SPC news

Issue No. 3, 2009
Issued in June, 2009

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(carla.smidt@spc.uk.com)

SPC Dinner 2009

November 4th 2009
Dorchester Hotel, London W1
7.00 pm for 7.30 pm

Key Information is:

- **Principal Speaker - Dr. Vince Cable**
  (Liberal Democrat Shadow Chancellor and Deputy Leader)
- **Venue**
  The Dorchester, Park Lane, London W1

Duncan Howorth (SPC President and Managing Director, JLT Benefit Solutions) and Sir James Hodge (SPC Chairman) will also speak.

The event promises to provide excellent food and entertainment and, in keeping with one of SPC's key roles, represents a peerless networking opportunity to meet with fellow industry professionals.

Tickets are £155.00 per head and feedback from previous years' Dinners indicates that this is a modest cost which can be re-paid many times over in terms of the useful networking opportunities, which exist to strengthen your business relationships. The price includes pre-dinner cocktails, a five-course meal, half a bottle of wine with dinner, and a liqueur with coffee.

As ever, we are keen to encourage "new blood" at the Dinner and ensure that it continues to offer the broadest possible range of networking opportunities for those attending. To that end, if your company has never previously been represented at the Dinner, the person making the booking will benefit from a special price of £125.00, as will one additional guest.

The closing date for applications is October 7th.

However, please be aware that, due to the prestige of our principal guest and the excellent value which the Dinner represents, numbers are about to pass 200, although the Dinner is still over four months away. So we suggest you book soon.

For a booking form, please click here. ■

The latest new member of SPC

- **JP Morgan,**
  London EC2

■

Lindsay Davies re-elected as Honorary Treasurer

Council has re-elected Lindsay Davies, a partner in Hymans Robertson, as SPC Honorary Treasurer for a further year. Council expressed its thanks to him for agreeing to continue in the role. ■

HMRC Anti Forestalling Regulations

SPC hosted a technical seminar given by HMRC, in May, to discuss its planned anti-forestalling measures in connection with the restriction of higher rate tax relief for pension contributions.

We have raised a number of questions and concerns, in the light of the seminar.

Overview

We believe that there will be many injustices if the regulations and guidance are finalised, as drafted. The regulations are being introduced to stop high-earners from taking action to overcome the expected loss of higher rate tax relief on contributions in two years time, by pre-funding those contributions whilst higher-rate relief is available. These regulations are intended to target material increases in high-earners' contributions. We believe that they are too tightly drawn and that they will lead to many high-earners losing relief on established patterns of contributions and we believe, given that it is a temporary measure, that a lighter touch can be adopted with little extra risk. We therefore urged HMRC to re-think the approach.

Variable Contributions

Protecting only "regular" contributions over the last year is unreasonable because it does not adequately provide for those high-earners who have an established pattern of irregular contributions or those high-earners who have suffered a temporary reduction in "normal" contributions over the last year. We believe that it would be fairer to calculate pension inputs for protection purposes, based on the greater of the rate of regular contributions in payment before April 22nd 2009 (as currently defined) and the average rate of contributions paid (as an amount or a percentage) over the three years falling between April 22nd 2006 and April 21st 2009.

The addition of a three-year average overcomes the problem of a high-earner who has a regular pattern of contributions, paid less frequently than quarterly, and also mitigates the problems associated with temporary contribution holidays.

Transfer of Protected Pension Input

As it stands, a high-earner can protect existing contributions at a pension arrangement level only. Protection at an arrangement level is too rigid as it restricts freedom of choice (individuals may feel compelled to retain underperforming or uncompetitive arrangements) and penalises those individuals who have to change pension arrangements for reasons beyond their control (e.g. redundancy or the employer changing pension arrangement).

We strongly believe that a member should be able to "transfer" protected inputs to other arrangements in the future in order to avoid unnecessary restrictions. We do not believe that this would increase the risk of abuse, given that it is the individual's responsibility to monitor, with no responsibility falling on existing pension arrangements. This could be achieved by expanding paragraph 13 of the Special Annual Allowance Schedule and this provision would also help overcome some of the problems mentioned below.

Flexible Benefits and Salary or Bonus Sacrifice

There has been a significant concern about the impact of these provisions on flexible benefit schemes and salary/bonus sacrifice. We do not have any issues with the calculations of earnings in respect of determining whether a member is affected by the £150,000 limit, but remain concerned that the provisions as they stand will prejudice flexible benefit and salary/bonus sacrifice arrangements. In particular, there may be issues with bonus sacrifice schemes, where an agreement was reached to sacrifice bonus before April 22nd 2009, but where the bonus is not paid into the scheme until after this date. Also, some members may have made a personal commitment to increase pension contributions under a flex scheme, but have not had the opportunity to do so.

Safety in Numbers

Many of the new provisions rely on a minimum number of members within a scheme in order to benefit from scheme changes or avoid pension input. In many cases, there is a strong bias against money-purchase arrangements and smaller schemes. This bias results in little or no restriction on increases in defined benefit contributions, where the employer can significantly increase its input to overcome scheme deficits or provide increased benefits, but neither employers nor members could do the same to overcome recent investment losses in money purchase arrangements.

We believe that condition A under clause 4 in the draft legislation should be reviewed and extended to cover any work-based arrangement, and should cover any member of any scheme retiring normally (either in line with scheme rules or retiring under a contract-based arrangement on the expected date). The provisions for scheme change and new arrangements appear to favour new and re-activated arrangements, which only require 20 members to be on the basis. We would like to see the minimum qualification reduce to 12 members on the same basis and, in any event, think that the minimum number should never exceed 20. We also think that existing money purchase arrangements (both occupational and group personal pension) should have a provision to cater for "material change", provided it affects the required minimum number of members.

Cut Off Dates

We requested that serious consideration is given to allowing applications clearly postmarked before April 22nd 2009, to be "protected".

Case Studies

The case studies presented at the seminar appear to penalise a member making regular, but varied, contributions and favour members who missed contributions. We do not agree with the suggestion that the "annualised" rate should be determined on the lowest contribution where they have varied throughout the year and we believe that it is more equitable to use the "average" or "total" contribution in these cases.

Definition of Group Personal Pension

We think that the definition of Group Personal Pension may need to be amended. The definition requires that the individual arrangements need to be administered on a group basis, and this may cause problems.

What Exactly Constitutes a New Arrangement?

Many of the uncertainties arise from this question, and we have already described some. Other areas where further clarification would be welcomed are set out below

The draft anti-forestalling legislation clearly allows for new arrangements to be protected input amounts in certain circumstances and that is welcome. There is some confusion, however, over the possibility of describing what is otherwise an increase in contributions as a new arrangement.

For example, consider a case where a contributory pension scheme is to become non-contributory via 'salary sacrifice' and the intention is that part of the National Insurance saving will also be paid into the scheme. This obviously constitutes an increase in total contributions (i.e. the part relating to the NI saving). However, we have seen a suggestion that this can be averted by treating the contributions arising from the salary sacrifice as a 'new arrangement'. Would this be viewed as avoidance?

On a related matter, one of the questions asked by the audience at HMRC's recent seminar, hosted by SPC referred to a change of provider within an existing scheme. The reply given resulted in a subsequent press comment that 'in a briefing … with HMRC last week it was confirmed that individuals who move to a new pension provider will have their contribution history wiped out'. Our interpretation of the question and the answer was that they were actually talking about an individual remaining within the same scheme, but with a new pension provider (a different insurer, for example). However, HMRC did imply that the change would potentially be caught, although we do not think the draft legislation says this.

This needs to be clarified.

Changing the Accrual Rate in a Defined Benefit Scheme

A considerable number of defined benefit schemes currently allow members to choose the accrual rate, which applies to them for that particular scheme year. Where this is allowed, it is formally included in the scheme's rules. We read Clause 8 of the draft legislation as permitting such choices to be made, without constituting new savings, because there is 'no material change in the rules of the pension scheme'. However, at the HMRC seminar last month, HMRC seemed to state (or to imply) that, in such cases, where a member can choose the accrual rate each year, it would view the 'regular pension savings' as being the lowest possible rate. This needs to be clarified.

Changing the Contribution Rate in an Employer-sponsored Defined Contribution Scheme

The draft legislation regarding employer-sponsored defined contribution schemes is more restrictive, in that it refers to a protected amount as 'a rate which has not increased'.

Therefore, in cases where scheme rules provide that individuals can choose the rate at which contributions are made, we believe that any increase to the current rate, which is a consequence of member choice, will be caught. Again, we seek clarification that HMRC will not seek to impose the lowest possible rate as the 'protected amount' (unless the individual was currently contributing at that rate, of course).

Redundancy

We did not view this aspect as having been covered in depth at the seminar.

It appears that any taxable redundancy payment (in excess of £30,000) counts towards the calculation of the individual's 'relevant income' and thus can bring an individual within the scope of the anti-forestalling legislation. This seems very unfair, as redundancy can rarely be viewed as the individual's choice. Furthermore, any defined contribution made, as a result of the redundancy payment, will probably count as 'new savings'.

There is a strong case for special treatment of those made redundant. This is especially the case in the current economic climate, where many individuals will find it difficult to find new jobs and thus will be unable to build up pension benefits in the future.

Employer-financed Retirement Benefit Schemes (EFRBS)

It is clear that, before April 22nd, the provision of an EFRBS for an individual was not regarded as an avoidance vehicle by HMRC. For example, the tax treatment of these schemes is covered in detail in HMRC's Employment Income Manual and there is no mention of 'avoidance'.

We assume, therefore, that new EFRBS can still be set up without being caught by the anti-avoidance clauses in the draft legislation.

However, we are less certain about the implications of making any changes to existing EFRBS. Consider the following example. Typically, an EFRBS will be set up when an individual's benefit accrual in a registered scheme reaches a given percentage of the lifetime allowance. The individual then opts out of the registered scheme and future accrual is provided in the EFRBS.

In the past, the registered scheme benefit might have retained a salary link. However, given that the LTA will now be frozen for five years after April 2011, some employers might wish to 'switch' the salary link fully to the EFRBS. If such a 'switch' is made on or after April 22nd 2009, will that be viewed as an avoidance vehicle?

Finally, we assume that, if a member of a registered defined benefit scheme is retiring and taking all of his or her benefits from the scheme, any augmentation to the benefits under that scheme arising from an existing EFRBS being 'rolled into' the registered scheme will be covered by 'Condition A' in Clause 4 of the draft legislation (provided all of the relevant conditions are met).

Finally, we disagree in principle with these changes because the new pension taxation regime already has lifetime allowance and annual allowance limits intended to prevent "abuse" of tax reliefs by high earners. This change causes policy confusion and may ultimately lead to a reduction of pension input to other members because there are lower incentives to maintain existing provisions, for those making the decisions on pension provision.

We have asked HMRC to address these concerns before the legislation is finalised by Parliament. ■

Pension Schemes (Reduction in Pension Rates) (Amendment) Regulations 2009

These regulations (SI2009/1311) were laid before Parliament at the end of May and address concerns raised by SPC and others, at unintended unauthorised payment charges, where there is a reduction in pensions during a scheme wind up.

In their draft form, these regulations had a condition that a scheme had to have had 20 or more members, when winding-up began, in order for the regulations to apply. However, as a result of further representations by SPC, this condition has been dropped, thus substantially increasing the practical value of the regulation. ■

DWP seeks SPC views: Consultation on Draft Personal Accounts Scheme Order and Rules

DWP has sought our views on its consultation on the draft scheme order and rules for personal accounts.

For a copy of the draft, please click here.

At the time of preparing this issue of SPC News, we had the draft under consideration. ■

SPC responds to DWP review of the disclosure requirements

We have responded to DWP's consultation following its review of the disclosure requirements.

For a copy of our response please click here.

We reported DWP's consultation in **SPC News no. 2, 2009**. ■

SPC invited to comment on PADA Discussion Paper: "Building Personal Accounts - Designing an Investment Approach"

We have been invited to comment on PADA's discussion paper "Building Personal Accounts: Designing an Investment Approach".

For a copy, please click here.

At the time of preparing this issue of SPC News, we had the discussion paper under consideration. ■

PPF issues updated Section 179 valuation guidance

The Pension Protection Fund (PPF) issued a revised version (G5) of the s179 valuation guidance in May, 2009. G5 is mandatory for valuations which are signed on or after October 1st 2009, or which have effective dates on or after April 1st 2009. It could be adopted voluntarily for valuations with effective dates earlier than April 1st 2009, signed between April 1st and September 30th, 2009.

The key changes from guidance G4 (issued in April 2007) are:

- Revaluation - For schemes which provide no revaluation in deferment to any benefit for any member, the new guidance allows the use of a new assumption which takes account of this in calculating liabilities.
- Post 2009 accrual - Statutory revaluation of benefits accrued after April 5th 2009 is limited to RPI capped at 2.5% (compared to a 5% cap for earlier accrual). The new guidance requires actuaries to provide trustees with the information to split pre and post 2009 deferred benefits, so that schemes will be prepared if PPF decides in future to require this breakdown in s179 valuations.
- Submission of valuations - Section 179 valuations were previously sent to the Pensions Regulator as part of the annual scheme return form. They should now be submitted online to PPF via The Regulator's Exchange system.
- Death benefits - if a scheme has no provision for survivors' pensions for any member, no death benefits should be valued. ■

Pensions Regulator issues further Statement on Scheme Funding

On June 23rd, 2009 the Pensions Regulator issued a further statement on scheme funding. It stresses that trustees are expected to focus on the prudence of the technical provisions, but have more flexibility in determining how to meet any shortfall. It also provides some guidance on the need for expert covenant advice.

The Regulator has also highlighted some brief case studies which it published at the end of last year, illustrating how companies and trustees resolved some difficult funding discussions. It also intends to publish further guidance on covenant shortly. ■

SPC responds to FSA Consultation 09/10: Reforming Remuneration Practices in Financial Services

We have limited our comments on the consultation paper to the proposals in chapter 6, which is the most relevant to SPC members. While we broadly agree with the requirement to introduce a code of the type proposed for the banking industry, we do not believe it should be extended to all authorised firms. For example, in the pensions industry, while remuneration risks exist, they are often simpler to identify and controlled largely by existing SYSC and COBS rules.

For a copy of our response, please click here.

The consultation paper is available by clicking here. ■

European Commission hearing on harmonising solvency standards for certain pension schemes

On May 27th, the European Commission held a hearing on whether, and if so to what extent, elements of the Solvency II Directive (setting out solvency rules for insurance companies) should be extended to pension schemes – at least those which carry out cross-border activity and those termed 'regulatory own funds'. This follows its consultation on the subject in September 2008.

SPC was represented at the meeting by Mark Dowsey (SPC European Sub-Committee and Watson Wyatt).

He reported that little new evidence emerged, beyond that garnered in the consultation exercise and summarised in the Commission's 'Feedback Statement' published in March, although some commentators pointed to the comparative resilience of pension schemes in the light of the current economic climate.

Several speakers highlighted factors such as the employer covenant, the long-term investment horizon, the presence of State insolvency schemes and the 'solidarity' afforded by inter-generational cross-subsidy as making Solvency II inappropriate for pension schemes. However, some of those present called for harmonisation of solvency rules across all pension schemes – not just the narrow scope currently covered.

Doing nothing is not an option, because the EU Pensions Directive currently contains cross-references to the Solvency I Directive which have been superseded by Solvency II and the Commission will propose a way forward within 12 months. This will be accompanied by a cost/benefit analysis of whatever it proposes. ■

Board for Actuarial Standards invites SPC comments on its exposure draft on modelling

The Board for Actuarial Standards has invited our comments on its exposure draft on modelling.

For a copy please click here.

At the time of preparing this issue of SPC News, we had the exposure draft under consideration. ■

Board for Actuarial Standards invites SPC comments on its exposure draft on data

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For a copy please click here.

At the time of preparing this issue of SPC News, we had the exposure draft under consideration.

Our response to the earlier BAS consultation paper was reported in **SPC News no. 2, 2009**. ■

Exposure draft: Reporting Actuarial Information

We have responded to the Board for Actuarial Standards exposure draft on reporting actuarial information.

The scope of the proposed standard has widened significantly since the previous consultation on the subject, but this would be a logical consequence of producing a generic standard.

Generally, the balance between prescription and freedom to exercise professional judgement in a reasonable way seems to be correctly set. An acid test, however, will be whether actuaries feel able in practice to leave out from reports items which they do not consider it justified to include from a cost/benefit point of view.

For a copy of our full response, please click here.

For a copy of the exposure draft, please click here. ■

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SPC News is produced by the SPC Secretary and contributors from Mercer

About SPC

SPC is the representative body for the providers of advice and services needed to establish and operate occupational and personal pension schemes and related benefit provision. Our Members include accounting firms, solicitors, life offices, investment houses, investment performance measurers, consultants and actuaries, independent trustees and external pension administrators. Slightly more than half the Members are consultants and actuaries. SPC is the only body to focus on the whole range of pension related functions across the whole range of non-State provision, through such a wide spread of providers of advice and services. We have no remit to represent any particular type of provision.

The overwhelming majority of the 500 largest UK pension funds use the services of one or more of SPC's Members. Many thousands of individuals and smaller funds also do so. SPC's growing membership collectively employ some 15,000 people providing pension-related advice and services.

SPC's fundamental aims are:

(a) to draw upon the knowledge and experience of Members, so as to contribute to legislation and other general developments affecting pensions and related benefits, and

(b) to provide Members with services useful to their business.