Finance Bill 2021/22 draft legislation: pensions

Employment Tax

04 November 2021

The CIOT has submitted comments on the draft Finance Bill 2021/ 22 legislation on increasing the normal minimum pension age for pensions tax and the pension 'Scheme Pays' reporting deadlines.

In July, the government published for consultation draft legislation to be included in the Finance Bill 2021/ 22. This included draft clauses to increase the normal minimum pension age (NMPA) from 55 to 57 from April 2028. The NMPA is the minimum age at which most pension savers can access their pensions without incurring an unauthorised payments tax charge unless they are retiring due to ill-health. The government also published draft legislation to amend the reporting and payment deadlines where an individual asks their pension scheme to settle their annual allowance charge of £2,000 or more from a previous tax year by reducing their future pension benefits, in a process known as 'Scheme Pays'.

Increasing the normal minimum pension age (NMPA) for pensions tax

The legislation will increase the NMPA from age 55 to 57 in 2028, except for members of uniformed services pension schemes, where the NMPA will remain 55. Although it would add complexity to an already overly complex pensions' tax regime, we said that alongside an increase in the NMPA 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. We also suggested that the upper age at which an individual can make tax relievable contributions be similarly increased from 75 to 77 (so that the age threshold remains 10 years above the state pension age).

We also identified a potential gap in the draft legislation in respect of pension scheme transfers by members prior to 6 April 2023: 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. There remain issues around individuals without a protected pension age reaching 55 (but not 57) before 6 April 2028. These have been recognised but details of how to resolve them are awaited.

Pension 'Scheme Pays' reporting: information and notice deadlines
The legislation will amend:

(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.

While welcoming 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 did raise some concerns regarding the proposed deadlines in the draft legislation. In particular, the legislation appears to bring forward the timing of the payment to HMRC by the scheme administrator under Scheme Pays, even where there has been no change to the member's pension input amount. Additionally, the changes to the deadlines also potentially bring forward current Scheme Pays deadlines in cases where the member's pension input amount changes shortly after the end of the tax year. Furthermore, the proposed hard-stop deadline of '*the end of the period of six years beginning with the end of the tax year in question*' for both the scheme administrator and the member appears to mean that a scheme administrator could issue a statement with a change to the pension input amount in line with the legislation after, say, five years, 11 months and 30 days, leaving the scheme member just one day to make a Scheme Pays election and give notice to the scheme administrator that they want to do so.

The CIOT's full submission can be found at www.tax.org.uk/ref824.