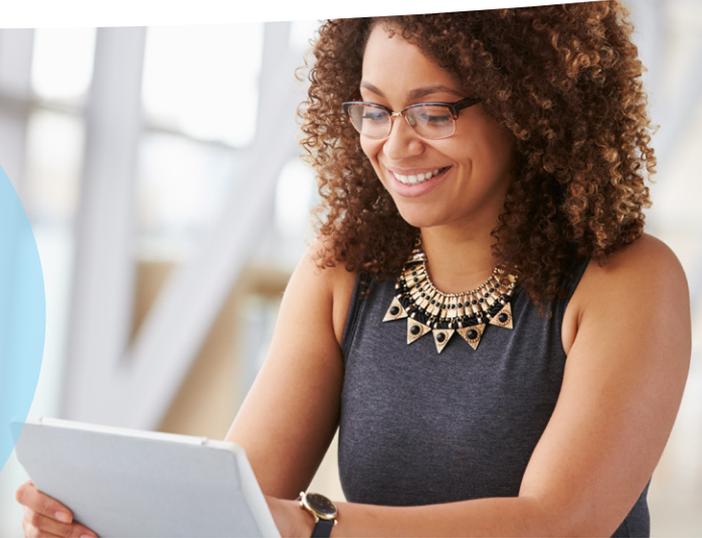


Briefing

Pension scheme de-registration threat?



This Briefing Notes outlines two items of legislation, one an Act and the other a Bill, which could have unintended consequences for certain types of occupational pension scheme, unless subsequent overriding regulations, and amendments to the draft wording respectively, are brought forward.

Master Trusts

The Pension Schemes Act 2017 introduces in Section 1 a definition which indirectly means that many Registered Pension Schemes (perhaps over 2000) used solely by owners of small or medium sized will be treated as Master Trusts, even though they are not marketed to staff. This arises because any occupational pension scheme which is associated with more than one employer is deemed a Master Trust if the employers are not part of the same group of companies. Master Trusts are a vehicle used for staff retirement benefit schemes, typically to facilitate the required provision of benefits known as "automatic enrolment".

However, many schemes deemed to be Master Trusts under the Pension Schemes Act 2017 are not used for automatic enrolment, but are instead a means for entrepreneurs with more than one business to have their retirement benefits under one roof. Being deemed a Master Trust requires these schemes to be authorised by The Pensions Regulator, although the regulator does not seem to be prepared for this and we suspect this has little concept of how many arrangements would need to register.

De-Registration Threat

The Finance Bill 2017, as currently drafted, would allow HM Revenue & Customs to use its discretion to de-register any pension scheme that is a Master Trust that is not authorised by The Pensions Regulator. De-registration effectively removes all tax privileges from a pension scheme.

This issue could easily be rectified, by a slight alteration to the definition used in the Pension Schemes Act 2017 for employers which are "connected" with each other. The definition could be extended so that it includes companies which are not in the same group of companies, but have common ownership or are owned within a common cohort of stakeholders (for example where members of the same family own more than one company and have a single pension scheme).

There are provisions similar to the kind of connection envisaged in Section 993 of Income Taxes Act 2007.

This proposed amendment would not impinge on the understandable need to police genuine Master Trusts and would ease an unnecessary and suspected, unwanted burden on The Pensions Regulator.

..... The Finance Bill 2017 as currently drafted raises another issue, in that Schedule 1 would allow HM Revenue & Customs unlimited discretion to de-register any pension scheme that has a dormant sponsoring employer.

The wording of the legislation means that HMRC could de-register schemes which:

- a) have a current non-dormant sponsoring employer but also other sponsoring employers that are now dormant; or
- b) were established many years ago and some of whose employers are now dormant, but the trustees continue to run the scheme for its pensioner and deferred members.

This legislation would in fact probably capture a majority of occupational pension schemes and not just the ones which we believe HMRC seeks to eliminate, being those which only ever had a dormant sponsoring employer.

As drafted, HMRC can de-register a scheme one month of a company becoming dormant, whereas winding up a pension scheme where appropriate to do so might take several years to complete. Therefore, if a sponsoring employer becomes dormant, there may not be sufficient time before HMRC precipitately removes tax privileges for members to transfer to other arrangements to protect their benefits.

..... It is appreciated that HMRC has discretion and we may like to believe they will only use that discretion against schemes which HMRC believe were not set up for legitimate purposes.

However, recent history suggests that HMRC have no qualms about penalising legitimate schemes so as to ward off bogus schemes. A recent example would be their attack on tax relief for "in specie" contributions.

In that instance HMRC are on record as saying that their concern was regarding intellectual property being contributed in specie, but in fact they are also denying tax relief for contributions of commercial property or quoted shares, whose values are far less speculative and subjective than those of intellectual property.

We doubt anybody wishes to stop HMRC preventing bogus pension schemes from being set-up, but this should not come at a cost of prejudicing the rights of existing members of legitimate schemes.

It should also be noted that a member of the public who had been fooled into transferring pension rights into a new bogus pension scheme would actually be the main casualty if the scheme is de-registered. There would be a huge tax on the scheme assets and, we believe, on the member themselves as they are often set up as the director or owner of the entity sponsoring the bogus pension scheme. The assets of the bogus scheme would by then in most cases have been misappropriated by the criminals operating the bogus schemes.

We would be grateful if you would put these points to the relevant bodies in the House, and we respectfully ask that amendments to the legislation should be brought forward which would exclude legitimate occupational pension schemes for small businesses from this heavy handed legislation.

Please contact your Barnett Waddingham consultant if you would like to discuss any of the above topics in more detail. Alternatively contact us via the following:

 info@barnett-waddingham.co.uk

 0333 11 11 222

www.barnett-waddingham.co.uk/sip

Barnett Waddingham LLP is a body corporate with members to whom we refer as "partners". A list of members can be inspected at the registered office. Barnett Waddingham LLP (OC307678), BW SIPP LLP (OC322417), and Barnett Waddingham Actuaries and Consultants Limited (06498431) are registered in England and Wales with their registered office at Cheapside House, 138 Cheapside, London EC2V 6BW. Barnett Waddingham LLP is authorised and regulated by the Financial Conduct Authority and is licensed by the Institute and Faculty of Actuaries for a range of investment business activities. BW SIPP LLP is authorised and regulated by the Financial Conduct Authority. Barnett Waddingham Actuaries and Consultants Limited is licensed by the Institute and Faculty of Actuaries in respect of a range of investment business activities.