Issue 99: 2012 - on your marks, get set…

As 2012 begins to loom on the horizon, some of the finer details proposed for the Personal Accounts regime are emerging. Draft regulations have been issued for consultation and further detailed proposals are expected to be published later this year.

The starting pistol fires

The structure of the Personal Accounts regime was outlined in the Pensions Act 2008.

Everyone earning above a relatively low threshold (£5,035 p.a. in 2006/07 terms) and aged between 22 and State Pension Age will be automatically enrolled in the Personal Accounts scheme unless they are instead automatically enrolled in their employer's pension scheme and it meets certain requirements:

- Defined Benefits (DB) schemes must be contracted-out, and therefore satisfy the Reference Scheme Test, or provide an accrual rate of at least 120ths and satisfy other conditions similar to the Reference Scheme Test;
- Defined Contribution (DC) occupational schemes and personal pensions must provide for a contribution rate of at least 8% (on earnings between £5,035 p.a. and £33,540 p.a. in 2006/07 terms), including at least 3% from the employer, and have a default investment option.

The minimum contributions to the Personal Accounts scheme will be the same as for DC, but there will also be a maximum annual contribution, proposed to be £3,600 in 2005 terms. This upper limit is likely to mean the Personal Accounts scheme will be inadequate for many higher earners' pension provision. This was discussed in **Spotlight 61**.

Employees can opt out, but it will be illegal for an employer to offer an inducement to opt out. Employees opting out would usually be re-enrolled after an appropriate period, which the Act sets as a minimum of three years, unless they opt out again. Employees not covered by auto-enrolment (for example, those under age 22) will also be able to opt in.

These requirements are expected to be phased in over three years from 2012.

There are several hurdles ahead

The implications of the draft regulations currently out for consultation are far-reaching. These provide details of how employers must automatically enrol employees into occupational pension schemes, personal pensions or the Personal Accounts scheme. In summary:

- Eligible jobholders must be enrolled from the first day they become eligible, the "automatic enrolment date", from which date various deadlines are measured;
- Enrolment must be completed within 14 days, except for personal pensions where there is a target of seven days for provision of information and a further seven days, from receipt of this information, for completion of enrolment;
- Contributions must be deducted on the first payday after the automatic enrolment date, even if this occurs before active membership is achieved;
- Certain enrolment information must be provided by the employer to the jobholder within 14 days (or seven days for personal pensions) and further scheme information within 30 days; and
- The jobholder will have the right to opt out by notifying the employer within 30 days of becoming an active member, or, if later, within 30 days of receipt of enrolment information (or within 30 days of contract for personal pensions).

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Some employers might be anticipating that a large percentage of their workforce will opt out, particularly where significant numbers of employees do not currently save for retirement. Unfortunately, the process of opting out is not straightforward. There are numerous stages -

1. The jobholder must request an opt-out notice from the scheme. (The regulations specifically prohibit the employer from issuing such notices.)
2. The jobholder must complete this form and send it to the employer before the end of the 30 day period outlined above.
3. If the opt-out is successful, the employer must send the original notice to the scheme within seven days of receipt; if unsuccessful, the employer must notify the jobholder within five days of receipt.
4. The employer is also responsible for refunding any employee contributions that may have been collected. Any refund must be made by the later of the second payday after the jobholder gives notice or within 21 days of receipt of the notice.
5. A refund of any contributions must be made by the scheme to the employer within 21 days of the scheme receiving the opt-out notice from the employer.

So, there will be a significant number of actions to take even where the ultimate outcome is that an employee does not become a member of any scheme.

The proposal that employees cannot opt out until they have joined could have serious consequences for individuals with Enhanced Protection. Making a contribution, or entering in to a new arrangement, could invalidate their protection and lead to significant tax consequences at retirement. We would hope that this issue is addressed as a result of the consultation process.

Employers providing more generous schemes would have some additional flexibility. If an employer provides a qualifying DB scheme, or a DC arrangement to which it contributes at least 6% of qualifying earnings and total contributions are at least 11% of qualifying earnings, then automatic enrolment can be postponed for up to 90 days. This flexibility might be very valuable for employers with high staff turnover or seasonal employment patterns.

Where will you finish?

If you want to respond to the latest consultation in order to influence the final requirements, you have until 3 June to do so. Other actions which might be considered in preparation for 2012 include:

- Calculating the potential cost implication of providing pension benefits for the increased number of employees joining the company pension arrangement – this will need to be allowed for in workforce budgeting over the next few years;
- Considering the design of existing pension arrangements, to ensure they meet the quality requirements and to check if they would allow for the 90 day postponement of automatic enrolment;
- Planning a review of employee communication and payroll/new joiner processes.

If you have any questions on this Spotlight, please contact your usual Hewitt contact or Peter Williams (+44 (0) 1372 733763).

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