Pensions: regulated advice or tax advice?

Technical

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Should I cash in my pension scheme? With new rules on ‘pensions flexibility’ introduced with effect from 6 April 2015 which permit defined contribution pension savings to be withdrawn in their entirety as a lump sum, this is likely to be a frequently asked question.

The Financial Conduct Authority (FCA) regulates certain activities defined in the Financial Services and Markets Act (FSMA) 2000 as regulated activities (including exempt regulated activities). These activities include investment and pension advice. Membership of the ATT or CIOT alone does not give any authority to provide any regulated services, such as pension advice. Tax advisers should be careful not to breach the provisions of the FSMA 2000 and provide advice on pensions, beyond the tax implications, unless separately authorised to do so.

If a member wishes to undertake regulated activities (or exempt regulated activities), they must be with a firm authorised by the FCA or a member (or controlled by or managed by a member) of a Designated Professional Body (DPB). Further information is available in the CIOT/ATT’s ‘Professional Rules and Practice Guidelines’ and from the FCA’s website.

A member who is with a firm which is neither authorised by the FSA nor a member of a DPB should not carry out regulated activities (nor exempt regulated activities), as to do so would be committing an offence. Thus, a member who is with a firm which is neither authorised by the FSA nor a member of a DPB may advise in general terms on the benefits of setting up or cashing in pension arrangements, for example the tax reliefs (and limits thereon) available to businesses and workers on investing in pensions or the tax payable on withdrawing pension savings. However, the advice must not refer to any specific pension product or provider.

Accordingly, unless otherwise authorised to do so, a tax adviser’s response to the question ‘Should I cash in my pension scheme?’ should be to solely advise on the tax consequences of the various options open to the individual. For example, how much could be withdrawn as a tax-free pension commencement lump sum; the tax payable if the balance is withdrawn as a lump sum or if partial withdrawals are made; and the tax consequences if a person dies before or after age 75.