

Talking points – Protection revisited

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This factsheet is intended for information purposes only. Its contents are not to be used as legal, financial or tax advice. The tax treatment and tax benefits are based on our understanding of current tax legislation.

Transitional protection and its various intricacies can be a minefield

Many people have already been caught out – see our recent lifetime allowance trap case for an example. In this Talking Point we take a look at the various types of protection, and what happens when it goes wrong

Enhanced protection

This can be claimed by any individual with pension benefits and/or tax free cash entitlement, irrespective of the value, even if the combined total was worth less than £1.5 million on 5 April 2006.

Broadly, there must be no further accrual or contributions, excluding some indexation in defined benefits schemes below a certain level. There will be no lifetime allowance charges due while a claim to enhanced protection is in place.

Once an individual has been granted enhanced protection, it will remain in force unless they lose it because:

- » they fail to comply with the conditions for enhanced protection, or
- » the individual notifies HMRC that they no longer wish to be covered by enhanced protection.

Primary protection

A claim for primary protection can only be made where an individual's total combined pension benefits and tax free cash exceeded £1.5 million as valued at 5 April 2006.

Individuals claiming primary protection can continue to make tax relieved contributions or to accrue further benefits under registered pension schemes after 5 April 2006.

Unlike enhanced protection, individuals with primary protection have a personal lifetime allowance which is greater than the standard lifetime allowance. This personal lifetime allowance is set by the value of their pension rights on 5 April 2006.

The lifetime allowance charge will apply only to benefits paid after their personal lifetime allowance has been used up. Personal lifetime allowances under primary protection will be adjusted annually in the same way as the standard lifetime allowance.

Key date

In most cases the application for transitional protection in the form of enhanced or primary protection needs to be made prior to 6 April 2009. There is no need to apply for scheme specific protection in relation to tax free cash or early retirement ages. In exceptional circumstances it is possible that the client may be able to apply after 5 April 2009. The following guidance from HMRC applies in that the individual must:

- » have a reasonable excuse for not notifying HMRC of their notification before 6 April 2009, and
- » make the notification to HMRC without unreasonable delay after the reasonable excuse ceases to apply.

If HMRC can be satisfied that both conditions have been met they will issue a protection certificate.

Who is responsible?

One of the most important points surrounding protection is the fact that it is the responsibility of the individual to apply for protection; not the provider or the adviser. However in most cases, individuals will still need assistance – many will not even be aware of the change in legislation unless advised. Should a need for protection be identified, further assistance is certain to be needed with completing the paperwork correctly.

The mechanics

Copies of the valuation of scheme benefits should not be submitted with the notification form. Individuals must however:

- » keep all documents relating to their successful protection application for six years following the day the form is submitted to HMRC
- » keep a copy of the protection certificate until the point where no further benefit crystallisation events can occur
- » declare all previous BCEs, otherwise the scheme administrator can not be held responsible for any calculations of the tax charges due.

HMRC cannot give scheme administrators details of an individual's protection unless the individual has authorised them to do so. Individuals should use form APSS 203 to give scheme administrators authorisation to view their certificate.

Amending notifications

If after the individual has submitted their notification form to HMRC they realise that

- » the information given in the notification is incorrect or has become incorrect, or
- » information given in connection with the notification is incorrect or has become incorrect

they must tell HMRC without undue delay.

HMRC can issue an amended certificate which will revoke and supersede the first. In addition, HMRC can amend or revoke a certificate at any time if they have reason to believe that any information given either was incorrect or has

become incorrect in:

- » the notification
- » connection with the notification, or
- » the certificate

HMRC can also revoke or amend a certificate if the individual fails to reply to a notice for information within the time specified in the notice. In all cases, if HMRC revokes or amends a certificate they will notify the client directly.

Cessation of enhanced protection

When an individual loses enhanced protection, or no longer wishes enhanced protection to apply to them, they must notify HMRC. It should be noted that where the former applies, if the individual does not notify HMRC of this within 90 days they are liable to a penalty of up to £3,000.

Our view

We believe that education is the key and clients need to be made aware of the implications of protection and their actions. Whilst advisers are not responsible for claiming protection for a client, there is opportunity to offer this service as part of a full financial planning approach. Clearly advisers should review all their clients between now and April 2009 to ensure that the appropriate action has been taken where required.

- » pricing) at the time of placing the transaction.
- » In the case of currency exchange, the prevailing spot rate is used.