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By email to [pensions.policy@hmrc.gsi.gov.uk](mailto:pensions.policy@hmrc.gsi.gov.uk)

Dear Sir/Madam

**Changes to the Annual Allowance 2015/16 and 2016/17+ - consequential information obligations (Draft legislation: the Registered Pension Scheme (provision of information) (amendment) Regulations 2016 )**

Thank you for the opportunity to comment on the above draft regulations which would make changes to the circumstances in which scheme administrators have a duty proactively to issue a pension savings statement ("PSS") to a member and include them in an Event Report.

These cover two separate changes: the very necessary amendments to fit with the transitional change to the operation of the Annual Allowance for the 2015/16 tax year; and amendments applicable to 2016/17 and subsequent tax years, in which individuals may have a tapered annual allowance less than £40,000.

As an overarching philosophy, we believe that the requirements to issue statements proactively should be restricted only to those seem at higher risk of exceeding their Annual Allowance.

PSSs are not simple to produce and consume time and resources for scheme administrators. This cost is met by the employer - but ultimately potentially by all members in terms of less resource for benefits.

- The statements contain valuations of DB benefits that have no means outside the purpose of the annual allowance test, and consequently can confuse members who may also receive ostensibly contradictory information about their benefits valued in different ways for other purposes. Sometimes members mistakenly attempt to use the PSS figures for other purposes and arrive at erroneous conclusions.

ACA have raised concerns in the past about the potential for disproportionate cost of having to prepare PSS for all members accruing pension benefits in a tax year (our letter in 2014 referred: [http://www.aca.org.uk/files/Feedback\\_on\\_the\\_burden\\_created\\_for\\_Scheme\\_Administrators\\_by\\_Pensions\\_Savings\\_Statements-13\\_April\\_2014\\_-20150825164429.pdf](http://www.aca.org.uk/files/Feedback_on_the_burden_created_for_Scheme_Administrators_by_Pensions_Savings_Statements-13_April_2014_-20150825164429.pdf)).

These draft regulations cause us to re-emphasise the concerns raised in our 2014 letter.

In terms of managing the risk of not collecting tax due, we would note that the requirements up to 2014/15 for sending proactive PSS have been a "**line in the sand**", broadly to pick up individuals who might have an AA charge. However, the design that it has inevitably included people who had no need of a statement and not picked up those who might need to report an AA charge:

- PSSs are sent to those well away from having any AA charge (because the pension input amount (PIA\_ in the year was a spike and they still have lots of unused AA from the previous three years to mitigate it) – an unnecessary PSS that might confuse and worry them; and

- no proactive PSSs are sent to those whose PIA in the tax year is above £40K but split between two schemes – but the information included in PSSs is available on request to all members (and it is ultimately the individual responsibility of a pension saver at these levels to identify whether they have an AA charge to pay and manage its payment to HMRC .

but given that the provision of proactive PSSs cannot perfectly capture all individuals who will need a statement and exclude everybody who does not need one, the requirements to date have attempted to be workable rather than impose unworkable burdens vainly aiming for an unachievable perfection.

**So we are pleased to see that with the proposals in the draft regulations HMRC seem to continue to aim for an approach that is “risk-focussed” for taxation without overburdening schemes with too much additional costs.** We have suggestions in this letter that we hope are in the spirit of the risk-focus that HMRC wants but making the compliance burden easier.

Our detailed comments are set out in the appendix to this letter: we hope that you find them of assistance and would welcome the opportunity to discuss this further with HMRC, and to work with you to ensure a workable and cost-effective solution.

Yours sincerely

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## APPENDIX

### 2016/17 tax year onwards

There are two proposed categories of members for whom a PSS should be issued automatically by a scheme. We think both need amending to make them workable.

#### **Category 1: if total PIA in a scheme for the tax year exceeds the “Annual Allowance”**

The regulations refer to “the Annual Allowance”, but from 6 April 2016 this will mean the personal potentially tapered Annual Amount.

A pension scheme will not be able to determine an individual’s Annual Allowance. So we believe this reference in the draft regulations should be changed (to what we hope was HMRC’s intent) to be the untapered Annual Allowance and the Annual Allowance applying as if the individual were not “high income” (ie as if section 228AZA did not apply to the individual) – so £40,000 currently.

This edit should feed through both to the trigger for sending this group a proactive PSS, and also to the requirement in the regulation that the information to be provided to members in the PSS includes the amount of the “Annual Allowance” for the tax year.

This in effect continues the current requirements unchanged, as the base category to whom the PSS must be sent.

#### **Category 2: for those who by some measure have income higher than £110,000, (ie a proxy for being a high income individual), and some Pension Input Amount in the scheme however small**

The intent of the draft aims to add in the new group of individuals at higher risk than before of an AA charge because they might have a lower personal Annual Allowance. So the income measure trigger is a proxy to Threshold Income. We have considered two different approaches to the income trigger, each with practical pros and cons. However, before we comment on these, we do note a couple of points.

- This “higher risk” group is more easily identified by HMRC than by either the employer or the scheme administrator. Most of the group will submit self-assessment tax returns with, in many cases, sufficient information to identify that their Threshold Income exceeded £110,000. Since around 85% of personal tax returns are filed on-line or electronically there might be scope to flag this to individuals once the data has been entered into the return but before it has been filed. **The consistency checks performed on a draft return before it is ready to be submitted electronically could therefore include a check of whether Threshold Income appears to be more than £110,000 and then raise a flag that would remind the taxpayer or the tax agent to think about the possible taper of the AA.** This might improve compliance if it prompts taxpayers in a difficult area of tax before the taxpayer has submitted the return and would prompt the taxpayer to approach the pension scheme for a PSS if s/he needs one, and the scheme would issue that on request.
- The proactive burden automatically involves issuing an accurate set of PIA for the current year and three year history when the member might not need these. And it may well be that schemes choose to send out information proactively, in a form that best suits the scheme and is satisfactory for most members.

These points supports keeping the statutory “Category 2” (income-based) burden for proactive PSSs as light as possible.

With regard to the income definition, we considered two approaches:

- **Approach 1 “Scheme pensionable salary”:** The draft regulations refer to an item called “pensionable salary” but its definition and intent is not quite clear. We assume that HMRC wanted to identify a relevant number that the scheme will already have on its books and so can easily use to determine who is in Category 2. So perhaps the definition was intended to be something like: ““pensionable earnings” means the member’s salary, wages or fee ~~in respect of the employment~~ to which accrual of retirement benefit in the public service pension scheme(e) or occupational pension scheme(f) relates [or if no such figure is known, to which death benefit cover relates]”.

However there are difficulties with this.

- Particularly in DC OPSs there may be groups for which the scheme genuinely does not need nor have information on pay, just the contributions they received.
- It is difficult to frame wording that is unambiguous and works for each scheme design, for example what “as at date” is the figure (“pensionable earnings for the tax year” will not have a meaning in many scheme rules)? If the scheme has different pensionable earnings for different parts of the pension calculation, which figure? If there are part timers, which figure?

Unless the law is clear about the definition to be used, the scheme may be uncertain or may interpret the law in a way that means it inadvertently fails its obligation to sending PSSs to certain members and for including those individuals’ details on the Event Reports. Defining a clear, usable definition of “earnings” for this purpose may require legal input. A scheme may need to take legal advice on interpretation in some cases.

- **Approach 2 “Employment taxable income” and an employer list:** An alternative approach would be to use a figure that was both objective and closer to the definition of taxable earnings even if not a figure readily known to the scheme administrator.

One way forward might be that Category 2 (the income-based category) is determined by a figure for taxable earnings in the tax year that the **employer** should already have. Without being employment tax experts, we wondered whether this could be framed around a number the employer has to report in any case to HMRC after the end of the tax year in what was a P35 or is now the 12th month RTI return – could HMRC suggest an item like this?

So the regulations would

- insert a new requirement on the employer to report to the scheme administrator within 3 months of the end of the tax year, a list of employees who have been members of the scheme during the tax year and whose (as defined) employment income exceeded £110,000. (The actual figure for Employment Income would not be supplied given that the scheme does not need this and it might be sensitive data.)
- (To simplify the communications between employer and trustees, one could modify this so that once an individual counts as crossing the income trigger in one tax year, he stays in the group for future years (ie only new high earners need to be listed). But in some employments, this might be over the top, if individuals do have very variable pay say by commission so may have Tapered

AA one year but another year may clearly have a £40K AA.)

- Under the Trustees' obligations, the individuals in this income-based category, Category 2, would thus simply be the employer list (less those whose PIA is nil – see later).

Approach 2, based on the employer-provided list of individuals, may in fact mean more PSSs have to be sent proactively (because someone whose scheme pensionable earnings is only their salary at perhaps £90,000 may have employment taxable earnings that is above £110,000). On the other hand individuals who work for two employers (either two part time jobs or a change of job during the tax year) would be less likely to be picked up (their taxable income in each employment being less than £110,000 but their notional pensionable salary applied to a part year accrual being over) - but as now, they would have to self-identify and ask for a PSS if needed.

The challenge in this approach is matching up information possibly across three different computer systems owned by three data controllers. Will employers be able to identify which of their employees are in which of their schemes? The payroll data would be held by the payroll function and may be outsourced to a specialist payroll bureau. The employer's record of membership of the pension scheme may be on an HR computer system (although perhaps the payroll function will know about accruing members because their membership triggers a funding contribution into the scheme for them). At worst it may mean linking two separate computer records to compile the list of affected individuals; and then passing this to the scheme administrators.

Neither approach is ideal but we veer towards Approach 2.

### **Need for an explicit PIA de minimis of nil**

In either case we would suggest one further change to this Category: that is that the condition in (iii) is appended "and the member's total pension input amount in the scheme for the tax year is greater than zero".

An example shows why this is needed. Say an individual is still an employee, has opted out of accruing retirement benefits in the scheme with full deferred member carve out but is still in the scheme in an arrangement for life cover only. In HMRC guidance (see PTM053910) there is a suggestion that this MIGHT count as "active membership" although it clearly does not generate PIA. As currently drafted therefore there is a risk that a PSS would have to be sent (with nil for the current tax year and a three year history of perhaps nil or other numbers). A scheme which has closed to accrual and thought its burden of proactive PSS had finished might find itself having to send a PSS showing nil for this year but a three year history. We suspect there may be other technical situation like this.

## 2015/16 tax year

We welcome the proposal of a simplistic approach of requiring a statement to be issued automatically only if their savings over the combined Pension Input Period exceeds £40,000.

(If the law were instead left as it stands interacting with the creation of two mini tax years under the headline transitional arrangements for 2015/16 AA testing we think it might have required proactive PSSs and Event Reports for all accruing members for the second mini-tax year, because its post-alignment Annual Allowance is zero.

The trigger being £40,000 exceeded by PIA in all the PIPs ending in 2015/16 (the Combined PIP) does not really match a particular risk group given the way the transition is structured.

And for most arrangements this combined Pension Input Period is longer than 12 months - and for a common default Pension Input Period ending on 6 Aprils (or mid-April), almost 24 months. So as drafted the legislation would mean an individual who saved £20K in the year to 6 April 2015 and £21K in the 365 days to 5 April 2016 would have to have proactively sent PSS when in fact there may be no charge to report to HMRC. So for 2015/16 under the draft provisions there would be an increased number of statements issued proactively despite fewer people likely to exceed the Annual Allowance.

One way to make the provision more proportionate would be to

- Replace the £40K trigger in the draft regulations, against which is tested the total level of PIA in the Combined Pension Input Period (or PIPs ending in the tax year)
- With a trigger that mimics the AA test better: a trigger that the total pre-alignment PIAs in the scheme exceed £80K, or the post alignment PIAs exceed [£80K – total pre-alignment PIA, or £40K if lower]

This would reduce the number of PSSs to a group consistent with the obligations up to 2014/15.

Some administrators may find that their system coding is such that it is simpler for them to identify and send PSSs to those with “total PIA exceeded £40K”. They could do this knowing that the group they choose certainly encompasses the group we are proposing.

We note the new requirement to report the PIA split into the aggregate in PIPs ending in the pre-alignment tax year, and the aggregate ending in the post-alignment tax year. This will be an extra burden to schemes but we can see the argument for it.

We have not worked through the knock ons where the 10K Money Purchase AA applies.

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