

Anti forestalling provisions

With effect from April 2011, if you have an income of over £150,000 higher rate income tax relief is being restricted for pension contributions made by you or on your behalf. Income includes dividend income, redundancy payments (above £30,000) savings interest and pensions in payment so (as the Company may not know if you are affected) it will be up to you to declare any additional tax through your self-assessment tax-return. There may be an option to require the Plan to pay the tax charge (if it is over £15,000) with the cost being recouped from your benefit or fund – this is still under consultation and may only apply to DB benefits.

For individuals with gross income of at least £180,000 only basic-rate relief will be available on pension savings. Higher-rate tax relief will be tapered down from 50% to 20% for those with gross income of between £150,000 and £180,000.

Further information will be provided about this change nearer the time.

In order to prevent high earners from making excess pension contributions in advance of April 2011, the Government introduced anti-forestalling provisions which apply immediately.

Transitional Period – Does this affect you?

From 22 April 2009

If you have or will have an income of over £150,000 (or did in any of the last two tax years) AND have changed your normal pattern of regular contributions after 22 April 2009 you may fall under the anti-forestalling provisions.

From 9 December 2009

The Government extended the transitional arrangements therefore, if you have an income of between £130,000 and £149,999 (or did in any of the last two tax years) AND changed your normal pattern of regular contributions after 9 December 2009 you may also fall under the anti-forestalling provisions

If you are affected, your contributions will be subject to a tax-charge once they exceed a Special Annual Allowance (SAA) which is between £20,000 and £30,000. The tax charge is 20% which has the effect of reducing the tax relief to basic rate.

Total contributions include Smart Contributions (SCs), Additional Smart Contributions (ASCs), Additional Voluntary Contributions (AVCs) and Company contributions.

If you are in one of the DB sections, normal, regular ongoing savings include any increases in pension benefits which arise under the existing pension scheme rules as at 22 April 2009 / 9 December 2009. These include any increased benefits due as a result of normal pay rises and progression.

Exemptions

- If your total contributions are less than £20,000 (this can be £30,000 in some cases – see below) you are not affected.
- If your total contributions exceed £20,000 but you continue with your normal pre 22 April 2009 / 9 December 2009 pattern of regular additional contributions (ASCs and AVCs) you have a 'protected pension input' so are not affected.
- If you pay a percentage of a variable amount e.g. commission this is included as a normal pattern of regular contributions provided you elected the percentage before 22 April / 9 December.
- AVCs set up before 22 April 2009 / 9 December 2009 are included in regular savings provided you make them on a quarterly or more frequent basis. This applies even if you have made no formal agreement but have made the AVCs on request. If different amounts are paid, HMRC will allow the median of the contributions you have made. That is, if the contributions were put in order of value, the middle value or middle two values, e.g. £3,000, £4,000, £4,500 £2,900 = average of £3000 + £4500 = £3,500 and this amount could continue to be paid quarterly from 2009/10 onwards as a protected pension input.
- If you are in the M or Enhanced M section your SCs and ASCs are linked to a percentage of your salary then any automatic increase in contributions as a result of an increase in your salary would be a protected pension input.
- Smart contributions and ASCs you elect in April 2010 are protected as long as they are paid at the same level as you elected in April. However, if on or after 22 April 2009 / 9 December 2009 you opted to increase the level of contribution then the increased amount would not be protected pension input.
- If you have made infrequent AVCs i.e. less than quarterly over the last 3 tax years your SAA could be increased above £20,000 (to a maximum of £30,000). If the average amount paid is less than £20,000 then £20,000 in total can be paid in 2009/10 and 2010/11. If the average amount you have paid is higher, then you can continue to pay in excess of £20,000
e.g. your contributions and Company contributions = £1000 a month {£12,000 pa} and you have made an annual AVC of £25,000. Therefore, for 2009/10 and 2010/11 year you can pay £12,000 in regular contributions and £13,000 as extra contributions. (Total SAA = £25,000). If you had paid an annual AVC of £35,000, the SAA would be capped at £30,000.

- Any one-off pension contributions promised before 9 December (if you were not caught by the original measures) but paid after 9 December will also be protected.

Additional Information

Any additional contributions made between 6 April 2009 and 21 April 2009 which are over and above the normal pattern of regular contributions, will not be subject to the special annual allowance tax charge. The total value of additional contributions in this period will reduce the amount of SAA for 2009/10

If you have been affected by these changes may (HMRC will confirm) be able to claim a refund of contributions paid after 6 April 2009. The refund will be chargeable to tax at 40%.

For income prior to April 2009, salary sacrifice (SCs and ASCs) reduces income until you make new elections. Once you have made new elections, even if they are unchanged salary sacrifice is added back to income.

If you think you may be affected you should consider carefully before making any extra contributions including ASCS in the December Life Event window. This article is based on our understanding of HMRC rules and we recommend you seek financial advice.