

## ASP and IHT - part two

The complexities of IHT and the returns involved are a further burden on scheme administrators and add to other complexities of Pensions Simplification.

It is quickly becoming clear to scheme administrators that although this will create little extra work for the deceased's estate, it will create additional risks and work for the administrator that may in turn restrict the options they can offer on the death of a policyholder.

### Who is responsible?

The responsibility for the relevant return regarding ASP falls solely on the scheme administrator. They also need to keep the legal personal representatives (LPRs) informed as the LPRs must account for all appropriate property, which is all the assets

under the LPRs' control and any asset to which the deceased is treated as being beneficially entitled.

As the deceased is treated as being beneficially entitled to the ASP fund, it must be included by the LPRs on their return (IHT200).

There is certain information that they will require such as:

- » the value of the ASP fund at death, in accordance with IHT valuation criteria; and
- » the extent to which the funds will be expended on relevant dependants' benefits.

### Time limits and returns

There is a six month time limit for decisions on the extent of relevant dependants' benefits, which coincides with the period after which interest will be charged on unpaid tax.

The new provision section 216(bca) of the Inheritance Act 1984, as amended in the Finance (No.2) Bill 2006, places an obligation on the scheme administrator to deliver an account in respect of the assets for which they are liable. HMRC Capital Taxes Office are still in the process of producing the required account forms for ASP.

However, they have stated that they recognise many ASPs will pass on to relevant dependants or charities. If the whole ASP passes in this way then no IHT is due and hence a full return will not be required. They are therefore designing a one-sided account form for scheme administrators.

The following information is likely to be required:

- » name and date of death
- » scheme reference number
- » value of ASP fund at death
- » amount being expended on relevant dependants' benefits or charities
- » name and address of relevant dependants or charities
- » dependants' dates of birth (not required if funds are passing to charity)
- » name, address and contact details of scheme administrator

Following completion of the above-mentioned form there will be no need for any further involvement of the scheme administrator until a dependant ceases to qualify or dies.

If the above is not the case then IHT will be due and the scheme

administrator will have to make an IHT100 return to HMRC Capital Taxes Office. This comprises a core form, a new event form designed especially for ASP and associated pages for the assets concerned. There is one year in which to deliver the return. However, it should be noted that interest starts to accrue at six months.

Once the account is submitted then a bill for the tax will be issued to the scheme administrator. It is very difficult to calculate the exact amount of tax due: first, the scheme administrator is unlikely to hold all the information required and, second, the liability may fluctuate with the value of the estate itself. The final liability will depend on the settling value of all the other parts of the estate. This is where things can become complex and drawn out. Although an initial



## Time limits and returns continued

bill will be issued to the scheme administrator and paid in full, this may not be the end of the liability. If the estate were to be large and complex – likely to be the case for SIPP policyholders – the estate can be left open until all details of the tax liability have been resolved and a certificate of closure issued. Occasionally this could drag on for years. If a further tax bill were to be presented to the scheme administrator (due to an increase in the value of the estate) after a Transfer Lump Sum Death Benefit

(TLSDB) had been paid, the liability would fall on the scheme administrator. What we don't know is how the scheme administrator will deal with this sort of problem and what restrictions they will impose to prevent abuse.

### Example (from HMRC)

The deceased has an estate of £350,000 including an ASP fund of £100,000. In addition, the deceased has made £100,000 of gifts within the last seven years.

The aggregate estate is therefore £450,000. However, the gifts, although subject to tax, do not bear the actual charge. The current IHT threshold is £285,000.

The total tax due is  $(£450,000 - £285,000) \times 40\% = £66,000$ . This is apportioned between the assets remaining within the estate, £350,000. Therefore the tax due on the ASP is  $(£66,000/£350,000) \times £100,000 = £18,857$ .

## On death of a dependant

IHT is also due on the death of a dependant or when they cease to qualify as a dependant. Again the scheme administrator is liable and will need to deliver the account. The IHT100 form will be required. The charge applied at this stage is a postponed charge from the policyholder's death. So that the estate does not need to be held in limbo for years waiting for this charge to crystallise, the value of the ASP fund calculated is at the date of the dependant's death/cessation of dependency and the IHT liability calculated on the basis that the fund is the top slice of the estate. The rates and thresholds used will be the ones applicable at the time of the dependant's death and not the original policyholder's.

Again HMRC Capital Taxes Office will issue a bill for the IHT charge so there is no requirement for the administrator to calculate it.

HMRC Capital Taxes Office state that if benefits are left to a relevant dependant they will monitor the situation for the death of the dependant, although they are currently unsure how. However, it still remains the scheme administrator's responsibility to notify HMRC Capital Taxes Office and to submit an account to them.

### Example (from HMRC)

A policyholder dies in 2006 with an estate worth £450,000, including an ASP fund worth £100,000. The ASP is used to

provide a dependant's pension for the spouse. He left £300,000 to his children and the remainder to his spouse. Therefore the chargeable value of the estate is £300,000; the IHT threshold is £285,000. This would lead to a tax charge of £6,000 on death.

The spouse dies in 2010, when the ASP fund is worth £80,000 and the IHT threshold has risen to £325,000. £80,000 would be added to £300,000 (previous chargeable amount).

$£380,000 - £325,000 = £55,000$   
 $£55,000 \times 40\% = £22,000$

Therefore the tax due will be £22,000.

## Our view

It is clear that this has been implemented in such a way as not to inconvenience the estate and rightly so. It is a shame however, that the same consideration has not been extended to the scheme administrator.

On occasion, with the estate in limbo, scheme administrators will not be able to proceed with TLSDBs or annuity purchases.

Surely it would have been much simpler to stick with a flat 35% charge, no thresholds and TLSDBs

being kept within a pension wrapper.

Far more worrying was the government's insistence at the Report Committee stage of the Financial (No.2) Bill on the 4 July 2006 that 'ASP [was introduced] for pension scheme members who have not secured their pension benefits by age 75, where the member has a principled religious objection to the pooling of insurance and mortality risk.'

They went on to say 'this is not a mainstream product and it must not become a tax avoidance measure. We shall not be going down that road.' It will be interesting to see whether scheme administrators ask policyholders to make a declaration to enter ASP such as 'I accept that there may be inheritance tax implications on my fund.'

*This bulletin is based on our current interpretation of the changes under Pensions Simplification.*