Hewitt in Ireland

SPOTLIGHT

February 2007 Issue 8

Legislative update

This issue of Spotlight highlights recent developments in relation to pensions including

- **Finance Bill 2007**
- **Revenue update in relation to members of Approved Profit Sharing Schemes**
- **Revaluation and earnings increase factors**
- **Amendments to the Disclosure Regulations**
- **An important decision by the European Court of Justice**

Finance Bill 2007

Section 16 of the Finance Bill, published on 1 February 2007, includes four amendments to the Taxes Consolidation Act 1997 which impact on pensions. There may, of course, be changes to the Bill before it is enacted:

(i) A simplified Revenue approval process is introduced for one member retirement benefit schemes promoted by life offices, who can agree standard documents with Revenue, and can then establish schemes for clients using the standard documentation, without requiring Revenue approval in each case. A condition of this approach is that the total contributions paid to such schemes must not exceed the maximum permissible employee contributions e.g. 15% of the remuneration up to the earnings cap for those aged 30 to 39 etc.

(ii) The tax due on a notional distribution from an ARF, introduced in last year's Finance Act, must be remitted to Revenue not later than the middle of March, compared with the previous requirement of mid-February.

(iii) An individual whose pension benefits are the subject of a Pension Adjustment Order made under the Family Law Acts, whereby a part of his or her pension is designated for the (former) spouse, must include the value of this designated benefit in determining whether his or her standard fund threshold or personal fund threshold has been exceeded and if it does, the member is liable to tax on the excess. This must be done even where the former spouse has taken a transfer value from the member's pension arrangement. There is no requirement to restrict the maximum that may be taken as a tax free cash sum, which is defined in the legislation as one quarter of the standard fund threshold, on account of a Pension Adjustment Order.

(iv) The rate of tax applicable to any excess funds above the standard or personal fund thresholds is reduced from 42% to 41% from 1 January 2007 in line with the reduction in income tax rates.

Revenue Update

The Revenue issued an update on 2 February 2007 which enables employees who participate in approved profit sharing schemes to increase their pension contributions. Previously, if an employee took part of his or her salary and/or bonus in the form of company shares, the salary or bonus foregone could not be included in the calculation of remuneration for the purpose of determining maximum tax-deductible pension contributions. Furthermore, the salary or bonus foregone could not be used in the calculation of final remuneration upon which Revenue maximum benefits are based. Revenue has now announced that these items may be included in the calculation of remuneration and final remuneration respectively. This applies from 30 January 2007.

The Revenue briefing also confirmed that the taxable amounts arising on the exercise of share options may be included in remuneration and final remuneration calculations for pension purposes.

Revaluation percentage for preserved pensions for 2006

The Minister for Social and Family Affairs has announced the revaluation percentage for 2006 which is the amount by which preserved pensions must be increased for that year. The percentage is 4%, in line with the average increase in CPI over 2006. This is of course the maximum revaluation percentage provided for under the Pensions Act. This means that the liabilities for deferred pensioners under the funding standard, and associated funding proposals, will be somewhat higher than anticipated, and this may cause problems for some marginally solvent schemes.

Earnings increase for maximum contributions and benefit calculations 2007

Under the provisions introduced in the Finance Act 2006, the Minister for Finance announced in December the earnings increase factor to be applied to the maximum earnings to be used in calculation of contributions for tax purposes (€254,000 per annum) and the standard fund threshold (€5 million) and personal fund threshold above which a tax charge arises. The earnings adjustment for the tax year 2007 is 1.033, and accordingly the earnings cap increases to €262,382, while the standard fund threshold becomes €5,165,000.

Disclosure Regulations

The Occupational Pension Schemes (Disclosure of Information) (Amendment) Regulations 2006 were made shortly before the end of last year. These make a number of relatively minor amendments to the Disclosure Regulations of which the most notable are:

- Trustees of defined contribution schemes are not required to provide statements of reasonable projection until 1 January 2008 (it was originally intended that these would be required from 1 January 2007).

- Annual benefit statements for defined benefit schemes should relate to a date not more than six months before the date of issue (previously three months) which, for example, means that statements as at 1 January 2007 must be issued by 30 June 2007 at the latest.

- Benefit statements should provide details of the Trustees at the date the benefit statement is prepared rather than its effective date.

ECJ decision in Robins case

The European Court of Justice gave its ruling on 25 January 2007 in a case brought by AMICUS on behalf of former employees of ASW Limited against the UK Government following the wind-up of the ASW Pension Schemes when the company became insolvent. This predated the introduction of the Pension Protection Fund in the UK, and the extent of compensation received by members under the previous UK provisions left significant shortfalls relative to their pension expectations. The claim was brought under the terms of the EU Insolvency Directive which requires member states to ensure that measures are taken to protect members' interests in pensions in the event of insolvency of their employer. The Court ruled that this did not require the State to ensure that employees received their full entitlements when their employer became insolvent, but indicated that the amounts provided in this case (some members received only 20% of their entitlement) fell below what might be considered reasonable protection. The case has been returned to the UK High Court to determine whether compensation is payable to the claimants

The Irish Government supported the UK Government in this case, and the Pensions Board are currently considering whether the judgment will require any changes to the protection provided in Irish legislation to pension scheme members when their employer becomes insolvent.

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