pays' rules, we suggest amending the draft legislation in respect of the period within which a pension scheme administrator must provide information about a change to an individual's pension input amount (PIA) to avoid the deadlines being either very early or too tight.

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 Introduction and general comments

3.1 These measures introduce:

- an increase in the normal minimum pension age (NMPA); and
- extend the Pension Scheme Pays reporting information and notice deadlines.

3.2 Our stated objectives for the tax system, relevant to these two measures, include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Responsive and competent tax administration, with a minimum of bureaucracy.

3.3 ***The need to simplify the current pensions tax regime***

We feel that the underlying principle to the pensions tax regime should be that the rules are 'simple, durable and readily understood'. And yet, considering all the changes that have been made since the Finance Act 2004 legislation codified and consolidated the rules, we believe that we are now a long way from achieving that. We therefore think that there is an urgent need to take a fresh look at the whole area of pensions savings, with the underlying aim of restoring the simplicity of the post A-day regime. This is such an important area for everybody, with people having to make key decisions involving sizeable amounts of money, that the regime really does need to be kept simple and stable.

4 Increasing the normal minimum pension age (NMPA) for Pensions Tax

4.1 This legislation increases the NMPA from age 55 to 57 in 2028, except for members of uniformed services pension schemes, where the NMPA will remain 55.

4.2 We understand the policy intention is that the NMPA should remain 10 years below state pension age. We are not, however, convinced an increase to the NMPA is necessary or desirable and there is no obvious risk to the Exchequer in permitting workers to retire at age 55 and draw on their pensions from that age, in line with current rules.

4.3 Assuming the NMPA is increased to 57 from April 2028, we agree that while adding complexity to an already overly complex pensions tax regime there should be a framework of protections for members of pension schemes who already have a right to take their pension at a pre-existing pension age. This will, undoubtedly, lead to additional work for pension scheme administrators in identifying and documenting such protected rights. While this approach is not dissimilar to that adopted in 2010 when the NMPA increased from 50 to 55, we think this will mean there is potentially more ongoing work for a scheme that accepts transfers and chooses to ringfence the protected rights, especially where a member also has protected rights from the 2010 change. This said, there is no obligation on a scheme to offer that protection, so it would be for the scheme to decide what to offer to a member, and whether the member then chooses to proceed with the transfer.

4.4 We would also suggest when increasing the NMPA that the upper age at which an individual can make tax relievable contributions also be increased from 75 to 77 (so that the age threshold remains 10 years above the state pension age). If this measure is to support '*fuller working lives*' and '*encourage individuals to save longer*' then '*with increasing life expectancy*' (per paragraph 20 of the Explanatory Note) then individuals should be able to contribute at a greater age. Similarly, the age for income drawdown reviews changing from every 3 years to every year should increase from 75 to 77. As should the age for re-comparing your pension fund(s) value against the lifetime allowance.

4.5 We think there is a possible gap in the draft legislation in respect of pension scheme transfers by members prior to 6 April 2023 (new paragraph 23ZB(3)). As the legislation is currently drafted a transfer, pre-6 April 2023, from a scheme with a pre-existing unqualified protected pension age, to a scheme that does not have the necessary unqualified right in its rules as of 11 February 2021 will lose the member any protection that they had in the ceding scheme. This is because new paragraph 23ZC gives protection on individual transfers, but only applies where paragraph 23ZB applied immediately before the transfer. And paragraph 23ZB can only apply where (per paragraph 23ZB(3)(a)) '*on 5 April 2023 the member had an actual or prospective right under the pension scheme to any benefit from an age of less than 57*', which is not the case if the member transferred out before 5 April 2023. This said, if the rules of the receiving scheme on 11 February 2021 meet the requirements on the right to retire from age before age 57 the right to a protected pension age can be acquired in respect of the transferred benefits – but it will only apply to future accrual.

4.6 We also note that block transfers still need to involve 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. In comparison, individual transfers appear to work at an arrangement level rather than scheme level, so it appears that an individual could transfer just their DC benefits and remain protected (and transfer protection). For example, draft paragraph 23ZC(3)(a) states that '[the funds] *were sums or assets held by the transferor scheme for the purposes of, or representing accrued rights under, the arrangements under the pension scheme which relate to a member of that scheme*'. This suggests that individual transfers operate at an arrangement level, rather than scheme level, so transferring DC rights only from a hybrid scheme where a

member also holds DB rights does not lose them the protection. This being said, the drafting around individual transfers is not clear and clarification on this point would be welcomed.

4.7 There is, in our opinion, an increasing desire by government, trustees and sponsoring employers for the Defined Contribution (DC) sections of 'hybrid-type' schemes (where DB and DC rights are side by side in a scheme rather than genuine hybrid schemes) to be consolidated in larger schemes such as master trusts. However, where a member has both DB and DC rights (separately) then it is not possible to retain fully protected NMPAs for the transferred DC rights as these are classified as partial rather than block transfers and only ring-fenced protection on the individual transfer basis would apply. The existing restrictive block transfer provisions, in both the 2010 and proposed 2021 legislation, are we believe practical barriers to consolidation and at odds with the government's broader policy goals. We suggest further consideration is given to making such transfers easier. (The related provisions for scheme-specific lump sums suffer from a similar problem.)

4.8 In regard to pre-existing rights to retire earlier than age 57, guidance is needed on what is meant by an 'unqualified right'[1] in relation to scheme rules as of 11 February 2021. Guidance on 'internal transfers' from one DB arrangement to another within the same scheme is also extremely brief and some additional guidance in this respect would also be welcome.

4.9 Additionally, we note from the Explanatory Note that issues around individuals without a protected pension age reaching 55 (but not 57) before 6 April 2028 have been recognised. The further advice on the proposed transitional arrangements where, for example, an individual has (a) started but not completed drawing on their pension funds before the change in NMPA, (b) drawn completely on some pension schemes but not others, and (c) not started to draw on any of their pension funds, should be published sooner rather than later so individuals, their advisers and scheme administrators can plan accordingly.

5 Pension Scheme Pays reporting: information and notice deadlines

5.1 This legislation amends:

(i) the period within which an individual can give notice to their pension scheme to pay their annual allowance charge for previous tax-years ('Scheme Pays'); and
(ii) the period within which a pension scheme administrator must provide information about a change to an individual's pension input amount (PIA).

5.2 While we welcome the policy intent to extend Scheme Pays to all individuals within scope of a retrospective annual allowance tax charge of £2,000 or more (who meet the conditions to qualify to use Scheme Pays) we do have some concerns regarding the proposed deadlines in the draft legislation.

5.3 The draft legislation (amendment to section 254(7A)) appears to bring **forward** the timing of the payment of current mandatory scheme pays, even where there has been no change to the member's PIA, to the quarter after the quarter in which the member gives notice. Is this intended? We think the Scheme Pays tax should be taken to be charged on the scheme administrator in the latter of the period ending with 31 December in

[1] Increasing the normal minimum pension age for Pensions Tax - GOV.UK (www.gov.uk): '*An individual may have a right to take benefits before the NMPA where this is not dependent on anything else or somehow qualified – for example requiring employer or trustee consent.*'

the year following that in which the annual allowance charge arose or the period ending with 31 December in the year in which the member gives notice of liability to the scheme administrator.

5.4 We also think that the changes to the deadlines also potentially bring **forward** current mandatory scheme pays deadlines in cases where the member's PIA changes shortly after the end of the tax year. (Please see the attached Appendix for the analysis on this.)

5.5 Furthermore, new sections 237BA(4)(b) and (5)(b) provide for a hard-stop deadline of '*the end of the period of 6 years beginning with the end of the tax year in question*' for both the scheme administrator and the member. The result appears to be that it is possible for the scheme administrator to issue a statement with a change to the PIA in line with the legislation (per section 237BA(3)(a) and (4)(b)) but after, say, 5 years, 11 months and 30 days – meaning that the member has then just one day to make a scheme pays election and give notice to the scheme administrator that they want to do so. Accordingly, we think the legislation needs to be amended to address this point. (Please see the Appendix in relation to this point.)

5.6 Lastly, it is not clear how new section 237BA(3) will work where there is a change in the member's benefits in a previous tax year (ie where the scheme administrator is required by regulations to give the member information). We do not think that the current regulations require a statement to be provided and assume that new regulations will be laid relating to this (in which case we would have expected the Finance Bill material to mention this). This being so, when might we expect these draft regulations to be published?

6 Acknowledgement of submission

6.1 We would be grateful if you could acknowledge safe receipt of this submission and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

14 September 2021

APPENDIX

Analysis of the Scheme Pays deadline changes.

Example 1

Our understanding of the current deadline is:

Pension Input Amount (PIA) over 2021/22 tax year greater than £40,000 and tax charge greater than £2,000.

The election by the member of the scheme pension (MSP election) must be made by 31 July 2023.

Under a member's Scheme Pays election, the annual allowance tax charge needs to be paid in quarter 4 of 2023 (or in an earlier period if elected by the scheme administrator).

Example 2

Our understanding of the deadlines under the new legislation is:

Pension Input Amount (PIA) over 2021/22 tax year greater than £40,000 and tax charge greater than £2,000.

If the PIA changes between 2 May 2023 and 5 April 2028, the deadline for a member's Scheme Pays election is the earlier of (i) 5 April 2028, and (ii) the PIA change information date plus 3 months.

Hence, regardless of whether the PIA changes after the fact, it appears that the tax charge now needs to be paid by the scheme administrator in the quarter after the quarter in which the scheme administrator receives notice of liability from the scheme member

Furthermore, a change to the PIA would bring the member's Scheme Pays election deadline as early as 2 August 2022 (if the PIA changes and the member is told on 2 May 2022).

Example 3 – our suggested approach

We suggest amending the legislation so that:

Pension Input Amount (PIA) over 2021/22 tax year greater than £40,000 and tax charge greater than £2,000.

Assuming no change in PIA later, a member's Scheme Pays election must be made by 31 July 2023 (ie, as before).

If the PIA changes between 2 May 2022 and 5 April 2028, the deadline is the **later** of 31 July 2023 and the PIA change information date plus 3 months (ie the deadline cannot be earlier than if the PIA change had not happened). This way if the PIA is changed the member has at least three months to decide.

Scheme Pays – hard deadline and member's election

Given the hard deadline for a member's Scheme Pays election of the '*end of the period of 6 years beginning with the end of the tax year in question*', we think that the scheme administrator hard deadline in section 237BA(4)(b) for notifying a change to the PIA may need to be 3 months before the end of that period to give the member time to respond. Otherwise, for example, it appears that the scheme administrator could give the individual information about a change in the PIA on (using the above examples) 5 April 2028 and expect the individual to decide whether to make an election on that same day!