BARNETT WADDINGHAM
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Briefing

Lifetime allowance protection

Could you lose it and what are your responsibilities if you do?

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We now have a plethora of lifetime allowance (LTA) protection regimes. These have effective dates falling in either 2006, 2012, 2014 or 2016. These are the years in which the LTA was either first introduced, or subsequently reduced.

If protection is lost, the onus lies with the pension scheme member to inform HM Revenue & Customs (HMRC). This briefing note focuses primarily on this responsibility.

When might LTA protection be lost?

The answer to this depends on which type of protection a member holds, but can generally be summarised as follows:

- Primary protection, Individual Protection 2014 or Individual Protection 2016: in certain divorce cases, where part of the member's entitlement is assigned to the ex-spouse. This may lead to the level of protection being reduced, or even lost;
- Fixed Protection (2012), Fixed Protection 2014 or Fixed Protection 2016: where contributions continue to be paid, where particular pension transfers occur, where certain new 'pension wrappers' are opened, or where pension benefits increase above a certain amount; and
- Enhanced protection: where contributions continue to be paid, where certain types of pension transfers occur or new 'pension wrappers' are opened, where pension benefits increase by more than a certain level, or where a member voluntarily tells HMRC they no longer require enhanced protection.

When must I inform HMRC?

Again, the legislation differs for the various types of protection.

Primary protection

Where an individual with primary protection becomes subject to a pension debit upon divorce, they must notify HMRC in writing. Their pension savings for the purpose of primary protection are revalued and a new certificate is issued by HMRC showing the reduced primary protection factor. In cases where the reduction takes the value of pension savings below £1.5 million, the protection will be lost altogether.

Enhanced protection

An individual with enhanced protection must notify HMRC in writing within 90 days of 'relevant benefit accrual' occurring. If they fail to do so, they will be liable to a penalty of up to £3,000.

Fixed Protection (2012), Fixed Protection 2014 or Fixed Protection 2016

For Fixed Protection (2012), the individual must notify HMRC in writing that their fixed protection no longer applies.

For Fixed Protection 2014 and Fixed Protection 2016, notice must be given, according to HMRC, "...within 90 days of the day on which they could first reasonably be expected to have known they had lost their protection".

In the case of Fixed Protection 2016, the application and acceptance is done online, as opposed to paper-format. Similarly, the notification to HMRC is done online, unless HMRC agree it can be communicated in another format for the particular case.

Importantly, if the member does not let HMRC know in time, then they will be liable to a penalty of up to £300 for failing to notify them, and further penalties of up to £60 per day, after the initial penalty is raised. However, please see the section below on a recent First Tier Tribunal judgment, concerning the mistaken loss of Fixed Protection.

Individual Protection 2014 or 2016

Where an individual with Individual Protection 2014 becomes subject to a pension debit upon divorce, they must notify HMRC in writing within 60 days of the date of the pension debit. This notification will include a calculation that would typically require technical input. It is outside of the scope of this briefing. Individuals not providing this information to HMRC may be liable to penalties.

In the case of Individual Protection 2016, the application and acceptance is done online, as opposed to paper-format. The level of protection may be reduced or lost altogether if the individual becomes subject to a pension debit upon divorce.

The individual must notify HMRC online within 60 days of the date of the discharge notice related to the pension debit, unless HMRC agree it can be in another format for the particular case. As with Individual Protection 2014, if the information is not provided to HMRC within 60 days, the individual may be liable to penalties.

Can protection be reinstated if lost by mistake?

In Hymanson v HMRC (2018), the First-Tier Tribunal (FTT) ordered HMRC to reinstate a member's Fixed Protection (2012) where Mr Hymanson had not stopped paying contributions into his pension by means of an existing standing order. This was due to a mistaken belief that these could continue without resulting in the loss of Fixed Protection (2012).

This is certainly a judgment in favour of the pension scheme member, and HMRC have recently confirmed that they do not intend to appeal the decision to the Upper Tier Tribunal.

While the judgment reached may well be confined to the facts of this particular case, it does make further challenges to the loss of LTA protections more likely to occur in future.

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

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