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Small Self-Administered
Pension Schemes

The Role of a Scheme Administrator

A Scheme Administrator is a defined role in legislation and the Finance Act 2004 (as amended) sets out various duties and requirements of the Scheme Administrator of a Registered Pension Scheme. Each Registered Pension Scheme must have a Scheme Administrator or HM Revenue and Customs (HMRC) can levy penal tax charges against the scheme.

Set out below is a non-exhaustive summary setting out the main duties of a Scheme Administrator of a Registered Pension Scheme.

1. Registering the pension scheme with HMRC.
2. Submitting the Registered Pension Scheme Return to HM Revenue and Customs.
3. Submitting Event Reports to HM Revenue and Customs.
4. Submitting Accounting for Tax reports to HM Revenue and Customs.
5. Operating tax relief on contributions under the relief at source system.
6. Providing information to scheme members, and others, regarding the members' lifetime allowances, contributions ("pension input amounts" in the jargon), benefit payments and transfers in and out of the scheme.
7. Deciding whether an action or investment in the scheme falls under the provisions in the legislation which requires reporting to HMRC. Please see the section headed "Practical Implications of the Role" later in this document.
8. Providing miscellaneous information to HMRC upon request, for example if HMRC choose to audit a scheme.
9. Reports and Notifications to HMRC and the member where a member transfers to a Qualifying Recognised Overseas Pension Scheme.
10. **Being directly liable to pay certain tax charges in connection with the scheme.**

Who can be a Scheme Administrator?

A Scheme Administrator must meet three separate requirements which are set out below.

1. The residency requirement
2. The "fit and proper" test
3. Make the necessary declarations

1. The Residency Requirement

A Scheme Administrator must be resident in one of the following countries:

- the United Kingdom
- another EU member state
- a European Economic Area (EEA) state which is not a member of the EU (that is, Norway, Iceland or Liechtenstein)

Anyone who is not resident in one of these countries cannot be a Scheme Administrator.

2. The "Fit and Proper" Test

HMRC does not explicitly define what must be done to meet this test nor will it confirm whether or not a person looking to become a Scheme Administrator is a fit and proper person, rather they assume that proper consideration has been given to that person's suitability and "Fit and Proper" status. However, it gives some guidance regarding some practices which may lead it to believe the individual is **not** a "fit and proper" person. Some of these are set out below in a non-exhaustive list:

- the person does not have sufficient working knowledge of pensions and pensions tax legislation to be fully aware and capable of assuming the significant duties and liabilities of the Scheme Administrator, or does not employ an advisor with this knowledge;
- has previously been involved in pension liberation;
- has previously been the Scheme Administrator of, or otherwise involved with, a pension scheme which has been de-registered by HMRC;
- has been involved in tax fraud, abuse of tax repayment systems or other fraudulent behaviour including misrepresentation and/or identity theft;
- has a criminal conviction relating to finance, corporate bodies or dishonesty;
- has been the subject of adverse civil proceedings relating to finance, corporate bodies or dishonesty/ misconduct;
- has participated in or been connected with designing and/or marketing tax avoidance schemes;
- employs as an advisor a person who has been involved in pension liberation or tax avoidance;
- has been removed from acting as a trustee of a pension scheme by the Pensions Regulator or a Court, or has otherwise seriously contravened the pensions regulatory system, or the regulatory system of any other professional/governmental regulatory body; and/or
- has been disqualified from acting as a company director or is bankrupt.

3. Make the necessary declarations

A Scheme Administrator may only act in connection with a pension scheme if they make certain declarations to HMRC. These declarations can only currently be made electronically using the HMRC online service. These declarations are that they:

- understand that they will be responsible for discharging the functions conferred or imposed on the Scheme Administrator of the pension scheme by and under Part 4 Finance Act 2004, and
- intend to discharge those functions at all times, whether resident in the United Kingdom or another state which is a member State or a non-member EEA State.

Liabilities

If certain investments are made or if certain transactions are carried out they can incur tax charges which must be reported to HMRC. These transactions generally fall under the heading of "Unauthorised Payments". Despite the name, these may even transactions which don't involve any transfer of money.

1. Scheme Sanction Charge

The tax charges for these are split into three. Depending on the situation, some or all of them can apply. One of the tax changes, the scheme sanction charge, is assessed directly on the Scheme Administrator. This is an income tax charge that arises on the Scheme Administrator in respect of certain unauthorised payments. The tax is due at a rate of 40%, based on the value of the payment. However, the rate may be reduced to as low as 15% where any related Unauthorised Payments charge has been paid.

2. De-registration Charge

There are a number of reasons HMRC may decide to deregister a scheme but the main reasons are set out below:

- the total of the percentages of the fund used up by each Unauthorised Payment in any 12-month period is 25% or more.
- on or after 6 April 2018, the scheme is an occupational pension scheme and one of the sponsoring employers is a dormant company. A company is dormant if, in the year before HMRC decides to de-register the scheme, it has been dormant for a continuous period of one month.
- there is no Scheme Administrator.
- any one of the persons making up the Scheme Administrator is not a fit and proper person to be the Scheme Administrator.
- the Scheme Administrator has failed to pay a substantial amount of tax, or interest on tax, which they are liable for.
- the Scheme Administrator has failed to provide information that they are required to provide to HMRC and the failure is significant.
- the Scheme Administrator has failed to produce a document that HMRC has required them to produce.
- the Scheme Administrator has deliberately obstructed an HMRC officer carrying out an inspection under that has been approved by a Tribunal.
- any information contained in the application to register the scheme was materially inaccurate.
- any other information provided to HMRC was materially inaccurate.
- a declaration accompanying the application to register the pension scheme was materially false.
- any other declaration to HMRC made in connection in with the pension scheme was materially false.

- that any document produced by the Scheme Administrator to HMRC contains a material inaccuracy, and at least one of the following:

i. the inaccuracy is careless or deliberate. An inaccuracy is careless if the scheme Administrator has failed to take reasonable care.

ii. the Scheme Administrator knew of the inaccuracy when they produced the document to HMRC but, at that time, they didn't tell HMRC about the inaccuracy.

iii. the Scheme Administrator discovers the inaccuracy after it has produced the document to HMRC and has failed to take reasonable steps to tell HMRC about the inaccuracy.

The amount of the de-registration charge is 40% of the total of the amount of:-

- sums (cash); and
- the market value of any assets

held for the purposes of the scheme immediately before it ceased to be a Registered Pension Scheme.

The person liable to pay the tax charge is the Scheme Administrator in place immediately before the scheme ceased to be registered. If the Scheme Administrator is made up of more than one person, for example two individuals, liability to the tax charge is joint and several on all persons making up the Scheme Administrator. This means that each and any of the persons making up the Scheme Administrator can be asked to pay the whole amount of tax due.

The charge is a free-standing tax charge, which means any losses that a taxpayer may have cannot be set against the tax charge. Liability to the tax charge arises whether or not the liable person(s) are UK resident. Note that scheme investments are no longer relieved against income tax or capital gains tax after the date of de-registration.

Further, any payments out of the pension scheme after de-registration would not enjoy any tax privileges. De-registration is not automatic and is always at the discretion of HMRC.

Practical Implications of the Role

The Scheme Administrator role also requires knowledge of the relevant pensions legislation to know what needs to be reported to HMRC and when. These reports will include (but are not limited to) the following:

1. Monitoring fund apportionment to ascertain whether there has been taxable reallocation;
2. Reporting the scheme wind up.
3. Calculating the maximum permitted borrowing and reporting any borrowing in excess of this along with the tax charges due
4. Calculating the maximum permitted loan to sponsoring employers and reporting any loans in excess of this along with the tax charges due
5. Monitoring if any benefits in kind have been provided to a member and reporting this along with the tax charges due
6. Gathering information and calculating maximum permitted benefit levels, testing against the Lifetime Allowance at retirement, age 75 or death as appropriate
7. Analysis of scheme investments to determine whether taxable property has been acquired
8. Submitting the Registered Pension Scheme Return to HMRC when requested

9. Reports of members taking benefits before normal minimum pension age
10. Reporting payments of serious ill-health lump sums
11. Reporting the cessation of ill -health pensions
12. Payments of certain Pension Commencement Lump Sums
13. Reporting changes to the legal structure of the Scheme
14. Reporting changes to Scheme Rules
15. Changes to the country in which the pension scheme is established
16. Changes to whether the scheme either becomes or ceases to be an occupational pension scheme
17. Reporting transfers to Qualifying Recognised Overseas Pension Schemes and paying any tax due

Penalties

Failure to provide accurate information in accordance with HMRC legislation can result in penalties for which the Scheme Administrator is liable. The list below gives details of the main penalty provisions relating to the provision of information but it is not exhaustive.

Failure	Penalty
Failure to provide information required by regulations	**£300 plus up to £60 per day**
Provision of documents fraudulently or negligently	**Up to £3,000**
Failure to preserve documents as required by legislation	**Up to £3,000**
Failure to submit a Registered Pension Scheme Return (RPSR)	**£100 plus up to £60 per day**
Fraudulent or negligent information provided on the RPSR	**Up to £3,000**
Failure to submit an Event Report	**£300 plus up to £60 per day**
Fraudulent or negligent information provided on the Event Report	**Up to £3,000**
Failure to submit an Accounting for Tax form	**Varies**

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Extensive information is available on the website of HM Revenue & Customs at the following address: www.gov.uk/hmrc-internal-manuals/pensions-tax-manual

You can also contact HM Revenue & Customs directly by telephone or post as set out below:

Registered Pension Schemes - General technical/procedural enquiries

0300 123 1079 9am - 5pm (Monday - Friday)

Pension Schemes Services
HM Revenue and Customs
BX9 1GH
United Kingdom

This document outlines the position as understood by Barnett Waddingham LLP as at 13 August 2019. Tax rates are subject to change and Barnett Waddingham LLP recommends that Scheme Administrators take professional advice before taking any action based on the contents of this document.

Please contact your Barnett Waddingham client manager if you would like to discuss any of the above in more detail.

ssas@barnett-waddingham.co.uk 0344 443 0200

www.barnett-waddingham.co.uk/ssas